

THE PRACTICE OF STATE APOLOGIES: THE ROLE OF DEMANDS FOR HISTORICAL APOLOGIES AND REFUSALS TO APOLOGIZE IN THE CONSTRUCTION OF STATE IDENTITY

By Ažuolas Bagdonas

Dissertation

*submitted to Central European University Department of International Relations and European Studies
in partial fulfillment of the requirement for the degree of Doctor of Philosophy in Political Science*

Supervisor: Associate Professor Alexander Astrov

Word count: 81000

Budapest 2010

Abstract

This dissertation examines apologies by state representatives for past human rights violations as part of the practice of state apologies, which is shaped by not only apologies given but also apologies demanded and refused. Since apologies for historical wrongs are often argued to be conducive to national and international reconciliation, thereby improving relations and contributing to lasting peace, the study examines why states sometimes refuse to apologize nevertheless, even when it is in their material interest to do so. This study argues that, unlike diplomatic apologies, state apologies for historical wrongs involve an expansion of state responsibility and require changes in state identity. Demands for historical apologies thus serve to not only to affirm the validity of the violated norms but also to challenge the state's view of itself. Such challenges may come from and thus influence state identity construction at three levels: domestic, bilateral and transnational. This study argues that states refuse to apologize when apologizing would significantly disrupt their self-narratives and thus threaten their ontological security. In support of these arguments, three cases are examined: the so-called Danish cartoon crisis in 2006, Lithuania's demands for Russia to compensate the damage of the Soviet occupation, and the transnational demands for Turkey to recognize the Armenian genocide. The three cases illustrate how ontological security concerns mediate the content and the scope of international norms by means of ascription, acceptance or rejection of responsibility. The study suggests that historical apologies take the practice of state apologies beyond the traditional framework of international law and, insofar as they require not merely adjusting or coordinating behavior but also rewriting self-narratives, they can also become sources of conflict, rather than a means for conflict resolution.

Table of Contents

Introduction. State apologies as a practice.....	1
Chapter 1. Diplomatic and Historical State Apologies.....	18
1.1 Introduction.....	18
1.2 Necessary elements of apologies.....	19
1.3 Diplomatic state apologies.....	24
1.3.1 The functions of diplomatic state apologies.....	27
1.3.2 Diplomatic apologies and politeness.....	31
1.4 Historical state apologies.....	34
1.4.1 Difference between historical and diplomatic apologies.....	37
1.4.2 Historical apologies: image repair and reconciliation	40
1.5 Conclusion	48
Chapter 2. Apologies and state identity.....	50
2.1 Introduction.....	50
2.2 State apologies and identity.....	51
2.3 Narrative identity of states.....	59
2.4 Ontological security and apologies	66
2.5 Conclusion.....	74
Chapter 3. Domestic apologies: collective responsibility and the Danish cartoon controversy.....	76
3.1 Introduction.....	76
3.2 Responsibility in diplomatic and historical apologies	77
3.2.1 Relations between legal and moral guilt and responsibility.....	78
3.2.2 Collective responsibility in state apologies.....	83
3.3 Denmark and the Mohammad Cartoon Controversy.....	91
3.3.1 Conflict of human rights norms	93
3.3.2 Denmark's historical apologies.....	98
3.3.3 Muslims in Denmark.....	101
3.3.4 Legal measures against immigrants and rules on naturalization	103
3.3.5 Defining the nation.....	106
3.4 Conclusion.....	108
Chapter 4. Apology, history and law at bilateral level: the case of Lithuania and Russia	111
4.1 Introduction.....	111
4.2 Economic relations between Russia and Lithuania: material incentives for not demanding an apology.....	112
4.3 The occupation thesis: the roots of conflict	117
4.3.1 Restoration of independence.....	118
4.3.2 Legal reasoning behind the restoration of independence	119
4.3.3 State continuity: domestic and international consequences.....	122
4.3.4 Demands for compensation and apology.....	126
4.4 Russian denial of the occupation.....	130
4.4.1 Reasons for denying the occupation.....	135
4.5 The international dimension of the conflict of historical and legal interpretations.....	138
4.5.1 Similarities between the Baltic States.....	140
4.5.2 Placing the issue on the European agenda.....	142
4.5.3 The politics of history at the European level.....	146
4.5.4 Law and history at the European level.....	148
4.6 Conclusion.....	151
Chapter 5. Turkey and the demands for the recognition of the Armenian Genocide.....	155

5.1 Introduction.....	155
5.2 Controversy over the Armenian genocide.....	157
5.2.1 The Armenian diaspora.....	158
5.2.2 The Armenian state.....	160
5.2.3 International recognition of the Armenian genocide.....	162
5.2.4 Turkey's policy.....	165
5.2.4.1. "Leave history to historians"	170
5.3 Competing historical narratives.....	173
5.3.1 Disagreement over the legal characterization of the events of 1915.....	175
5.3.2 Disagreement over the genocidal intent.....	177
5.3.3 Incompatibility of the legal frames of reference in historical narratives.....	180
5.3.4 Different strategies of emplotment.....	182
5.4 Armenian genocide and international norms	186
5.4.1 The doctrine of necessity.....	187
5.4.2 Genocide as the crime of crimes	189
5.4.3 Linking the Armenian genocide to the Holocaust.....	190
5.5 Conclusion.....	193
Conclusion. The practice of apologies, state identity, and the international normative system.....	196
Bibliography.....	208

Introduction. State apologies as a practice

During the past two decades, public institutional apologies have become an increasingly salient phenomenon, attracting substantial interest from scholars in various fields, mainly in philosophy, psychology, sociolinguistics, and political science. Most of the studies analyzing public apologies focus on the reparative and transformative potential of apologies and have an explicit normative intent.¹ Apologies for past injustices are seen as attempts to confront and ameliorate or undo their consequences by means of truth telling, victim acknowledgment and accountability. If successful, such attempts could lead to a new moral relationship between the perpetrators, victims and bystanders, enabling them – and the society at large – to transcend the bitterness of past conflicts, restore relationships, and move forward. The healing potential that public apologies supposedly hold has directed most studies to investigate the conditions and the requirements of effective apologies. What is a genuine apology, what are the moral and practical components of apology, what psychological needs should the offending party meet – these are some of the key questions addressed in the growing literature on public apologies. Studies that focus on state apologies for past wrongs, which can be viewed as a category of public, usually seek to explore the healing potential of apologies with regard to particular political goals: intra- and inter-communal conflict resolution, reconciliation, and peace-building.² Theoretical inquiries into apologies by states are often coupled with attempts to reach general

1 See N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press, 1991); A. Lazare, *On Apology* (Oxford: Oxford University Press, 2004); M. R. Amstutz, *The Healing of Nations: The Promise and Limits of Political Forgiveness* (Boulder: Lanham, Md: Rowman & Littlefield Publishers, 2005); E. Barkan and A. Karn, *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford: Stanford University Press, 2006); N. Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008); L. Radzik, *Making Amends: Atonement in Morality, Law, and Politics* (New York: Oxford University Press, 2009).

2 See J. Borneman, *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe* (Princeton, N.J.: Princeton University Press, 1997); R. Brooks, ed., *When Sorry Isn't Enough: The Controversy Over Apologies and*

insights on the conditions under which apologies can realize their potential: what are the stages between hatred and forgiveness and how can apologies contribute to the process of reconciliation, what factors influence the success of apologies, and what other forms of redress should accompany an apology.

This study builds on the research on public apologies driven by theoretical and normative concerns but approaches it from the International Relations point of view, which leads to a somewhat different set of questions and different, although related and complementary, understanding of the phenomenon of state apologies. First, the study is concerned exclusively with state apologies, which are understood here as public apologies by state representatives.³ While public apologies for historical wrongs by individuals, groups, corporations, churches or sub-state institutions are relevant for understanding the “age of apology”, broadly conceived in the literature as a process of re-examining the past, moral regeneration and collective reconstruction of social, political and personal relations, the state remains the most important unit of analysis because of its privileged position to affect significant changes both domestically and internationally.⁴ Apologies by groups, such as the Irish Republican Army's apology in 2002 for civilian deaths or the Reconciliation Walk in 1996 to apologize for the Crusades, may be symbolically important and contribute to the creation of a moral climate and conditions for sustainable intra- or inter-societal peace. However, decisions taken at state level can either cancel or reinforce the effect of group apologies, and the state has legal and political leverage beyond any other institution.

Reparations for Human Injustice (New York: New York University Press, 1999); B. A. Weiner, *Sins Of The Parents: The Politics Of National Apologies In The United States* (Philadelphia: Temple University Press, 2005); G. Negash, *Apologia Politica: States and Their Apologies by Proxy* (Oxford: Lexington Books, 2006); M. R. Marrus, *Official Apologies and the Quest for Historical Justice* (Toronto: Munk Centre for International Studies, 2006); M. Nobles, *The Politics of Official Apologies* (New York: Cambridge University Press, 2008); J. M. Lind, *Sorry States: Apologies in International Politics* (Ithaca, NY: Cornell University Press, 2008).

3 Most apologies by states are public, both due to the nature of their delivery and their purpose to publicly acknowledge a wrong. However, there can be private state apologies too, delivered orally or in a personal letter.

4 M. Gibney's et al. *The Age of Apology: Facing up to the Past* (Philadelphia: University of Pennsylvania Press, 2008) provides one of the most nuanced and insightful studies of public apologies because it recognizes the exceptional role of the state.

Second, it is possible to view apologies not only as singular acts or events but also as practices. State apology is a practice, comparable to other state practices, e.g. the declaration of war or the signing and solemnization of treaties. Following Michael Oakeshott, a practice may be defined as “a set of considerations, manners, uses, observances, customs, standards, canon's maxims, principles, rules, and offices specifying or denoting obligations or duties which relate to human actions and utterances”.⁵ If a practice is understood in this way as a standard of conduct, rather than the actual conduct, it always reflects an ideal conception of activity.⁶ In this sense, a substantial part of the literature on public apologies can be said to be engaged with the task of elaborating the ideal of a “genuine”, “consummate”, “categorical” apology, which might never be found in practice but which nevertheless defines it, while another part examines how the practice of apologies can be used in pursuit of certain goals.

Conceptualizing state apologies as a practice brings several aspects that are often overlooked in the literature. The practice of state apologies is not a new one but dates back to at least the 17th century, the time when the modern state system was developed. Apologies by statesmen could be traced back still further back in time. State apologies for historical wrongs do not represent a novelty then but a change, and should be analyzed as such. The main difference between the state apologies at different stages of the evolution of the practice concerns what apologies are given for and to whom, and in this regard at least three types of state apologies can be distinguished: religious, diplomatic, and historical. Religious apologies, predating the emergence of the Westphalian state system, were given for violations of the precepts of morality to God; diplomatic apologies – for violations of the rules and principles guiding the conduct of international relations to injured states; and historical apologies – for

5 M. Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), 55.

6 T. Nardin, *Law, Morality, and the Relations of States* (New Jersey: Princeton University Press, 1983), 6. See also C. Navari, “The Concept of Practice in the English School”, paper presented at the annual meeting of the ISA's 50th Annual Convention “Exploring the Past, Anticipating the Future”, New York Marriott Marquis, New York City, NY, USA, February 15, 2009, accessible at <http://www.allacademic.com/meta/p313325_index.html> (last accessed on June 7, 2010).

breaches against the international human rights law and values to wronged individuals and groups. This tentative periodization and its characterization as evolution should not obscure the fact that the actual apologies may contain elements of each type or that they do not replace each other but rather form new layers in the practice and can exist side by side. Although religious apologies by statesmen are virtually obsolete now and will not be examined in this study, the idea of apology has been profoundly influenced by religious concepts of sin, confession, contrition, repentance, and atonement.⁷

Third, changes in the practice of state apologies direct our focus to international law, which is considered in this study as the normative framework of apologies, rather than universal morality or international ethics. Since all apologies include direct or indirect reference to the norm or norms that were violated, an analysis of the normative framework leads to a better understanding of the practice. Diplomatic apologies reflect and affirm the values and norms embedded in the Westphalian law, which are centered around the ambiguous concept of state sovereignty.⁸ Since one of the central rules of the Westphalian sovereignty is the exclusion of external actors, whether *de facto* or *de jure*, from the territory of a state, the majority of diplomatic apology cases are concerned with both physical (border crossing, damage to ships, diplomatic premises etc.) and symbolic (insults) violations of state sovereignty.⁹ Diplomatic apologies serve as signals that the basic rule of coexistence within the state system is respected despite the violation. Conversely, historical apologies are given for violations of

7 Whether and how the understanding of apology and related concepts (wrongdoing, responsibility, atonement, forgiveness) differs across major religions cannot be addressed here. With the exception of papal apologies, religious state apologies are virtually non-existent today and thus there is nothing to compare. But consider the following statement by the President of Iraq Saddam Hussein on December 2, 2002, regarding the invasion of Kuwait in 1990: "We are saying what we are saying not out of weakness or as a tactic to an illegitimate end but to clarify facts as we see them. On that basis, we apologize to God for any action that may anger the Almighty if such an action took place in the past, unbeknownst to us but considered to be our responsibility, and to you [Kuwaitis] we apologize on this basis as well." "Saddam's Apology to Kuwait," *Fox News*, December 7, 2002, accessible at <<http://www.foxnews.com>> (last accessed on June 3, 2010).

8 For a discussion of the ambiguity of the concept, see J. Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); T. J. Biersteker and C. Weber, "The Social Construction of State Sovereignty" in *State Sovereignty as Social Construct*, eds. T. J. Biersteker and C. Weber (Cambridge: Cambridge University Press, 1996), 1-22.

9 S. D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ.: Princeton University Press, 1999), 4.

human rights and are organized around the concept of crimes against humanity. Crimes against humanity and, in particular, the crime of genocide introduce limits on state sovereignty, so that it is no longer absolute. In this regard, whatever other functions are performed by historical apologies, they also signal that the state accepts boundaries to its sovereignty and thus the superiority of universal norms.

The change that is represented by the appearance of historical apologies after the Cold War is related to the ongoing transformation of the normative framework of international law through the inclusion and development of human rights law and, to paraphrase Zhou Enlai's famous quip about the French Revolution, it may be "too soon to tell" just what this transformation represents. While some scholars, like Stephen Krasner, argue the human rights developments do not represent a fundamental break with the past but only a new form of a long-lasting tension in the Westphalian system between autonomy and international regulation, others point out that the human rights law represents a serious challenge to traditional international law.¹⁰ In some areas, there is an incompatibility between the two and the universal character of human rights sits uneasy with the idea of sovereignty as the final and absolute authority of the political community. While international law regulates the behavior of states and is important for understanding the practice of apologies, the indeterminate character of ongoing changes in the international normative structure means that the practices in which the states engage will have an important role in shaping developments in international law as well. This study will not examine changes in the normative structure, freezing it in a current state of tension between state-centered and human-centered norms and taking it as a given. However, the examination of changes in

10 See H. J. Steiner, Philip Alston and Ryan Goodman, eds., *International Human Rights in Context: Law, Politics, Morals*, 3rd ed. (Oxford: Oxford University Press, 2008), 1156-1237; G. Abi-Saab, "The Changing World Order and the International Legal Order: The Structural Evolution of International Law Beyond the State-Centric Model", in *Global Transformation: Challenges to the State System*, ed. Y. Sakamoto (Tokyo: United Nations University, 1994); A. L. Clunan, "Redefining Sovereignty: Humanitarianism's Challenge to Sovereign Immunity," in *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, eds. N. Shawki and M. Cox (Farnham: Ashgate, 2009), 7-27.

the practice of state apologies can cast some light on some of the particular ways in which agents transform the normative structure. This study suggests that one of such ways is through the expansion of the idea of state responsibility.

Fourth, the focus on state apologies as a practice leads to the inclusion of demands for apologies and refusals to apologize as part of the phenomenon. The questions that are usually asked in the majority of the literature on public apologies, as well as the preoccupation with the normative aspects and the effectiveness of public apologies, resulted in scholars largely ignoring this part of the practice, which is important for several reasons. It is important to note that, while public apologies can open the path for dialogue and reconciliation and thus resolve or prevent conflicts, demands for public apologies and refusals to apologize can incite, sustain or even deepen conflict between parties. If, as it is often noted, a failed or a semi-sincere apology can serve add an insult to an injury and further alienate the wronged party, then this is even more so in case of non-apologies. Even a quick look at some of the current demands for diplomatic or historical apologies circulating in the public domain will reveal that the phenomenon of public apologies is as much a source of conflict as a path or a tool for conflict resolution. Refusals to issue diplomatic apologies typically lead to the worsening of relations, withdrawal of diplomatic representation, or sometimes even threats of war. It is curious to note that the World War I, which may be regarded as the beginning of century-long conflicts leading to the transformation of the international normative system, and the U.S. involvement in it were both preceded by demands for apologies.¹¹ Demands for and refusals to issue historical apologies might have extremely negative consequences as well: for example, the U.S. refusal to issue a historical apology for the atomic bombings against Hiroshima and Nagasaki or the German demands for an apology for the firebombing of Dresden have the potential to disrupt the *modus vivendi* achieved between the relevant

¹¹ Austria demanded that Serbia apologize for the assassination of Franz Ferdinand, while the U.S. demanded an apology from Germany for the sinking of the RMS Lusitania in 1915, which carried 139 U.S. citizens. Of course, this is not intended to suggest that the failure to issue satisfactory apologies caused the war, only that they were symptomatic of the break down and contributed to the further worsening of relations.

states. On the other hand, if demands for apology perform a role comparable to that of apologies and can be viewed as unilateral statements on the value of the violated norms, as well as calls for improvement of relations, refusals to apologize are puzzling and require an investigation.

Thus the central question structuring this study can be formulated in the following way: if it is accepted that apologies can lead to conflict resolution, reconciliation and improved relations, as it generally is in all of the literature of public apologies, it is not clear why any state would refuse to apologize. Why would any state prefer conflict to friendly relations by refusing to accept responsibility and condemn past acts, policies or practices that led to egregious violations of human rights? While answering this question requires looking at specific cases, several lines of general arguments could also be advanced.

First, it could be suggested that states refuse to apologize because they do not accept the validity or the applicability of the norms that are affirmed by an apology for their violation. This explanation may certainly be valid in some cases of diplomatic (non-)apologies which are often utilized to reflect the state's position on the existence, the content or the extent of norms (see section 1.3.1 on the Hainan incident). In some cases, demands for a historical apology and refusal to apologize may also have an impact on the relative importance or the hierarchy of different human rights norms. For example, in the Danish case examined in chapter 3, the government's refusal to issue an apology assigns priority to the freedom of speech over the freedom of religion, thus making a contribution to not only domestic implementation but also regional and global development of civil and political rights. However, explaining states' refusal to apologize simply by their rejection or questioning of the relevant norms is generally implausible because historical apologies are usually demanded for grave violations of human rights, the prohibition of which is at the widely if not universally accepted core of the human rights law.

12 On the controversial issue of which human rights constitute the core of the human rights regime, see T. Meron, "On a Hierarchy of International Human Rights", *The American Journal of International Law* 80, 1 (1986): 1-23, and T. Koji, "Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-Derogable Rights," *European Journal of International Law* 12, 5 (2001): 917-941. These articles argue that while there is theoretical support

While a further argument could be made that the spread of the global human rights regime is uneven and that, while all states declare adherence to basic human rights norms, both their implementation and the importance assigned to them differs from state to state, the fact remains that the practice of historical state apologies has generally been limited to liberal democracies, involving countries where the human rights regime is the strongest. Furthermore, even if it was possible to show that refusal to apologize stems from questioning or altogether rejecting the validity or extent of a norm, this would then raise the question of the reasons for the variation in state behavior. In short, even if the states' views of the norms for the violation of which an apology is demanded are certainly relevant in the analysis of the practice of state apologies, it should be regarded as an intervening, rather than independent variable.

A stronger explanation for the states' refusal to apologize could be based on their material interests. Thus, in accordance with one of the canonical principles of instrumental rationality, it could be argued that states do not apologize when the expected utility costs of apologizing exceed the expected utility benefits.¹³ Even assuming that an apology leads to reconciliation and resolution of a conflict, resolving a conflict might not be very important to the state in the first place. For example, Germany could gain very little by accepting the demands of the Herero people in Namibia to apologize for committing a genocide in 1904.¹⁴ Furthermore, apologizing may – and usually does – invite demands for reparations and thus the benefits of resolving a conflict may appear to be too costly. Apart from the direct material costs, there may be indirect and strategic costs to apologizing, such as setting a precedent for similar demands by other groups or clarifying the content or the extent of a norm when it

for the indivisibility of human rights, the actual practice shows an emergence of a hierarchy of human rights, in which the “core” rights can be identified, such as the right to life, prohibition of torture, prohibition of slavery, and non-retroactivity of penal law.

13 On the principles of rationality, see chapter 12 in J. Elster, *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences* (Cambridge: Cambridge University Press, 2007).

14 On the Herero genocide, see Rachel Anderson, “Redressing Colonial Genocide Under International Law: The Hereros' Cause of Action against Germany,” *California Law Review* 93 (2005): 1155-189.

is advantageous to preserve ambiguity (e.g. the use of nuclear weapons), etc.

Empirical case studies show that material concerns are certainly a factor in both demands for apologies and decisions whether to apologize or not and that this applies to both diplomatic and historical apologies.¹⁵ Nevertheless, materialist or instrumentalist explanations encounter difficulties explaining those cases of apologies when states are willing to offer material compensation to victims of past policies or acts but not an apology, as well as those cases where apologizing would not entail material costs but could bring significant benefits. In other words, while the material and strategic reasons play a role in the practice of state apologies, their analysis is not sufficient for understanding why states sometimes refuse to apologize.

This study suggests that a fuller understanding of the practice of state apologies, the significance of the emergence of historical apologies alongside diplomatic apologies, as well as the demands for and the refusal of states to offer historical apologies to explain state refusal requires an appreciation of the role of state identity. Identity is a factor in all state apologies, since all purposeful action involves self-understanding and self-reflection. However, it is more prominent and potentially more problematic in historical apologies because the longer periods of time that elapse between an offense and an apology require identification work. Furthermore, while certain identity is required for an apology to take place, the act of apologizing also affects state identity at three levels: domestic, where apology seeks to achieve national unity by means of including previously excluded groups; bilateral, where it helps to achieve a shared view of historical events; and transnational, where it positions the state with regard to the norms and values of the international community.¹⁶

15 See E. Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W.W. Norton, 2000) or the volume on public apologies edited by Roy Brooks for a detailed discussion.

16 While the first two levels are self-explanatory, what is meant by “transnational” requires a brief clarification. Scholars within the English School approach to International Relations, which this study takes as its background, traditionally make a distinction between international system, international society, and world society, although precisely what constitutes the world society and what is its relation to the other two key elements has often been ambiguous. See B. Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization* (New York: Cambridge University Press, 2004) for a brilliant exposition of this problem. While recognizing the contested nature of the concept, this study finds R.J. Vincent's conceptualization of the world society most useful – see

In order to reach a better understanding of the ways in which identity matters in historical state apologies, the dissertation conceptualizes state/national identity as narrative identity, which may be defined as an activity of self-constitution and self-understanding articulated narratively.¹⁷ In this regard, the study follows the post-structuralist understanding of identity as a discursive construct, with an emphasis on the temporality of Self and its construction through a particular type of discourse – narratives.¹⁸ It is argued here that the central narrative that defines the national component of state identity is the national history. Not all actions by the state are articulated with regard to its history and various other narratives can be found in particular contexts. However, answers to the question “who are we” will ultimately lead to national history, which therefore serves as a kind of master narrative providing coherence to other narrative discursive articulations. While national history is subject to internal and external interpretative struggles and should not be regarded as inherently stable or immutable, it is not in a constant flux either because of stabilization through law, education and various commemorative practices. Previously ignored historical figures or even larger episodes in history may be brought into prominence or made relevant by competing groups for the interpretation of current events and the advancement of various political agendas; however, a radical revision of the historical self-narrative is unusual in the absence of major traumatic events, such as war or revolution.¹⁹ In this

R.J.Vincent, *Human Rights and International Relations* (New York: Cambridge University Press, 1986). Thus, the study situates diplomatic apologies in the international society, and historical apologies – in the boundary zone between the international and the world society, which is understood as a kind of dissolved international society in which groups and individuals have equal standing with the state. Transnational level includes states and non-governmental actors together in the context of the emerging world society.

17 K. Atkins, *Narrative Identity and Moral Identity A Practical Perspective* (New York: Routledge, 2008), 7.

18 On post-structuralist view of identity, see in particular O. Wæver, “Identity, Communities and Foreign Policy: Discourse Analysis as Foreign Policy Theory” in *European Integration and National Identity: The Challenge of the Nordic States*, eds. L. Hansen and O. Wæver (London: Routledge, 2002), 21-49, and L. Hansen, *Security as Practice: Discourse Analysis and the Bosnian War* (London: Routledge, 2006). E. Ringmar's *Identity, Interest and Action: A cultural explanation of Sweden's intervention in the Thirty Years War* (Cambridge: Cambridge University Press, 1996) represents one of the few applications of the idea of narrative identity in IR.

19 For an interesting discussion on shifts in consciousness of European following the World War II, see Peter Sloterdijk, *Theory of the Post-War Periods: Observations on Franco-German relations since 1945*, trans. Robert Payne (Vienna: Springer-Verlag, 2009). This may also be said about pressures for narrative change from the international structure – for example, J. S. Barkin and B. Cronin argue that “the legitimization of the nation-state in a particular era is determined largely by the principles around which the winning coalition unites during the course of a great war, as well as in its aftermath, as the dominant coalition constructs a new international order.” J. S. Barkin and B. Cronin, “The State and the

regard, the position taken here moves away from post-structuralism towards social constructivism, which allows for more stability in state identity.

If the practice of state apologies is viewed as a way in which agents reaffirm shared norms in situations when their validity is put in doubt, there is a significant difference between diplomatic and historical apologies. Diplomatic apologies typically serve to reaffirm an order in which the subjective identity of states (constitutional structure, nationality etc.) matters much less than their formal or objective identity as a particular type of entity defined by a set of rights and duties under international law. While the refusal to issue a diplomatic apology can stir national feelings in response to a perceived affront and thus activate the national identity component, this would still need to be interpreted in the context of the norm of the equality of states. In other words, diplomatic apologies do not lead to a transformation but rather seek to restore balance that was upset by a violation. In contrast, the affirmation of the validity of norms in historical apologies may require a significant adjustment in the identity narrative of the apologizing state, such that the practice no longer concerns the coexistence of states but the very foundations of a state's existence. The projection of universalist and naturalist (i.e. independent of the laws and traditions of the times) human rights norms back in time introduces a two-fold task in historical apologies – first, the need to identify with the past community in a way that permits assuming responsibility for its actions; and second, to adjust the identity narrative to incorporate the victim's view of the past. Both these tasks encounter difficulties, which lead to tension in the practice of historical apologies. Even if the widespread aversion to the idea of collective trans-generational responsibility is overcome, the revision of history may prove too difficult. In any case, understanding the relation between apologies and identity should lead to a better understanding of both the ways human rights norms are transmitted through state practices, and the factors that inhibit the socialization of states and/or generate conflict.

Nation: Changing Norms and Rules of Sovereignty in International Relations,” *International Organization* 48, 1 (1994): 107-130.

In the light of the above, this study suggests that the question of why states refuse to apologize for gross human rights violations in the past can best be answered by looking at the contemporary ontological security needs of states. According to the ontological security theory, states have a basic need for the stability and consistency of their self-narratives in order to exercise their agency.²⁰ This need leads to routinized foreign policy actions which may appear irrational from the strictly strategic or materialist points of view and may even be pursued at the expense of physical security. Ontological security needs will vary from state to state, and an examination of the domestic identity construction processes is required to understand how and why ontological security motivates state actions. The basic argument is that, while historical apologies may be influenced by the intensity of demands, the value that the state attaches to the violated norm or the damaged relations, the material and strategic cost-benefit calculations, the analysis should take into account the impact that apologizing or not apologizing would have on the domestic, bilateral and international processes of state identity construction. States are less likely to apologize if an apology would lead to a revision of their self-narrative in a way that would make them ontologically insecure.

Several methodological notes are due here. First, while the study situates itself within post-structuralist and social constructivist research paradigm, the nature of the subject requires interdisciplinary forays into areas that are not usually addressed by International Relations. Thus, although the central argument is not normative in its intent, the study incorporates a discussion of works in other disciplines that may be explicitly normative. This primarily concerns the understanding of apologies, as well as philosophical investigations of collective responsibility. The justification for this is based on a principle of interpretation in hermeneutics and law that is sometimes referred to as the benefit of doubt. Unless there is evidence to the contrary, it is assumed that the verbal actions of actors are not inherently unreasonable, contradictory or inconsistent. Thus, in addition to the standard

²⁰ See in particular B. J. Steele, *Ontological Security in International Relations: Self-Identity and the IR State* (London: Routledge, 2008).

assumption that the actors (states, as well as non-state entities and groups) are rational, by which is meant that they choose the means appropriate to ends, whatever those ends are, it is also assumed that the actors' statements (actions) are meaningful, which may entail an examination of the inter-textual resources available for actors to create meanings for their actions.²¹ Second, the study is concerned with *understanding* the practice of state apologies and does not seek to formulate a causal account of the phenomenon that could be used for making far-reaching predictions. While it is possible to make partial predictions about the likelihood of foreign policy decisions or developments on the basis of an understanding of a particular state's identity, this is not the primary aim of the study.²²

Accordingly, the three cases of the practice of state apology are examined here not in order to test the theoretical account but to demonstrate its viability. As it was already mentioned, perhaps the strongest alternative answer to why states do not apologize could be based on some form of materialist or instrumentalist argument. The argument of this study is not that materialist or instrumentalist aspects of the phenomenon do not matter but only that in some cases they do not matter as much as identity and thus the understanding of the practice of state apologies would be incomplete without appreciating the role of identity. Therefore, the selection of cases for discussion follows the logic of crucial case studies in comparative politics, according to which an argument is likely to be valid in all circumstances if it can be shown to be valid under least favorable conditions. In case of the Danish cartoon controversy examined in chapter 3, the costly boycott of Danish goods in the Middle East and increased physical insecurity could have been expected to create strong incentives for political leadership to respond to demands for an apology but did not. In the case examined in chapter 4, Lithuania's demands for an apology from Russia are made despite their detrimental effects on the economy and, arguably, the

21 On rationality see P. Anand, "Decision Making," in *The Social Science Encyclopedia*, eds. A. Kuper and J. Kuper, 2nd ed. (London: Routledge, 1996), 286. For a discussion of why the rules of interpretation apply to human action and how human action can be considered a text, see P. Ricoeur, *From Text to Action: Essays in Hermeneutics II*, trans. Kathleen Blamey and J. B. Thompson (Evanston: Northwestern University Press, 1991), 144-168.

22 On partial predictions (deductions) on the basis of understanding discursive systems, see Wæver, 32.

physical security of the country without expecting material rewards. And in the case examined in chapter 5, Turkish reactions to demands for the recognition of the Armenian genocide occasionally harm the economic and diplomatic relations of the country, as well as its prospects for achieving strategic foreign policy goals. In short, in all these cases a strong argument could be made that material or strategic interests require apologizing or abandoning demands for an apology and therefore refusals to accept responsibility or forgo demands require an analysis of non-material costs.

Finally, the difficulty of assessing the quantitative aspects of the practice of apologies should be noted. It does not appear possible to establish the number of instances of state apologies, nor determine with a high degree of precision whether there has been an increase or a decrease in them. An online database of political apologies and reparations maintained by the Center for International Governance Innovation in Canada over 1100 documents related to historical apologies by political or social entities and financial and symbolic reparations.²³ Aaron Lazare compared the number of articles in the New York Times and the Washington Post, containing the word ‘apology’ or ‘apologize’ during the five-year period of 1990–1994 with that of 1998–2002 and found that the two newspapers combined had a total of 1,193 such articles during the first five-year period, compared to 2,003 articles during the latter five-year period.²⁴ However, both the database and the increase of news items are likely to tell more about the growing interest in the phenomenon than about its scope or intensity. The frequent references in the literature on public apologies to an “avalanche” or even an “epidemic” of apologies are made in the context of historical apologies and refer to little more than the fact that there were virtually no such apologies before 1988 and that their number has been growing since that time. While historical apologies are usually reported in the media, especially in cases when they generate controversy, diplomatic apologies are often demanded and given through diplomatic channels without receiving

23 See the Political Apologies and Reparations Website at <<http://political-apologies.wlu.ca/about.php>> (last accessed on June 8, 2010).

24 Lazare, 6.

media attention. For example, the Lithuanian media reported widely the incident when the Lithuanian flag was flown upside-down during the meeting between French President Nicolas Sarkozy and Lithuania's President Dalia Grybauskaitė in Paris in September 2009 but did not report the subsequent diplomatic apology. Given these difficulties, the discussion of the practice of state apologies in the following chapter is based on a sample of 100 diplomatic apologies and demands for apologies (50 of which were issued before and 50 after the end of the Cold War) and 50 historical apologies and demands for them, the information on which was collected from and checked against various sources (history and international law books, legal cases, newspapers and the Internet).²⁵ This non-exhaustive sample is considered representative enough to draw generalizations, especially since much less is known about the quantitative dimensions of other diplomatic state practices (e.g. summit meetings or bilateral treaties) and the study is qualitative in its aims.

The dissertation is structured in the following way. Each chapter poses a question or a series of questions the answers to which are intended to deepen our understanding of the different aspects of the practice of state apologies. Each case study examines the relation between (non-)apology and state identity at domestic, bilateral and transnational level. In addition to the specific questions structuring their arguments, the case chapters note what norms are claimed to be violated and whether the refusal to apologize is based on identity or the denial of the validity or value of the violated norms. In this regard, responsibility can be considered to be the main vehicle that connects norms and identity. The connection can break down in several ways: when the national component of state identity is “imagined” in a way that results in the lack of unity and/or continuity of Self, or when a unitary and

25 In principle, the typology suggested in this study is non-exhaustive for it is based on the norms for the violation of which apologies are offered. If different norms emerge that are not covered by either traditional international law or human rights law, different apologies could be expected as well. For example, China's apology to Russia for a spillover of poisonous benzene into the Songhua River (the largest tributary of the Amur River in Russia), which was caused by an explosion at a state-owned chemical factory in Jilin city in November 2005, could perhaps be interpreted as an environmental apology, although insofar as it involves the violation of borders and treats environment as a property of the state it may as well be considered a diplomatic apology.

continuous Self is positioned in the world in a way that makes the norms inapplicable.

The first two chapters provide a general discussion of state apologies. Chapter 1 discusses the standard of apology, as it is elaborated in philosophical, psychological and sociological studies, as well as the linguistic and psychological theories of the functions of public apologies. It is found that responsibility is the main component distinguishing apologies from similar actions and that the theories examined require a more explicit and better developed account of identity in order to explain the puzzle of non-apologies. The chapter provides a more extensive discussion of diplomatic and historical apologies, as well as the key differences between them. Chapter 2 explores the relation between state apologies and identity, introduces the concept of narrative identity, and presents the main argument of the dissertation.

The next three chapters provide a discussion of particular instances of state apologies. Following a theoretical analysis of why the notion of collective responsibility underlying historical apologies becomes a problem to societies grounded in liberal values, chapter 3 examines the Danish case and investigates how the government's refusal to accept responsibility for the publication of cartoons that were found offensive by Muslims in Denmark and around the world contributed to the domestic identity construction process. The rejection of demands for an apology served to affirm a particular view of the character of the Danish national community and the relation between the state and its people. Relevant human rights norms were not rejected but weighed one against the other and reinterpreted both by means of legal decisions and the denial of government responsibility.

Chapter 4 examines Lithuania's demands for Russia to recognize the Soviet occupation of 1940 and apologize for it, which is discussed as a case of bilateral identity construction process that is distinctive in more than one way. While the ontological security rationale is present on both sides, Russia could be shown to have material incentives not to apologize because of Lithuania's demands for material compensation. The case is therefore examined mainly from Lithuania's point of view, since

here we find strong material incentives to abandon the demands for apology and normalize relations. Importantly, Lithuania's demands for the recognition of the Soviet occupation could be regarded as demands for a diplomatic apology; however, they are propelled and invigorated by the institutionalized memory of the Soviet repressions which are considered to have been a genocide. Russia's apology for the Molotov-Ribbentrop Pact, which is central to Lithuania's self-narrative as the event that led to both the loss of statehood and the subsequent Soviet crimes against the population, would then represent both a historical and a diplomatic apology. Furthermore, while Russia's rejection of responsibility is based on the incompatibility of historical narratives, this incompatibility also leads to disagreement over which norms apply to the historical events in question.

Chapter 5 examines Turkey's refusal to acknowledge the Armenian genocide as an example of how apology contributes to state identity construction at the transnational level. The Turkish and Armenian narratives are discussed by looking at two representative historical studies on the events in question. This case illustrates a clash between state values and human rights values in the competing narratives, at least insofar as the actions of the Ottoman government are explained and justified by reference to the state of emergency that existed during the war. The refusal to apologize is based on the incompatibility of Turkish and Armenian historical narratives and the ontological security needs of the Turkish state.

Chapter 1. Diplomatic and Historical State Apologies

1.1 Introduction

This chapter examines the phenomenon of state apologies, differentiates between diplomatic and historical apologies, and discusses various perspectives on the role of state apologies in the international community. The main argument is that both diplomatic and historical state apologies affirm the norms that guide international relations but refer to different norms and therefore perform somewhat different functions: diplomatic apologies are routinized interaction rituals which aim to reduce potential sources of conflict between states arising from violations of public international law and which take place with regard to calculations of status and interests; historical apologies provide an assessment of state actions in respect of the norms of international human rights law. While historical apologies are not free from pragmatic calculations, the interest-based accounts of historical apologies are not sufficient to explain state behavior.

The following question guides the development of argument in this chapter: what is the function of state apologies in the international community? In answering this question, the chapter is divided in three parts. First, the requirements of a categorical apology are analyzed, outlining the conceptual boundaries of the phenomenon of state apologies. Second, the practice of diplomatic state apologies is described, focusing on the functions they perform in the international normative system. Finally, the differences between diplomatic and historical apologies are discussed, arguing that a fuller understanding of the role of historical apologies in the international system requires an identity-centered perspective.

1.2 Necessary elements of apologies

The examination of the function of state apologies, which may be defined as public apologies by state representatives, should begin with a more general discussion of the concept of apology. What is an apology and what does it mean to apologize? What is the difference between private and public apologies or between interpersonal and institutional apologies? A substantial body of scholarship on apologies in several disciplines (linguistics, psychology, sociology) can be relied upon in clarifying these preliminary issues.

The theory of pragmatics, a subfield of linguistics which studies context-dependent aspects of meaning, conceptualizes apologies as speech acts, i.e. performative utterances, in which the uttering of the sentence is, or is part of, the doing of an action.²⁶ Within various taxonomies of speech acts, apologizing is placed alongside condoling, congratulating, greeting, thanking, accepting, rejecting, deploring in the category of acknowledgments that “express, perfunctorily if not genuinely, certain feelings toward the hearer”.²⁷ According to J. L. Austin, in order to be successful, a performative utterance must meet a number of conditions: there must exist an accepted conventional procedure, which includes the uttering of words by certain persons in certain circumstances; the particular persons and circumstances must be appropriate for the invocation of the particular procedure; the procedure must be executed by the participants correctly and completely; the persons involved in the procedure must have appropriate attitude and intention etc.²⁸ Some recent accounts of speech acts shifted the focus from formal success conditions to the social functions of speech acts.²⁹ According to this view, in apologizing the speaker acknowledges responsibility for committing an offense, and the apology is

26 J.L. Austin, *How to Do Things With Words* (Oxford: Clarendon Press, 1962).

27 K. Bach and R. M. Harnish, *Linguistic Communication and Speech Acts* (Cambridge MA.: MIT Press, 1979), 51.

28 Austin, 12-16.

29 E. Ogiermann, *On Apologizing in Negative and Positive Politeness Cultures* (Amsterdam: John Benjamins Publishing Company, 2009), 46.

successful when the hearer recognizes his or her intention of expressing regret. The performative goal in apologies is seen as coinciding with the social goal, which is maintaining harmony between speaker and hearer.

The formal requirements of performing the act of apology apply to state apologies as well. The procedures for delivering official diplomatic apologies are formalized and routinized, while state apologies for historical wrongs are typically delivered at special formal events, such as anniversaries, commemorations, and state visits. State apologies must be delivered by persons who are in position to represent the state, typically heads of state and prime ministers, or other high officials authorized to represent the state.³⁰ However sincere, neither apologies by individuals or groups nor apologies by state representatives given in their own name count as state apologies.

In addition to formal requirements, apologies are also subject to substantive requirements which refers to those features distinguish it from other performative utterances. Over the last decade, a wide consensus formed among the scholars studying the phenomenon of public apologies regarding the essential elements of a categorical ('full', 'genuine', 'authentic') apology, i.e. the substantive content of the speech act of apology. Paul Davis names three constitutive elements of a 'genuine' or 'consummate' apology: doxastic (the belief that one has transgressed), affective (one's feelings of self-reproach) and dispositional (one's disposition to avoid the transgression in future), which constitute the essence of the practice of apologizing and which should determine whether apology is accepted or rejected by the victim of an offense.³¹ According to Nick Smith, the doxastic element includes corroborated factual record (agreement on what happened), acceptance of blame (acceptance of the wrongfulness of an act

30 Usually, the appropriateness of persons for delivering state apologies is not contested. In case of Japan, however, the issue is a matter that often stirs passions. For example, while some British organizations of former Japanese prisoners of war believe that it falls on the Japanese government to apologize for the mistreatment of the POWs, other organizations pressed for an apology from the emperor and found the prime minister's apology unacceptable. See M. Cunningham, "Prisoners of the Japanese and the Politics of Apology: A Battle over History and Memory," *Journal of Contemporary History* 39, 4 (2004): 561-574.

31 P. Davis, "On Apologies," *Journal of Applied Philosophy* 19, 2 (2002): 169-173.

and causal responsibility for it), identification of each harm and endorsement of the underlying moral principles; the affective element includes the recognition of the victim as a moral interlocutor and categorical regret (recognition of moral failure and wishing to undo transgression); while the dispositional element encompasses reform and redress (a promise not repeat the offense and a compensation); appropriate mental state (seriousness, sincerity, empathy and sympathy).³² In other discussions of what constitutes a 'genuine' apology the affective element may refer to sorrow, remorse or guilt, and the dispositional element may entail material reparations, but the definition and the implicit logic of apology remains much the same.³³

Few interpersonal and even fewer institutional apologies meet the ideal of the genuine apology described above. With few exceptions, state apologies generally fall short of a genuine apology as well. The substantive requirements of an apology define the conceptual boundaries of the phenomenon, whereas real-life apologies may be situated on a continuum with a 'genuine' apology at one end and an expression of regret involving acknowledgment of responsibility at the other. What should be stressed here is that apologies necessarily involve an explicit or implicit acknowledgment of some type of causal responsibility for an offense. This aspect of apologies has raised a great deal of interest among legal scholarship in the United States and Canada who, realizing the potential benefits of apologies in peaceful settlements of disputes, struggled to invent a formula which would exclude apologies from admissibility into evidence.³⁴ While in some cases apologies might be evidence only of the speaker's personal *belief* or *feeling* of culpability, in other cases, to stay on the safe side, defendants were advised to offer partial apologies which are expressions of condolence or sympathy, but not statements that

32 N. Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008), 17-108.

33 The extended discussion on the requirements of genuine apologies see K. Gill, "The Moral Functions of an Apology," *Philosophical Forum* 31, 1 (2000): 11-27; L. Kort, "What is an Apology?" *Philosophical Research Archives* 1 (1975): 78-87; A. Lazare, *On Apology* (Oxford: Oxford University Press, 2004); N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press, 1991).

34 See J. Cohen, "Legislating Apology: The Pros and Cons," *University of Cincinnati Law Review* 70 (2001): 819-95; D. L. Levi, "The Role of Apology in Mediation," *New York University Law Review* 72 (1997): 1165-1210.

admit fault. Some of the current public statements issued by state representatives follow the legally safe path and use the formula “we are sorry that this happened”.³⁵ However, if apologies expressed only sympathy or regret, they could be consistently issued in the absence of the doxastic element or, indeed, by any third party. Whatever the merits of quasi-apologies in situations demanding immediate response, they potentially lead to absurdity – presumably, almost everybody feels sorry that there was slavery.

Much of the current research on apologies focuses on interpersonal apologies. While the substantive requirements outlined above apply to state apologies as well, there are some important differences between interpersonal and institutional apologies. First, the affective element in institutional apologies is not as significant as in interpersonal apologies. Since state apologies, like other institutional apologies, are apologies by proxy, questions about the sincerity of the speech-act and the feelings of guilt for an offense recede into the background. Second, institutional apologies are much more likely to be public, which reduces the importance of the acceptance of the victim of an offense for which apology is given. In private apologies, the speaker ultimately aims to elicit forgiveness by the victim.³⁶ However, in case of public apologies, the interaction between the speaker and the hearer is altered by the presence of the audience, which in the age of global media may be the world at large. Therefore, acceptance by the victim of an offense, or forgiveness, is no longer the only measure of success of institutional public apologies for even without being accepted apologies perform an important function by putting facts on the public record and stating a position with regard to the relevant norms. Indeed, some institutional apologies do not have a clearly specified recipient, while others do not seek a clear response. For example, it has been observed that Pope John Paul II, who has

35 This is the case, for example, in the avalanche of apologies related to the torture of Iraqi prisoners in Abu Ghraib, where apologies have apparently become a means of avoiding responsibility. See T. Judt, “A Sorry State: The Artlessness of the Apology,” *The Washington Post*, May 9, 2004; M. Gibney and N. Steiner, “Apology and the American ‘War on Terror,’” in *The Age of Apology: Facing Up to the Past*, ed. M. Gibney (Philadelphia: University of Pennsylvania Press, 2008), 287-315.

36 T. Govier and W. Verwoerd, “The Promise and Pitfalls of Apologies,” *Journal of Social Philosophy* 33, 1 (Spring 2002): 68.

apologized for various historical wrongs on behalf of his Church on about a hundred different occasions, in most cases apologized to God and not to victims or their descendants.³⁷ In this regard, it should be noted that demands for apologies perform the same role as state apologies, especially if they are presented or mediated by states. Even if these demands are not satisfied, they too put the facts on the record and publicly affirm the validity or relevance of particular norms in a given situation. This partially explains why some public apologies are given when no one demands them, as in the case of the UN apology for the Rwandan genocide, and some demands for an apology are made without expecting to be met, as in the case of Lithuania and Russia, which is examined in Chapter 4.³⁸

There is a legitimate question whether apologies follow the same logic across cultures. In English, *apology* has three basic meanings, although the semantic usage of the word indicates an even greater variety: apology as defense (from Greek *apologeomai* – ‘speak in defense’), apology as a justification or excuse, and apology as expression of remorse, of which only the last is the focus of this study.³⁹ Other languages may contain a broader or a narrower range of meanings, as well as cross-cultural variation in degree of directness, ambiguity and verbosity of apologies. For example, in Japanese there is a great variety of apology expressions that can be used in conjunction with various intensifiers depending on the seriousness of the object of regret and the relation between the

37 See M. R. Marrus, “Papal Apologies of Pope John Paul II” in *The Age of Apology: Facing Up to the Past*, ed. M. Gibney (Philadelphia: University of Pennsylvania Press, 2008), 259-287.

38 The United Nations’ Report of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda (15 Dec. 1999) contains the following passage, which represents an interesting and so far the only case of what could probably be described as a collective state apology: “The United Nations failed the people of Rwanda during the genocide in 1994. It is a failure for which the United Nations as an organization, but also its Member States, should have apologized more clearly, more frankly, and much earlier.” See United Nations Security Council, *Report of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda*, December 15, 1999, S/1999/1257, 51, accessible at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>> (last accessed on December 10, 2010).

39 On the etymology of the term ‘apology’, see M. Deutschmann, *Apologising in British English* (Umeå: Umeå Universitet, 2003), 37; and M. Moore, “Pardon Me for Breathing: Seven Types of Apology,” *A Review of General Semantics* 60 (June 2003): 160-169. Sometimes the apology given may be understood in all three senses of the word; consider the following statement by a well-known fast-food company: “Because it is our policy to communicate to customers, we regret if customers felt that the information provided was not complete enough to meet their needs. If there was confusion, we apologize”. “McDonald’s apologizes for beef flavoring in U.S. Fries,” *Chicago Sun-Times*, May 25, 2001.

interlocutors.⁴⁰ While this may sometimes result in ambiguity or miscommunication, the linguistic nuances of apologies are generally less significant in case of institutional apologies than in interpersonal apologies and this study will assume that corresponding ranges of meanings can be fixed across cultures.⁴¹

With these preliminary issues of clarification out of the way, we can now turn to examining the functions of state apologies. While most studies on state apologies focus on the recent trend of apologies given for historical wrongs, heralding the end of the Cold War as the beginning of the “age of apologies”, such narrow focus ignores the fact that state apologies are not a new phenomenon – apologies by state representatives are in fact a very well established practice in the diplomatic relations between states. The inclusion of diplomatic apologies has two consequences for the analysis of state apologies. First, it directs our focus to the international level by placing the origins of the phenomenon in the workings of the society of states, rather than domestic civil rights movements etc. Second, it allows examining changes in the practice of state apologies, which is important for our understanding of its meaning in international politics. The following sections will describe the general features and discuss the functions of both diplomatic and historical state apologies in comparative terms.

1.3 Diplomatic state apologies

The practice of diplomatic state apologies can be traced back to the 17th century and became widespread in the 19th century. Initially, at least, diplomatic apologies were interpersonal in nature, as

40 See H. Wagatsuma and A. Rosett, “The Implications of Apology: Law and Culture in Japan and the United States,” *Law & Society Review* 20, 4 (1986): 461-498.

41 For a discussion of one case of miscommunication resulting from cross-cultural differences, see K. Murata, “Has He Apologized or Not?: A Cross-Cultural Misunderstanding Between the UK and Japan on the Occasion of the 50th Anniversary of VJ Day in Britain,” *Pragmatics* 8, 4 (1998): 501-513.

insults to a monarch's representatives in another country meant insults to the king's person. When in 1662 in London Count d'Estrade, the French representative, and the Baron de Vateville, the representative of Spain, engaged in a violent dispute over who had precedence in meeting an ambassador from Sweden, Louis XIV recalled his ambassador at Spain, expelled the Spanish envoy, and threatened Spain with war if the insult was not repaired by a formal apology.⁴² Similarly, when ambassador of Peter the Great in London M. de Mathweof was publicly mistreated and arrested in 1708 for failing to pay his debts, Queen Anne sent her foreign minister to apologize to the ambassador personally, sent a special explanation of the incident to the czar, and ordered her representative in Russia Lord Whitworth to apologize to the czar in the presence of the diplomatic corps and the court.⁴³

Although it gradually lost its interpersonal character, the practice of diplomatic apologies became quite widespread towards the end of the 19th century. The main function remained the same – to diffuse potential conflicts or eliminate excuses for conflict by means of repairing insults to the state. For example, in 1854 when the US steamer *Black Warrior* was seized by the Spanish officials in Cuba for violating customs regulations and the US sought to provoke a war with Spain, Spain apologized and agreed to an indemnity.⁴⁴ In 1868, when 11 French sailors were killed by the local samurai in the port of Sakai, the Japanese government executed the offenders and offered an official apology and an indemnity to the French government.⁴⁵ In the 20th century, diplomatic apologies became part of a normal diplomatic routine, frequently demanded and given, often through diplomatic channels and without much publicity, which makes it very difficult to assess the true scale of the practice.

42 J. Pardoe, *Louis the Fourteenth, and the Court of France in the Seventeenth Century* (New York: James Pott & Company, 1902), 118-120.

43 F. Marshall, *Titles, Decorations and Forms Or International Vanities* (Barber Press, 2007), 254-255.

44 H. L. Janes, "The Black Warrior Affair," *The American Historical Review* 12, 2 (1907): 280-298.

45 J. Goebel, "The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars," *The American Journal of International Law* 8, 4 (1914): 802-852. Similar incidents involving apologies include the Tatsu Maru incident (1908), when China apologized to Japan for seizing a Japanese steamship; the sinking of Dresden (1915), when Britain apologized to Chile for the violation of its sovereignty; the sinking of Lusitania (1915), when Germany apologized to the United States for sinking a British ship that carried American citizens; the I am alone case (1935), when U.S. apologized to Canada for sinking a Canadian smuggler ship.

The role of state apologies in the functioning of the international legal system has been recognized and formalized in the International Law Commission's draft articles on the Responsibility of States for Internationally Wrongful Acts.⁴⁶ Article 37 of the draft articles stipulates that a formal apology may be appropriate as a satisfaction for an injury caused by an internationally wrongful act in cases when full reparation is not possible by restitution or compensation. According to the ILC's commentaries on the draft articles, formal apologies serve as a form of remedy in cases of "non-material injury" (an injury that is not financially assessable), such as "insults to the symbols of the State, such as the national flag, violations of sovereignty or territorial integrity, attacks on ships or aircraft, ill-treatment of or deliberate attacks on heads of State or Government or diplomatic or consular representatives or other protected persons and violations of the premises of embassies or consulates or of the residences of members of the mission." An examination of instances of diplomatic apologies would reveal an even greater range of non-material injuries. For example, in 1963, Indonesia apologized to Denmark after its *charge d'affaires* was found to be involved in running an illegal brothel; in 1987, Israel apologized to the United States for espionage against the US; in 2005, Israel apologized to New Zealand for an attempted passport fraud by Mossad agents; and in 2005, China apologized to Russia over a benzene spill into the Russian territory caused by an explosion in a petrochemical plant in Harbin.

The theoretical order of priority affirmed by the ILC in the draft articles (preferably restitution, followed by compensation, and, finally, satisfaction) is often reversed in the diplomatic practice of states – some the fiercest disagreements between conflicting parties revolve around the issue of apology, rather than compensation. In other words, compensation is often of secondary importance to an explicit recognition of responsibility for violation through a formal apology. In some cases, states

⁴⁶ The draft articles and commentaries, as well as background information about the Commission's work on state responsibility, are available on the ILC website at <<http://www.un.org/law/ilc/index.htm>> (last accessed on August 1, 2007).

are prepared to pay compensation on *ex gratia* basis but decline issuing an apology.⁴⁷ This is so because not only the attribution of wrongful acts but the very wrongfulness of acts under international law is often contested by states.⁴⁸ In codifying the long-established practice of apologies, the ILC relied on a number of cases, where an apology was found appropriate by judiciary bodies or where it was issued by a transgressing state.⁴⁹ However, in assessing the role of state apologies in the international normative system, it is important to take into account that apologies are often demanded but not given, as well as distinguish between denial of responsibility for a wrongdoing and denial of a norm. To illustrate this point, it is worth taking a closer look at the Hainan Island incident as an instance of diplomatic apologies.⁵⁰

1.3.1 The functions of diplomatic state apologies

On April 1, 2001 a U.S. surveillance aircraft flying over the Exclusive Economic Zone (EEZ) waters of China collided with the intercepting Chinese fighter and was forced to make an emergency

47 For example, in the aftermath of the USS *Liberty* incident on June 8, 1968, when Israeli jet fighters and torpedo boats attacked a U.S. Navy intelligence ship in international waters in the Mediterranean, Israel regretted the loss of life, offered compensation for the diseased and injured but refused to apologize and assume responsibility for the incident. See W. L. Jacobsen, "A Juridical Examination of the Israeli Attack on the USS *Liberty*," *Naval Law Review* 36 (1986): 69-119. Similarly, when the USS *Vincennes* shot down an Iranian commercial Airbus, Flight 655, killing 290 Iranian passengers, the United States refused to apologize to Iran but made an *ex gratia* payment to the victims' families. For a discussion and more examples, see M. N. Leich, "Denial of Liability: *Ex Gratia* Compensation on a Humanitarian Basis," *The American Journal of International Law* 83, 2 (1989): 319-324.

48 It must be noted that the draft articles codify only the secondary rules of state responsibility (i.e., the conditions under which a breach of obligations occurs and the legal consequences that follow it) and not the substantive obligations of states.

49 The cases cited in the commentaries include the *Corfu Channel* (U.K. v. Albania), *Consular Relations* (Paraguay v. United States) and *LaGrand* (Germany v. United States of America) cases before the International Court of Justice; the *I'm Alone* arbitration; the *Rainbow Warrior* arbitration (New Zealand v. France), etc.

50 In many respects, this case is comparable several other: e.g., the *Pueblo* incident in 1968, when North Korea seized a U.S. Navy intelligence-gathering ship with an 83-man crew and forced the U.S. to apologize for intrusion into its territorial waters and "the grave acts of espionage." See M. Lerner, *The Pueblo Incident: A Spy Ship and the Failure of American Foreign Policy* (Lawrence, Kansas: University Press of Kansas, 2002); the "Whiskey on the Rocks" incident, when a Soviet submarine ran aground in Southern Sweden and the Soviet Union was forced to issue an apology for intrusion into the Swedish territorial waters. See M. Leitenberg, *Soviet Submarine Operations in Swedish Waters 1980-1986* (Washington, D.C.: The Center for Strategic and International Studies, 1987); as well as the recent seizure of the British Royal Navy personnel by Iran off the Iraq-Iran coast in March 2007.

landing on Hainan Island.⁵¹ Chinese authorities then detained the twenty-four crew members and demanded that the United States apologize for the incident. Apart from the attribution of responsibility for the collision, the ensuing dispute between the two countries revolved around three issues: whether U.S. reconnaissance operations in the South China Sea infringed upon China's rights over its EEZ; whether the U.S. violated China's sovereignty by entering Chinese territorial airspace and landing on Hainan Island without authorization; and whether China's boarding of the U.S. aircraft and detention of its crew was in violation of the U.S. right to sovereign immunity.⁵²

On April 11, following a series of negotiations, the U.S. Ambassador Joseph Prueher sent a carefully worded letter of regret, which stated that the United States was "very sorry" for the death of the Chinese pilot, as well as for entering Chinese airspace and performing the emergency landing without authorization.⁵³ Significantly, the United States did not accept responsibility for the collision and offered no apology for conducting reconnaissance operation in the Chinese EEZ. Nevertheless, the letter led to the release of the detained crew on April 12 and, later, the return of the U.S. plane. On June 30, China requested a compensation of approximately \$1 million for the expenses associated with the incident (the damaging of the Lingshui airfield, where the emergency landing took place, the detention of the crew, as well as the subsequent transportation of the aircraft back to the United States). On August 9, the Department of Defense offered a "non-negotiable" amount of \$34,567, which China rejected as "unacceptable".⁵⁴

The U.S. assertion of its right to conduct reconnaissance flights in the airspace along China's

51 For an overview of the incident, see "Contemporary Practice of the United States Relating to International Law," *American Journal of International Law* 626, 95 (2001): 630-633.

52 For a discussion of these issues, see M. K. Lewis, "An Analysis of State Responsibility for the Chinese-American Airplane Collision Incident," *New York University Law Review* 77 (2002): 1404-1441.

53 The full text of the letter is available at <http://en.wikisource.org/wiki/Letter_of_the_two_sorries> (last accessed on May 8, 2010). While during the negotiations China insisted on obtaining a "dao qian" (formal apology) from the U.S., the Chinese version of the letter contained only "bao qian", which can be translated as either "apology" or "regret" in English and thus allows for more flexibility in interpretation. See M. F. Shakun, "United States-China Plane Collision Negotiation," *Group Decision and Negotiation* 12 (2003): 477-480.

54 "China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications," *CRS Report for Congress*, October 10, 2001, 8, accessible at <<http://www.fas.org/sgp/crs/row/RL30946.pdf>> (last accessed on May 8, 2010).

coast as well as China's insistence on a peculiar interpretation of its rights in its Exclusive Economic Zone should be viewed in the context of their policies in the region in general and towards Taiwan in particular. The United States have an expressed interest in continuing airborne reconnaissance operations in the South China Sea for military purposes.⁵⁵ China has an interest to push back the U.S. military presence in the region and keep the option of reunification with Taiwan by forceful means open. Insofar as a particular interpretation of the legal issues involved in this case helps either country furthering their interests, politics and law are tightly intertwined.

This is the dynamic aspect of state apologies – apologies do not merely give satisfaction by affirming the validity of violated rules and “restoring” the existing order to the state in which it was prior to the violation. In many cases, apologies may be used as an instrument to negotiate, develop and agree upon new rules. In this regard, Gibney and Roxstrom suggest that, under certain circumstances, apologies may: “1) contribute to the formation of customary international law; 2) constitute a source of interpretation for the purpose of determining the content of obligations arising from treaty law; and 3) serve as a unilateral declaration that is at least binding on the state that issued the apology”.⁵⁶ As illustrated by the Hainan Island incident, refusing to issue an apology may also contribute to the development of customary international law by denying the existence or validity of a rule.⁵⁷

However, it is equally important to note that neither state questioned the general normative framework within which an interest-driven argument over the interpretation of a particular rule took place – this is the static aspect of diplomatic apologies. While the content of China's sovereign rights

55 The Congressional Research Service Report states that “The primary objective of the U.S. electronic eavesdropping effort is to help maintain as detailed and up-to-date an understanding as possible of the existence, locations, numbers, and technical characteristics of radars and other electronically transmitting military systems of potential adversaries, and a complementary understanding of the operating patterns, doctrine, and tactics of these foreign military forces. See *ibid.*, 30.

56 M. Gibney and E. Roxstrom in “The Status of State Apologies,” *Human Rights Quarterly* 23 (2001): 915.

57 The role of apologies as a source of customary law may be particularly significant if the norm in question is not well-established, as in the case of the Hainan incident. See, for example, M. J. Valencia and Ji Guoxing who argue that there is a gray area surrounding navigation rights, military activities, and the use of force in the EEZ. M. J. Valencia and Ji Guoxing, “The “North Korean” Ship and U.S. Spy Plane Incidents: Similarities, Differences, and Lessons Learned,” *Asian Survey* 42, 5 (2002): 723-732.

over its EEZ was disputed, the principle of sovereignty itself was reaffirmed by the U.S. apology for landing on the Chinese without authorization.

In the ILC draft articles, as well as in the Hainan Island incident described above, apologies serve in upholding the so-called “state values” imbedded in public international law – state independence, equality, autonomy, impermeability and national interest.⁵⁸ The idea of state responsibility involved in diplomatic apologies is clearly related to a bilateral relation between the delinquent and the injured state and, by invoking responsibility, the injured state normally pursues its individual interest. In other words, diplomatic apologies affirm the idea of state responsibility as it is found in traditional international law – state are responsible to each other insofar as there exists an international legal obligation in force between the two states and when it is breached.⁵⁹ Furthermore, responsibility is collective in nature – the individuals involved in the violation of norms are merely agents of the state without any legal personality and their acts are imputed to the state.⁶⁰

Concerns about the national honor, credibility and prestige of the state are a factor in all diplomatic apologies, and sometimes they are demanded not for immediate strategic gains or as part of a norm-setting policy but simply in response to a perceived need to protect the international standing or the self-image of the state. For example, in 1931, when Maj. General Smedley Butler publicly recounted gossip about Benito Mussolini at a diplomatic banquet, the Italian government protested and the US Secretary of State Henry Stimson on January 29, 1931, sent to the Italian Ambassador the following note of apology for Butler's conduct:

58 On state values, see L. Henkin, *International Law: Politics and Values* (London: Martinus Hijhoff Publishers, 1995), 100-101, 168.

59 M. N. Shaw, *International Law* (Cambridge: Cambridge University Press, 1997), 697.

60 Thus, for example, when New Zealand captured two of the French secret service agents involved in the sabotage of the *Rainbow Warrior*, during which one person was drowned, and sentenced them on the charges of manslaughter, France demanded their release in exchange for an apology since the agents were not acting on their own ill but as agents of the state. See J. Wexler, “The Rainbow Warrior Affair: State and Agent Responsibility for Authorized Violations of International Law,” *Boston University International Law Journal* 5 (1987): 389-412 and J. S. Davidson, “The Rainbow Warrior Arbitration concerning the Treatment of the French Agents Mafart and Prieur,” *The International and Comparative Law Quarterly* 40, 2 (1991): 446-457.

I have the honor to express the deep regret which this Government feels at the reflections against the Prime Minister of Italy in the unauthorized speech of Maj. Gen. Smedley D. Butler, United States Marine Corps, at Philadelphia, on January 19. The sincere regrets of this Government are extended to Mr. Mussolini and to the Italian people for this discourteous and unwarranted utterance by a commissioned officer of this Government on active duty.⁶¹

Similarly, in January 2010, when the Turkish Ambassador Oguz Celikkol was summoned by the Israeli Foreign Ministry to be rebuked over the fictional Turkish television series portraying Israeli agents kidnapping babies and was seated on a much lower chair than his Israeli counterparts, Turkey threatened to withdraw the ambassador, unless it received a formal apology by Israel. The Israeli government apologized promptly to the ambassador personally and to the Turkish people.⁶²

1.3.2 Diplomatic apologies and politeness

If the strategic policy calculations involved in demanding and issuing diplomatic apologies are bracketed, the logic of diplomatic apologies can be usefully understood by relying on research in the field of sociolinguistics and pragmatics, which forms part of the study of the larger phenomenon of politeness. Politeness is generally viewed as a means of reducing friction and minimizing potential conflict between interlocutors, whereas apologies are understood as linguistic markers of politeness.⁶³ Among the existing sociolinguistic politeness models, Brown and Levinson's model is of particular interest because many arguments about the function of apologies circulating in other fields follow a similar line of reasoning.⁶⁴ Since politeness may be seen as a deviation from rational and efficient

61 E. C. Stowell, "The General Smedley D. Butler Incident," *The American Journal of International Law* 25, 2 (1931): 321-324.

62 Z. Elçi and A. Fisher-Ilan, "Israel apologizes to Turkey in diplomatic spat", *Reuters*, January 13, 2010, accessible at <<http://www.reuters.com/article/idUSTRE60C1M420100113>> (last accessed on May 5, 2010).

63 See G. Held, "Politeness in Linguistic Research," in *Politeness in Language. Studies in its History, Theory and Practice*, eds. R. J. Watts, S. Ide & K. Ehlich (Berlin and New York: Mouton de Gruyter, 1992), 131-53. In politeness studies, remedial apologies have been defined as transactions involving "a bid to change the balance-sheet of the relation between s and h" and to restore balance upset by a harmful act. See G. N. Leech, *Principles of Pragmatics* (New York: Longman, 1983), 125.

64 See P. Brown and S. C. Levinson, *Politeness: Some Universals in Language Use* (Cambridge: Cambridge University Press, 1987).

communication, Brown and Levinson attempt to provide rational explanation of the function of politeness by employing the concept of 'face', which denotes the public self-image that every member of a group wants to claim for himself.⁶⁵ In their model, all speech acts are seen potentially face-threatening and two components of 'face' are distinguished: 'positive face' (positive consistent self-image) and 'negative face' (freedom of action and freedom from imposition). A rational actor aims to maintain one's own face, minimize the impact of 'face threatening actions' and, at the same time, communicate efficiently.⁶⁶ As these aims are often in conflict, different strategies may be employed in communication, depending on the circumstances. In this model, apologizing is a "culturally stabilized interaction ritual with conventionalized formulae", which primarily aims to redress the impact of a 'face threatening action' and whereby restore equilibrium.⁶⁷ While Brown and Levinson gave apologies as an example of redressing 'negative face' needs of the hearer, others have also pointed out that apologies can function to redress threats to the hearer's positive face needs (i.e., show recognition) or to improve the speaker's self-image.⁶⁸

While sociolinguistic politeness models deal almost exclusively with interactions between individuals, the concept of 'face' can be applied in studying apologies in international relations as well. According to Barry O'Neill, in apologizing the state loses public 'face', which is defined as a pattern of deference, but gains honor (self-image and/or reputation granted by the society).⁶⁹ On the one hand, when a state apologizes, it accepts blame and thus risks worsening the way it will be treated by others in the future; on the other hand, to apologize for a morally blameworthy act is to gain honor, i.e. to

65 The term was popularized by Erving Goffman in 1950s. See his *Interaction Ritual: Essays on the Face-to-Face Behavior* (New York: Pantheon Books, 1967), 5-47.

66 The degree of face threat is assessed according to the variables of social power and the social distance (degree of familiarity and frequency of interaction), and imposition on the hearer's the negative face. When applied to diplomatic apologies, Brown and Levinson's formula essentially suggests that, all other things being equal, states are more likely to apologize to states of equal or greater power if they have regular interaction and if the failure to apologize would result in significant face loss for the other state (e.g. in cases where apologies come into media focus).

67 Brown and Levinson, 235.

68 See P. Austin, "Politeness Revisited: The Dark Side," in *New Zealand Ways of Speaking English*, eds. A. Bell and J. Holmes (Clevedon, Avon: Multilingual Matters, 1990), 276-95.

69 B. O'Neill, *Honor, Symbols, and War* (Michigan: The University of Michigan Press, 1999), 177-192.

change the audience's estimate of the state's honor. The relation between 'honor' and 'face' in O'Neill's scheme is comparable to the relation between positive and negative face in Brown and Levinson's model: it involves the same struggle between the desire to be recognized and assimilated and the desire to be distinct and autonomous. Correspondingly, the decision to apologize or not is subject to rational calculations in game-theoretical terms, a matter of finding an equilibrium between the changes in the states' public face levels in case of an apology and the prospect of conflictual relations in the future in case of the absence of apology.⁷⁰

The concern about the loss of face in making apologies is implicitly recognized in the Article 37 of the draft Convention on the Responsibility of States for Internationally Wrongful Acts, which stipulates that "satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State". The curious appearance of a non-legal concept 'humiliation' is nevertheless indicative of the general aim of apology in the ILC article, which is roughly the same as in linguistic politeness models: to re-establish the situation which existed before the wrongful act was committed and avoid upsetting the balance in the other direction.

In summary, diplomatic apologies can be viewed as a type of interaction ritual in the community of states that is appropriate in cases of non-material injury and that is subject to strategic calculations, including the impact of apologies on the development and interpretation of customary law, the status of states, and the desirability of either conflictual or peaceful relations. The strategic calculations form a normal background of the interaction, expected by both the parties and the audience, and statements expressing less than a genuine apology are often acceptable. In the Hainan Island incident described above, when the quasi-apology was finally issued by the United States to obtain the release of the detained crew it was lauded as "a politically shrewd and expedient resolution to the crisis that allowed the bilateral relationship to go forward relatively unscathed."⁷¹ Even though

⁷⁰ Ibid., 191.

⁷¹ Lewis, 1407.

the issuing of apology was denied by the U.S. immediately upon apologizing, both sides considered the achieved resolution to be a diplomatic victory.⁷²

1.4 Historical state apologies

In contrast to the long-established practice of diplomatic apologies, where everyone involved is familiar with what is expected and what is at stake, state apologies for historical wrongs are a fairly new and controversial phenomenon, which became more widespread only at the end of the Cold War. Most historical apologies that have been given by states can be grouped into four large categories: apologies to domestic groups, apologies related to the Holocaust and the World War II, and apologies related to colonialism. Apologies that do not fall under any of these categories are related to recent events involving crimes against humanity, e.g. the Rwandan Genocide (1994) and the Bosnian War (1992-1995).⁷³

Domestic apologies include apologies for past discrimination of individuals and groups: e.g., US and Canadian apologies in 1988 for the internment of their Japanese citizens during the World War II; Norway's apology for discrimination to the Sami people in 1997; Peru's apology for the “abuse, exclusion, and discrimination” to its citizens of African origin in 2009; Chile's apology in 2010 to the descendants of the Kawésqar people, who were kidnapped in 1881 to be exhibited at human zoos in Europe; apologies for cultural or biological assimilation: e.g. Australia's apology in 2008 for the

72 The U.S. State Secretary Colin Powell said: “To apologize would have suggested that we have done something wrong or accepted responsibility for having done something wrong. And we did not do anything wrong.” Cited in P. H. Gries and K. Peng, “Culture Clash? Apologies East and West,” *Journal of Contemporary China* 11, 30 (2002): 174.

73 For example, in March 1999, US President Bill Clinton delivered an apology for US and Western inaction during the Rwandan Genocide, while in April 2010, Canada apologized for Canada's failure to respond adequately. In September 2003, President of Serbia and Montenegro Svetozar Marovic apologized for “all evils done by any citizen of Montenegro and Serbia to any citizen in Croatia”, which was reciprocated by Croatian President Stjepan Mesić, who apologized “to all those who have suffered pain or harm at any time from citizens of Croatia who misused or acted against the law.” In March 2010, the Serbian parliament apologized for failing to prevent the 1995 Srebrenica massacre and, in April 2010, Croatian President Ivo Josipovic apologized before the Bosnian parliament for his country's role in the Bosnian War. While the close examination of the actual statements reveals that all of these apologies fell short of the categorical apology, as defined in this chapter, they can nevertheless be viewed as part of the phenomenon of historical state apologies.

removal of Aboriginal children from their parents for assimilation between 1869 and 1969; Canada's apology in 2008 for the abuse of Indian children in state-funded mandatory residential schools; the Czech Republic's apology in 2009 for forced and coerced sterilization of Roma women; and apologies for crimes against humanity: e.g. South African president's apology for the Apartheid in 1997, or the US apologies for slavery and Jim Crow Laws in 2008 and 2009. Apologies in this category are the closest to the ideal-type of genuine apology and are typically followed by some form of material redress.⁷⁴

Holocaust apologies make up a large part of historical state apologies to outside groups. West German Chancellor's Willy Brandt's silent genuflection before the monument to the Warsaw Ghetto uprising of 1943 during his visit to Warsaw on December 7, 1970 is often regarded as one of the earliest attempts at a Holocaust apology.⁷⁵ However, the majority of apologies for the Holocaust took place after the Cold War either in relation to anniversaries or official visits to Israel, or in relation to new historical research and pressure from interest groups. Apologies have been made for direct or indirect participation in the Holocaust (e.g. Lithuania, Latvia, Ukraine, Poland, Germany, Hungary), for the refusal or deportation of Jewish refugees (e.g. Finland, Denmark, Belgium, Switzerland), for misappropriating Jewish assets (the Netherlands Sweden, Norway, US), and for assisting or harboring Nazi criminals after the WW II (US, Argentina, Austria). Around half of countries in Europe have by

74 See for example, the text of Australian Prime Minister Kevin Rudd's speech to Parliament, in which he apologized to the "Stolen generations" on behalf of the parliament and the government. "Apology to Australia's Indigenous Peoples House of Representatives Parliament House, Canberra," February 13, 2008, accessible at <<http://www.pm.gov.au/node/5952>> (last accessed on May 8, 2010).

75 Since the spontaneous genuflection was performed in silence and was not preceded or followed up by a speech, the spectators were left to ponder as to its exact meaning and purpose. In one of a subsequent interviews, Brandt enigmatically claims to have to done it in order to commemorate "millions of murdered people". To this date, it is sometimes interpreted in the context of Polish-German reconciliation, rather than as an act of repentance for the Jewish victims. See W. J. Long and P. Brecke, *War and Reconciliation: Reason and Emotion in Conflict Resolution* (Cambridge, MA: MIT Press, 2003), 97-98. Nevertheless, the "kniefall" had strong resonance both domestically and (somewhat later) internationally, while the image of Brandt kneeling have since become an iconic representation of not only his Ostpolitik but of the entire Germany's policy of historical reconciliation. There is an abundance of literature, mostly in German, discussing Brandt's symbolic action. See for example C. Schneider, *Der Warschauer Kniefall: Ritual, Ereignis und Erzählung* (Konstanz: UKW Verlagsgesellschaft, 2006).

now issued an apology for complicity in the Holocaust.

Apologies related to the World War II include Japan's apologies for aggression and war crimes, which due to their range, number and frequency may be regarded as a category on its own; Russia's apology in 1993 for the detention of more than 600,000 Japanese civilian and military war prisoners in Soviet labor camps after Japan's surrender in 1945; Germany's apology to Poland in 1994 and the Czech Republic in 1997; Norwegian Prime Minister's apology in 2000 for the mistreatment of the so-called "war children" (*krigsbarn*) born by German fathers and Norwegian mothers; Austria's apology in 2002 for the medical experiments conducted on handicapped children from 1940 to 1945; Croatia's apology for the Bleiburg massacre in 1945; and others. Importantly, there have been a number of demands for apologies in this category that have been refused. For example, when Queen Elizabeth II visited Germany in November 2004 to host a concert in Berlin to raise money for the reconstruction of Dresden's Frauenkirche destroyed in the firebombing during World War II, the queen was expected to apologize for the bombing of Dresden. While Chancellor Gerhard Schroeder dismissed the debate in the media as absurd at the time, each visit by a leader of any of the Allied countries to Dresden does not fail to bring up the question of an apology for the firebombing of the city in February 1945, which has become a symbol of wanton destruction and is regarded by many to have been a war crime.⁷⁶ Similarly, the United States have repeatedly refused to apologize for dropping atomic bombs on Hiroshima and Nagasaki at the end of World War II.⁷⁷ A proposal to apologize for the attacks on Pearl Harbor was considered and abandoned in the Japanese diet in 1991. The Czech Republic and Slovakia refused to repeal or apologize for the consequences of the so-called Beneš decrees, associated with the deportation of about 3 million ethnic Germans and Hungarians from Czechoslovakia in 1945-47.

⁷⁶ For a discussion, see P. Addison, ed., *Firestorm: The Bombing of Dresden, 1945* (Chicago: Ivan R. Dee, 2006).

⁷⁷ In 1992, in response to a previous interview with US President G. Bush in which he said that the nuclear devastation of Hiroshima was justified because it spared the lives of millions of American citizens, an organization of A-bomb survivors in Japan demanded an apology for the bombing of Hiroshima and Nagasaki. The refusal to apologize was reiterated by President Clinton in 1995 - "No Apology For Hiroshima," *New York Times*, April 8, 1995, accessible at <<http://www.nytimes.com>> (last accessed on May 8, 2010).

Finally, there have been a few apologies related to the colonial past of some, mostly European, states. In February 2002, Belgium apologized for complicity in the murder of Congo's Prime Minister Patrice Lumumba in 1960. In 2004, Germany apologized for the massacres during the Hereros' 1904-1907 uprising in Namibia. In 2008, Italy apologized to Libya for the “deep wounds” caused by the period of colonization. In this category, however, there are more demands for apologies and reparations than apology statements. Since the acknowledgment of responsibility by means of an apology may turn into acceptance of liability, apologies for colonialism are not readily given or are couched in an evasive and non-committal wording. Thus, for example, during the UN World Conference Against Racism in Durban in 2001, the double move of the representatives of the African countries to recognize slavery as a crime against humanity (for which there is not limitation of statutes) and demand an apology for slavery from the European countries, forced the British, Dutch, Spanish and Portuguese delegations to press hard to replace the suggested use of “apology” with “regret” in order to avoid possible future liability.⁷⁸

1.4.1 Difference between historical and diplomatic apologies

While diplomatic and historical apologies share a number of similarities, there are several significant differences. First, the normative framework within which historical apologies are given is different from that of diplomatic apologies. Historical apologies are offered and demanded for acts that would today represent violations of international human rights law and, in particular, crimes against humanity. The juridical concept of “crimes against humanity” informs and motivates all historical state

⁷⁸ The issue of reparations for slavery was also one of the reasons why the United States withdrew its delegation from the conference. For a more detailed account on the issue of apologies at the UN conference against racism, see J. Ukabiala, “Slave Trade A ‘Crime Against Humanity,’” *Africa Recovery* 15, 3 (2001): 5, accessible at <<http://www.un.org/ecosocdev/geninfo/afrec/vol15no3/153racis.htm>> (last accessed on May 6, 2010).

apologies today, even though some apologies are given for grave violations of human rights that would not qualify as a crime against humanity.⁷⁹ The Nuremberg Charter defined crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”.⁸⁰ The concept broke down the spatial borders of international law (a crime against humanity was to be considered “crime” whether or not it was in violation of the law of the country where perpetrated). Furthermore, insofar as the Nuremberg trials ignored the principle of non-retroactivity, the concept broke down the temporal borders of law.

Like diplomatic state apologies, historical apologies may also contribute to customary law by affirming the relevant legal norms, in their case – the norms of human rights law. However, the universal and atemporal nature of the concept of crimes against humanity, which defines the normative framework within which historical state apologies are demanded and issued, means that this type of apology not only affirms the validity of a norm in contemporary world but also projects its validity back in time. The fact that most apologies have so far been limited to fairly recent events is incidental because the normative framework permits apologies for any historical events that are found relevant for the life of any group anywhere in the world today. For example, in 1988, Portugal's President Mario Soares formally apologized to the Jews for centuries of persecution by the Grand Inquisition in the presence of the Israeli ambassador, and, in 1992, the King of Spain invited the President of Israel to receive an apology for the expulsion of the Jews in 1492. This then led the inhabitants of the Moroccan city of Chaouen to ask the King of Spain to apologize for the persecution of the Moors.⁸¹ The

79 See J. Derrida, *On Cosmopolitanism and Forgiveness*, trans. M. Dooley and M. Hughes (London: Routledge, 2001), 28-29.

80 Article 6(c) of the Charter of the International Military Tribunal, the full text is available online at <<http://avalon.law.yale.edu/imt/imtconst.asp>> (last accessed on May 8, 2010).

81 I. Wilkinson, “Moors' want apology for Spanish exodus,” *Telegraph*, February 15, 2002, accessible at <<http://www.telegraph.co.uk>> (last accessed on 8 May 2010). See also G. Keeley, “Moors want Spain to apologize after

normative work of historical apologies is limited only by the difficulties arising when the actions too far removed in time are prohibitive in a meaningful attribution of responsibility. In short, historical apologies not only strengthen contemporary norms that regulate state behavior but also encourage the reexamination and reassessment of history in the light of these norms.

On the other hand, the disagreements over historical apologies usually arise not over the content of the norm but over the qualification of historical events as crimes against humanity and the attribution of responsibility. In apologizing, the state affirms that it is the same agent that violated a norm and that the recipient of an apology is the same as the victim of the offense. The same logic of the identity and continuity of agents is present in demands for apologies, regardless of whether these demands are met. The more time passes between the offense and the apology, the more difficult is the work of identification. Unlike diplomatic apologies, which typically deal with recent acts and in which responsibility of individuals is attributed to the state under some form of command responsibility, historical apologies have to address the thorny issue of collective responsibility, which arises within the individual-centered normative framework and which can become an even more difficult hurdle of collective inter-generational responsibility when apologies are given for an offense far in the past. For example, when an inquiry by the Australian Human Rights and Equal Opportunities Commission recommended in 1997 reparations and an apology to indigenous people, Prime Minister John Howard steadfastly refused to offer an apology arguing that “Australians of this generation should not be required to accept guilt and blame for past actions and policies over which they had no control”.⁸² And in 2008, when an apology was finally issued by Prime Minister Kevin Rudd, Indigenous Affairs Minister Jenny Macklin claimed that it was made on behalf of the Australian government and did not attribute guilt to the current generation of Australian people.⁸³ The problem of collective guilt is

400 years,” *Times Online*, April 9, 2009, accessible at <<http://www.timesonline.co.uk>> (last accessed on 8 May 2010).

82 Cited in M. Augoustinos, A. LeCouteur, and J. Soyland, “Self-sufficient arguments in political rhetoric: constructing reconciliation and apologising to the Stolen Generations,” *Discourse and Society* 13 (2002): 105-42.

83 Cited in “Australia apology to Aborigines,” *BBC News*, January 30, 2008, accessible at <<http://news.bbc.co.uk/2/hi/asia->

discussed in Chapter 3 in more detail, where it will be shown that reification of institutions is not the only way to address the problem of collective guilt in state apologies; however, here it should be noted that all historical apologies involve acknowledgment of some form of identity and continuity between the people or the entity that committed a wrong in the past and the people or the entity that is required to apologize in the present.

Second, the recipients of historical apologies are different. If diplomatic apologies are usually given from one state to another, sometimes including references to the nation, historical apologies are given to groups of people or even individuals inside or outside the state who have been wronged by previous policies or acts. In most cases, historical apologies would not make sense if their recipient was another state. For example, Japan's apology to the British prisoners of war during the Second World War would be clearly misplaced if issued to the British state which, after all, came out as victor in the war.⁸⁴ Demands for historical apologies are often advanced by groups and non-governmental organizations, rather than states, and may run against the current material interests of the host state. Historical apologies thus appear to break the traditional state monopoly of international subjectivity, as well as state unity.

1.4.2 Historical apologies: image repair and reconciliation

Like diplomatic apologies, historical apologies are also sometimes viewed in relation to the phenomenon of politeness. For example, famous American journalist Nicholas D. Kristof wondered:

Japanese people are famously polite, apologizing at the start and end of every conversation and many times in between-which makes the reluctance to apologize for the war even more remarkable. If the Japanese

[pacific/7216873.stm](http://www.pacific/7216873.stm)> (last accessed on 8 May 2010).

84 On Japan's apologies to the British POW's, see M. Cunningham, "Prisoners of the Japanese and the Politics of Apology: A Battle over History and Memory," *Journal of Contemporary History* 39, 4 (2004): 561–574. Interestingly, the U.S. POWs also brought claims against Japan. See "World War II Era Claims against Japanese Companies," *The American Journal of International Law* 95, 1 (2001): 139-143.

regularly apologize for being a nuisance, even when they are not, why will they not show regret for the slaughter of millions?⁸⁵

While there is something counter-intuitive about considering an apology for “the slaughter of millions” a matter of politeness, the logic involved in politeness models discussed above can be applied to historical apologies as well. A. J. Meier suggests a social-psychological model of apologies centered on the desire or need for image maintenance, according to which “apologies repair the harm incurred to a speaker's image upon establishment of a link between that speaker and some sort of behavior that fails to meet the standards of a particular reference group”.⁸⁶ Meier's argument that the major motivating force behind apologies is the speaker's image in the eyes of the hearer could be extended to include the audience in case of public apologies.

Within the scant International Relations literature on the subject, J. Lind develops this understanding of apology as a means to image repair for conflict minimization and examines the connection between apologies and threat perception.⁸⁷ Building on Stephen Walt's balance of threat theory, Lind proposes an apology theory, according to which the admission and remorse for past aggression and atrocities reduce perception of threat: states that apologize appear to have benign intentions and states that glorify or remain silent about past offenses appear to have malign intentions.⁸⁸ In this approach, the choice between official apologies (apologetic policies) and statements denying, glorifying, or justifying past actions, compensations paid to perpetrators, rather than victims, and commemoration that remembers past events positively on the other (unapologetic policies) is taken to as an indicator of intentions.

A similar argument is developed by Peter Hays Gries, who introduces the concept of ‘face nationalism’.⁸⁹ According to Gries, ‘face nationalism’ is a “commitment to a collective vision of the

85 N. D. Kristof, “The Problem of Memory,” *Foreign Affairs* 77, 6 (1998): 37-49.

86 A. J. Meier, “Conflict and the Power of Apologies,” *Philologie in Netz* 30 (2004): 3.

87 J. M. Lind, *Sorry States: Apologies in International Politics* (Ithaca: Cornell University Press, 2008).

88 S. Walt, *The Origins of Alliances* (Ithaca, NY: Cornell University Press, 1987).

89 P. H. Gries, “A ‘China Threat’?” *World Affairs* (Fall 1999); P. H. Gries and K. Peng, “Culture Clash? Apologies East and West,” *Journal of Contemporary China* 11, 30 (2002): 173-178.

‘national face’ and its proper international status as represented to other nations”, which has both emotional and rational sides: on the one hand, people are emotionally attached to the self-image that they present to the world, and, on the other hand, ‘face’ is a type of ‘social credit’ which is necessary to pursue instrumental goals. According to Gries, it is the policymaking elites that decide on whether an apology should be demanded or given but their decisions are constrained by the collective vision of the ‘national face’.⁹⁰ Indeed, the legitimacy of the regime depends upon the elite’s ability to accommodate popular demands and appease national feelings (pride, anger, lust for revenge etc). In this view, apologies appear to be a product of ‘two-level’ bargaining games conducted by elites on the diplomatic stage over issues of state image. Their actions are assessed by both domestic and international audiences.

These and similar theoretical accounts of state apologies for historical wrongs capture an important aspect of all state apologies, including historical apologies. However, the focus on the self-image needs becomes problematic if we consider cases where apology is demanded but not given. Theories built on sociolinguistic politeness models function on the premise that the most significant factor in determining the decision to apologize is the degree of violation or the seriousness of the offense, as perceived by the speaker.⁹¹ It is unclear why would any state refuse to apologize for crimes against humanity or, as in the case discussed in Chapter 5, the ultimate crime – the crime of genocide.

The second distinct body of literature on apologies generally focuses on their emotional aspects and explores their healing power. Implicitly or explicitly, the “psychological approach” literature builds on the insights from studies of interpersonal apologies, where apologies are seen therapeutic for both victims and perpetrators. In the aftermath of physical, sexual or verbal violence, victims may often experience a psychological trauma. Recovery from trauma is believed to be dependent upon the ability

90 See P. H. Gries, *China’s New Nationalism: Pride Politics, and Diplomacy* (Berkeley: University of California Press, 2004).

91 See in particular S. Blum-Kulka and E. Olshtain, “Requests and apologies: A cross-cultural study of speech act realization patterns,” *Applied Linguistics* 5, 3 (1984): 196-213.

to reconstruct the traumatic experience in a narrative form, giving it context and organization, ultimately leading to catharsis.⁹² However, the victim often knows only of the offense and its effect, whereas the offender knows the context and the motives of the offense.⁹³ A sincere apology may facilitate recovery from trauma by providing the missing perspective, confirming the facts and assigning blame.⁹⁴ Through acknowledgment of the victim's experience, the victim's dignity is restored and his/her story validated.⁹⁵ On the other hand, apology enables the offenders to show remorse, relieve feelings of guilt, and restore their social identity.⁹⁶ In other words, apology is an important event in the process of repentance is a morally regenerative process, which enables the victims to overcome feelings of anger and bitterness, and the offenders to overcome self-loathing and regain self-respect.⁹⁷ The key element of apology emphasized in most psychological accounts is its sincerity.⁹⁸

Following this reasoning, the role of apology is understood in most of the literature on restorative justice, reconciliation and forgiveness as a tool for reestablishing broken relationships and restoring social harmony. Restorative justice is a normative theory of criminal justice, an alternative to the currently dominant retributive and rehabilitative theories, which advocates replacement of punishment with dialogue and restitution.⁹⁹ The underlying idea of the theory is that "crime is a conflict between individuals resulting in injuries to victims, communities and the offenders themselves" and

92 See J. L. Herman, *Trauma and Recovery* (New York: Harper/Collins, 1992).

93 D. T. Regan and J. Totten, "Empathy and Attribution: Turning Observers into Actors," *Journal of Personality and Social Psychology* 32, 5 (1975): 850-856.

94 S. Altar, *Apologizing for Serious Wrongdoing: Social, Psychological and Legal Considerations* (Ottawa: Law Commission of Canada, 1999).

95 T. Govier and W. Verwoerd, "The Promise and Pitfalls of Apologies," *Journal of Social Philosophy* 33, 1 (Spring 2002): 67-82.

96 B. R. Schlenker and B.W. Darby, "The Use of Apologies in Social Predicaments," *Social Psychology Quarterly* 44, 3 (1981): 271-278; A. Lazare, "Go Ahead, Say You're Sorry," *Psychology Today* 28, 1 (1995): 40-42.

97 J. North, "The "Ideal" of Forgiveness: A Philosophical Exploration of Forgiveness: A Philosopher's Exploration," in *Exploring Forgiveness*, ed. R. D. Enright and J. North (Madison, Wisconsin: The University of Wisconsin Press, 1998), 15-34; E. Hutchison and R. Bleiker, "Emotional Reconciliation: Reconstituting Identity and Community after Trauma," *European Journal of Social Theory* 11, 3 (2008): 385-403.

98 See, for example, M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 112; N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press, 1991).

99 On restorative justice, see H. Strang and J. Braithwaite, eds., *Restorative Justice: Philosophy to Practice* (Burlington, VT.: Ashgate, 2000).

that “the overarching aim of criminal justice process should be to reconcile parties while repairing the injuries caused by the crime.”¹⁰⁰ However, the process of reconciliation is only possible if the offender is conscious of transgression and shows remorse. In this context, apology is taken to be an indicator of the intentions of the offender and by itself may not be sufficient to achieve reconciliation. Whenever apology is understood in this way, it is frequently accompanied by the argument that apologies, important as they are to restoring relationships, ought to be complemented with some form of material compensation – partly because refusal to consider material reparation would make the sincerity of apology questionable, and partly because this may be necessary to *restore* the situation which existed before the crime was done.¹⁰¹

While its scope of application in domestic criminal law systems is currently limited, restorative justice, which may be viewed as part of a larger concept of transitional justice, was found practical in societies torn by the systematic violations of human rights by previous regimes.¹⁰² In cases where criminal prosecution was either impossible due to the lack of evidence or undesirable out of political considerations and where the option of granting a blanket amnesty was not found satisfactory, many countries chose the alternative path of setting up investigatory bodies, the so-called truth commissions, aimed at finding out “who did what to whom, and why, and under whose orders.”¹⁰³ Whatever other functions may have been assigned to such investigatory bodies – judicial, political or educational, the therapeutic aspect is invariably present in the discussions of the activities of truth commissions. Investigating and recording human rights violations and, if the mandate allows, condemning past

100H. Strang, “Restoring Victims: An International View,” paper presented at the Restoration for Victims of Crime Conference, Melbourne, Australia, September 1999, 2.

101Moreover, as Taft Lee notes, the law and lawyers tend to equate ‘to heal’ with ‘to compensate’. See T. Lee, “Apology Subverted: The Commodification of Apology,” *Yale Law Journal* 109, 5 (March 2000): 1135-1160.

102On transitional justice, see R. G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000).

103R. I. Rotberg, “Truth Commissions and the Provision of Truth, Justice and Reconciliation,” in *Truth vs. Justice*, eds. R. I. Rotberg and D. Thompson (Princeton: Princeton University Press, 2000), 3. For a discussion of truth commissions, see P. B. Hayner, “Fifteen Truth Commissions–1974 to 1994: A Comparative Study,” *Human Rights Quarterly* 16, 4 (1994): 597-675.

atrocities is supposed to provide a “closure” and help “reorient a society that has lost its moral way.”¹⁰⁴ As Ruti G. Teitel observes, the main purpose of the transitional justice sought by truth commissions was to construct an alternative history of past abuses, and the primary aim was not justice but peace.¹⁰⁵ Since, in order to apologize, the offender must accept the victim’s perspective on the nature of transgression, apologies are understood here as a symbolic exchange that advances social peace through the construction of a shared narrative. Once again, it has to be noted that apologies here are understood as part of a larger morally regenerative process of a nation, which may include a variety of other measures: institutional reform, public access to archives and police records; memorials to victims; ceremonial reburials of victims; compensation to victims or their families; lustration; international or domestic (or mixed) criminal tribunals etc., all of which are aimed at producing national catharsis and re-building the integrity of the social.¹⁰⁶

Since apologies are seen to have the healing power at the interpersonal and societal level, the same line of reasoning is often extended to international relations. While it is not entirely clear who is feeling guilty (individuals or states), who is expressing apologies on whose behalf and between whom reconciliation takes place (states, societies or individuals), apologies can be understood within this framework as part of the process of improving relations between nations, leading to international peace.¹⁰⁷ As in interpersonal relations, state apologies express remorse for a transgression and act as a prelude to forgiveness and reconciliation. Thus, according John Borneman, state apologies are instances of “ritual retribution in democratic regimes”, which may increase the legitimacy of democratizing states and present “one important possibility for reconciliation and forgetting, that is, the possibility for a

¹⁰⁴ Rotberg, 11.

¹⁰⁵ R. G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003): 79.

¹⁰⁶ For an elaboration on the required process, see D. Crocker, “Reckoning with Past Wrongs: A Normative Framework,” *Ethics and International Affairs* 13 (1999): 43-64. See also J. E. Mèndez, “Accountability for Past Abuses,” *Human Rights Quarterly* 19 (1997): 256-58; J. Borneman, “Reconciliation after Ethnic Cleansing: Listening, Retribution, Affiliation,” *Public Culture* 14, 2 (2002): 281-304.

¹⁰⁷ See A.L. Phillips, “The Politics of Reconciliation Revisited: Germany and East-Central Europe,” *World Affairs* 163, 4 (Spring 2001): 171-191.

more enduring social peace.”¹⁰⁸ It seems that the restorative justice framework and the understanding of apology associated with it is gaining popularity not only among social scientists but also among practitioners. Some scholars have suggested establishing an international truth commission, which would function much like the International Criminal Court, and which would provide a forum for countries interested in international reconciliation.¹⁰⁹ The restorative justice paradigm has already been at least partially embraced by international organizations. For example, apart from playing an active role in the creation of truth and reconciliation commissions in El Salvador, Haiti, Guatemala and Sierra Leone, the United Nations acted as the founding authority in establishing the Commission for Reception, Truth and Reconciliation in East Timor in 2001.¹¹⁰ The logic of truth commissions is also implicit in cases of bilateral historical commissions in Central and Eastern Europe in the aftermath of the collapse of the Soviet Union. In short, apologies based on truth and aimed at healing are gaining currency.

Even though it might not be very useful for understanding diplomatic apologies, the psychological approach to historical apologies is appealing because it not only captures the emotional side of these apologies but also enables relating apologies to a wide range of other phenomena in international relations, such as truth commissions, reparations etc. Nevertheless, psychological accounts also struggle with explaining situations in which states refuse to apologize for grave violations of human rights. If an apology has such enormous healing power that is beneficial to both the wrongdoer and the victim, why would any state refuse to apologize?

Both sociolinguistic and psychological theoretical accounts of the function of apology capture

108 J. Borneman, “Can Public Apologies Contribute To Peace? An Argument for Retribution,” *Anthropology of East Europe Review* 17, 1 (1999): 7-20.

109C. J. N. Eisnagle, “An International “Truth Commission”: Utilizing Restorative Justice as an Alternative to Retribution,” *Vanderbilt Journal of Transnational Law* 36, 1 (January 2003): 209-242.

110For a discussion of the first UN Truth Commission, see C. Stahn, “Accommodating Individual Criminal Responsibility and National Reconciliation: The UN Truth Commission for East Timor,” *The American Journal for International Law* 95, 4 (October 2001): 952-966.

important aspects of state apologies. Different in the thrust of their arguments, these theories are not mutually exclusive. The sociolinguistic perspective generally focuses on the side giving apologies and the rational calculations involved in making an apology, and the psychological perspective typically emphasizes the needs of the victim and the emotional effects of apologies. Both perspectives reveal that public apologies have an instrumental dimension – diplomatic apologies aim at avoiding conflict, whereas historical apologies seek to ameliorate post-conflict situations, and both are seen to contribute to international peace and good relations between states. However, assuming, rather than problematizing, the identity of agents making a historical apology, both perspectives are ill-equipped to explain cases where state apologies are refused. It becomes plausible to argue that the decisions whether to apologize or not, as well as the demands for apologies are driven by materialist calculations: reparations, restitution or compensation etc. However, while concerns about material effects of apologies play a role in some diplomatic and historical apologies, they are neither central nor decisive in many others. Indeed, in two of the cases examined in the following chapters material interests would arguably be better fulfilled by either dropping demands for an apology or by issuing an apology. Furthermore, bracketing changes in the international normative system, which become evident when historical apologies are contrasted to the older practice of diplomatic apologies, and taking the normative framework within which apologies are demanded and given deprives sociolinguistic and psychological accounts of resources to explain the outburst of historical apologies after the Cold War.

The following chapter will offer an identity-based perspective on state apologies that does not contradict or depreciate the insights of either sociolinguistic or psychological perspective but focuses on the identity work involved in state apologies in the context of the world society. Naturally, the identity of states is relevant in cases where apology is given; however, the importance of identity in apologies and, conversely, the role of apologies in identity construction is easier to appreciate by looking at cases that involve disagreements over apologies, if only because it encourages articulation of

conflicting positions and arguments.

1.5 Conclusion

This chapter examined a range of issues that help understanding state apologies as a practice. Like other practices, the practice of state apologies reflects an ideal conception of activity, and the first part of the chapter was devoting to examining the formal and substantive requirements for apologies: a genuine state apology must be performed in accordance with the formal procedure by persons who are in position to represent the state and it must indicate that the apologizing party acknowledges a transgression, regrets it and undertakes to avoid transgressing in the future. While genuine apologies by states are fairly uncommon occurrences, it was found that the minimum requirement for an apology is that it expresses regret and acknowledgment of responsibility for a transgression.

The second part of the chapter identified two types of state apologies that are performed by states, which differ in what they are given for and to whom. Diplomatic apologies, which can be traced back to the beginnings of the Westphalian system of states and which have since become an ordinary feature of diplomatic relations between states, are issued by states to other states as a satisfaction for non-material injuries caused by violations of international law. Their function is to affirm the violated norms or develop and agree upon new standards of behavior within the framework of traditional state values that center around the principle of state sovereignty. Diplomatic apologies encapsulate the traditional idea of bilateral state responsibility and thus they are a matter of bilateral relations, even though the consequences of demands for apologies, refusals to apologize and apologies given may contribute to the development of customary international law. In contrast, historical apologies, which are a fairly recent phenomenon that is becoming more widespread since the end of the Cold War, are

typically given by states to groups of people for past violations of human rights. The different normative framework within which historical apologies are given has several important consequences: first, groups of harmed individuals acquire and exercise international subjectivity in the sense of being able to formulate their demands in terms of international law; second, since human rights are regarded as universal, the values that they embody are projected on past events prompting their historical reassessment; third, the temporal dimension gives rise to the need for identification and thus brings the identity of actors into the picture. Insofar as historical apologies are often given for the violation of what is today considered to be peremptory norms they involve responsibility for obligations *erga omnes*, i.e. responsibility not only toward the injured party but toward the international community at large.

Finally, the chapter provided a general overview of the literature on the functions of state apologies, where diplomatic apologies are usually explained in terms of sociolinguistic theories as a tool for restoring equilibrium upset by a violation of a norm, while historical apologies are usually viewed in terms of psychological theories as an act or a process that facilitates reconciliation. While there are differences between these two bodies of literature – e.g. the former tends to focus on strategic and rational calculations and the latter on the emotional side of apologies – all the theories reviewed generally agree that apologies can have an important role in conflict resolution.

Chapter 2. Apologies and state identity

2.1 Introduction

Shifting the focus to identity in state apologies allows reconciling the linguistic-politeness and psychological theories of apologies, as well as appreciating the importance of both the audience/structure and the dimension of time in historical apologies, and thereby provides a more complete account of the phenomenon, which permits explaining those cases where apology is not given. This shift does not contradict the theoretical perspectives described in the previous chapter for identity is implicit in both linguistic politeness and psychological theories: some notion of identity underlies both the idea of (national) “image maintenance” or “face needs” and the cluster of ideas related to recovery from (national) trauma, moral regeneration, reconciliation and healing. This chapter suggests that conceptualizing identity as narrative identity enables the application of insights at the level of individuals to the life collectives without abandoning methodological individualism and opens rich grounds for interdisciplinary research on both apologies and other related phenomena.

The following argument is advanced in the chapter: state apologies and demands for state apologies influence state/national identity at three levels – domestic, where apologies help defining the values constituting the political/moral community; bilateral, where apologies help reaching a shared perspective on historical events; and transnational, where apologies contribute to the emergence of a shared normative framework underlying the world society. The chapter argues that in addition to the perceived seriousness of the violation, the decision whether to apologize or not depends on the compatibility of core identity narratives between the speaker and the hearer, as well as the degree to

which the agent's identity narratives incorporate the pressures produced by shifts in the external normative framework. Differences in state behavior in this regard can be explained by the ontological security needs of states.

The basic question that structures this chapter is the following: what is the relation between state apologies and state/national identity? In answering this question, the chapter is divided in three sections: first, the identity work involved in apologies and the identity effects of apologies are discussed; then the notion of narrative identity is clarified; finally, the question of how state/national identity affects state behavior is addressed, with particular focus on state refusal to apologize for historical wrongs.

2.2 State apologies and identity

In chapter 1, two types of state apologies were distinguished, identifying two important differences between them: historical apologies are usually given for grave violations of human rights in the past, rather than non-material injuries to states caused by internationally wrongful acts, and to groups of individuals within or outside the state, rather than to another state. In this chapter, these differences will be further examined; however, the question arises whether diplomatic apologies and historical apologies should be viewed as part of the same practice. In what sense can historical apologies be considered as part of the practice of diplomacy in the international community, if they are addressed to groups both outside and inside of the state, rather than other states? The answer to this question affects both the level and the units of analysis, since it may well be that in order to understand historical apologies one should not focus exclusively on states but rather on the spread of human rights norms among different groups in different societies and its manifestations through apologies by

individuals, companies, churches, societal groups etc. If the traditional understanding of diplomacy as the conduct or management of international relations between states is accepted, then historical state apologies either do not belong to the same practice of diplomacy or have to be re-conceptualized, excluding the domestic dimension and focusing on the configurations of power and interests. However, focusing on domestic or international nongovernmental sources of historical apologies would fail to appreciate the uniqueness and the centrality of the state, while the traditional understanding gives a slanted and unsatisfactory view of apologies as an epiphenomenon of the interplay of power and interests. For this reason, and due to the fundamental similarities between diplomatic and historical apologies (both are apologies performed by states), adopting a different understanding of diplomacy is preferable to trying to fit the phenomenon into a definition, however well-established it may be.

Following James Der Derian, diplomacy can be conceptualized as a mediation between estranged individuals, groups or entities, where mediation refers to intervention between two or more entities for the purpose of reconciling and, more abstractly, any activity that reduces alienation between entities.¹¹¹ From this perspective, the transfer of power from the speaker to the hearer by means of “giving face” discussed in sociolinguistic approaches to apology and the effects of that transfer discussed in psychological approaches are twin aspects of the same process of overcoming alienation between communities. Apologies by entities other than state can also be regarded as diplomacy, although because of the centrality of state in international law the effects of non-state apologies are of a different order. Thus conceived diplomacy not only allows viewing diplomatic and historical apologies as part of the same practice but also turns our attention to the condition of estrangement, or otherness, which becomes identity under self-reflection.

If identity at its most general refers to different answers to the question “Who am I?”, the

¹¹¹See “Mediating estrangement: A theory for diplomacy” in *Critical Practices in International Theory: Selected Essays*, ed. J. Der Derian (New York: Routledge, 2009), 7-31; J. Der Derian, *On Diplomacy: A Genealogy of Western Estrangement* (Oxford: Basil Blackwell, 1987).

discussion of apologies and state identity may begin by distinguishing two aspects of state identity: state as object (or content or structure), which refers to culture-dependent answers to the question “what is the state” and the criteria for belonging to a category of states different from other entities, and state as subject (or agent or process), which refers to individuated answers to the question “what kind of state” and the features that make a state unique and different from other states.¹¹²

The formal or objective aspect of state identity, i.e. what it is to be a state and to act like a state, is, to a large extent, defined externally at the level of the society of states through international law. Statehood is defined in positivist international law by the concept of legal personality, which refers to capacity to possess certain rights and duties enforceable at law.¹¹³ The distinctiveness of states, i.e. their difference from other entities, is determined by the nature and scope of rights and duties ascribed by law. It should also be noted that, while changes in the formal identity of states do not depend on any particular state or particular action but rather on changes in international law and the specific rights and duties it ascribes to states, it is states that create international law and thus the practices in which states engage may in time lead to a changed understanding of what a state is.

The subjective aspect of state identity depends on actions and interactions of states, self-definitions and their acceptance by other states. In principle, the answers to question “what kind of state” are unlimited and a quick look at how the term “state” is qualified in current usage will reveal a great diversity in this regard. There are superpowers, small and micro states; liberal, democratic and authoritarian states; developmental and failed states; unitary and federal states; secular, theocratic and communist states; republics, monarchies and empires; strong and weak states, independent and puppet states, as well as pariah, rogue and criminal states. However, almost all states in the contemporary world are nation-states, which refers to the self-definition of states as deriving legitimacy from a

¹¹²For an extended discussion, see R. D. Ashmore and L. Jussim, “Introduction: Toward a Second Century of the Scientific Analysis of Self and Identity,” in *Self and identity: fundamental issues*, eds. R. D. Ashmore and L. Jussim (New York : Oxford University Press, 1997), 3-23.

¹¹³M. N. Shaw, *International Law*, 5th ed. (Cambridge: Cambridge University Press, 2003), 175.

nation, regardless of the way the nation is understood. This feature of state identity is so wide-spread that states are often equated with the nation they claim to rule or represent – the Kingdom of Sweden is Sweden, while the Islamic State of Iran is Iran. According to Roger Scruton, there is a broad consensus in the recent literature on nations and nationalism that nations are relatively recent phenomena, “as much the creatures as the creators of the states that are conjoined to them”, and that nationalism is the ideology of the modern state: “the set of doctrines and beliefs that sanctify this peculiar local arrangement and legitimize the new forms of government and administration that have emerged in the modern world”¹¹⁴ In many contexts, state identity has become coterminous with national identity. State apologies are also often issued on behalf of the nation and are addressed or include references to another state's nation.

These preliminary clarifications should help understanding the relation between state apologies and state identity better. This relation is different in case of objective and subjective identity aspects and different in case of diplomatic and historical apologies. Objective state identity is a precondition for entities to engage in the practice of state apologies. The effects of the practice on the objective state identity are varied. Since, as it was argued in chapter 1, diplomatic apologies affirm “state values” (autonomy, impermeability, national interest etc.), their effect is to preserve the *status quo* in the normative system and thus stabilize the understanding of the state. Indeed, the routinization of diplomatic apologies ensures that the question of state identity rarely comes to the forefront. In contrast, historical apologies affirm and thereby strengthen the human rights-oriented value system, which may unbalance the stable understanding of states by either expanding the duties ascribed to states by the normative framework or by limiting their rights and freedom of action in certain areas. While international human rights law has been progressively incorporated into the public international

114R. Scruton, “The First Person Plural,” in *Theorizing Nationalism*, ed. R. Beiner (State University of New York Press, 1999), 279-280. Naturally, there are alternative views; most prominently, A. D. Smith, *The Nation in History: Historiographical Debates about Ethnicity and Nationalism* (Hanover, NH.: University Press of New England, 2000).

law, there are issues where the norms remain incompatible, i.e. where states cannot simultaneously comply with two different norms. One key issue, for example, concerns the right (or even the duty) of states to intervene in other states in cases of protracted human suffering, grave human rights violations and genocide. While humanitarian intervention is a subject of heated debates among scholars of International Relations and international law and it would be premature to claim that it has specific and necessary effects on objective state identity, it may well be that a state that engages in gross and systematic human rights violations ceases to be a state and turns into a territory or a “regime” that can or must be replaced.¹¹⁵ Nevertheless, the impact of state apologies on objective state identity is indirect and minor.

Subjective state identity figures more prominently in state apologies because of the problems related to the passage of time and the principle of responsibility. First of all, in order to accept responsibility for an offense and make an apology, a state must also regard itself and must be regarded by others as, in some important way, the same as the state that committed an offense. Since, strictly speaking, identity as sameness in time is not possible due to the corrosive effects of time, identity involves the process of identification, either by claiming or attributing continuity and sameness of a state on the basis of certain physical or mental properties that are found important. International law does not provide clear rules and principles guiding state continuity and succession.¹¹⁶ Whether a state that replaces the previous state is a successor, a continuing state or a totally new one seems to be a matter of choice, provided that the choice is accepted by other states, for neither territorial, nor population or government changes bear decisive relevance on this. Second, even if the state considers itself in some important way the same as the state that committed a wrongful act, a question may arise

¹¹⁵For the debates on intervention, see J. L. Holzgrefe and R. O. Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (New York: Cambridge University Press, 2003); J. M. Welsh, ed., *Humanitarian Intervention and International Relations* (New York: Oxford University Press, 2004); M. Ayoob, “Humanitarian Intervention and State Sovereignty,” *The International Journal of Human Rights* 6, 1 (2002) 81-102.

¹¹⁶For a clear exposition of the reasons for this, see M. C. R. Craven, “The Problem of State Succession and the Identity of States under International Law,” *European Journal of International Law* 9, 1 (1998): 142-162.

whether and to what extent it is responsible for the act. The more time passes, the more difficult this question may become due to possible changes in the constitutional make-up of the state. The inheritance of responsibility for internationally wrongful acts is debated among scholars of international law, although the general rule seems to be that, while it inherits the rights and obligations, the successor state is not bound by wrongful acts committed by the predecessor before succession, unless it freely accepts responsibility.¹¹⁷

The process of (self-)identification is usually unproblematic and therefore less visible in diplomatic apologies. While there are exceptions (as in the case of the Baltic States discussed in chapter 4), diplomatic apologies are typically demanded and given for fairly recent events and thus the sameness of the apologizing state does not come into question. The violation of norms for which diplomatic apologies are given falls under the legal category of ordinary responsibility which concerns breaches of bilateral and multilateral synallagmatic treaties that deal with economic matters, reciprocal treatment of diplomats etc.. Ordinary responsibility is considered to be a private (bilateral) matter between states that does not require *mens rea* but merely that an act can be attributed to a state. Acts by individuals belonging to the state by virtue of citizenship or representing the state by holding an office or performing an official function are attributed to the state.¹¹⁸ Even when it is possible to deny responsibility for acts performed by individuals, states rarely use this option or if they do it rarely succeeds. Thus, for example, when the Greenpeace ship *Rainbow Warrior* was sunk in New Zealand in 1985 by undercover agents of the French foreign intelligence services and two French agents were arrested, charged with arson and murder and sentenced to 10 years imprisonment, France agreed to pay

117For the discussion and the argument that successor states are responsible for the acts of predecessor states, see P. Dumberry, *State Succession to International Responsibility* (Leiden: Martinus Nijhoff Publishers, 2007), 35-59.

118See A. P. Sereni, "Agency in International Law," *The American Journal of International Law* 34, 4 (1940): 639. See also the Articles on State Responsibility of the International Law Commission (ILC) which state that the conduct of any state organ, as well as persons or entities empowered by domestic law to exercise elements of governmental authority, will be considered as an act of the state under international law. "Draft Articles on Responsibility of States for Internationally Wrongful Acts," in *Report on the International Law Commission on the Work of Its Fifty-third Session*, UN GAOR, 56th session, 2001, UN Doc. A/56/10, accessible at <<http://www.un.org/law/ilc>> (last accessed on May 21, 2010).

compensation and apologize to New Zealand for the violation of her sovereignty in exchange for the release of the agents and threatened trade sanctions if they were not extradited.¹¹⁹ In short, neither the sameness of the state, nor attribution of responsibility, nor the fact that responsibility is collective become problematic in diplomatic apologies and thus the identity work involved generally goes unchallenged.¹²⁰

In contrast, historical apologies involve longer periods of time and different norms, and the process of self-identification comes to the forefront. First of all, the state may consider itself significantly different from the state that committed a wrongful act or may not have existed at the time of an act at all. In what sense and to what extent is today's Croatia, which considers itself the successor of the Anti-Fascist Council of the People's Liberation of Yugoslavia (AVNOJ), responsible for the crimes committed in the Nazi-founded Independent State of Croatia by the Ustashe, against which AVNOJ fought? In what sense is France responsible for the actions of the Vichy regime during the World War II? Is today's Spain responsible for the extermination of native populations in the Americas hundreds of years ago?¹²¹ Discussions of historical wrongs go beyond international law, touch upon and activate the national component of state identity and often center around national responsibility. Second, the problem of self-identification is compounded by the fact that historical apologies are generally given for violations that would fall under the category of aggravated responsibility in

119For details of the Rainbow Warrior affair, see United Nations, *Reports of International Arbitral Awards: Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair*, April 30, 1990, vol. XX, 215-284, accessible at <http://untreaty.un.org/cod/riaa/cases/vol_XX/215-284.pdf> (last accessed on May 18, 2010). A similar incident took place in 2004, when two alleged Mossad agents were arrested for trying to fraudulently obtain New Zealand passports, and New Zealand entered into a year-long diplomatic row with Israel over an apology. "Israeli government apologises to New Zealand," *New Zealand Herald*, June 26, 2005, accessible at <<http://www.nzherald.co.nz>> (last accessed on May 18, 2010).

120On collective responsibility in international law, see H. Kelsen, "Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals," *California Law Review* 31 (1943): 530-571.

121"Columbus 'sparked a genocide,'" *BBC News*, October 12, 2003, accessible at <<http://news.bbc.co.uk/2/hi/americas/3184668.stm>> (last accessed on May 21, 2010); "Chavez demands apology for African, S. American 'genocide'," *World News Australia*, September 3, 2008, accessible at <<http://www.sbs.com.au/news/>> (last accessed on May 21, 2010).

contemporary international law. Aggravated responsibility concerns serious breaches peremptory norms (crimes against humanity, peace) and involves obligation of the delinquent state against all other states. Furthermore, aggravated responsibility requires fault or culpable neglect (*mens rea*) and leads to individual criminal responsibility.¹²² In case of aggravated responsibility, the acts of individuals are no longer veiled as the acts of the state and thus the principle of collective responsibility becomes problematic. In what sense and to what extent can the whole nation be considered responsible for the crimes of individuals, even if their crimes are collective in nature and can rarely be viewed apart from the state?¹²³

Identification and acceptance of responsibility, which may not necessarily be legal responsibility, are preconditions for historical state apologies. However, when given, state apologies also affect subjective state identity. These effects can be analyzed domestically, where apology seeks to achieve national unity by means of including previously excluded groups, at the bilateral level, where it helps to achieve a shared view of historical events, as well as at the transnational level, where it indicates acceptance of the norms and values of the international community. Apologies may also be demanded in seeking to produce these identity effects in the state. In order to examine the influence of state apologies on state/national identity, a closer look at what is involved in the construction of identity is required.

¹²²Individual criminal responsibility is an evolving issue in international law, which was espoused in the Nuremberg Tribunal, recognizing that “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced”, and reached a new stage with the establishment of the International Criminal Court. See Lyal Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Dordrecht: Martinus Nijhoff Publishers, 1991); S. R. Ratner and J. S. Abrams, *Accountability for Human Rights Atrocities in International Law*, 2nd ed. (Oxford: Oxford University Press, 2001). The idea of ordinary and aggravated responsibility originates in the work of the International Law Commission and follows roughly the distinction in domestic law between civil and criminal responsibility.

¹²³The debates on the idea of state crimes are illustrative of the problems involved with collective responsibility for serious breaches of peremptory norms. Since a state crime invokes the need of sanctions (e.g. punitive bombing), which would affect all individuals composing state, who may not be individually guilty at all, the very concept of international crimes contradicts the motive for developing it, i.e. respect for individuals out of a feeling of solidarity for human beings. See J. H. H. Weiler, A. Cassese, and M. Spinedi, eds., *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility* (Berlin: Walter de Gruyter, 1989), 258.

2.3 Narrative identity of states

How should an agent's identity and changes in identity be understood? What makes identity continuous? At the individual level, the philosophical perspectives on personal identity range between Hume's skeptical "bundle theory" on one end, which suggests that a person or a self is nothing but a set of "different perceptions which succeed each other with an inconceivable rapidity and are in a perpetual flux and movement" and that therefore an enduring self is a habit of imagination; Locke's psychological continuity theory of self as consciousness and repeated self-identification; and some version of Cartesian ego, where self consists of spiritual or immaterial substances or properties. Corresponding views of the state can be found in International Relations theories, where the state disintegrates into individuals or bureaucratic processes on one end, or emerges as an organism endowed with a soul and capable of reasoning and emotions on the other.¹²⁴ Instead of committing to some particular view and thereby entering complex and lengthy metaphysical debates, the more useful way to analyze state identity is by relying on the idea of narrative identity, which captures the mediating role of language in human experience and which does not necessarily entail an ontological position, unless it is specified that there is no reality beyond language.¹²⁵ The main argument in favor of adopting the concept of narrative identity is utility, in the sense that it allows deeper understanding the phenomenon of apologies, permits the integration of the level of the individual with the level of community, as well as opens venues for interdisciplinary analysis.

¹²⁴See in particular M. Sicker, *The Genesis of the State* (New York: Praeger, 1991); A. Vincent, *Theories of the State* (Oxford, U.K.: Blackwell, 1994); H. J. McCloskey, "The State as an Organism, as a Person, and as an End in Itself," *The Philosophical Review* 72, 3 (1963): 306-326; E. Ringmar, "On the Ontological Status of the State," *European Journal of International Relations* 2, 4 (1996): 439-466; A. Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 215-246. See also contributions by P. T. Jackson, I. B. Neumann, C. Wight, and A. Wendt in the *Review of International Studies* 30, 2 (2004).

¹²⁵For a view that narrative is an ontological condition of social life, see M. R. Somers, "The Narrative Constitution of Identity: A Relational and Network Approach," *Theory and Society* 23, 5 (1994): 605-649. However, an ontological view would at least entail a position on the mind-body problem, which is not necessary for the argument made in this chapter. For a discussion, see N. Onuf, "Parsing Personal Identity: Self, Other, Agent," in *Language, agency, and politics in a constructed world*, ed. F. Debrix (New York: M.E.Sharpe, 2003), 26-50.

Narrative may be defined as the semiotic representation of a series of events meaningfully connected in a temporal and causal way.¹²⁶ The idea of narrative identity, developed in the works of various scholars in literary theory, philosophy of history and philosophy, captures the mediating role of narratives in the temporal experience of reality.¹²⁷ While physical reality may be an utterly disorganized, unstructured, raw flux of events containing scrambled messages or, alternatively, involve causal interconnections and order, a significant part of this reality is experienced by imposing stories on it which give meaning to human life. Different positions on the relation between narrative and physical reality can be found, ranging between the view that narrative does not distort but imitates reality, which already has inchoate narrative structures, such as the cycle of birth and death or the means-ends structure of action, and the view that narrative essentially fictionalizes reality by imposing meaning and structure where there may be none.¹²⁸ As in the previously mentioned philosophical debate on the ontological status of self, these otherwise important questions on the cognitive or scientific value in narratives may be set aside here, simply noting while there are non-narrative ways of representing reality (lists, diagrams, numbers etc.), the representation of enduring self necessarily involves a narrative. The temporal function of narratives is also what distinguishes it from other language-centered approaches to identity. Thus, for example, while discourse analysis examines the construction and reproduction of self identity by means of establishing difference (othering), narrative discourse analysis shifts focus to the the representation of action and practices.¹²⁹

126J. A. G. Landa and S. Onega, eds., *Narratology: An Introduction* (London: Longman, 1996), 4.

127Some of the most influential works on narrative in philosophy include P. Ricoeur, *Time and Narrative*, 3 vols. trans. K. McLaughlin and D. Pellauer (Chicago: University of Chicago Press, 1984, 1985, 1988); A. MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1981); C. Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1989). For an overview of approaches to narrative inquiry, see D. Herman, ed., *The Cambridge Companion to Narrative* (Cambridge: Cambridge University Press, 2007).

128For the discussion of the first view, see D. Carr, *Time, narrative, and history* (Indiana University Press, 1991). For the second view, see H. White, "The Value of Narrativity in the Representation of Reality," *Critical Inquiry* 7, 1 (1980): 5-27, where White argues that the claim that real events are properly represented when they can be shown to display the formal coherency of a story is a fantasy.

129See I. B. Neumann, "Returning Practice to the Linguistic Turn," in *Pragmatism in International Relations*, eds. H. Bauer and E. Brighi (New York: Routledge, 2009), 82-103.

Narrative identity may be defined as an activity of self-constitution and self-understanding articulated narratively.¹³⁰ Or to put it somewhat differently, narrative identity is a story or stories that one tells about oneself. By organizing a sequence of events, characters, means, motives, and perspectives into a meaningful whole, narrative provides unity and continuity to self, as well as integrates first-, second-, and third-personal aspects of selfhood. The organizing function of narratives is realized by means of emplotment, which essentially refers to the process of selection from the multiplicity of events, incidents, and factors and their transformation into a single story by means of synthesis.¹³¹ A story may or may not have a clear beginning and an end but it is always composed of actions and agents and it proceeds forward in time. It may be noted here that while the stories that may be told are infinitely diverse, the strategies of emplotment (plots, story frameworks) are limited in number.¹³² Different emplotment of same events may lead to a different story and, consequently, a different identity.

What does narrative identity refer to in case of nation-states? The often dangerous conceptual leap involved in the application of insights on the individual level to the collective level is facilitated by the fact that narrative identity is a second-order structure of intelligibility. If no ontological claims are made about the reality of selves represented by the narratives and if it is taken into account that the first-person narration changes into first-person plural and there are many possible stories that are competing for primacy within a state at any given time, the concept of narrative self can be usefully applied to states as well.¹³³ The logic of narrative identity functions similarly in case of individuals and collectives.

130K. Atkins, *Narrative Identity and Moral Identity A Practical Perspective* (New York: Routledge, 2008), 7.

131On emplotment, see P. Ricoeur, "Life in Quest of Narrative" in *On Paul Ricoeur: Narrative and Interpretation*, ed. D. Wood (London: Routledge, 1991), 21-25.

132The classic typology of plots by Aristotle names four types: romance (the hero transcends the conditions of the world), the satire (the hero experiences that an escape is illusory), comedy (a harmony is achieved) and tragedy (the hero suffers, but with hope of a future liberation).

133See I. B. Neumann, "Beware of Organicism: The Narrative Self of the State", *Review of International Studies* 30 (2004): 259, where Neumann points out that the state's self's structure is heterological rather than monological.

The main story constituting a nation-state's identity is its history. Although the construction of the narrative identity will depend on the particular context and the length of time under consideration, it is the nation's official or predominant version of its history that generally provides answers to the question “who are we?” by circumscribing origins and membership, identifying the “founding fathers” and defining moments, linking territory and population, constructing images of national character, as well as establishing unity and continuity of self in the flux of events and changes. Other stories relevant to the self-constitution, told in particular contexts or spanning shorter period of time, e.g. the history of a state's foreign policy or relations with some other state, can be expected to be dependent on or aligned with the master-narrative of national history.

While the nation-state is not the only narrator and does not possess the same degree of authorship or control as the individual, and the scope and methods of control will vary from state to state, with totalitarian states providing an extreme example, all states occupy a privileged position with regard to the production and maintenance of self-narratives. First of all, although technological changes severely diminished the state's capacity to control access to current information, the state can nevertheless control the production of historical knowledge both by regulating the use of archives and by determining who can teach and what can be taught. The state can also encourage the production of certain kinds of narratives by setting up special institutions or offering funding and career opportunities, as well as discourage or punish the production and dissemination of other kinds. In addition to control of written narratives, the state has a privileged position with regard to the conveyance and sustenance of other forms of social memory.¹³⁴ Particular narratives may be strengthened or reconfigured by commemorative ceremonies, national holidays or days of mourning, monuments, museums, exhibitions, funding for films, theater performances and works of art, as well as by legal measures (e.g. pensions, citizenship or other kinds of privileges, language and immigration

¹³⁴See in particular P. Connerton, *How Societies Remember* (Cambridge: Cambridge University Press, 1989), and C. Linde, *Working the Past: Narrative and Institutional Memory* (Oxford: Oxford University Press, 2009).

laws). The institutionalization of narratives through law, formal education and routinized domestic and international practices establishes the dominant interpretation of the state's past and sets limits on the range of reinterpretations to which it can be subjected.

On the other hand, if the state has superiority in the emplotment, stabilization and naturalization of the self-narrative, the plurality of voices participating in the construction of “we” ensures that national identity is a continuous and dynamic process. Despite the binding and homogenizing power of institutionalized narratives, individuals and collectivities have multiple and conflictual identities (class, regional, religious etc.) which can never be fully reconciled, and thus the national identity construction process can never be completed.¹³⁵ Generally, as John Hutchinson suggests, nations can be viewed as zones of conflict, where rivals validate their stories and visions by reference to an authentic past, prominent figures or practices, thereby defining, codifying and elaborating the characteristics of nation and contributing to the internalization of national values.¹³⁶ In addition to domestic sources of discordance, nation-state identities can be challenged from outside, particularly since the significance of the boundary between the inside and the outside of the state is being progressively diminished by technological changes. Since all strategies of emplotment mean selectiveness and thus exclusion of certain events and perspectives, the truthfulness of narrative identity is a relative category subject to negotiation. In extreme cases, when the narrative endorsed by the state is not representative or contradicts the narratives told by a significant part of its population or when the chosen strategy of emplotment excludes events, agents, motives etc. considered significant by others from the story, it may lead to an identity built on self-deception and delegitimize the state as a key site for the articulation of national identity or cripple the state's authentic agency, i.e. the state's ability to act as self.¹³⁷

¹³⁵See M. L. Bruner, *Strategies of Remembrance: The Rhetorical Dimensions of National Identity Construction* (Columbia: University of South Carolina Press, 2002).

¹³⁶J. Hutchinson, *Nations as Zones of Conflict* (London: Sage Publications, 2005), 103-108.

¹³⁷On self-deception as a failure of self-knowledge, see R. Brown, “The Emplotted Self: Self-Deception and Self-

Let us turn back to the question of how state apology affects national identity. Conceptualizing identity as narrative identity leads to a better understanding of both the ideas of self-image or face in linguistic theories of diplomatic apologies and the ideas of national trauma and national healing in psychological theories of historical apologies. In the latter, narrative identity shifts the focus of analysis from emotions, which play a central role in interpersonal relations but become problematic at the level of collectivities, to narratives.¹³⁸ Since genuine apologies require a common point of view between the speaker and the hearer on the events that constituted an offense, apologies entail accommodation of the victim's point of view within the self-narrative of the perpetrator and may lead to changes in the emplotment strategies and thus the story that one tells about oneself. The sincerity of historical apologies refers to the consistent and lasting rearrangement of the self-narrative rather than emotions prompting or accompanying the speech act of apology.

If the view of apology as a symbolic act of not only reaffirmation to the violated norms but also of inclusion of the victim's perspective and the corresponding reconfiguration of the self narrative is accepted, then it becomes clearer how the absence of change in the self-narrative leads to the annulment of the speech act. The case of Japan illustrates the importance of change in self-narrative for the acceptance of apology, for despite multiple apologies by Japanese officials for various crimes preceding and during the World War II it is still widely considered that Japan has not apologized.¹³⁹ Occasional statements by conservative politicians minimizing or denying war crimes and exonerating war criminals, as well as high-level visits to the Yasakuni shrine, Japan's war memorial where a number of war criminals were enshrined in 1978, were perceived by audiences in China and south Korea as

Knowledge," *Philosophical Papers* 32, 3 (2003): 279 - 300.

¹³⁸But see A. Wendt, "Social Theory as Cartesian science: An auto-critique from a quantum perspective," in *Constructivism and International Relations: Alexander Wendt and His Critics*, eds. S. Guzzini and A. Leander (London: Routledge, 2006), 178-217.

¹³⁹On Japan's apologies, see J. W. Yamazaki, *Japanese Apologies for World War II: A Rhetorical Study* (New York: Routledge, 2006).

revisionist moves denying Japan's wartime responsibility.¹⁴⁰ The history textbook controversies regarding the use of words in the representation of Japan's wartime actions, which poisoned relations between Japan and China and South Korea in 1982 and in 2005, are particularly revealing of Japan's internal struggles over national narrative and the resulting difficulties in finding the right balance between the view that it has been a victim of the World War II and the other countries' views of Japan as an aggressor.¹⁴¹ Since debates over the content and the form of education are always in part about defining citizenship and since the stories selected from the national past are invariably prescriptive, the officially sanctioned history textbook becomes an indicator of changes in the national identity required by a genuine apology.¹⁴²

The identity effects of historical state apologies are threefold, roughly corresponding to the first-, second-, and third-personal perspectives. First, domestic apologies indicate the expansion of the self-narrative to include the stories of the victims of discrimination, assimilation or systematic human rights violations. In this way, as Melissa Nobles shows by discussing cases in the United States, Canada, New Zealand, and Australia, historical state apologies help change the terms and the meaning of national membership.¹⁴³ It is noteworthy that domestic apologies are usually preceded not only by organized interest group activities but also by the work of a governmental historical commission, the publication of a historical study or a court session that brings new or previously ignored facts to light and prompts a reevaluation of history. In effect, domestic apologies represent the redrawing of the social covenant, specifying who belongs to the nation and what are the values and principles guiding its life. Second, apologies given to groups outside the state construct national unity by means of

140T. Takahashi, "The national politics of the Yasukuni Shrine," in *Nationalisms in Japan*, ed. N. Shimazu (New York: Routledge, 2006), 155-181.

141On the textbook controversies, see Y. Nozaki, *War Memory, Nationalism and Education in Postwar Japan, 1945-2007: The Japanese History Textbook Controversy and Ienaga Saburo's Court Challenges* (New York: Routledge, 2008) and C. Rose, "The battle for hearts and minds: Patriotic education in Japan in the 1990s and beyond," in *Nationalisms in Japan*, ed. N. Shimazu (New York: Routledge, 2006), 131-155.

142L. Hein and M. Selden, eds., *Censoring History: Citizenship and Memory in Japan, Germany and the United States* (Armonk, N.Y., 2000.), 4-5.

143M. Nobles, *The Politics of Official Apologies* (Cambridge: Cambridge University Press, 2008).

acceptance of collective responsibility for a historical wrong, and stabilize the self-narrative against outside claims by incorporating the second-person plural perspective on self. Here too it is not unusual that apologies are preceded by the work of a historical commission, although the propensity to apologize can be expected to vary depending on the significance of those who demand an apology to the national narrative. Finally, the practice of historical state apologies represents the integration of the norms of the international community and the alignment of national narratives with the values embedded in these norms, as well as the concurrent strengthening of the normative framework, thus generating transnational pressure for other states “to come to terms with their past”, i.e. to reinterpret their histories in the light of the contemporary norms.

2.4 Ontological security and apologies

The discussion of state apologies in this and preceding chapter leads to the following schematic understanding of the practice. A certain act by a state in violation of a common norm against another state or individuals inside or outside the state leads to internal or external pressure for a state to rectify the situation by an apology, thereby upholding the validity of the violated norm and resolving or preventing conflict with the other state or individuals. Here pressure may refer to demands by the party, which was harmed by the act, demands by the community, which values the norm, or internal demands born by the value attached by the perpetrator to either the relations with harmed party or the violated norm. The decision of the state whether to apologize or not can then be seen to depend on either or these factors or their combination: the value of the norm, the value of relations, the intensity of demands. Which of these are more important will vary from case to case. However, if so far the argument focused on how the act of apology affects state identity, it will now be advanced further to

suggest that, in case of historical apologies, the narrative identity of states influences how norms, relations and demands are perceived and thus influences the decision whether to apologize or not.

Perhaps the best way to analyze the role that identity plays in historical state apologies is by looking at those cases, where apology is demanded but not given. As it was stated in the introductory chapter, refusals to issue historical apologies are puzzling in at least two regards. First, the norms that underlie historical apologies have been not only widely accepted by states but also internalized to various degrees in their domestic practices.¹⁴⁴ In contrast to diplomatic apologies, a refusal to give a historical apology rarely involves questioning the validity of norms, although it is sometimes still possible to argue over which particular human rights norms should apply. Chapter 3 will examine the Danish case, in which the freedom of expression is given precedence over the freedom of religion in justifying the refusal to apologize. However, such a justification is not possible in cases when the past violation concerned the breach of non-derogable rights, such as the right to life or the right to be free from slavery and torture and other inhumane or degrading treatment or punishment. Given the universal nature of human rights, the justification of the breach of non-derogable human rights by state security needs becomes invalid as well. With the spread and internalization of the human rights norms, recourse to state values (e.g. territorial integrity) or security and military needs in cases of gross human rights violations has become not only illegal but also immoral. Thus, for example, the United States might argue that the use of the nuclear weapons in Japan was necessary to reduce the loss of life both among the civilians and the combatants but not that it was required for strategic and military gains.¹⁴⁵ In

¹⁴⁴See T. Risse-Kappen, S. C. Ropp, and K. Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999). The main treaties embodying human rights law - Universal Declaration of Human Rights (1948); the Convention on the Prevention and Punishment of the Crime of Genocide (1951); Convention on the Elimination of All Forms of Racial Discrimination (1966); International Covenant on Civil and Political Rights (1976); International Covenant on Economic, Social, and Cultural Rights (1976); and UN Convention Against Torture (1984).

¹⁴⁵It may be suggested that because of the movement from the state-centered to the human-centered law, certain issues in Europe can be expected to retain relevance quite apart from the domestic struggle over historical memory in particular countries, until they are reassessed. This refers primarily to the war crimes and crimes against humanity committed by the Allies in the World War II – e.g. the fire bombing of cities, mass rapes, expulsions, and arbitrary executions.

many cases, however, the argument that the loss of life was required to save lives is implausible or simply not available. Second, since apology can help restoring and improving relations between the parties, it is not clear why any state would prefer conflict to reconciliation, no matter the intensity of demands or the perceived importance of relations. In short, why would any state not apologize for a genocide?

The answer to the puzzle of non-apology ultimately points to the costs of apology. These costs can be assessed in material and instrumental terms or in identity terms. The materialist position could be formulated as a strong argument that states comply with international law when and if it is in their interest to do so or as a weaker argument of apologies and demands for apologies as a form of instrumentally rational or rhetorical action, i.e. action in which norm-based arguments are used in pursuit of material or strategic gains.¹⁴⁶ From this perspective, both apology and refusal to apologize can be explained in terms of cost-benefit calculations – the state will apologize if the benefits of apologizing outweigh the costs. The material costs include the possibility of reparation, compensation, and restitution claims against the state that apologizes and admits responsibility for a violation of a norm. Furthermore, it could be argued that apologies are demanded on the basis of calculations about the identity effects that apologizing produces, thereby seeking to gain some advantage from the reconfiguration of the narrative. An apology for the expulsion of the Sudetenland Germans in 1945 could lead to restitution claims, an apology for slavery could strengthen the case for reparations or affirmative action in the countries that apologize, and an apology by the US for dropping nuclear bombs on Japan could make their use difficult in the future.

¹⁴⁶The first position is powerfully argued by J. L. Goldsmith and E. A. Posner in *The Limits of International Law* (Oxford: Oxford University Press, 2005). On rhetorical action, see F. Schimmelfennig, “The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union,” *International Organization* 55, 1 (2001): 47–80. Instrumentally rational action is one of the four types of social action in Max Weber's taxonomy, the other three being value-rational action, “determined by a conscious belief in the value for its own sake of some ethical, aesthetic, religious or other form of behavior, independently of its own prospects for success”, affectual action, determined by feelings, and traditional action, determined by habits. See M. Weber, *Economy and Society: An Outline of Interpretive Sociology*, eds. G. Roth and C. Wittich, trans. E. Fischhoff (New York: Bedminster Press, 1978), 24-25.

The parsimony of materialist and instrumentalist explanations which reduce decision-making to cost-benefit calculations is both their strength and weakness. As is well known, the main weakness is that these explanations typically lack an account of how interests are formed. Since much of contemporary IR literature in the past two decades has been devoted to exposing the problems with interest-based materialist explanations of state behavior, there is no need to engage these arguments here at length. Chapters 3, 4 and 5 examine cases of non-apologies in which the cost-benefit calculations in materialist terms would have led the states to apologize or to abandon demands for apology. Denmark incurred substantial economic and security losses for not apologizing, Lithuania would gain economic and economic security advantages if it sought improvement of relations and abandoned its claims towards Russia, while Turkey's refusal to apologize for the Armenian genocide does serious damage not only to its international reputation but also to its military and economic interests. In these cases at least, the strong claim that state behavior is driven by material interests does not suffice to explain state behavior. The weaker claim that apology may be a type of rhetorical action implies that at least one party of the interaction is bound by norms to such an extent that it can be compelled or “trapped” into norm-based behavior contrary to its egoistic interests, in whichever way these are conceived. It is evident that many, though arguably not all, demands for historical apologies are driven in part by the expectation of material benefits in the form of compensation for the injustice suffered. Thus demands for apology could indeed be seen as a type of rhetorical action in many cases. However, this merely restates the same puzzle: why does rhetorical action fail, if the states against which it is directed are expected to be norm-compliant?

The identity costs of apologizing consist of changes in the self-narrative. Some of these changes may involve the inclusion of a previously unknown or ignored minor episode in the country's history, as in the US apology for the Tuskegee Syphilis study for conducting medical experiments on several hundred African-American males without their knowledge from 1932 to 1972 or as in Australia's

Britain's recent apologies for the child resettlement program, under which children were shipped from Britain to its colonies between 1618 and 1967. Other changes may require a serious reassessment of entire periods in countries' histories, as in Holocaust apologies or apologies to former colonies. Generally, it may be noted that the shift from state-centered to human-centered law and values leads to a decrease in romantic wartime stories and a corresponding increase in stories best categorized as tragedies.¹⁴⁷ In some cases, the revision of stories central to the national identity may appear too costly or even inconceivable.

In order to understand how the identity costs of apologizing can become prohibitive and lead to preference for conflict, rather than reconciliation, we may rely on the ontological security theory in IR.

¹⁴⁸ The various formulations of the ontological security theory within the constructivist discipline of International Relations, building on Weber's idea of value-rational action and Giddens's ideas on individual security, utilize the concept of narrative identity, except that the self-narrative is taken to mean not the master-narrative of the state's history but rather a specific narrative discourse (a "biographical narrative") that links by implication a policy with a description or understanding of a state's self.¹⁴⁹ According to the theory, states have a basic need to establish the unity, continuity and

¹⁴⁷Concomitant and somewhat unexpected developments in countries where human rights norms have been internalized most threaten to seriously cripple their militaries. A single mother sued the British army for being inconsiderate to her childcare rights and won; Israeli soldiers sued the Defense Ministry over medical experiments; the Dutch state was sued for failing to prevent the Srebrenica massacre; the family of a Spanish journalist killed in Baghdad during the war in Iraq sued responsible US soldiers – these are just a few headlines from an avalanche of litigation that befell the militaries, which highlight the increasing appeal of private armed forces.

¹⁴⁸See in particular, B. McSweeney, *Security, Identity and Interests* (Cambridge: Cambridge University Press, 1999); J. Mitzen, "Ontological Security in World Politics," *European Journal of International Relations* 12, 6 (2006): 341–70; B. J. Steele, *Ontological Security in International Relations: Self-identity and the IR state* (New York: Routledge, 2008). While the theory is useful, the label "ontological security" is somewhat inapt and unfortunate for it implies a definite stance on a range of philosophical problems which are neither addressed nor adequately discussed in the literature on ontological security. What is meant by ontological security could perhaps be captured better by McSweeney's "existential trust" or simply "narrative security". For an introduction to ontological puzzles, see W. V. Quine, "On What There Is", *The Review of Metaphysics* 2, 5 (1948): 21-38, where he argues that: "A curious thing about the ontological problem is its simplicity. It can be put in three Anglo-Saxon monosyllables: 'What is there?' It can be answered, moreover, in a word – 'Everything' – and everyone will accept this answer as true". For a discussion of ontological issues in IR, see C. Wight, *Agents, Structures and International Relations: Politics as Ontology* (Cambridge: Cambridge University Press, 2006).

¹⁴⁹A. Giddens, *The Consequences of Modernity* (Stanford, CA: Stanford University Press, 1990). On "biographical narrative", see Steele, *Ontological Security*, 10.

stability of their self-narratives in order to realize a sense of agency. Since agency requires a stable cognitive environment, states tend to create behavioral and cognitive certainty by establishing routines in their relations with other states. Because routines sustain identity, states become attached to them and are reluctant to abandon them, even if the practices that constitute routines generate physical insecurity or conflict.¹⁵⁰ Conflictual relations can satisfy the ontological security needs as well as cooperative relations, so long as they help maintaining the stability of self and are consistent with self-narratives.

If ontological security helps explaining the rationality of moral, non-strategic or conflictual actions by revealing how these actions serve the self-identity needs of states, the derivative concept of ontological insecurity can account for differences in state behavior in similar normative contexts. Ontological insecurity will be taken here to refer to the impact of exogenous and endogenous challenges to the stability of self-narratives. External or internal demands for an apology based on the same norms will entail different degrees of revisions in the self-narrative of the state and thus can be expected to disrupt routines in different ways, or not at all. In extreme cases, an apology could lead to a condition of deep uncertainty about the cognitive environment, depriving the state of a sense of continuity, purpose or direction and limiting its agency.

The following chapters will examine three cases where apology is not given mainly for ontological (in)security reasons. Turkey's refusal to recognize the Armenian genocide during the World War I stems from the centrality of the historical narrative of the period to Turkey's contemporary identity. Since the inclusion of the Armenian perspective would require a major reassessment of not only the final years or even decades of the Ottoman Empire but also the circumstances, events and heroes of the birth of the Turkish Republic, Turkey is more than reluctant to “come to terms with its past” despite the growing transnational pressure. While in Europe the condemnation of the Holocaust

¹⁵⁰Mitzen, 342.

in particular and genocides in general is gradually becoming one of the symbolic pillars of a shared identity, the Turkish narrative remains configured around “state values” and the demands for the recognition of the Armenian genocide are widely perceived as interventionist attempts to weaken the state and divide the nation or simply to exclude the country from joining the European Union.¹⁵¹

In case of Lithuania and Russia, ontological insecurity is a factor in both the requests for an apology and the refusal to issue one. For Lithuania, the current economic importance of Russia and the centuries-long history of subjugation underscores the need for the recognition of its view of the circumstances in which statehood was lost and the country incorporated into the Soviet Union in 1940. The narrative upon which contemporary Lithuania's identity is based may be succinctly summarized by a statement made by Prime Minister Andrius Kubilius in a recent interview to a Russian news agency:

For us, the World War II ended not in 1945 but in 1990. In essence: thank you for the victory against Fascism but we still need a victory over Stalinism. We want both Europe and Russia to realize that our people suffered from Stalin as much as from Hitler.¹⁵²

Russia's refusal to acknowledge that the fifty years of the Soviet rule was an occupation shakes the very ideological foundations of the Lithuanian state, making normal relations difficult if not impossible and giving credence to various discourses of the danger posed by resurgent Russia.¹⁵³ For Russia, the incorporation of Lithuania's narrative into its official story would amount to an unacceptable historical revision of both the World War II, which is central to Russia's self-narrative, and its outcomes, upon which Russia's place and great power aspirations in the international system are partially based. Victory in the World War II is the single most important source of pride for Russians and it remains crucial for the construction of social consensus in Russia.¹⁵⁴ For both ideological and pragmatic reasons, Russia is

151 See A. Zarakol, “Ontological (In)security and State Denial of Historical Crimes: Turkey and Japan,” *International Relations* 24, 1 (2010): 3-23.

152 “Premier Litvy: malo pobedit fashizm, nado pobedit eshhe i stalinizm” [Lithuanian Prime Minister: It's not enough to win against Fascism, we must win against Stalinism as well], *Ria Novosti*, May 31, 2010, accessible at <<http://www.rian.ru/interview/20100531/240708566.html>> (last accessed on June 1, 2010).

153 On the construction of discourses of danger, see D. Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Minnesota: University of Minnesota Press, 1998).

154 See, for example, M. Laruelle, *In the Name of the Nation: Nationalism and Politics in Contemporary Russia* (New York: Palgrave Macmillan, 2009), 153-188.

unable and unwilling to apologize for the Soviet crimes, while Lithuania is unable to abandon its demands, and thus both countries remain locked in a zero-sum ontological security struggle.

Finally, in case of the Danish cartoon controversy, the ontological insecurity of the Danish society results from the perception of processes of migration under the conditions of globalization. As Catarina Kinnvall notes, globalization generally challenges simple definitions of who we are and where we come from through de-territorialization of time and space and engenders the growth of constant time- and space-bound local identities as a response to this existential insecurity.¹⁵⁵ Migrants, asylum seekers and refugees have become a concrete representation of threats to the security of national identities in many European countries and Denmark in particular. Since, in 2000, nearly all Muslims in Denmark were political refugees, immigrants or children of immigrants, Muslims in have become signifiers of globalization, stereotypical outsiders on the inside of the state, dangerous to the idea of Danishness based on cultural homogeneity, cohesiveness, and egalitarianism not only in terms of the particular values associated with their religious identity but also in terms of their territorial loyalties.¹⁵⁶ In the context of the intensification of attempts to overcome the challenge of difference by means of integration and assimilation of Muslims since 2001, the Danish prime minister's persistent refusal to apologize for the publication of offensive cartoons involved a complex identity move in defining the Danish society as liberal, open, tolerant and exclusive on that basis, simultaneously affirming and denying the state's role in the construction of national unity.

If ontological insecurity that would result from an apology is one of the main reasons why historical apologies are not given, it does not follow that ontological security is the main reason for

155C. Kinnvall, "Globalization and Religious Nationalism: Self, Identity, and the Search for Ontological Security," *Political Psychology* 25, 5 (2004): 742.

156See A. Linde-Laursen, "Is something rotten in the state of Denmark? The Muhammad cartoons and Danish political culture," *Contemporary Islam* 1, 3 (2007): 265-274; and S. Lex, L. Lindekilde and P. Mouritsen, *Public and Political Debates on Multicultural Crises in Denmark: A European Approach to Multicultural Citizenship: Legal, Political, and Educational Challenges*, EMILIE, Report on National and European level cases, University of Aarhus, European University Institute, May, 2007.

apologizing. Apologies strengthen the self-narratives of states by reducing challenges from inside or outside and thus have the effect of increasing their stability; however, the successful expansion or revision of the self-narratives may also mean that the challenge presented by them was not so great in the first place. Which of the three factors or their combinations – norms, demands or relations – influence apologies can be answered by looking at particular cases. What should be noted is that the presence of ontological (in)security dynamics in historical apologies, demands for apologies and refusals to apologize, triggered by the identity work required to assume or attribute responsibility for past offenses, indicates a substantial change in the practice of state apologies. Within the human rights framework, the practice acquires a major transformative potential that can change the present by changing the way the past is understood. If diplomatic apologies maintained the Westphalian state model and could only affirm the autonomy of states, genuine historical apologies lead to the creation of intersubjective spaces where the dichotomy of “us” and “them” is replaced by a dialogue.

2.5 Conclusion

This chapter examined the relationship between state apologies and state identity. Different aspects of identity feature in both diplomatic and historical apologies. Diplomatic apologies which affirm state-centric values serve to strengthen the objective identity of states as legal persons with certain rights and duties, while the subjective state identity generally remains muted. In contrast, by virtue of the more pronounced temporal dimension and the different normative framework, historical apologies engage subjective state identity. In order to apologize, the state must regard itself and be regarded by others in some important way the same as the state that committed a transgression. The longer the periods of time between the transgression and an apology, the more difficult this

identification work may become. Furthermore, since responsibility for gross violations of human rights often involves individual criminal responsibility, in order to apologize the state must also negotiate its unity domestically, which is not necessary in case of diplomatic apologies which are based on the notion of collective responsibility. The continuity and unity of the state are the preconditions for a historical apology which are actualized through the speech act. In principle, there are more ways in which the claims to unity and continuity could be substantiated (e.g. continuity of government institutions); in practice, however, it usually takes the form of claims regarding national unity and continuity and thus involve the idea of national responsibility. Furthermore, if identity is conceptualized as narrative identity, as it is argued in the chapter, historical apologies have consequences to state identity in the shape of domestic, bilateral and transnational challenges to the self-narratives of states. When these challenges concern periods that are central to contemporary state/national identity, they may disrupt the stability of the state's self and lead to ontological insecurity. The following three case-study chapters will illustrate the diversity of ways in which considerations of state/national identity and ontological security play a role in decisions whether to demand and whether to give a historical apology.

Chapter 3. Domestic apologies: collective responsibility and the Danish cartoon controversy

3.1 Introduction

This chapter examines how state apologies contribute to the construction of state identity at the domestic level. The main argument advanced in this chapter is that official apologies serve to redefine the nature or the scope of political/moral community by means of affirming the values that guide it or by means of extending membership to include previously excluded groups. Conversely, refusal to apologize may limit membership by excluding groups on the basis of the affirmed values. Furthermore, by assuming responsibility for past events state apologies serve in the construction of national/state unity.

The chapter is organized in two parts. The first part of the chapter examines a peculiar problem that all historical apologies face in liberal democracies – that of collective responsibility. As it was argued in Chapter 1, a genuine apology necessarily entails acknowledgment of responsibility: to apologize is to recognize that one is at fault with respect to a wrongdoing. When a state apologizes on behalf of its people, this involves an acknowledgment of some form of collective responsibility. If an apology is given for historical wrongs, responsibility seems to be attributed to members of a collectivity who might not even have existed at the time of the wrongdoing. Apologizing on behalf of people for the crimes they have not committed seems to go against the basic principles underlying contemporary liberal morality and law. If in diplomatic apologies state unity is assumed and continuity is usually irrelevant, in historical apologies both of these requirements for moral agency must be negotiated. Therefore, examining the ways in the which the problem of collective responsibility can be

overcome is important for understanding the ways in which state apologies influence state identity construction

The second part examines the Danish government's refusal to accept responsibility for the publication of cartoons in a Danish newspaper that offended the religious feelings of the Muslims both in Denmark and elsewhere in the world and resulted in an international crisis. The so-called Danish cartoon controversy is analyzed by focusing on its domestic aspect and in the context of Denmark's historical apologies to other minority groups. The Danish case is illustrative of the tension between the individual and collective responsibility discussed in the first part but it also represents a showcase of state involvement in the dynamics of inclusion and exclusion in national identity construction.

3.2 Responsibility in diplomatic and historical apologies

Our discussion of how apologies influence the construction of state identity domestically should begin by clarifying the change in the notion of responsibility involved in the practice of state apologies. All state apologies involve collective responsibility. However, while the normative framework of diplomatic apologies permits treating collective responsibility as individual responsibility of the state by means of the concept of state as a legal person, collective responsibility becomes problematic in historical apologies due to several factors. First, demands for historical apologies frequently blur the distinction between legal and moral responsibility thereby raising the issue of not only legal but also moral agency of the state. Second, demands for historical apologies may come from inside the state, thereby making the fiction of the legal personality of the state inapplicable. Finally, as mentioned in chapter 2, some wrongs for which historical apologies are demanded would now be considered to be international crimes which require *mens rea* and lead to individual, rather than collective, criminal

responsibility. In other words, some historical apologies seem to involve the notion of collective guilt or, when they are demanded for the crimes that took place a long time ago, even collective transgenerational guilt, both of which are found repugnant by liberal thinkers. Since historical apologies are usually demanded from states that consider themselves liberal, attempts to solve the problem of collective responsibility or collective guilt and establish the bases for moral agency requires self-reflection, which involves identity articulation and/or change. The following sections will expand on the general issues raised here before moving to examine how they were resolved in the particular case of Denmark.

3.2.1 Relations between legal and moral guilt and responsibility

First of all, let us clarify the difference between legal and moral guilt in Western thought. States are frequently unwilling to issue official apologies for the historical wrongs they committed fearing that an acknowledgment of responsibility may entitle the victims of their descendants to compensation. This is particularly relevant in cases where the recipients of apologies have access to national legal systems. For example, while most EU delegations were prepared to offer the much-demanded apology for slave trade during the UN World Conference Against Racism in Durban in 2001, the British, Dutch, Spanish and Portuguese delegations pressed hard to replace the suggested use of “apology” with “regret” in order to avoid possible future liability.¹⁵⁷ How could a moral stance taken by the states historically implicated in the abhorrent business of slave trade transform itself into concrete amounts to be paid

¹⁵⁷The draft declaration of the conference contained the following passage, which was eliminated from the final declaration: “We request those who, directly or indirectly, by commission or omission, participated, permitted, facilitated or tolerated colonialism, slavery of indigenous and African people and the slave trade, in particular the transatlantic slave trade, to apologize to the peoples concerned as a first step in the process of reparation to heal the wounds arising from these practices, as a fundamental prerequisite for the creation of the peace of mind of all parties involved, which gives future efforts better chances of success”. For a more detailed account on the issue of apologies at the UN conference against racism, see J. Ukabiala, “Slave Trade A “Crime Against Humanity””, *Africa Recovery* 15, 3 (2001), accessible at <<http://www.un.org/ecosocdev/geninfo/afrec/vol15no3/153racis.htm>> (last accessed May 10, 2010).

out?

It is clear that legal and moral guilt do not necessarily coincide – one may be legally guilty but morally innocent, and *vice versa*. Indeed, sometimes the breaking of laws or disobedience can be the only available morally right action. Nevertheless, significant parallels exist between the commonly accepted notions of legal and moral guilt and in some cases they overlap. First of all, it may be observed that very similar criteria of culpable responsibility are applied to determine both legal and moral guilt. Guilt is generally understood to be the condition of blameworthiness (or liability for punishment) resulting from the violation of a standard of conduct prescribed by an authority. In both law and morality, however, not all persons can be held guilty and not for all violations but only those that meet certain criteria.

The preconditions of holding a person guilty can be usefully summarized by the notion of moral agency. First, moral agents have the capacity for understanding the requirements of morality or law. Hence, mentally disabled people and children below certain age may not be properly considered to be moral agents. Second, a person must be able to act freely. This means that machines, automatons, zombies, hypnotized people etc. do not qualify for moral agency. Finally, moral agency presupposes an enduring self, i.e. that one preserves personal identity over time. Thus, for example, it seems inappropriate to blame or punish persons for actions they have no memory of doing, e.g. in cases of amnesia. In short, a moral agent is an enduring thinking entity with a degree of freedom.

The actions which make moral agents liable for blaming, praising, punishment or reward are also subject to a number of requirements: they must be causally related to the agent, free and intended.

¹⁵⁸ These requirements may be interpreted in ways that either increase or decrease the scope of responsibility: the causal link between an agents action and harm may be direct or indirect; an agent

¹⁵⁸In terms of these requirements, significant differences exist between criminal and tort law. Unlike criminal law, tort law does not distinguish between the intended and unintended consequences of an intended act, and therefore liability may be imposed despite mistake, ignorance or necessity. See R. Burgh, "Guilt, Punishment, and Desert" in *New Essays in Moral Psychology*, ed. F. Schoeman (Cambridge: Cambridge University Press, 1987), 328-329.

may be blamed or punished for a causing harm by both action and omission, as well as “in ignorance” if the harmful outcomes of an action could have been reasonably expected; additionally, one must somehow include the role of luck in considering responsibility for the actual outcomes of an action. We need not enter into lengthy discussions of this subject.¹⁵⁹ All of these conditions basically refer to the degree of control that an agent has over his action: first of all, the action must be chosen and not compelled externally, and second – the agent must be aware of what he is doing or bringing about.¹⁶⁰ In this view, it would not be proper to blame or punish an agent for actions over which he had no control.

Each and every criteria of culpable responsibility are subject to extensive debates in philosophy. Thus, for example, while it is assumed in law that every human being is a moral agent unless proved otherwise, philosophers debate the very possibility of the free will or the existence of an enduring self. This may serve to highlight the differences between law and morality, but it does not invalidate the argument that moral and legal guilt may be coterminous at least in some cases. Thus, we will accept the argument of a prominent legal philosopher H. L. A. Hart that the “striking differences between legal and moral responsibility are due to substantive differences between the content of legal and moral rules and principles rather to any variation in the meaning of responsibility when conjoined with the word ‘moral’ rather than ‘legal’”.¹⁶¹ In other words, the difference between legal and moral guilt is that it arises from the violation of different standard of conduct.¹⁶²

Importantly, in most cases of historical state apologies are demanded for historical wrongs that have since then came to be seen as crimes under domestic and international law. Since in cases of

159Exhaustive analyses of the conditions of ascription of responsibility can be found in M. J. Zimmerman, *An Essay on Moral Responsibility* (Totowa, N.J.: Rowman and Littlefield, 1988) and J. R. Lucas, *Responsibility* (Oxford: Oxford University Press, 1993). See also T. Nagel, “Moral Luck,” *Proceedings of the Aristotelian Society* 50 (1976): 137-51.

160 Aristotle, *Nicomachean Ethics*, trans. J. A. K. Thomson (Harmondsworth: Penguin, 1953), chapter 5.

161H. L. A. Hart, “Responsibility,” in *Philosophy of Law*, eds. J. Feinberg and H. Gross, 4th ed. (Belmont: Wadsworth Publishing Company, 1991), 498.

162Joel Feinberg also points out the differences that arise from the dependence of legal responsibility judgments on practical considerations of policy and purpose. In his view, moral responsibility judgments are ‘superior in rationality and perfectly precise’. J. Feinberg, “Problematic Responsibility in Law and Morals,” *The Philosophical Review* 71, 3 (July 1962): 340-51.

historical state apologies the violated moral standard is also the legal standard, it becomes clearer how an acknowledgment of moral responsibility can become a statement on legal guilt. Two of the most contentious issues during the earlier-mentioned Durban conference in 2001 were the demand for an explicit apology for transatlantic slavery and calling slavery a “crime against humanity”. Enslavement is already considered to be a crime against humanity according to the Rome Statute for the International Criminal Court; however, the controversy was whether slavery should be considered to be an international crime in retrospect.¹⁶³ Thus, it is important to note that moral guilt may be understood to be tantamount to legal guilt at least in those cases of state apologies where the doxastic element is assessed similarly in both moral and legal terms. Conversely, if international law is understood as a set of standards for proper behavior, i.e. a minimum international morality that the majority of states share, it can also explain why demands for a moral reappraisal of past behavior are often formulated with reference to contemporary international legal norms.

What is the relation between guilt and responsibility? Etymologically, to be responsible is to be answerable, to be under the obligation to give an answer if someone asks “Why did you do it?”¹⁶⁴ Guilt can then be understood as a feeling that results from not being able to provide a satisfactory answer without justification.¹⁶⁵ Somewhat more abstractly, responsibility may be understood as a condition that relates agents to their actions and the consequences of their actions. Thus, philosophers sometimes differentiate between role responsibility (as in “parents are responsible for taking care of their children”), causal responsibility (as in “the storm was responsible for damage”), liability responsibility

¹⁶³This example illustrates the conflict between two alternative ways of grounding *jus cogens* norms – on the basis of state consent or on the basis of universally recognized moral considerations. While some authors make a strong argument that *jus cogens* simply by definition cannot be consensual, it appears that consent is nevertheless sought to justify the retroactive application of *jus cogens* norms which is implied in the alternative grounding. For an argument that the basis of universal jurisdiction is non-consensual, see L. May, *Crimes Against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005), 25-39.

¹⁶⁴Lucas, *Responsibility*, 6.

¹⁶⁵In this context, it is worth recalling that etymologically apology meant telling a story, offering a justification or an excuse. In the current usage, however, to apologize is “to declare voluntarily that one has no excuse or defense, justification, or explanation for an action (or inaction) that has ‘insulted, failed, injured, or wronged another’” - N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press, 1991), 17.

(responsibility as being liable for punishment, reward, blaming, or praising) and capacity responsibility (e.g. “children are not responsible enough to be left alone”).¹⁶⁶ The concept of responsibility is tightly related to the concept of guilt – guilt is a particular type of liability responsibility, which may be called culpable responsibility. Provided that responsibility is understood in this way, it seems legitimate to use the terms “guilt” and “responsibility” interchangeably. However, there seems to be another significant difference between guilt and responsibility – the list of potential objects of responsibility is much wider than that of guilt. One can be responsible for and guilty of a wrongful action or a failure to act, but one can also be responsible for a state of affairs or other beings (people or animals). Importantly, one can be responsible for the actions of other people but it is not clear whether it is proper to hold someone guilty for somebody else’s crimes.

The dominant view shared by many Western philosophers and lawyers alike that guilt is always personal has been perhaps most strongly expressed by Hannah Arendt: “there is no such thing as being or feeling guilty for things that happened without oneself actively participating in them”.¹⁶⁷ Arendt’s position is based on what we have noted among the requirements of culpable responsibility as the condition of control, which claims that it is not appropriate to judge an agent for actions over which he had no control, i.e. if he could not have done otherwise. If it is true that guilt is a component of a genuine apology, and if it is true that only individuals can be guilty, it would follow that there can also be no such thing as genuine historical state apologies, at least not by states that consider themselves liberal. The remainder of the first part of the chapter will deal with the ways in which various philosophers attempted to justify the ascription of guilt to individuals for actions that they have not done.

¹⁶⁶See chapter 9 in H. L. A. Hart, *Punishment and Responsibility* (Oxford: Clarendon Press, 1968). For a good discussion of legal and moral responsibility, see chapter 2 in J. Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970).

¹⁶⁷ Arendt, *Responsibility and Judgment*, 147.

3.2.2 Collective responsibility in state apologies

What is meant by “collective guilt” if it is understood as a type of liability responsibility and what kind of collective responsibility is involved in state apologies? In a logically exhaustive typology, Joel Feinberg describes four possible distinct types of collective responsibility arrangements: liability without fault, liability with non-contributory fault, collective and distributive contributory fault, and collective but not distributive contributory fault.¹⁶⁸ These four types can be viewed as a catalog from which a liberal state that wants to apologize can choose to justify an apology or groups that want an apology can choose to justify their demand.

Collective and distributive contributory fault refers to liability of the whole group because of the contributory fault of each every member. In other words, collective guilt is the sum of the guilt of individuals. Although quite a few philosophers attempted to show that this type of share responsibility could arise even in loosely structured groups (among “random individuals”), and to devise methods for apportioning guilt within such groups, it is hard to see why aggregate individual responsibility should be called “collective responsibility” at all.¹⁶⁹ In cases where everyone is in position to perform an action that could prevent the occurrence of harm or in cases where some joint action is required, the question arises, indeed, as to who is to be held responsible for the consequences of inaction. For example, who is responsible for environmental degradation? And, in some of these cases, it could be plausibly argued that everyone is guilty in some measure. Yet, there is little point to describe it as collective guilt because nothing is thereby added to the individual responsibility of everyone involved. Moreover, while this understanding of collective guilt is in principle compatible with some contemporary state

168J. Feinberg, “Collective Responsibility,” *The Journal of Philosophy* 65, 21 (November 7, 1968): 674-688. Incidentally, Arendt’s statement quoted above was a reaction to Feinberg’s article at a meeting of the American Philosophical Society in 1968.

169V. Held, “Can a Random Collection of Individuals Be Morally Responsible?” *Journal of Philosophy* 67, 14 (July 1970): 471-81; S. Bates, “Responsibility of ‘Random Collections’,” *Ethics* 81, 4 (July 1971): 343-349; L. May, “Collective Inaction and Shared Responsibility,” *NOÛS* 24 (1990): 269-278; A. Bayer, “How Can Individualists Share Responsibility?” *Political Theory* 21, 2 (1993): 228-248.

moral apologies, it does not help understanding apologies for historical wrongs which involve transgenerational guilt.

In case of **collective liability with non-contributory fault**, the whole group is held to be responsible for the morally faulty behavior of every member although it is the behavior of only a few members that causes harm. Feinberg provides the example of drunk driving: all people who drive while drunk are sometimes blamed for the accidents caused by only a few unlucky drunk drivers. An even better example of this type of notion of collective guilt – a firing squad ordered to execute a possibly innocent person – is provided by Haskell Fain.¹⁷⁰ Fain argues that “as long as the class of those willing to serve on the firing squad wider than the class of those who serve, no single individual can prevent the execution from occurring”, and that therefore, “the collective responsible for the execution consist of the class of those who would be willing to serve on the squad if called upon to serve”.¹⁷¹ Since it is only moral luck that separates members who cause harm from members who do not, it does not seem just to judge only those who were unlucky – each member would appear to share some guilt for harm. Collective liability with non-contributory fault arrangement offers a way to account for the possibility of being guilty without active participation and is therefore worth examining in more detail.

This type of arguments, which is somewhat reminiscent of the doctrine of original sin, must in one way or another address the crucial issue if it is to be plausible: how can we know that those who have not committed a crime would have committed it if placed under the same circumstances?¹⁷² It is possible to construct an argument that would derive its force from the exposition of the limits of freedom possessed by agents. To this end the notion of character could be employed, which is normally

170 H. Fain, “Some Moral Infirmities of Justice” in *Individual and Collective Responsibility: Massacre at My Lai*, ed. P. A. French (Cambridge: Schenkman Publishing Company, 1972), 29-34.

171 Ibid. 32.

172 The original sin doctrine, which was accepted by most Christian thinkers for more than a millennium, essentially states that all men are guilty through the disobedience of one man. While there are numerous variations, this view was usually grounded in a particular understanding of human nature and thus our question “how do we know” would be answered simply: all men would have done the same as Adam because it is in the human nature. For a classical historical study of the doctrine of original sin, see N. P. Williams, *The Ideas of the Fall and of Original Sin* (London: Longmans, Green & Co., 1927).

understood as “a set of relatively long-term, relatively general dispositions that a person has to feel, think and act in certain ways.”¹⁷³ If such a thing as a national character exists, it could be suggested then that all people of the same nationality would behave in a certain predictable way under the same circumstances.¹⁷⁴ To the extent that a national character is not the product of individual decisions, at least some of the guilt for the “characteristic” crimes should be attached to the nation, including the future generations, rather than solely on the individuals who are unlucky enough to actually commit those crimes.

Apart from the unlikelihood that a national character could lead one to commit crimes, this type of ascription of guilt, however, seems to be exactly what Arendt objected to and where her objections were most powerful: where all are guilty, nobody can be judged.¹⁷⁵ Every man is capable of evil but this should not in no way obscure the fact of individual guilt which, according to Arendt, refers to an act, not to intentions or potentialities. Thus, insofar as we are not willing to abandon the condition of control altogether and accept some form of determinism, which would make the concept of guilt meaningless, we must conclude that merely willing to serve on various squads is not enough to be made liable for executions.

The third arrangement discussed by Feinberg is **collective but not distributive contributory fault** – the only of his four types of collective responsibility that is not reducible to individual responsibility. Under this arrangement, group moral responsibility is independent of any responsibility of individual members. Logically, from the attribution of an action and moral responsibility to a collectivity it does not follow that the collectivity’s members were responsible for the action of the

173 Zimmerman, *An Essay on Moral Responsibility*, 112.

174D. Goldhagen's *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Knopf, 1996) provides an example of such an argument. Goldhagen argues that all Germans are responsible for the Holocaust because of the “eliminationist antisemitism” was part of the German mentality.

175H. Arendt, “Organized Guilt and Universal Responsibility,” in *The Portable Hannah Arendt*, ed. P. Baehr (New York: Penguin Books, 2000), 146-56.

collectivity.¹⁷⁶ The question whether groups can be guilty translates into the question whether groups can be moral agents. To argue that a group (for example, a group organized into a state) can be a moral agent entails showing that it is an enduring entity that has the capacity for both moral deliberation and free action. In short, this approach to collective responsibility raises a difficult question regarding the ontological status of entities that are distinct from their members.

It is clear that diplomatic apologies, where the nature and the ideological bases of the domestic regime are irrelevant, are based on the notion of collective non-distributive contributory fault. Consider, for example, the Corfu Channel Case examined before the International Court of Justice shortly after the WWII.¹⁷⁷ On May 15, 1946, an Albanian battery fired in the direction of two British cruisers as they passed through the Corfu Channel. The British protested and requested an immediate and public apology. Albania retorted that the British failed to request Albanian permission for passage through the channel, part of which included Albanian territorial waters. After exchanging a series of diplomatic notes, the British decided to reassert their right of innocent passage by sending a detachment of warships through the channel. On October 22 while passing through the channel, two destroyers ran into a minefield, and the resulting explosions caused serious damage to the ships and the loss of forty-five British sailors. In November, disregarding the protests of Albania, the British Navy swept the channel, including Albanian territorial waters, and found twenty-two German mines.

The dispute was subsequently referred to the Court of Justice, which considered whether Albania was liable for the explosions and for the resulting damage and loss of human life and the whether British passage through Albanian territorial waters was a violation of Albanian sovereignty. The Court determined that Albania's failure to warn the ships of the minefields was a grave omission involving her international responsibility and that Albania had a duty to compensate the damages to the

176 V. Held, "Moral Responsibility and Collective Action," in *Individual and Collective Responsibility: Massacre at My Lai*, 109.

177 Corfu Channel Case (UK v. Alb.), 1949 I.C.J. 4. Case materials are available at <<http://www.icj-cij.org>> (last accessed on December 10, 2010).

ships and their crews. On the other hand, the Court found that, while the passage of ships in October was “innocent”, the sweeping operation in November constituted a violation of Albanian sovereignty. While the British found evidence that the mines were laid in the period between May and October and alleged that this was carried out by two Yugoslav warships by the request of Albania, no proof could be produced that Albania either arranged or acquiesced to the laying of mines. It could not be even shown that Albania knew of their existence before the explosions in October. And nevertheless, the Court found Albania responsible for the damage to British ships because she could have been reasonably expected to know about the mines in its territorial waters. For all we know, not a single Albanian was involved in a violation of an international norm and yet they were found collectively responsible and had to compensate the damages caused by mines of unknown origin merely because these happened to explode on Albania’s territory. Within the framework of classical international law, state (group) responsibility is not only non-reducible to individual responsibility but individuals lack any substantial personality at all and appear in this particular instance of legal discourse on a par with ships, as part of state property.

Thus one way to overcome the collective guilt problem would be to treat many as one by endowing the state or nation with moral agency. Within the theoretical framework of classical international law, the state is considered to be a person, and the possibility of the reality of such a conception outside of law and beyond the metaphor or fiction has been explored in various disciplines, including International Relations.¹⁷⁸ However, in case of state apologies for historical wrongs, both when apologies are issued to domestic groups or when they are issued to groups in other states, the

¹⁷⁸See, for example, A. Wendt, “The state as person in international theory,” *Review of International Studies* 30, 2 (2004): 289-316, and T. Erskine, ed., *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations* (New York: Palgrave Macmillan, 2004). In philosophy, the questions of whether whether groups can have beliefs and intentions, and whether they can act have generated a lively debate: see P. A. French, H. K. Wettstein, eds., *Shared intentions and collective responsibility* (Malden, MA : Blackwell Pub., 2006); M. Gilbert, *Sociality and Responsibility: New Essays in Plural Subject Theory* (Lanham: Rowman & Littlefield, 2000); M. E. Bratman, *Faces of Intention* (New York: Cambridge University Press, 1999).

unity of the state is ruptured. Moreover, within the framework of international human rights, the individual and not the state is the basic moral unit and methodological individualism cannot be easily abandoned.¹⁷⁹

Finally, in case of **collective liability without fault**, a whole group is held responsible for the actions of one or several of its members. If there is a very high degree of solidarity so that “there is no hurting one member without hurting them all and <...> the successes and satisfactions of one radiate their benefits to the others”, if such an arrangement is part of the “expected background of the group’s way of life”, and if those who are held vicariously liable have a reasonable control over the group, then liability without fault may be an acceptable form of social organization.¹⁸⁰ The most successful attempts to justify collective responsibility within the liberal tradition have been developed along the lines of this argument by showing how the requirements of high degree of solidarity, shared expectation, and reasonable control can be met in contemporary liberal democracies, thereby permitting liability without fault. The arguments justifying collective responsibility involve two distinct tasks – first, showing that collective responsibility is intelligible with regard to decisions in the present, and second, demonstrating how collective responsibility can be extended to cover decisions and actions in the past.

Thus, for example, David Miller argues that nations are not merely collections of individuals but should be regarded as communities that display features that justify ascribing collective responsibility to their members: common identity, which is partly constitutive of the identity of each member; public culture, which includes a set of principles guiding the making of political decisions; the acceptance of special obligations to one another beyond the instrumental reasons; the disposition of the members to preserve the continuous existence of the nation for reasons other than purely instrumental benefits of membership.¹⁸¹ While Miller rejects collective responsibility in cases when nations are

¹⁷⁹See also note 122.

¹⁸⁰Feinberg, “Collective Responsibility,” 676-681.

¹⁸¹D. Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 124-125.

subject to external or autocratic rule and when nations are split by deep cultural divisions, he argues that open and democratic political communities can be regarded as cooperative practices in which costs and benefits are fairly distributed among the members and thus it makes sense to hold fellow-nationals responsible for actions carried in their name. According to Miller, intergenerational collective responsibility stems from the fact that the benefits of membership in a national community include the tangible benefits of inherited territory and capital, as well as intangible benefits, such as pride in the national past, and that therefore “one cannot legitimately enjoy such benefits without at the same time acknowledging responsibility for aspects of national past that have involved unjust treatment of people inside or outside the national community”.¹⁸²

An original argument is advanced by Farid Abdel-Nour, who explores the implications of the active component of being part of a nation conceived in Ernest Renan's terms. He argues that national responsibility is incurred imaginatively, when an individual's pride in the achievements of his nation meaningfully implicates him in the cause of even distant outcomes.¹⁸³ According to Abdel-Nour, the “imaginative” collective responsibility is limited to the negative outcomes of only those actions in which an individual takes pride, thereby assuming imaginative agency, does not meaningfully lead to punishment, which would be like criminalizing fantasies and feelings, and belongs to the realm of opinion and consensus formation. Nevertheless, this minimal account of collective responsibility is sufficient for a historical state apology on behalf of the nation.

These and other similar accounts of collective responsibility as liability without fault are based on the idea that responsibility follows from an identity with, or commitment to, a community - in this case, the nation.¹⁸⁴ These arguments do not abandon the view that individuals are the morally relevant units but entail varying degrees of relaxation the stringent liberal idea of the autonomy of moral agents

¹⁸²Miller, 161.

¹⁸³F. Abdel-Nour, “National Responsibility,” *Political Theory* 31, 5 (2003): 693-719.

¹⁸⁴For a similar argument on collective responsibility, see also J. Thompson, *Taking responsibility for the past: reparation and historical injustice* (Cambridge: Polity Press, 2002).

through emphasis on the community as a source of identity for individuals, and thus represent movement from stringent liberalism to communitarianism. Conversely, insofar as apology implies the acknowledgment of collective responsibility, historical state apologies attempt to declare and thereby contribute to the existence of that identity with and commitment to the nation among its members.

To recapitulate the argument so far in the most economical terms: human rights norms no longer permit recourse to the idea of state as a legal person and thus the moral agency of the state needs to be renegotiated in order to be able to apologize, which involves defining mutual relations between the individual, the political community, and the state. The range of options for such a definition could be presented as a continuum between a totalitarian state which is comfortable with the idea of collective responsibility but does not want to apologize, and a minimal state of classical liberalism theory which would uphold the values underlying an apology but cannot apologize because it lacks agency. Demands for historical apologies and historical apologies involve a definition that falls somewhere in between these two extremes. As it has been suggested, within the liberal tradition of thought this entails a movement from classical liberalism towards communitarianism. Perhaps the best way to understand the impact of historical apologies on domestic identity construction is by placing this process of defining the foundations of the moral agency of the state in the context of tension between the principles of liberalism and democracy in the politics of liberal democracies.¹⁸⁵ The problem of collective responsibility posed by historical apologies requires a re-articulation of the identity narrative that explains both what are the principles that guide the actions of a political community, as well as the who belongs to that community and why. The following pages will examine a particular case of Denmark where apology was refused because the required revision in the identity narrative was found unacceptable.

¹⁸⁵See C. Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge: The MIT Press, 1985 [1923]).

3.3 Denmark and the Mohammad Cartoon Controversy

The Danish cartoon controversy began following the publication of caricatures of the Prophet Muhammad on 30 September 2005 by Denmark's largest daily newspaper *Jyllands-Posten*. The publication upset the Danish Muslim community, which mobilized to stage protests against the newspaper in early October, filed a complaint with the Danish police, as well as made their campaign international by resorting to ambassadors from Muslim countries and sending two delegations to some Middle Eastern countries to spread publicity about the cartoons in November and December of the same year.¹⁸⁶ The international campaign brought results in January and February of 2006, leading to protests in some Islamic countries around the world. As the caricatures, viewed as extremely offensive by many Muslims, were reprinted in newspapers of other countries, the issue gradually acquired the proportions of a wide-spread international crisis, although Denmark remained the focus of protests throughout. The consumer boycott of Danish goods in some Arabic-speaking countries in late January 2006 was accompanied by demonstrations in Pakistan, Palestine, Afghanistan, Libya, Nigeria, Indonesia, Malaysia and other countries, as well as riots in Syria, Lebanon and Iran where Danish embassies were set on fire.¹⁸⁷ Danish Prime Minister Anders Fogh Rasmussen called the cartoon row Denmark's worst international relations incident since the World War II.¹⁸⁸

Public protests were followed by official actions: some Middle Eastern countries recalled their ambassadors from Denmark (Iran, Libya, Saudi Arabia, Syria), others threatened it with an embargo,

¹⁸⁶The mobilization resulted in the formation of the Committee for the Defense of the Honor of the Prophet consisting of twenty-seven Muslim organizations and mosques, which aimed to obtain an apology for the cartoons. See P. Ammitzbøll and L. Vidino, "After the Danish Cartoon Controversy," *Middle East Quarterly* 14, 1 (Winter 2007): 3-11.

¹⁸⁷The BBC reported that the boycott of Danish goods led to a 15.5% drop in Denmark's total exports between February and June 2006 – "Cartoons row hits Danish exports", *BBC News*, September 9, 2006, accessible at <<http://news.bbc.co.uk/2/hi/europe/5329642.stm>> (last accessed on April 18, 2010). The New York Times reported that, in Nigeria alone, the sectarian violence provoked by the Danish cartoons resulted in the deaths of more than 100 people in February 2006 – L. Polgreen, "Nigeria Counts 100 Deaths Over Danish Caricatures," *New York Times*, February 24, 2006, accessible at <<http://www.nytimes.com>> (last accessed on April 18, 2010).

¹⁸⁸Cited in "70,000 gather for violent Pakistan cartoons protest," *Times Online*, February 15, 2006, accessible at <<http://www.timesonline.co.uk/tol/news/world/asia/article731005.ece>> (last accessed on April 18, 2010).

while Iran went as far as canceling all trade relations with Denmark on February 6, 2006. While opinions as to how the Danish government should respond to the caricatures varied, most states partaking in the diplomatic démarche found the absence of an unambiguous condemnation unsatisfactory. A number of countries expressed their belief that a mere official disapproval of the newspaper's publications was not sufficient and that a state apology would be required. Thus, for example, the parliament of Bahrain demanded an apology from Denmark's head of state Queen Margrethe, as well as from the government.¹⁸⁹ The foreign minister of Bangladesh requested the Danish government to issue an apology and prevent such things happening in the future.¹⁹⁰ The Foreign Ministry of Iran and Russian President Vladimir Putin also stated that an apology by the Danish government would be appropriate.¹⁹¹

Although the attitude of the Danish government seems to have become progressively conciliatory as the crisis exacerbated, the basic position was stated by Prime Minister Rasmussen in October and did not change: "the Danish government and the Danish nation as such cannot be held responsible for what is published in independent media".¹⁹² Furthermore, the prime minister expressed unambiguous support for freedom of the press as a guarantee of the freedom of expression, depicting it as an engine of social progress. In his New Years address, Rasmussen stated:

. . . [T]o put it bluntly: it is this unorthodox approach to authorities, it is this urge to question the established order, it is this inclination to subject everything to critical debate that has led to progress in our society. For it is in this process that new horizons open, new discoveries are made, new ideas see the light of day. While old systems and outdated ideas and views fade and disappear. That is why freedom of speech is so vital. And freedom of speech is absolute. It is not negotiable. . . . We have based our society on respect for the individual person's life and freedom, freedom of speech, equality between men and women, a distinction

189 "Outrage at insult to Islam," *Gulf Daily News*, January 31, 2006, <<http://www.gulf-daily-news.com>> (last accessed March 2, 2007).

190 "Bangladesh requests Denmark to tender apology on Prophet cartoon," *New Kerala Newspaper*, February 6, 2006, <<http://www.newkerala.com>> (last accessed on March 10, 2007).

191 Putin is quoted to have said that "if a state cannot prevent such publications, it should at least ask for forgiveness." See "Putin urges Denmark to apologize to Muslims," *Radio Free Europe/ Radio Liberty*, February 8, 2006, <<http://www.rferl.org>> (last accessed on March 10, 2007).

192 "Denmark PM rejects apology demand," *Aljazeera News*, January 29, 2006, <<http://english.aljazeera.net>> (last accessed on March 10, 2007). This position is reiterated in "CNN late edition with Wolf Blitzer: Interview With Anders Fogh Rasmussen," *CNN*, February 12, 2006, accessible at <<http://transcripts.cnn.com/TRANSCRIPTS/0602/12/le.01.html>> (last accessed on April 18, 2010).

between politics and religion. We must safeguard these principles. . . . Let us stand united to protect a society that allows us freedom to differ.¹⁹³

In a subsequent interview to Al Arabya News Channel (Dubai), Rasmussen reiterated: “Neither the Danish government nor the Danish people can be held responsible for what is published in the media. . . . the newspaper apologized for the offense these drawings caused, and I hope this apology will help to solve the problem”.¹⁹⁴ While Rasmussen was criticized domestically for his initial handling of the crisis, mostly for refusing to meet with the delegation of ambassadors from Muslims countries, his basic position received wide-spread support. A poll conducted by Epinion on January 28, 2006, showed that 79% of Danes agreed that the prime minister ought not to apologize to the Muslim countries, while 48% believed that the prime minister's apology would be an unacceptable political interference with the freedom of the press.¹⁹⁵

3.3.1 Conflict of human rights norms

If we focus on the norms that were referred to by the parties, leaving aside the larger political context for the moment, the cartoon crisis centered around the clash between the right to freedom of religion and belief, which includes protection against religious hatred, and the right to freedom of expression, which is understood as the right to seek, receive and impart information and ideas. While these rights are largely compatible and the Danish government made earnest attempts to convince the Muslim audiences abroad that Denmark cherishes both freedom of religion and freedom of expression,

193Prime Minister Anders Fogh Rasmussen's New Year Address 2006, accessible at <http://www.stm.dk/_p_11198.html> (last accessed on April 18, 2010).

194See Anders Fogh Rasmussen's interview to *Al Arabiya*, February 2, 2006, available in Danish at <<http://www.dr.dk/Nyheder/Udland/2006/02/02/02205208.htm>> (last accessed on April 18, 2010). The apology referred to by Rasmussen was issued by the editor-in-chief of Jyllands-Posten on February 8, 2006, and read: “In our opinion, the 12 drawings were sober. They were not intended to be offensive, nor were they at variance with Danish law, but they have indisputably offended many Muslims for which we apologize”. The full text is available at <<http://jp.dk/udland/article177649.ece>>

195The results are presented in Danish - “Epinion: Ingen skal undskylde Muhammed tegninger” [Epinion: Nobody should apologize for the Muhammad cartoons], January 28, 2006. <<http://www.dr.dk/Nyheder/Indland/2006/01/28/062331.htm>> (last accessed on April 18, 2010).

the cartoon crisis revealed that with regard to blasphemy a hierarchy of norms had to be established. Danish Muslims and representatives of Muslim countries reasoned that freedom of speech had to be limited in order to protect the right to freedom of religion – as eleven ambassadors from Muslim countries argued in their common letter to the prime minister on October 12, 2005, “Danish press and public representatives should not be allowed to abuse Islam in the name of democracy, freedom of expression and human rights, the values that we all share”.¹⁹⁶ Rasmussen's initial response was remarkable not so much for its somewhat derisive undertones, as for what it did not contain – neither at that time nor later when the crisis escalated did the prime minister or the Danish government claim that the international concern over the situation of the Muslims in Denmark represented an interference with Denmark's domestic affairs. In his answer to the ambassadors Rasmussen merely pointed out that the “Danish legislation prohibits acts or expressions of a blasphemous or discriminatory nature [and] the offended party may bring such acts or expressions to court”, which was later superseded by his active position that the freedom of speech was absolute, vital and non-negotiable in Denmark.

In this regard, equally important, though less frequently mentioned in the accounts of the cartoon controversy, was the position taken by the Danish Prosecution Service which functions under the Ministry of Justice. On October 27, 2005, a group of Muslim individuals and organizations filed a complaint with the Danish police requesting that the police investigate the newspaper that published the cartoons for violations of Danish Criminal Code sections 140¹⁹⁷ and 266(b)¹⁹⁸. The police declined to initiate criminal proceedings and this decision was appealed to the Regional Public Prosecutor of

196 The texts of the ambassadors' letter and Rasmussen's answer are available at <<http://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/brev-fra-11-ambassadoerer-til-statsminister-anders-fogh-rasmussen-samt-anders-fogh-rasmussens-svar/>> (last accessed on December 10, 2010)

197 Section 140 provides: “Any person who, in public, ridicules or insults the dogmas or worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months or, in mitigating circumstances, to a fine.”

198 Section 266(b) provides: “Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, color, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years”.

Viborg. On January 6, 2006, the Regional Public Prosecutor issued a decision in which he declined to charge Jyllands-Posten, arguing that the interpretation of relevant sections of the criminal code should take the right to freedom of expression into consideration.¹⁹⁹ This decision was then appealed to the Director of Public Prosecutions, who is superior to other prosecutors and supervises their work. On March 15, 2006, the Director affirmed the Regional Public Prosecutor's decision declining prosecution, stating that this decision may not be appealed to a higher administrative authority. The Director stated that although opinions on religious matters are restricted by the provisions of the criminal code, sections 140 and 266(b) should be "subject to a narrow interpretation out of regard for the right to freedom of expression".²⁰⁰ While this decision did not close all the domestic legal venues available for Muslim organizations because it concerned only criminal and not civil proceedings, it clearly reaffirmed the priority given to the freedom of speech under the Danish law over other considerations, such as respect for the religious beliefs of the Muslim minority.

In the context of the international human rights law, the decision of the Director of Public Prosecutions to give a narrow interpretation of the relevant criminal code's provisions is not exceptional. In Europe, especially, the boundary between the competing state duties to ensure the right to freedom of expression and to protect religious freedom and religious minorities is a matter of ongoing debate. In 2008, the Venice Commission, the Council of Europe's advisory body on constitutional matters, prepared an overview of national law and practice concerning blasphemy and related offenses in Europe and argued that incitement to hatred, including religious hatred, should be the object of criminal sanctions but that "it is neither necessary nor desirable to create an offense of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to

¹⁹⁹See Director of Public Prosecutions Decision on possible criminal proceedings in the case of Jyllands-Posten's Article "The Face of Muhammed", March 15, 2006, accessible at http://www.rigsadvokaten.dk/media/bilag/afgorelse_engelsk.pdf (last accessed on December 10, 2010).

²⁰⁰Ibid.

hatred as an essential component”.²⁰¹ While the Commission found that religious insult is a criminal offense in half of the member states of the Council of Europe, in the Commission's view, criminal sanctions are inappropriate in respect of insult to religious feelings because “in a democracy all ideas, even though shocking or disturbing, should in principle be protected” and “it must be possible to criticize religious ideas, even if such criticism may be perceived by some as hurting their religious feelings”.²⁰²

On the other hand, when the Austrian authorities banned showing a film that offended the Catholic religion in 1994, the European Court of Human Rights found that government's interference did not violate freedom of expression because states can legitimately take repressive measures against “provocative portrayals of objects of religious veneration” if they are judged incompatible with the freedom of religion and if they “do not contribute to any form of public debate capable of furthering progress in human affairs”.²⁰³ The ECHR argued that, in the absence of a uniform conception of the significance of religion in European societies, the governments have “a certain margin of appreciation” in deciding whether and to what extent respect for religious beliefs should limit freedom of expression.²⁰⁴ The UN Human Rights Council went a step further in its 2007 resolution, emphasizing that the exercise of the right of expression “carries with it special duties and responsibilities, and may therefore be subject to certain restrictions . . . necessary for the respect of the rights or reputations of

201European Commission for Democracy through Law, “Report on the Relationship between Freedom of Expression and Freedom of Religion: The issue of Regulation and Prosecution of blasphemy, religious insult, and incitement to religious hatred”. Adopted by the Venice Commission at its 76th Plenary Session at Venice 17-18 October 2008. Accessible at <<http://www.venice.coe.int/docs/2008/CDL-AD%282008%29026-e.asp>> (last accessed on April 18, 2010).

202Ibid., par 73 and 76.

203See par 49 in *Otto-Preminger-Institut v. Austria*, (13470/87) [1994] ECHR 26 (20 September 1994), accessible at <<http://www.echr.coe.int/echr/en/hudoc/>> (last accessed on 18 April 2010).

204In a similar case *Wingrove v The United Kingdom* (1996), where a British film director complained against the decision of the British Board of Film Classification to refuse certification to his film on the basis of a blasphemy law, the ECHR found that there had been no violation of the freedom of expression, stating that there was no uniform European conception of the requirements of the protection of religious freedom in relation to attacks on people's religious convictions and that state authorities are *in principle* in a better position to decide on the content of these requirements. These general principles were reaffirmed in *I.A. v. Turkey* (2005).

others, or for the protection of national security or of public order, or of public health or morals.²⁰⁵

In contrast to the prohibition of crimes against humanity (murder, extermination, deportation, and other inhumane acts committed against civilian population) underlying the demands for apologies in the cases discussed in the previous chapters, the scope of the freedom to religion and its relation to other human rights is debated. However, although the legal decision merely placed the Danish state on the liberal side of an ongoing debate on the balance between two norms of international human rights law, the prime minister's stalwart position on the freedom of speech as a weapon against “old systems and outdated ideas” indicated more than an affirmation of the liberal foundations of the Danish society. After all, the governments of some other liberal European states chose to interfere with the freedom of the press in this particular case, if only by expressing disapproval towards the publication of the cartoons in their countries. President Jacques Chirac declared that the freedom of expression should be exercised in a spirit of responsibility and condemned any “overt provocation that could dangerously fuel passions”²⁰⁶. The British Foreign Secretary Jack Straw called the republications of the cartoons “unnecessary, insensitive, disrespectful and wrong”.²⁰⁷ The Swedish foreign ministry effected the shut-down of an internet website that republished the cartoons.²⁰⁸ And Finland's Foreign Minister Erkki Tuomioja noted that “apologizing for an incident, even an unintentional one, does not violate anybody's freedom of speech”.²⁰⁹ Thus, it is not possible to reduce Denmark's refusal to apologize to a strong commitment to a particular interpretation of the hierarchy of laws.

205UN Human Rights Council Resolution 7/19 of 27 March 2007 “Combating defamation of religions”, accessible at <http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf> (last accessed on April 18, 2010). Note that all European states, with the exception of Russia, voted against the resolution.

206A. Penketh, “Chirac condemns 'overtly provocative' cartoons”, *Independent*, February 9, 2006, accessible at <<http://www.independent.co.uk>> (last accessed on April 18, 2010).

207C. Tryhorn, “Jack Straw praises UK media's 'sensitivity' over cartoons”, *Guardian*, February 3, 2006, accessible at <<http://www.guardian.co.uk/media/2006/feb/03/pressandpublishing.religion5>> (last accessed on April 18, 2010)

208See “Sweden shuts website over cartoon”, *BBC News*, February 10, 2006, accessible at <<http://news.bbc.co.uk/2/hi/4700414.stm>> (last accessed on April 18, 2010). However, the barrage of public criticism over this act was one of the reasons that forced the resignation of Swedish Foreign Minister Laila Freivalds in March.

209Cited on the website of the Ministry of Foreign Affairs of Finland on 2 February 2006: <<http://formin.finland.fi/Public/default.aspx?contentid=65868&nodeid=15145&contentlan=2&culture=en-US>> (last accessed on April 18, 2010).

3.3.2 Denmark's historical apologies

Prime Minister Rasmussen's claim that neither Denmark nor the Danish people are responsible for what is published by the Danish newspapers could be interpreted to mean that Danish state rejects the idea of collective responsibility in general. Rasmussen's view that the state is an instrument for the protection of individual freedoms, that the freedom of speech is absolute, and that the state cannot interfere with the freedom of expression are all part of the liberal value system. If interpreted in the spirit of classical liberalism, within this system only individuals possess moral agency and thus the notion of collective guilt or responsibility is *prima facie* unintelligible and therefore objectionable. However, this interpretation is foreclosed by the fact that Denmark has issued two historical state apologies during the last decade. When Rasmussen apologized on behalf of the Danish state or when he called on Russia to make a historic apology for the occupation of the Baltic States by the Soviet Union, his statements presupposed some notion of collective responsibility.²¹⁰ Before proceeding to look at the domestic reasons for the Danish refusal to apologize, it may be worthwhile to briefly examine what Denmark apologized for.

The first apology concerns the forceful relocation of the Inughuits in Greenland in 1953, when twenty-six Inughuit families (the so-called Thule tribe), consisting of 116 people, were evicted from their traditional hunting and fishing areas to make space for the expansion of the US Thule military base. The issue of compensation was raised already in 1954 but it was brought into prominence only at the end of the Cold War in 1985. After years of bureaucratic stalling, the dispute was finally brought before a Danish court in 1996, where Inughuit representatives demanded the restoration of their rights and compensation. The court denied their right to live in and use their native settlement area because

²¹⁰ Rasmussen told Danish daily *Politiken* that Putin's apology would improve relations in the region because "we know from experience that reconciliation is facilitated by admitting mistakes and apologizing on behalf of the nation". Quoted in "War repercussions continue", *Denmark's Official Website*, May 3, 2005, <<http://denmark.dk>> (last accessed on December 10, 2010).

the 1951 Defense Treaty between Denmark and the US, which regulated the establishment of the Thule military base, was found to be in accordance with the Danish law. However, the court found that the circumstances of their eviction and expropriation entitled the Thule tribe to both individual and collective compensation. Following the court decision, Prime Minister P. N. Rasmussen formally apologized to the Inughuit for the forced relocation:

Today, no one can be held responsible for actions committed by past generations almost 50 years ago. But in the spirit of the Commonwealth, and with respect for Greenland and the inhabitants of Thule, the Government would, on behalf of the Danish State, like to offer an apology – utoqqatserpugut – to the Inughuit, the inhabitants of Thule, and to the rest of Greenland, for the way in which the decision regarding the forced movement was made and implemented in 1953. We wish to continue and strengthen our collaboration and solidarity between Denmark and Greenland. . . . Any possible repetition of what took place in 1953 is therefore out of the question.²¹¹

The somewhat paradoxical move, whereby responsibility is both denied (presumably – individual responsibility) and accepted, should be viewed in the context of the legal dispute, which continued through an appeal to the Supreme Court of Denmark, where the Inughuit representatives increased their claim to compensation to DKK 235 million (about EUR 31.5 million), and Denmark's efforts to affect the accelerating process of decolonization.²¹² Despite the awkward wording of the statement and the legal wrangling over the amount of compensation, the apology represents the inclusion of the Inughuit perspective into the Danish historical narrative.

The second apology given by Denmark concerned the expulsion of twenty-one stateless Jewish refugees to Germany during 1940-1943. Denmark has long been famous for the rescue of more than 95% its Jewish minority population after the Nazi occupation in 1941. According to one Holocaust scholar:

211The full text of the statement is available in Danish: Fælleserklæring: “Et Rigsfællesskab i gensidig respekt” [Joint statement: “A Commonwealth of mutual respect”, September 2, 1999, accessible at <http://www.stm.dk/_p_7008.html> (last accessed on April 18, 2010).

212When the Supreme Court upheld the decision of the court of lower instance in 2003, the case was submitted to the European Court of Human Rights, which did not accept the application. For a summary of all the legal proceedings, see *Hingitaq 53 and others v. Denmark*, Admissibility Decision of 12 January 2006, Application No. 18584/04, accessible at <<http://www.echr.coe.int/>> (last accessed on April 18, 2010). On the relations between Greenland and Denmark, see N. Loukacheva, *Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (University of Toronto Press, 2007).

The Danes went forth during World War II to do deeds in civic responsibility unparalleled in the history of the Holocaust. While most of the rest of the world was a silent witness to the genocide of six million innocent people, the Danes not only protested verbally and in writing, but at great personal risk rescued thousands of the condemned Jews.²¹³

After the partial opening of the archives after the Cold War, however, certain previously unknown aspects of Jewish history in Denmark during the war became known. Thus, when the expulsion of Jews from Denmark during World War II was revealed in 1998, it was received with great interest and controversy.²¹⁴ The new evidence was at odds with the established narrative of the benefits of the strategy of cooperation pursued by the Danish authorities under the Nazi occupation, which enabled the protection of the Jewish minority until 1943. The apology for the expulsion of German Jews was given by Prime Minister Anders Fogh Rasmussen in 2005, on the sixtieth anniversary of the end of WWII and Denmark's liberation from the wartime occupation:

What was worse, as we know today, is that Danish authorities in some instances were involved in expelling people to suffering and death in concentration camps. . . . Also other innocent people were, with the active participation of the Danish authorities, left to an uncertain fate at the hands of the Nazi regime. These are shameful events. A stain on Denmark's otherwise good reputation in this area. The remembrance of the dark aspects of the occupation era is unfortunately also a part of the celebration of the sixtieth anniversary of the liberation of Denmark. Thus I would very much like - on this very occasion and in this location - to express regret and apologize for these acts on behalf of the government and thus the Danish state. An apology cannot alter history. But it can contribute to the recognition of historic mistakes. So that present and future generations will hopefully avoid similar mistakes in the future.²¹⁵

As the first Danish leader who publicly condemned the wartime policy of cooperation with the occupying Nazi regime as “morally unjustifiable”, Rasmussen may have found it easier or, given the domestic controversy of his reinterpretation of the dominant narrative, even politically expedient to also recognize the facts that put the Danish Holocaust record in a new perspective.²¹⁶ However, what is important to note is that this apology not only implies unreserved acceptance of collective

213See S. Abrahamsen, “The Rescue of Denmark's Jews” in *The Rescue of the Danish Jews: Moral Courage Under Stress*, ed. L. Goldberger (NY: New York University Press, 1987), 7.

214See V. Ö. Vilhjálmsson and B. Blüdnikow, “Rescue, Expulsion, and Collaboration: Denmark's Difficulties with its World War II Past”, *Jewish Political Studies Review* 18, 3-4 (2006), accessible at <<http://www.jcpa.org>> (last accessed on April 18, 2010).

215The full text of the speech is available in Danish: Statsminister Anders Fogh Rasmussens tale i Mindelunden [Prime Minister Anders Fogh Rasmussen's Speech at Mindelunden], May 4, 2005, accessible at <http://www.stm.dk/_p_7500.html> (last accessed on April 18, 2010).

216For a detailed analysis of the speech, see Lisa Storm Villadsen, “Speaking on Behalf of Others: Rhetorical Agency and Epideictic Functions in Official Apologies”, *Rhetoric Society Quarterly* 38, 1 (2008): 25 - 45.

responsibility but also collective inter-generational responsibility.

Therefore, the prime minister's refusal to apologize for the cartoons published in *Jyllands-Posten* should be viewed as an articulation of the idea of collective responsibility, rather than its rejection in general. The refusal to accept responsibility or to condemn the publication indicate not an argument that the Danish state is a minimal state that lacks a sufficient degree of unity and continuity or ability to act in the name of its subjects, i.e. lacks moral agency, but a position on the nature of the Danish community.²¹⁷ In other words, Rasmussen's rejection of responsibility is not a passive but an active act in the construction of Danish identity, resulting in the exclusion of that part of the Muslim minority that represents and advances the cause of the “old systems and outdated ideas”. A somewhat broader context is required to examine what that represents in Denmark.

3.3.3 Muslims in Denmark

In the 1970's Muslims migrated to Denmark from Turkey, Pakistan, and Morocco as guest workers; in the 80's – as refugees from Iran, Iraq and Palestine; and in the 1990's – mostly from Somalia and Bosnia. The number of immigrants from non-Western countries rose from 169,000 in 1995 to 327,000 in 2006, i.e. from 3.2% to 6% of the total population in just a decade.²¹⁸ What turned the growth of the Muslim minority population into a major political issue in one of the most homogenous countries in the world was the failure of the government's attempts to integrate them into the society. A study commissioned by the Ministry of the Interior in 2001, set six criteria for successful integration: Danish language skills and education; employment; economic independence; lack of

²¹⁷In his book *Fra socialstat til minimalstat* [From Social to Minimal State] (Copenhagen: Samleren, 1993) Rasmussen argued for a state which limits its functions in favor of the market.

²¹⁸Danish Ministry of Refugee, Immigration and Integration Affairs, “International Migration and Denmark 2006”, accessible at <<http://www.nyidanmark.dk>> (last accessed on April 18, 2010).

discrimination; contact between foreigners and Danes (defined in ethnic terms); participation in the political life; and acceptance of fundamental values and norms.²¹⁹ The study found that integration immigrants from third countries, which typically refers to Muslim immigrants, was unsuccessful according to most of the criteria. For example only four out of ten immigrants from third countries spoke “fluent” or “good” Danish; only 55 % of foreigners regularly socialized with Danes, 40% spoke to or were on greeting terms with Danes, while 8 % did not have any contact with Danes whatsoever; only 30% of foreigners from third countries that were married in 1999, married Danes, while nearly half married a person living abroad, and the rest married relatives resident in the country. The study also reported that only 37% of immigrants from third countries had unsupported employment and that the proportion of 25-66 year old immigrants from third countries that had lived in Denmark for more than three years and still received some form of social welfare was around 76 %. The fundamental values and norms in Denmark included respect for democracy and freedom of rights, respect for the laws of the country, respect for the equal rights for all, irrespective of sex, ethnic background or religion, as well as tolerance to other people’s norms and values. According to the study, there was not enough data to determine whether immigrants accepted the fundamental values and norms; however, the results of surveys on the equality of rights between sexes and the higher crime rates among immigrants and their descendants were indicative of the failure to integrate in this regard as well.

Fear of Muslim immigration threatening Danish “national culture” has been on the increase since the 1990s.²²⁰ As Tina Jensen notes, the identity of ‘Muslim’, referring to the immigrant population, became associated with ultimate otherness in the public debates in Denmark, where identities such as ‘Muslim’ and ‘Danish’ are essentially polarized.²²¹ Muslim values are contrasted

219The Think Tank on Integration in Denmark, “The Integration of Foreigners in the Danish Society” (2001), accessible at <<http://www.inm.dk>> (last accessed on April 18, 2010).

220D. Skidmore-Hess, “The Danish Party System and the Rise of the Right in the 2001 Parliamentary Election”, *International Social Science Review* 78, 3-4 (2003): 89-110.

221T. G. Jensen, “To Be ‘Danish’, Becoming ‘Muslim’: Contestations of National Identity?”, *Journal of Ethnic and Migration Studies* 34, 3 (2008): 406.

against the idea of Danish values, particularly the separation of religion and politics, as well as gender equality. Five days prior to the publication of the cartoons, Minister of Culture Brian Mikkelsen stated at the annual meeting of the Conservative Party:

A medieval Muslim culture will never be as valid in Denmark as the Danish culture. . . . immigrants from Muslim countries refuse to recognize Danish culture and European norms. In our own country, parallel societies are forming in which minorities practice their medieval norms and undemocratic ways of thinking. We cannot accept that.²²²

Prime Minister Rasmussen Statements by Muslim community leaders often highlight the perceived “un-Danishness” of the Muslims and prompt political and legal reactions. For example, in September 2004, when mufti Shahid Mehdi, affiliated with the Islamic Cultural Center in Copenhagen, stated in a televised interview that women who do not wear headscarves are “asking for rape”, representatives of some political parties called for a legal investigation.²²³

3.3.4 Legal measures against immigrants and rules on naturalization

The victory of Rasmussen's center-right Liberal Party of Denmark (Venstre) in the 2001 elections marked dramatic changes in Denmark's politics, ending decades of social-democratic rule.²²⁴

The election program was centered on the promises to introduce a total tax freeze, improve healthcare,

²²²The full text of the speech is available in Danish: “Kulturminister Brian Mikkelsens tale ved De Konservative landsmøde 2005”, September 25, 2005, accessible at <<http://www.kum.dk/sw28752.asp>> (last accessed on April 18, 2010). The cartoon crisis did not significantly alter the public discourse in this regard. For example, Minister of Economic and Business Affairs Lene Espersen stated: “The biggest threat to us comes from militant Muslim extremists. <...> They go to work, and earn their own money but live in a parallel society, where they sit and watch Arab and Pakistani television when they come home, and thus are not connected with Danish society” - see “Lene: Militante muslimer truer de danske værdier”, *Ekstrabladet*, August 16, 2009, accessible at <<http://ekstrabladet.dk>> (last accessed on April 18, 2010).

²²³“Political uproar after mufti's remarks”, *The Copenhagen Post*, September 24, 2004, accessible at <<http://www.cphpost.dk>> (last accessed on April 18, 2010). On the International Women's Day in 2007, imam Mostafa Chendid of the Islamic Society in Denmark declared in an interview to *Jyllands-Posten* that not only Muslim women, but all other women too, should wear a veil. In a subsequent interview with *Weekendavisen*, he elaborated that the veil is a signal that a woman is “not for sale” and serves as a protection against rape. Such statements are particularly incendiary in the context of the reported fact that the majority of the country's convicted rapists are immigrants from third countries – see Daniel Pipes and Lars Hedegaard, “Something Rotten in Denmark?”, *New York Post*, August 27, 2002, accessible at <<http://www.danielpipes.org>> (last accessed on April 18, 2010).

²²⁴The Liberal Party formed a coalition with the Conservative People's Party (Det Konservative Folkeparti), drawing support from third largest party - the Danish People's Party (Dansk Folkeparti). Most of the legal initiatives discussed below came as a result of negotiations between the Liberal-Conservative coalition and the Danish People's Party, which based its campaign on calls for strict policy towards immigrants.

as well as strengthen sanctions against violent crime and tighten asylum and immigration rules.²²⁵ In 2002, the government introduced amendments to the Bill amending the Aliens Act, the Marriage Act and other acts, streamlining the asylum proceedings, introducing more stringent conditions for the issue of permanent residence permits and tightening the conditions for family reunification.²²⁶ The amendments sought to limit the number of foreigners entering Denmark and introduce stricter requirements and incentives with regard to their obligation to support themselves, as well as to ensure better integration.

In 2003, the Danish government and parliament passed a bill on the reduction of social welfare benefit after six months for families where both spouses receive social welfare, which in practice targeted people with a migrant or refugee background.²²⁷ In 2004, changes in the social welfare policy increased the required level of language qualifications, as well as made welfare benefits dependent on employment record.²²⁸ Further measures taken by Rasmussen's government included cutting welfare payments by 30%-50% to immigrants without permanent residence permits and withdrawing funding for ethnic minority organizations. In June 2004, the Danish Parliament passed a law that requires religious leaders to speak Danish and respect “Western values”, such as democracy and the equality of women.²²⁹ While these initiatives can be viewed as directed against immigrants, according to Daniel Skidmore-Hess, the overall changes introduced in the Danish government's immigration policy were not exclusionist toward foreigners but integrationist, focusing on economic and cultural integration and emphasizing on effective Danish language acquisition.²³⁰ The immigration restrictions introduced by

225See the official party website at <<http://www.venstre.dk>> (last accessed on April 18, 2010).

226See UNHCR's Comments on the Draft Bill on amending the Aliens Act, the Marriage Act and other Acts (Ref: 2001/7310-81), March 18, 2002, accessible at <<http://www.unhcr.org>> (last accessed on April 18, 2010).

227European Council on Refugees and Exiles, *ECRE Country Report 2003 – Denmark*, September 1, 2004, 37. Available at <<http://www.unhcr.org/refworld/docid/41861a084.html>> (last accessed on April 18, 2010).

228European Council on Refugees and Exiles, *ECRE Country Report 2005*, 90. Available at: <<http://www.unhcr.org/refworld/docid/4a54bbf5f.html>> (last accessed on April 18, 2010).

229J. Isherwood, “Danes restrict imams to stifle Muslim radicals”, *Telegraph*, February 19, 2004, accessible at <<http://www.telegraph.co.uk>> (last accessed on April 18, 2010).

230Skidmore-Hess, 95.

Rasmussen's government won support across a wide spectrum of Danish public opinion, and the Liberal Party was voted to remain in power in the February 2005 elections, during which it campaigned on the continuation of the “tax-freeze”, municipal reforms and tightening of immigration requirements.

Equally if not more important for understanding the larger context of the government's refusal to apologize for the cartoons were the legal initiatives that aimed to redefine the rules on the acquisition of the Danish citizenship. While the debates regarding requirements for naturalization were present in the 1980s and the 1990s as well, they intensified and materialized in a series of legal initiatives since the Liberal Party came into power.²³¹ In 2002, a requirement was introduced for applicants to sign a declaration of faithfulness and loyalty to Denmark.²³² General residence requirements were extended by two years to nine years (compared to 5 years in Sweden and the UK, 8 years in Germany) and naturalization was made conditional upon the absence of criminal record and an overdue debt to the state. Requirements for naturalization were further increased after the re-election in 2005 – applicants had to prove their Danish language skills and show that they have not received social benefits for more than one of the last five years. In 2004, the government made amendments to Citizenship Act, introducing rules on repealing second-generation immigrant descendant's (excluding those from the Nordic countries) right to citizenship by declaration, as well as on deprivation of citizenship due to criminal record.

Overall, the requirements for the acquisition of Danish citizenship have become much more stringent since the Liberal-Conservative government came into power. As Eva Ersbøll notes, the right to citizenship has neither been seen as a means to better integration of immigrants nor as a goal

²³¹While other Nordic countries like Sweden, Finland and Iceland began allowing multiple citizenship since signing the European Convention on Nationality (1997), Denmark follows the principle of avoiding dual citizenship as much as possible and requires that persons renounce their citizenship at the time of naturalization. On the evolution of Danish citizenship laws, see Eva Ersbøll, “Country Report: Denmark”, EUDO Citizenship Observatory (2009), accessible at <<http://eudo-citizenship.eu/>>(last accessed on December 10, 2010).

²³²See the current version of the declaration at <http://www.nyidanmark.dk/NR/rdonlyres/7A32FAD0-E279-467C-91E3-3074249ED586/0/integrationserklaering_engelsk.pdf> (last accessed on December 10, 2010).

desirable in itself; instead the government followed the policy that Danish citizenship had to be deserved, and sought integration by increasing the criteria for citizenship.²³³ While different rules apply for the naturalization of Danish-born citizens who have lost their citizenship by acquiring a foreign nationality, as well as descendants of Nordic citizens, the government's emphasis on “active” citizenship and loyalty to Denmark have sometimes limited the rights of not only immigrants but Danish citizens as well, as in the case of amendments of the Danish Aliens Act in 2002 that sought to curb the immigrants' rights to family reunification.²³⁴

3.3.5 Defining the nation

These and other legal measures taken by Rasmussen's government to address the problem of integration of third-country immigrants, as well as increase the requirements for naturalization and thereby define the meaning of citizenship, form the background of the prime minister's response to the cartoon crisis. While the anti-immigrant sentiment has been growing ever since the end of the Cold War, it became mainstream after the 2001 elections. In this broader context, Rasmussen's political ideas acquire different significance. Rasmussen's book *From Social to Minimal State* may be regarded as an espousal of the classical liberal ideas in political philosophy, emphasizing the importance of personal responsibility, and neo-liberal ideas in economic policy.²³⁵ Rasmussen's ideas about national community are based on an exclusive notion of cultural nationalism, interpreted along the lines of the famous Ernest Renan's voluntaristic definition of nationhood.²³⁶ According to Rasmussen, speaking

²³³Ersbøll, 35.

²³⁴Both spouses are now required to be 24 years old, and the couple's connection to Denmark has to be stronger than to the country of origin. The latter requirement prevented many Danish from resettling in Denmark, led to heated public debates, and was eventually amended in 2004, when those who had been Danish citizens for more than 28 years were exempt from this requirement.

²³⁵A. F. Rasmussen, *Fra socialstat til minimalstat* [From Social to Minimal State] (Copenhagen: Samleren, 1993).

²³⁶In a lecture in 1882, “Qu'est-ce qu'une nation?” Renan declared: “A nation is therefore a large-scale solidarity, constituted by the feeling of the sacrifices that one has made in the past and of those that one is prepared to make in the

Danish and living in the country is not enough to explain the feeling of being Danish:

To feel as part of a people one must share the common historical experience that is exclusive to the members of the group. . . . This common root is prerequisite for being recognized as belonging to a people. . . . A nation becomes a nation through shared history, the myth of common descent, the mentality and shared customs.

Rasmussen argues that the state is not coterminous with the people and should be regarded as merely an instrument to protect people's freedom. While Rasmussen distanced himself from his writings after becoming a prime minister, this conception of nation underlies much of the Liberal Party's reforms in the area of immigration and immigrant integration, as well as citizenship.

It is difficult to see how this conception of nationhood, which emphasizes consensual but also historically determined cultural cohesiveness, could accommodate multiculturalism in general and the concerns of the Muslim minority in particular, since Muslims are immigrants and can hardly claim any shared historical experience.²³⁷ In Rasmussen's book and the Danish public discourse since 2001 in general, the emphasis on language, the smallness and homogeneity of the country and the resulting values of cohesion and egalitarianism make cultural pluralism at best suspicious and at worst undesirable, a threat to the existence of the Danish culture. In the context of the laws passed by Rasmussen's government, the prime minister's refusal to apologize for or condemn the offense caused by the cartoons, i.e. the non-involvement of the state, represents an active position with regard to the content of what it means to be Danish. In order to be become "more Danish", the Muslim minority is expected and encouraged to integrate with the Danish majority through intermarriages, symbolic solidarity with the welfare system through participation in the labor market, as well as "absolute and non-negotiable" acceptance of the Danish value system, characterized by equality, tolerance, freedom,

future. It presupposes a past; it is summarized, however, in the present by a tangible fact, namely, consent, the clearly expressed desire to continue a common life. A nation's existence is, if you will pardon the metaphor, a daily plebiscite, just as an individual's existence is a perpetual affirmation of life." E. Renan, "What is a Nation" in *Becoming National: A Reader*, eds. G. Eley and R. G. Suny (New York and Oxford: Oxford University Press, 1996), 41-55.

²³⁷For discussion of multiculturalism and Denmark, see S. Lex, L. Lindekilde and P. Mouritsen, "Public and Political Debates on Multicultural Crises in Denmark", *A European Approach to Multicultural Citizenship: Legal, Political, and Educational Challenges* (European University Institute, 2007). See also R. A. Kahn, "The Danish Cartoon Controversy and the Exclusivist Turn in European Civic Nationalism", *Studies in Ethnicity and Nationalism* 8, 3 (2008):524-542.

and secularism. However, given that the balance between the freedom of speech and freedom of religion is subject to a legitimate debate within the framework of liberal values as well, the position taken by Rasmussen represented the use of existing social and political structures to excluded the Muslim minority from having a say in the construction of the Danish identity.²³⁸

In his opening speech to the Parliament on October 3, 2006, a full year after the publications of the cartoons and half a year after the anti-Danish protests in some Muslim countries subsided, Prime Minister Rasmussen restated the dominant narrative, unaltered by the Muslim challenge from inside and outside.

Over the past five years it has become clear that we are in the midst of a global struggle of values. It is not a struggle of values between cultures or religions. It is a struggle of values between enlightenment and fundamentalist darkness. Between democracy and dictatorship. . . . We must demand respect for the fundamental rules of Danish society. In Denmark we have freedom of speech. In Denmark, women and men equal rights. In Denmark, we distinguish between politics and religion. . . . It is difficult to reach out to fanatical fundamentalists through improved integration. But we can and must prevent Denmark from becoming a breeding ground for fundamentalism's medieval ideas and attitudes. . . . We all have a responsibility to solve the task. We politicians have a responsibility.²³⁹

If any change could be detected in the representation of the threat posed by Muslims who failed to assimilate to the Danish the society, it was in that it was depicted in starker terms as an existential struggle between good and evil, connected to terrorism, and presented as an urgent problem that should be tackled not only by intensifying legal efforts at home but also by means of military involvement in Afghanistan and Iraq.

3.4 Conclusion

The case examined in this chapter differs significantly from the following two in that the

²³⁸For a discussion along these lines of argument, see C. Holder, "Debating the Danish Cartoons: Civil Rights or Civil Power?", *UNB Law Journal* 55 (2006): 179-185; S. Lægaard, "The Cartoon Controversy: Offence, Identity, Oppression?", *Political Studies* 55 (2007): 481-498.

²³⁹Prime Minister Anders Fogh Rasmussen's speech to the Parliament, October 3, 2006, the full text available in Danish at <http://www.stm.dk/_p_7541.html> (last accessed on December 10, 2010).

“wrongdoing” for which the Danish state was asked to apologize lacks the temporal dimension and involves offended feelings, rather than crimes against humanity. In other words, the demand for an apology prompted the need to consider the basis of the unity, rather than the continuity of the Danish state, while the norms for the violation of which it was asked belong to a different category. In a way, this case can be viewed as the future of the practice of historical apologies for it is not inconceivable that once the darkest stains in national pasts have been removed and historical amends have been made the practice will evolve to encompass lesser violations of human rights in the present. There are enough recent examples of state apologies to suggest that the “historical” in historical apologies is beginning to shrink to years or months, rather than centuries or decades, making the adjective inapt. In this regard, the Danish case suggests that the ability of the group demanding an apology to enlist the support of other states or transnationalize their grievance by other means is likely to become a key factor determining whether their demands are taken seriously. However, despite its difference from the cases which will be discussed in chapters 4 and 5, the predicament in which the Danish government found itself during the cartoon controversy illustrates the problem that all liberal states must solve in order to be able to apologize on behalf of the nation: the problem of collective responsibility.

What function did the rejection of calls for an apology, i.e. the rejection of collective responsibility, play in the construction of Danish identity narrative? Responsibility can be seen here as a vehicle that connects norms and identity. Articulations of what the state is responsible for and to whom define the norms that guide a political community and its character, as well as the criteria for membership. The unsolicited apology for the uglier side of Denmark's behavior during the Holocaust can be seen as an attempt to connect to the emerging European meta-narrative, as well as preempt internal and, potentially, external challenges to Denmark's self-image as virtuous state that emerged with the opening of the archives, i.e. with the loosening of the state's control over what is remembered about the war. The reluctant apology for the forced relocation of the Inughuits reflects Denmark's desire

the preserve the Commonwealth with Greenland, as the two countries are slowly drifting apart. While accepting responsibility through these apologies involved adjustments to the identity narrative, neither was represented as an ontological security challenge and helped preserving the unity and continuity of the state's self. In contrast, demands for an apology to the Muslims and requests that the government accept responsibility for and take measures against the newspaper, came as a challenge to the dominant narrative of what Denmark is or should be. In this case, refusing collective responsibility helped defining not only the hierarchy of norms but also defining the boundaries of and membership in the community. The case served to illustrate the general discussion of collective responsibility in this chapter by showing that, although there is tension in the movement from the total autonomy of individual selves at one extreme toward the communitarian view of culturally embedded selves, it is nevertheless possible for liberal states to assume responsibility for actions of the previous generation and limit responsibility for the actions of members of the community in the present. Indeed, the rejection of responsibility for the cartoons and the exclusion of the radical Muslim minority may be viewed in the context of affirming the principles underlying the cohesion and unity of the Danish society, thus preparing the ground for historical state apologies delivered to other groups.

Chapter 4. Apology, history and law at bilateral level: the case of Lithuania and Russia

4.1 Introduction

This chapter investigates how apology functions at the bilateral level by examining Lithuania's demand for an apology for the occupation from Russia. The basic question structuring the investigation is related to the circumstances of the demand. Given the substantial economic dependence of Lithuania on trade with Russia and given the perception of Russia's willingness to use economics as an instrument of political pressure, why does Lithuania continue focusing on one of the most important issues that prevents the improvement of relations with Russia? And conversely, why does Russia refuse an apology, if this could prevent further antagonism and prevent the spillover of disagreements from bilateral to the wider international and transnational arenas? I argue that pragmatic policy options have become unavailable due to the incompatibility of institutionalized identity narratives that ensure a different organization and interpretation of both the historical facts and the relevant norms that qualify them. Demands for apology from Russia serve to reaffirm Lithuania's continuity and the identity of the state reestablished in 1990 with the state lost in 1940, while Russia's refusal to offer an apology becomes an ontological security threat. On the other hand, Russia refuses to apologize not only because of the actual and potential material claims related to the demands for an apology but also because incorporating the narrative upon which these demands are based would destabilize its own identity narrative and put its contemporary status in the international society in question.

In support of this argument, the chapter first examines the material incentives for the improvement of Lithuania's relations with Russia in order to show the relative importance of the

identity factors at work. Then the institutional constraints on foreign policy options are assessed by looking at the legal foundations of the Republic of Lithuania and the circumstances of their development. The internationally unprecedented legal construct of continuity and identity that Lithuania used to restore its sovereignty necessitated demands for the recognition of the state's foundations by Russia either in the form of compensation or in the form apology for occupation. Third, the identity-based reasons for Russia's refusal to apologize are analyzed. Finally, the regional and international (European) aspects that have a role in shaping the dynamics of bilateral relations between Russia and Lithuania are considered.

While the case centers around the issue of the recognition of Lithuania's occupation by the USSR in 1940 and the organization of historical facts is based on legal arguments, the primary function of apology here is not to confirm the validity of the relevant norms of international law but to reaffirm state identity in time. Apology can not take place because, while the continuity and identity of Russia is not disputed, Russia does not want to recognize Lithuania to be the same as Lithuania prior to its incorporation into the Soviet Union. However, even in the absence of apology, the demand for it and the refusal to issue it serve to reconfirm the respective identities of states, only at the expense of friendly and pragmatic bilateral relations.

4.2 Economic relations between Russia and Lithuania: material incentives for not demanding an apology

While politically Lithuania is firmly embedded within the network of Western political, economic and military organizations (WTO, EU, NATO), it retains significant economic and cultural ties with Russia. According to the Information of the Statistics Department under the Government of the Republic of Lithuania, the EU is the biggest trade partner of Lithuania with a 58% of total import

and 64% of total export in 2009. However, despite the rather steep decline of Lithuania's export to Russia from 22% in 1997 to 13% in 2009, Russia remains the single largest trade partner of Lithuania, and its share of Lithuania's import was as high as 30% in 2009²⁴⁰. The gradual growth of the trade imbalance between Lithuania and Russia can be accounted for by several factors, the single most important of which is Lithuania's increasing energy dependence.

Russia is the most important supplier of oil, gas and electricity to Lithuania. Russia's OAO Gazprom is the only gas supplier to Lithuania and one of the biggest stockholders of the main Lithuanian gas operator Lietuvos Dujos. Since the country does not have any natural gas storage facilities and lacks capabilities to deliver, recast or store big quantity of liquid natural gas, and since the Minsk-Vilnius-Kaliningrad pipeline through which natural gas is transported to Lithuania is owned by Gazprom, Lithuania is totally dependent on Russia for the supply of natural gas.

The history of the oil supply situation in Lithuania is worth a study on its own due as a case illustrating how domestic and international business and political interests in the energy sector interact with each other. The main prize of the competition was and to this day remains the Soviet-built Mažeikiai Crude Oil Refinery in Lithuania, the only crude oil refinery in the Baltic States. In 1999 it was equipped with an oil export/import terminal, with the stated goal of diversifying the oil supply sources and thereby ensuring energy independence. Control of the refinery was transferred to the US-based company Williams-International for what was reported in the Lithuanian media as a symbolic fee, which caused the resignation of the then Prime Minister R. Paksas. Failing to ensure a stable supply of oil from Russia, Williams-International sold its shares to Yukos Oil Company in 2002. As Yukos was charged with tax evasion and the takeover of its assets began in Russia in 2004, the Lithuanian government borrowed internationally to acquire the refinery from Yukos for approximately 1 billion dollars, in order to resell it to a different operator. The law that enabled the government to

²⁴⁰Information of the Statistics Department under the Government of the Republic of Lithuania, accessible at <http://www.stat.gov.lt> (last accessed on December 10, 2010).

perform these actions declared that the new owner must not pose a threat to the national security interests, and therefore preference was subsequently given to a Polish company over the competing bids by Russia's Lukoil and Rosneft. Thus, in 2005, the refinery was sold to PKN Orlen. In 2006, Russia's pipeline monopoly Transneft closed the branch of the Druzhba ("Friendship") pipeline for repairs, thereby suspending the supply of crude oil to the Mažeikiai refinery. In 2007, the Russian officials announced that the pipeline will not be repaired. Since the pipeline had supplied 90% of oil to the refinery, it was forced to get all crude via tanker from the Russian port of Primorsk, adding about \$2 to the cost of each barrel.²⁴¹

The situation of the Mažeikiai refinery, the biggest tax-payer in the country, remains one of the most sensitive topics in Lithuania and, in a way, the refinery has come to symbolize the country's relation to its eastern neighbor. Spiced up with rumors and speculations about Russian takeover plans, bribery, tax-evasion, arson, spies and magicians, any development in the Mažeikiai refinery saga attracts enormous media attention and can break or make political careers. While theoretically the refinery can import crude oil from any supplier, the Russian crude remains economically the most viable option due to its lower price and thus, from a strictly economic point of view, a takeover by a Russian company that could effect the re-opening of the closed pipeline would appear to be a desirable and perhaps even an inevitable development.²⁴² However, attempts by Russian companies to acquire the refinery are usually perceived and interpreted by the political elites and the media not in terms of economic rationale but as part of the grand scheme to subdue the country economically and politically.

Lithuania's energy dependence further increased with the closing of the Ignalina nuclear power

241P. Romanov, "Druzhba Now Means 'No Oil' for Lithuania's Mazeikiu Refinery," *Energy Tribune*, July 16, 2007, accessible at <<http://www.energytribune.com/articles.cfm?aid=549>> (last accessed on March 6, 2010).

242Naturally, other scenarios are also possible. In 2010, when the Polish company sought to reduce the railway tariffs on the transport of its products within Lithuania and persuade the government into selling it the oil export/import terminal by threatening to sell the refinery to the Russians, Prime Minister A. Kubilius responded by talking about the possibility of amending the national security law to prevent such a sale. In 2010, Russia's Prime Minister V. Putin also made an informal offer to the President of Lithuania to reopen the Druzhba pipeline if Lithuania chose to participate in the construction of the new nuclear power plant in Kalinigrad instead of pursuing plans of its own NPP.

plant on 31 December 2009, in fulfillment of the country's accession agreement to the European Union. The facility, which was seen as too dangerous by the EU, supplied about 70% of Lithuania's electricity demand.²⁴³ To compensate the lost production, plans were made to increase the power output of the Elektrėnai fossil fuel power plant, build a new natural gas power plant by 2013, as well as import electricity from Russia, Latvia, and Estonia. In the longer term, the government introduced plans to build a new nuclear power station, the economic viability of which has been put into question shortly afterward by Russia's announcement of the construction of the Baltiyskaya nuclear power plant in the Kaliningrad region by 2016. In the medium term, the government of Lithuania sought EU funding for an undersea power grid connection between Lithuania and Sweden, as well as a grid connection to Poland. However, in the short term, more gas needs to be imported from Russia. Since more than 50% of overall European gas imports originate from Russia, the EU itself is energy dependent on Russia. However, with the closing of the Ignalina NPP the situation in Lithuania has arguably become the worst case in the EU and the European Commission's description of Lithuania as the „energy island“ in the EU is quite accurate.

Equally important is the assessment of the energy security situation in Lithuania by the political elites of the country. Memories of the Soviet Union's economic and energy blockade in 1990, imposed in response to the declaration of independence, are still fresh, and Russia's energy policies are viewed with deep suspicion. For example, reports of Russia-Ukraine gas disputes in 2006 and 2009, as well as with Belarus in 2007, were perceived to clearly indicate that Russia is using its resources as a tool for pursuing aggressive foreign policy in the former Soviet Union.²⁴⁴

243“FAQ on Ignalina Nuclear Power Plant for public affairs,” European Commission, accessible at <http://ec.europa.eu/lieuva/documents/skelbimai/2008_08_21_frequently_asked_questions_on_inpp.pdf> (last accessed on March 6, 2010).

244A strong argument can be made that the government's concern is not without basis and that Russia is indeed using energy for political leverage both in the former Soviet Union and in Europe at large. Swedish Defense Research Agency estimated that there were over 50 incidents related to Russia's energy supply (cut-offs, take-overs, coercive price policy, blackmail or threats) between 1991 and 2006. See R. L. Larsson, “Russia's Energy Policy: Security Dimensions and Russia's Reliability as an Energy Supplier,” FOI Report 1934, March 2006, accessible at <<http://www2.foi.se/rapp/foir1934.pdf>> (last accessed on March 6, 2010). See also Edward Lucas, *The New Cold War*:

The documents and the declarations of the government and political leaders of Lithuania reflect acute awareness of the potential security threat of excessive dependence on Russian energy supplies. For example, the Conservative Party's publication "The Energy Security of Lithuania" clearly states that Russia uses its energy policies to create a sphere of political influence and turn Lithuania into a satellite.²⁴⁵ This concern is reflected in the 1996 Law on the Foundations of National Security determines that energy dependence on a single country and capital investments for political gains pose a threat to national security.²⁴⁶ Energy security has become a permanent item on the government agenda.

Given the economic importance of Russia to Lithuania and the fact that the awareness of energy dependence has not so far resulted in viable economic solutions, it would seem rational for Lithuania to seek warmer relations with Russia. Indeed, every single minister of foreign affairs since the re-establishment of independence in 1990 entered the office by declaring the importance of improving relations with Russia. Nevertheless, relations between the two countries have gone from bad to worse, to the point where it can become damaging to the overall Russia-EU relationship.²⁴⁷ Thus, typically, Lithuanian Foreign Minister Petras Vaitiekūnas, who was initially a vocal supporter of the need to revamp relations with Russia and championed a number of initiatives to that purpose, ended up blocking the European Union's mandate to begin talks on a Partnership and Cooperation Agreement with Russia in 2008.

A number of factors contributed to the worsening of relations, including Russia's low-scale

How the Kremlin Menaces Both Russia and the West (New York: Palgrave Macmillan, 2008).

245A. Ažubalis, A. Kubilius, K. Škiudas, J. Urbanavičius, *Tėvynės sąjunga ir Lietuvos energetinis saugumas 2008* [Fatherland Union and the Energy Security of Lithuania 2008], accessible at

<<http://www.tsajunga.lt/index.php/leidiniai/12>> (last accessed on March 6, 2010). In 2007, the leader of the Conservative Party A. Kubilius even proposed a containment strategy to curtail Russia's influence in Lithuania.

246See Law On the Basics of National Security, accessible at <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=353942> (last accessed on March 6, 2010).

247A recent study singled out Lithuania and Poland as the "New Cold Warriors" in their relations with Russia. See M. Leonard and N. Popescu, "A Power Audit of EU-Russia Relations," European Council on Foreign Relations, November 7, 2007, accessible at <http://www.ecfr.eu/content/entry/commentary_pr_russia_power_audit/> (last accessed on March 6, 2010).

economic warfare (banning of import of dairy products from Lithuania, discrimination against Lithuanian transport companies etc.) and her policies in the former Soviet countries, as well as Lithuania's policy of avid support for the pro-Western governments and movements in Ukraine, Moldova and Georgia and her criticism of Russia's human rights record, especially in Chechnya. However, apart from specific and transient events, there is a more fundamental and a continuous source of disagreement, which prevents Lithuania's turn to a more pragmatic foreign policy towards Russia and, on the other hand, guarantees negative public opinion and political animosity towards Lithuania in Russia.²⁴⁸ This disagreement centers around the divergent historical and legal interpretations of historical events that led Lithuania to become part of the Soviet Union in 1940 and Lithuania's subsequent demands for material compensation and apology.

4.3 The occupation thesis: the roots of conflict

In order to understand why politicians in Lithuania found so difficult to stabilize relations with Russia despite the declared intentions and the perceived need for improvement, the legal and ideological foundations of contemporary Republic of Lithuania must be briefly examined. In 1990, Lithuania chose to reestablish its independence from the Soviet Union by invoking the legal principle of state continuity, rather than relying exclusively on the principle of the right of self-determination as most other Soviet Union's republics subsequently did, which offered a quick solution to a number of problems at the time but set the country on the path of ideological confrontation with the resurgent

²⁴⁸Opinion polls conducted by Levada-Center (previously known as VCIOM, the Russian Center for Public Opinion and Market Research) show that during the last 5 years Lithuania has never left the top five on list of Russia's perceived enemies. In 2005, 42% of respondents saw Lithuania as Russia's enemy, in 2006 – 42%, in 2007 – 32%, in 2008 – 40%, in 2009 – 35%. Data is available in Russian language at <<http://www.levada.ru/sborniki.html>> (last accessed on March 6, 2010). In contrast to Latvia and Estonia which are also stably perched among the top 5, Lithuania has not been accused by Russia of discriminating its Russian minority, and such negative public perception is genuinely perplexing if one does not take into account Lithuania's demands described in the following sections.

Russia for the years to come. The principle of state continuity meant that the Soviet period was to be regarded as an occupation and that a compensation and an apology for the damages of occupation must be demanded from the Soviet Union and, subsequently, Russia. Since after a relatively short period of flirting with the idea of liberal democracy Russia chose to rehabilitate the legacy of the Soviet Union and embrace it as part of its contemporary identity, the narrative identities of Lithuania and Russia became interlocked in a way that prevents accommodation. The following sections will explain and elaborate the elements of this argument.

4.3.1 Restoration of independence

In 1990, when the Lithuanian Reform Movement (“Sąjūdis”), which was organized under the Soviet program of glasnost, democratization, and perestroika in 1988, ventured to convert its massive public support into independence from the Soviet Union, the prospects for lasting independence were rather bleak. The Soviet government was adamantly opposed, years of the Soviet rule had made Lithuania's economy inextricably intertwined with those of other Soviet republics, over 30,000 of Soviet troops were stationed within the country, and the governments of other states were reluctant to extend recognition in fear of weakening Michail Gorbachev's position and reforms in the Soviet Union.

²⁴⁹ While the Soviet Union's constitution contained a clause allowing separation, the procedure was not specified and meant years of negotiations and procrastination in the best case or a gradual suppression of the independence movement in the worst.

Under such circumstances, on March 11, 1990, the Reform Movement, which held the majority

²⁴⁹On the Baltic State's history during the fall of the Soviet Union, see A. Lieven's *The Baltic revolution: Estonia, Latvia, Lithuania and the path to independence* (Essex: Gyllford and King's Lynn, 1994). The number of Soviet army stationed in Lithuania at the time is given in G. Surgailis, *Rusijos kariuomenės išvedimas 1990-1993 [The Withdrawal of the Russian Army in 1990-1993]* (Vilnius: Lietuvos Karo Akademija, 2005).

of seats in the first freely elected Supreme Council of the Lithuanian SSR, decided to proclaim Lithuania's independence by invoking the principle of state continuity and restoring the interwar Lithuania. While this act provoked an immediate hostile reaction from Moscow and brought an economic blockade by the Soviet Union and an attempt at a military coup in January 1991, it put the initiative firmly in the hands of the leadership of Lithuania and made the issue of Lithuania's independence a matter of international, rather than bilateral, negotiations. Since the Act of March 11 laid the foundations of contemporary Lithuania's identity and politics, it is necessary to examine the legal reasoning behind it in more detail.

4.3.2 Legal reasoning behind the restoration of independence

The widely accepted argument for the validity of the principle of state continuity invoked in the Act of March 11 can be summarized as follows. First, the military occupation of the Republic of Lithuania on June 15, 1940 and the subsequent incorporation in the Soviet Union was a consequence of the Molotov-Ribbentrop Pact between the Soviet Union and Germany on 23 August 1939.²⁵⁰ The secret protocol of the pact and its later modifications effectively served as an agreement between its signatories for the division of Poland and the Baltic States. Second, the protocol of the pact violated article 10 of the Covenant of the League of Nations (non-aggression and respect for territorial integrity and existing political independence of members) and the bilateral agreements between Lithuania and the Soviet Union. Since the protocol of the pact violated the conventional and customary international law that was in existence at the time, it should be retrospectively considered null and void.²⁵¹ Third,

²⁵⁰On Lithuania's incorporation into the Soviet Union and the role of the Molotov-Ribbentrop Pact, see A. E. Senn, *Lithuania, 1940: Revolution from Above* (Amsterdam: Rodopi, 2007).

²⁵¹Indeed, in 1989 both Germany and the Soviet Union declared the protocol invalid from the moment of its signing. The retrospective application of the provisions of the Vienna Convention on the Law of Treaties to invalidate the Molotov-Ribbentrop Pact may be justified by the fact that the Convention merely codified customary law.

since the incorporation of Lithuania into the Soviet Union was a consequence of the illegal pact and a military aggression and occupation, it should be considered to be an annexation. Fourth, the legal principle *ex injuria non oritur jus* (illegal acts cannot create law) dictates that because of the illegality of the Molotov-Ribbentrop Pact and the subsequent annexation of Lithuania, the Soviet Union could not acquire any sovereign rights to the territory of Lithuania. Thus, although the Republic of Lithuania could not exercise its sovereignty during the Soviet annexation and was *de facto* part of the Soviet Union, it continued its existence as a state under international law.²⁵²

In accordance with this legal reasoning, on March 11, 1990 the Supreme Council of the Lithuanian SSR performed a series of legal juggles: changed its name to the Supreme Council of the Republic of Lithuania, changed the national flag and anthem, passed the law on the restoration of the sovereignty of the Republic of Lithuania and the law on the restoration of the validity of the constitution of 12 May 1938. Since the constitution of 1938 was a product of authoritarian rule during the interwar period, it was immediately suspended and a new temporary constitution was adopted on the same day. While the constitution of the Soviet Union was declared to be ineffective on the territory of the restored Republic of Lithuania, the laws passed during the Soviet period were left effective insofar as they did not contradict the temporary constitution. These and other legislative acts passed on March 11 aimed to affirm state continuity and identity with the interwar republic.

This course of action for the restoration of Lithuania's sovereignty was facilitated by the fact that the annexation of the Republic of Lithuania in 1940 had not been recognized *de jure* by the majority of states.²⁵³ The United States, for example, refused to extradite citizens of the Republic of

²⁵²The argument is fully elaborated in D. Žalimas' *Lietuvos Respublikos nepriklausomybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės* [International Legal Grounds and Consequences of the 11 March 1990 Restoration of the Independence of the Republic of Lithuania] (Vilnius: Demokratinės Politikos Institutas, 2005). For an overview of the main issues in English language, see D. Žalimas, "Legal and Political Issues on the Continuity of the Republic of Lithuania," in *Baltic Yearbook of International Law*, ed. I. Ziemele, vol. I (Martinus Nijhoff Publishers, 2001), 1-21. For a discussion of comparable cases, see C.H. Alexandrowicz, "New and Original States: The Issue of Reversion to Sovereignty," *International Affairs* 45, 3 (1969): 465-480.

²⁵³According to various calculations, the annexation of the Baltic States was not recognized by over 50 states. See for example, W. J. H. Hough, "The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting

Lithuania to the Soviet Union after the Second World War, did not close the Lithuanian embassy in Washington, which continued its activities until the restoration of independence, and allowed to fund its activities from the frozen account of the Republic of Lithuania.²⁵⁴ While most states recognized Lithuania's incorporation into the Soviet Union *de facto*, only Bulgaria, Czechoslovakia, Romania and Sweden extended *de jure* recognition of the annexation.²⁵⁵

The legal path chosen by Lithuania, as well as Latvia and Estonia, was not the only available one. Most other Soviet republics subsequently chose to establish new states by relying on the principle of self-determination. Indeed, Lithuania too invoked this much cleared and more developed principle of international law insofar as the Supreme Council of the Lithuanian SSR legitimized its actions by claiming to represent the national will.²⁵⁶ Declaring state continuity and identity was potentially wrought with problems from the perspective of international law. First of all, as R. Müllerson points out, there is no general doctrine on the state continuity and state succession and state practice has not produced consistent precedent.²⁵⁷ While the restoration of Lithuania's independence is sometimes compared to Austria's actions in 1945, when the Anschluss of 1938 was declared null and void and Austria claimed continuity, the one significant difference between Lithuania's and Austria's respective

Forcible Seizure of Territory,” *New York Law School Journal of International and Comparative Law* 6, 2 (1985): 391-446. On the political reasons for the non-recognition of the incorporation of the Baltic States into the Soviet Union, see J. Hiden, V. Made, and D.J. Smith, *The Baltic Question during the Cold War* (London and New York: Routledge, 2008).

254On the genesis of the U.S. nonrecognition policy, see in particular R. A. Vitas, *The United States and Lithuania: The Stimson Doctrine of Nonrecognition* (New York: Praeger Publishers, 1990).

255Žalimas, *supra* note 13, 132-133.

256The claim to legitimacy of the Supreme Council's actions, which was of paramount importance when dealing the Soviet government at the time, was further strengthened by a plebiscite on February 9, 1991, during which 90% of participants representing 76% of eligible voters declared support for independent and democratic Lithuania.

257R. Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (London and New York: Routledge, 1994), 139. It is not entirely clear how the period of occupation should be viewed from the perspective of the continuous legal personality of the state. One way to look at the problem of “dormant” or “suspended” statehood was suggested by a German court in its decision regarding the embassy of Estonia in Germany after the end of the Second World War. Klabbers et al. report that the embassy was put under legal guardianship applying § 1910 of the German Civil Code, “which dealt with guardianship of adults who are incapable of representing themselves for physical reasons”, such as deafness, dumbness and blindness. See J. Klabbers et al. eds., *State Practice Regarding State Succession and Issues of Recognition: The Pilot Project of the Council of Europe* (The Hague: Kluwer Law International, 1999), 126.

situations is the span of time that elapsed since the illegal occupation.²⁵⁸ By itself the length of time is an extra-legal factor. However, it creates a situation that is often found in international law, where there is more than one equally valid legal maxim involved, leading to different solutions. Thus, in case of the Baltic States, the above-mentioned principle that *ex injuria non oritur jus* competes with the opposing principle that *ex factis ius oritur* (facts have a tendency to become law).²⁵⁹ The fifty years under the Soviet rule produced many such facts, making *restitutio ad integrum* impossible: changed borders, international treaties, membership in international organizations, property ownership, as well as the constitutional order and domestic laws (citizenship, etc.). Nevertheless, the majority of states recognized Lithuania's claim to continuity and identity, thereby turning legal fiction into political reality.²⁶⁰

4.3.3 State continuity: domestic and international consequences

The claim to state continuity and identity meant that Lithuania did not secede from the USSR but merely restored its independence lost in 1940. Although in reality the fate of the restored Republic of Lithuania was not resolved until the failed *coup d'état* attempt by the hardliners in Moscow in August 1991, which was followed by the general disintegration of the Soviet Union and the wide international recognition of the government of Lithuania, this decision had a number of international, bilateral and domestic legal and political consequences.

Domestically, the most important legal consequence of identity with the interwar republic was the restitution of individual and collective property rights to land, forests and buildings, which began in 1991. While Lithuania, in contrast to the other two Baltic States, chose to grant citizenship to all

258See K. Marek, *Identity and continuity of states in public international law* (Geneve: Droz, 1968), 359-360.

259Müllerson, 152.

260The term legal fiction describes a situation in which “the court in its official capacity allows, in certain circumstances, statements to be made which are known by it to be strictly false”. See R. Demos, “Legal Fictions,” *International Journal of Ethics* 34, 1 (1923): 38. On the recognition of Lithuania's claim to identity with the interwar republic, see Žalimas, *supra* note 13, 271-275.

permanent residents at the time of the restoration of independence, special provisions were made to facilitate the acquisition of citizenship for the emigrants and deportees of 1940, as well as their descendants.

Politically, the decision to declare the continuity and identity of the state delegitimized the Communist party and its leadership, turning them into collaborators with the occupation regime, and firmly set the Western orientation of the country. Although early attempts at desovietization (barring officials of the former regime from public service and politics) failed and a fairly limited law on the registration of persons who secretly cooperated with the special agencies of the USSR was passed only in 1999, the branding of the whole Soviet period as “occupation” limited the options available for domestic discourse on foreign policy. Thus, even when the former communist elites reorganized into the Democratic Labor Party and rather unexpectedly won the parliamentary elections of 1992, this did not affect either the country's Western orientation or relations with Russia.

One other significant consequence of the continuity and identity construct was the peculiar way in which the country's post-war history has been rewritten. Since the teaching of history during the Soviet times was tailored to ideological demands, it is not surprising that it changed substantially after the reestablishment of independence; however, the legal construct of continuity structured the new historical narrative in a distinctive way. One consequence was that all events during the Soviet period that could be seen as representing national resistance were emphasized. This concerns diplomacy and attempts to form a government in exile, underground movements and publications, as well as the partisan fight against the Soviet regime. The partisan fight, which at its peak in 1945 involved about 30000 soldiers and civilians and lasted until 1953, has been likened to the war against the Soviet Union, its participants were honored with military awards posthumously, and, in 2009, one of the partizan leaders J. Žemaitis was declared by the parliament to have been the factual president of the

Republic in 1949-1954.²⁶¹

Importantly, the outcome of the Second World War has been assigned a clearly negative meaning, setting the national narrative apart from the general European history. While for most of Europe the end of the Second World War meant the defeat of the Nazis, for Lithuania it came to signify the beginning of the Soviet occupation, which brought political repressions and deportations, as well as mass emigration. The International Commission for the Evaluation of Soviet and Nazi Crimes in Lithuania, established by the president in 1998, estimated that more than 280,000 citizens of Lithuania were deported and imprisoned in the Soviet labor camps in 1940-1953, and approximately 500,000 fled the country in fear of the Soviet terror.²⁶² The Soviet executions, repressions, and deportations that targeted the political and cultural elites of the country are viewed as a genocide against the Lithuanian people, and the Soviet crimes are seen as essentially equal to those of the Nazi.

The official historical narrative is supported by various political and legal measures (commemorations, museum exhibitions, funding for research, projects and events etc.) and an institutional network. For example, in 1992 the parliament created the Genocide and Resistance Research Center of Lithuania to “investigate the physical and spiritual genocide of Lithuanians carried out by the occupying regimes between 1939 and 1990”, and the Museum of Genocide Victims.²⁶³ In 2008, the parliament adopted the law that forbade the use of Nazi and Soviet symbols in public meetings.²⁶⁴ In 2009, after several previous unsuccessful attempts, the parliament approved

²⁶¹Declaration of the Parliament of the Republic of Lithuania of 12 March 2009 on the Recognition of Jonas Žemaitis as the Head of the Lithuanian State, accessible at <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=339103> (last accessed on March 6, 2010). This declaration should be viewed in the context of the controversy regarding the partizan fight, since this fight was not limited to military actions against the Soviet authorities but also included punitive actions against those civilians who were seen as collaborators. The argument that the partizan resistance could be considered as the war against the Soviet Union is fully elaborated in Bernardas Gailius, *Partizanai tada ir šiandien* [Partizans Then and Now] (Vilnius: Versus aureus, 2006).

²⁶²<<http://www.komisija.lt/lt/naujienu.php?id=1188547851>> (last accessed on March 6, 2010).

²⁶³See the official website of the center at <<http://www.genocid.lt/centras/en/#>> (last accessed on March 6, 2010).

²⁶⁴According to one opinion poll in 2008, 70% of respondents in Lithuania approved forbidding the use of the Nazi symbols, and 58% - the use of the Soviet symbols. Accessible at <<http://www.delfi.lt/archive/article.php?id=18038164>> (last accessed on March 6, 2010). The law caused a protest meeting at the Lithuanian embassy in Moscow.

amendments to the Criminal Code which provided punishment for public propagation or denial of the Nazi or the Soviet genocide, as well as for the public denigration of the Lithuanian partizan resistance.²⁶⁵

Internationally, the legal construct applied in the restoration of Lithuania's independence meant that the USSR's rights and obligations did not extend to Lithuania, that she did not inherit any portion of the USSR's external debts and did not claim any property or assets of the USSR in other countries. Similarly, this meant that, in accordance with the principle that *ex injuria non oritur* jus, the Soviet Union and, later, Russia could not claim any property or assets in Lithuania. Some rights and obligations of the pre-World War II republic have been reacquired, including the foreign real estate property and the gold reserves that were kept abroad. State continuity and identity were affirmed in resuming a number of international and bilateral agreements, as well as by restoring, rather than applying for, membership in international organizations whenever this was possible.²⁶⁶

Finally, one of the most important consequences of the Lithuanian identity and continuity thesis have been felt in the bilateral relations between Lithuania and Russia. While initially it enabled Lithuania avoiding the uncertain process of separation set according to the Soviet designs and in a single stroke delegitimized the threatening presence of the Soviet Union's (and later Russia's) military forces on the territory of the republic, eventually it resulted in demands for a compensation and apology for the occupation, which to this day remains the most contentious issue preventing significant improvement in the bilateral relations.

265During the debate in the parliament, the law was introduced by stating that “74 million people fell victim to the Communist regime, and 56 million – to the Fascist regime. . .The freedom fight and armed resistance to the Soviet occupation is one of the most important moments in our history that we have to respect and remember correctly. Therefore, this law aims to strengthen the preservation of historical memory and prevent its distortion or denigration.” Unofficial translation of the press report is accessible at the Parliament's website at <<http://www3.lrs.lt>> (last accessed on March 6, 2010).

266Curiously, during the 1992-1993 negotiations for the withdrawal of the Russian military forces from the territory of Lithuania, the Russian representatives tried to formalize the status of Russian troops in Lithuania on the basis of the Soviet–Lithuanian Mutual Assistance Treaty of 1939, which stipulated that the Soviets could station up to 20,000 of their troops. See Lieven, 81.

4.3.4 Demands for compensation and apology

The demand for compensation of the damage caused by the Soviet occupation is a logical derivative of the legal arguments used to support Lithuania's continuity and identity claim. If the actions of the Soviet Union are considered to constitute a serious violation of the norms of international law, if the incorporation of Lithuania into the Soviet Union was a consequence of an occupation, and if the repressions and deportations against the population of the occupied country are qualified as crimes against humanity, as they have been regarded in Lithuania, then the issue of state responsibility and adequate compensation can be seen as appropriate and even necessary under international law. Compensation for the Soviet occupation is demanded from Russia on the basis of the bilateral agreement of 29 July 1991 between the Russian Soviet Federal Socialist Republic and the Republic of Lithuania on the Foundations of Interstate Relations, in which the then Soviet Russia explicitly recognized that Lithuania's incorporation was an annexation and that eliminating its consequences would “create further conditions for mutual trust”, as well as on the fact that the Russian Federation declared itself as the state continuing the Soviet Union, i.e. the inheritor of all the Soviet Union's rights and obligations.

The initial demands for compensation were made under the circumstances of immense pressure from the Soviet Union to the renegade republic and the resulting uncertainty about the future of the restored Lithuanian state. Thus, initially these demands served as a diplomatic instrument to be used in the negotiations with the Soviet Union for the recognition of Lithuania's independence and the withdrawal of the Soviet troops. On June 4, 1991, the Supreme Council of Lithuania passed Resolution No. I-1403 Regarding the Compensation of the Damage Caused by the USSR to the Republic of Lithuania and Its Population, in which the government was instructed to calculate the damage caused by the USSR in 1940-1991 and the delegation of intergovernmental negotiations with

the USSR was authorized to raise the issue officially. The damage mentioned in the resolution included the damage done by the extermination and imprisonment of Lithuania's population, misappropriation, destruction and transfer of state and private property, the destruction of economy, and coerced collectivization. The issue was raised during the difficult negotiations for the withdrawal of the Russian military forces and in May 1992 the Lithuanian delegation shocked the Russian delegation with a preliminary estimation of the damage – 146 billion US dollars.²⁶⁷

On June 14, 1992 the government organized a referendum, in which the demand for the unconditional and immediate withdrawal of the troops of the former USSR (at that time already Russia) and the demand for compensation of damage was coupled. The referendum, which became the basis for all subsequent demands for compensation, was attended by 75.8% of voters, of whom 90.8% voted affirmatively.²⁶⁸ Given the the problems caused by the unruly behavior of the Soviet and then Russian troops in Lithuania and the widely-understood importance of withdrawal, the outcome of the referendum was clear before it started. The results of the referendum became a permanent point of reference in parliamentary discussions and subsequent legal regulation, constraining the options available to the opponents of the compensation demand.

After the withdrawal of the Russian troops from Lithuania in 1993, the issue of the compensation for the occupation damage lost its instrumental purpose but was never abandoned. It was resuscitated in the Law of 13 June 2000 on the Compensation of the Damages of the Occupation by the USSR, which obliged the government to make continuous efforts in initiating negotiations and seeking compensation from the Russian Federation, as well as appeal to the UN, EU and the Council of Europe for assistance in this matter.²⁶⁹ In the resolution of 16 January 2007, the parliament urged the Russian

²⁶⁷Surgailis, 64.

²⁶⁸Ibid., 70.

²⁶⁹The full text of the law is available in Lithuanian at <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=103905&p_query=&p_tr2=> (last accessed on March 6, 2010). There were two attempts to cancel the law in 2001 and 2005, which were overturned with reference to the results of the 1992 referendum.

Federation to begin negotiations for the compensation. In 2010, there was a proposal in the parliament that the government be obliged to give annual reports about the progress achieved in seeking compensation.

It is evident from the examination of the content and the frequency of the legal regulation that the issue of compensation has become a permanent item on the political agenda, quite detached from the pragmatic considerations of the day. The practical aspects of the demand for compensation proved to be more challenging. Government Resolution of 13 February 1996 regarding the specific measures for the compensation specified 15 categories of damage related to the Soviet occupation, including damaged caused by the genocide and repressions, persecution of resistance, forceful conscription into the Soviet army, forced emigration, damage to the Catholic Church, environmental damage etc.²⁷⁰ Calculations of the actual amounts of damage under each category were assigned to different institutions and a special commission. The initial calculations, which included the loss of projected GDP due to the Soviet interference with the development of Lithuania's economy, produced the staggering amount of 800 billion US dollars and it was decided to limit the demand for compensation to the direct damage, which was assessed at 20 billion US dollars.²⁷¹ However, the change of government in 2000 prevented the approval of the amount estimated by the special commission and thus the actual amount to be demanded from the Russian Federation remains unclear to this date.²⁷²

The practical difficulties of calculating damage and Russia's resolute refusal to even consider negotiations for the damage compensation have contributed to a range of existing opinions in Lithuania on the issue. At one extreme there is the position that Lithuania should stop demanding a compensation

270The full text of the resolution is available in Lithuanian at <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=24625&p_query=&p_tr2=>> (last accessed on March 6, 2010).

271D. Žalimas, "SSRS okupacijos žalos atlyginimo įstatymas ir Rusijos Federacijos atsakomybės tarptautiniai teisiniai pagrindai," [*The Law on Compensation of Damage Resulting from the USSR Occupation and the International Legal Grounds for Responsibility of the Russian Federation*] *Politologija* 4, 44 (2006): 27.

272For example, in February 2010, the newly appointed Minister of Foreign Affairs Audronius Ažubalis stated that the issue of compensation remains pertinent but that the government has not yet done the required calculations.

from Russia because the Russian people suffered most from the Soviet regime. However, the legal framework establishing the continuity of the Republic of Lithuania and the legal regulation of the issue of compensation damage, precludes the complete abandonment of the quest for compensation from being a viable political option.²⁷³ At the other extreme – the position that Lithuania has the duty to demand compensation, thereby restoring justice for her people and helping Russia become a responsible member of the international community. This view tends to dominate whenever the Fatherland Union is in power and is consistently voiced by the leader of the Reform Movement and currently Member of European Parliament Vytautas Landsbergis:

Our position is grounded in the truth and, ultimately, the law . . . they offer us pragmatism and realist politics - as if we could achieve something by standing on our head, denying ourselves, rejecting our identity and, specifically, the identity of the March 11 Lithuania, which is based on that we had been captured by a foreign power and we are on the road to freedom and that we are inviting and encouraging that same power to free itself from its criminal past.²⁷⁴

If, in accordance with Rick Fawn's definition, ideology is understood as “a set of systematic theoretical principles projecting and justifying a sociopolitical order”, which provides a “systematic interpretation of the past and a program or unfolding of the future” and which can be differentiated from other types of thinking as “a set of core values that are untouchable and not debatable”, then the legal continuity and identity thesis can be viewed as not only the legal but also ideological foundation of the Republic of Lithuania and the derivative demand for the compensation of the occupation is likely to resurface again and again despite the pragmatic considerations.²⁷⁵

273In 2007, Minister of Foreign Affairs P.Vaitiekūnas, who suggested that Russia should not be identified with the USSR, that Russia inherited the rights and duties but not the guilt of the Soviet Union and that Lithuania does not blame Russia for the occupation, was threatened with an interpellation by the Conservative MPs. The pressure to fall in line with the official narrative is no longer limited to politicians. Rare deviations, as in case of the controversial novel on the Lithuanian partisans by M. Ivaškevičius or a counter-narrative espoused by historian and political scientist Č.Laurinavičius, have been starkly condemned either as insults to historical memory or as Russian propaganda.

274V. Landsbergis, “Let's see the history of facts,” speech at the roundtable in the Parliament on the Issue of the Occupation Damage Compensation, June 5, 2009. The full text of the speech is available in Lithuanian at <http://www3.lrs.lt/pls/inter/vytautas_landsbergis?rid=3552&kid=1&did=91922> (last accessed on November 10, 2010).

275See R. Fawn, “Ideology and National Identity in Post-Communist Foreign Policies,” in *Ideology and National Identity in Post-Communist Foreign Policies*, ed. R. Fawn (London: Frank Cass Publishers, 2005), 3.

However, given the economic needs of the country and the absence of a clear prospect of the solution of the compensation issue by means of negotiations with Russia, the “middle path” becomes an attractive choice for both the general public and those politicians who do not fully subscribe to the Homeland Party's position. In this regard, the demand for the compensation of the damage of the Soviet occupation translates into a request for symbolic compensation, i.e. demand for a recognition of the Soviet period as an occupation and an apology for the crimes committed by the Soviet regime. For example, in 2006, President Valdas Adamkus stated that the issue of compensation for the occupation is a moral, rather than a financial issue. According to the public opinion survey commissioned by the ministry of foreign affairs in 2007 on the issue of compensation for occupation damage, 32.2% of respondents understood compensation as Russia's apology for the crimes that have taken place, 39.7% - as a lump sum payment to each victim or his/her descendants individually, and 20.8% - as payment to the Lithuanian state, which would then disburse the funds to citizens; 47% of respondents preferred a moral compensation – Russia's recognition of the fact of the occupation and an apology, while 46.8% believed that material compensation was more important. Interestingly, 83.7% of respondents did not believe that Russia would compensate damage in any way and only 13% believed that it was possible.

²⁷⁶ This gloomy outlook can be partially explained by examining Russia's position on the issue in the following sections.

4.4 Russian denial of the occupation

Russia's position on the issue of the occupation of the Baltic States has gradually evolved from reluctant and indirect recognition during the Yeltsin's era to the outright denial under President Putin

²⁷⁶Press release of the Ministry of Foreign Affairs, accessible at <http://www.politika.lt/index.php?cid=9329&new_id=681115> (last accessed on March 6, 2010).

and President Medvedev. If initially the Stalinist foreign and domestic policies and the human loss resulting from them have been condemned, recently there has been more ambiguity in the political assessment of role of Stalin in Russia's history, including the view towards the Molotov-Ribbentrop pact. The perception of the importance of the issues of historical interpretation of the World War II, which is evident from the public pronouncements and initiatives of Russia's political elites, has resulted in an increasing consolidation of the incompatibility of the official identity narratives of Lithuania and Russia. In conjunction with the fact that the economic importance of Lithuania to Russia is negligible and that there are few areas (membership in international organizations, the Kaliningrad transit) in which Lithuania could exert effective pressure to change this state of affairs, this narrative incompatibility means that Russia is not likely to offer even a symbolic compensation to Lithuania for the Soviet occupation.

The changes in the Russian position are most apparent with regard to the evaluation of the Molotov-Ribbentrop Pact of 1939 and its secret protocols. The existence of the secret protocols was concealed in the USSR until 1989, when the Congress of Soviet People's Deputies, which legally was the supreme body of state authority in the USSR, set up a special commission for the political and legal evaluation of the pact. Upon receiving evidence from the commission, the congress officially denounced the pact on December 24, 1989, declaring that its secret protocol violated the sovereignty and independence of the third parties (the Baltic States, as well as Finland and Poland) and that it was legally null and void from the moment of its signing.²⁷⁷ This official confirmation of the existence of the secret protocols had enormous symbolic and political value for the Reform Movement in Lithuania, further boosting the legitimacy of the quest for independence.²⁷⁸ However, the negative view of the

277The full text of the resolution is available in Russian at <http://www.lawmix.ru/docs_cccp.php?id=1241> (ast accessed on March 6, 2010).

278The anniversaries of the pact had enormous mobilization potential, which was fully exploited by the Reform Movement. While the first meeting condemning the pact in 1987 was a fairly small event and its participants were condemned and persecuted by the Soviet authorities, the 49th anniversary of the pact in 1988 already attracted some 200,000 people in Vilnius alone, and the 50th anniversary culminated in the event that was attended by approximately 1 million people.

Molotov-Ribbentrop Pact was abandoned after 1999, when Vladimir Putin replaced Boris Yeltsin as the president.

Russia's current position towards the Molotov-Ribbentrop Pact is reflected in the statements by the politicians, as well as the documents of the ministry of foreign affairs. The official view is that the pact was simply inevitable because of the state of international affairs of the time, namely the Western failure to check Germany's aggressiveness through collective security arrangements and the need to prepare for the impending war by winning time and creating a buffer space.²⁷⁹ Unable to reach an agreement with France and Britain, the Soviet Union did not have any other choice but to negotiate with Germany. Furthermore, the Soviet Union simply had to introduce its military forces to the Baltic States to protect the Soviet Baltic fleet and Leningrad in the eventuality of their occupation by Germany.²⁸⁰ In his article to the Polish daily *Gazeta Wyborcza*, which was published prior to his visit to Poland in 2009, Prime Minister V. Putin condemned the pact because any agreement with the Nazi regime should be considered immoral, even though it was necessary at the time. According to Putin, it was the Munich Pact of 1938 and not the Molotov-Ribbentrop Pact that led to the division of Europe.²⁸¹

While during Yeltsin's era Russia indirectly recognized Lithuania's claim to continuity and identity, as reflected in the preamble of the bilateral agreement of 29 July 1991, Russia never condoned the view that the Soviet Union had occupied and annexed Lithuania. During the negotiations for the

²⁷⁹See, for example, A. Dulyan, "Molotov-Ribbentrop Pact: A Portrait against the Historical Background,"

Mezhdunarodnaja Zhizn 8 (2009): 130-136, accessible at

<http://www.mid.ru/brp_4.nsf/0/26A62EA13D5473DBC325763100207111> (last accessed on March 6, 2010).

²⁸⁰A. Dyukov, *Pakt Molotova-Ribbentropa v voprosach i otvetach* [*Questions and Answers about the Molotov-Ribbentrop Pact*] (Moscow: Fond Istoricheskaya Pamyat, 2009), 27.

²⁸¹The full text of Putin's letter to the Poles is available in Polish at

<http://wyborcza.pl/1,75477,6983945,List_Putina_do_Polakow___pelna_wersja.html?as=1&startsz=x> (last accessed on March 6, 2010). According to a poll conducted by GfK Polonia for the newspaper *Rzeczpospolita* in 2009, 76% of respondents expected an apology from Vladimir Putin for the Soviet invasion of Poland on 17 September 1939 during the commemoration ceremonies. See J. Prus and W. Wybranowski, "Polacy chcą przeprosin za napaść," [Poles want an apology for the invasion] *Rzeczpospolita*, August 29, 2009, accessible at <<http://www.rp.pl/artykul/355555.html>> (last accessed on March 6, 2010). While Putin's letter was hailed in Western media as an expression of an apology, it not only fell short of it but also accused Poland of participating in the dismemberment of Czechoslovakia and thereby sharing the guilt of starting the World War II.

withdrawal of the Russian military forces from Lithuania in 1990-1993, the Russian delegation made unsuccessful attempts to make the withdrawal conditional on abandoning the claims regarding the occupation and the demands for compensation.²⁸² A number of legal arguments have been advanced to deny the Baltic occupation thesis. For example, Vice-president of the Russian Association of International Law Stanislav Chernychenko argues that the Baltic States were not occupied because the term “occupation” refers to a temporary capture of territory by enemy forces and it can not apply in this case since there was no state of war between the Soviet Union and the Baltic States in 1940 and the Soviet troops did not attack or capture their territories without their consent.²⁸³ According to Chernychenko, annexation by itself was not illegal under international law in 1940 and thus, regardless of the moral assessment of Stalin's policies, even of the incorporation of the Baltic States to the Soviet Union were an annexation it did not violate any contemporary legal norms. And according to the President of the Association of the Historians of the World War II O. A. Rzheshhevski, the incorporation of the Baltic States was not an annexation but took place at their own request.²⁸⁴ To the extent that the Russian ministry of foreign affairs endorses Chernychenko's argument, there may be a disagreement between Russia and Lithuania on the content of the norms of international law effective at the time of Lithuania's incorporation into the Soviet Union, since in Lithuania's view annexation was illegal; however, the main disagreement is not over the validity of the legal norms involved but over their application in the qualification of events that took place in 1940. In other words, Russia does not dispute that forceful occupation was against the prevalent norms of international law at the time but

282Surgailis, 72.

283S.V. Chernychenko “Ob “okkupacii” Pribaltiki i narushenii prav russkojazychnogo naselenija,” [On the “occupation” of the Baltic States and the violations of the rights of Russian-speaking population] *Mezhdunarodnaja zhizn* (August 27, 2004), accessible at <<http://www.ln.mid.ru/ns-pobeda.nsf/b33502cdd8144475c3256eda0037e5fc/a9693d8763f70b92c3256f00001e65f2?OpenDocument>> (last accessed on March 6, 2010).

284O. A. Rzheshhevski, “Ne v ladah s istoriej” [At odds with history], September 3, 2005, accessible at the website of the Russian ministry of foreign affairs <<http://www.mid.ru/ns-pobeda.nsf/b33502cdd8144475c3256eda0037e5fc/b6791521c10c31acc3256f380034b403?OpenDocument>> (last accessed on March 6, 2010).

claims that an occupation has never taken place.

Lithuania's view that the Soviet period was an occupation has been rebuffed again and again by various political figures in Russia, especially since the 60th Anniversary of the end of World War II, which the Lithuanian President V. Adamkus publicly refused to attend in Moscow in 2005. For example, in 2005, Minister of Defense Sergey Ivanov declared that “what is said about the occupation of the Baltic States by the USSR is absurd and nonsense [because] you cannot occupy what already belongs to you”.²⁸⁵ In 2006, following a meeting with President V. Adamkus, Russia's presidential special envoy to the EU Sergey Yastrzhembsky stated that “I can firmly say that Russia is not going to compensate Lithuania for damage caused by the occupation. It would therefore be better to stop discussing this theme if we want our relations to move forward.”²⁸⁶ This seems to be in accordance with the predominant public sentiment in Russia. A public opinion survey conducted by Bashkirova & Partners in 2005 showed that 70.5% of respondents believed that the Soviet Union did not occupy the Baltic countries in 1940, and 72.6% of respondents believed that the government should not apologize for the actions of the Soviet Union in the Baltic States.²⁸⁷

The position that there was no occupation and annexation of Lithuania that has been made official under presidents V. Putin and D. Medvedev, leads to a logical conclusion that Lithuania has been part of the Soviet Union *de jure* and that Lithuania's 11 March 1990 act of independence established a new state, rather than restored continuity. Thus, in 2010, in response to a law passed by the Lithuanian parliament urging Russia to compensate the damage inflicted by the Soviet army during the attempted coup in January 1991, the official representative of the Russian ministry of foreign affairs

285“Ivanov nazval “absurdom” zjavlenija ob okkupacii SSSR Pribaltiki,” [Ivanov called the claims about the occupation of the Baltic States by the USSR absurd] *RIA Novosti*, May 7, 2005, accessible at <<http://www.russianwinter.rian.ru/victory/20050507/39947379.html>> (last accessed on March 6, 2010).

286Quoted in V. Pakalkaitė, “S.Jastržembskis: Rusija neketina atlyginti Lietuvai okupacijos žalos,” [S.Yastrzhembsky: Russia Does Not Intend to Compensate Lithuania for Damage Resulting from the Occupation] March 23, 2006, accessible at <<http://www.delfi.lt/archive/article.php?id=9104815&categoryID=7&ndate=1143099899>> (last accessed on March 6, 2010).

287Cited in K. Paulauskas, “The Baltics: from nation states to member states,” *EU Institute for Security Studies*, Occasional Paper 62, February 2006, 12.

A. Nesterenko stated that in 1991 Lithuania did not yet exist as an independent state because it had not been recognized by any other state.²⁸⁸ According to Nesterenko, references to the bilateral agreement of 29 July 1991 between the Russian Soviet Federal Socialist Republic and the Republic of Lithuania on the Foundations of Interstate Relations are invalid in terms of international law because both parties were subjects of the Soviet Union at the time. Thus, after the intrinsically contradictory period during the Yeltsin's era, when continuity and identity were recognized without admitting occupation, Russia has returned to the Soviet Union's position on both the historical and legal interpretation of the events in 1940, thereby denying the foundations of the contemporary state of Lithuania.

4.4.1 Reasons for denying the occupation

The reasons for Russia's refusal to recognize the occupation of Lithuania by the Soviet Union and offer either financial or symbolic compensation in the form of apology, are both material and ideal or ideological. The material reason for refusal is obvious: if Lithuania's claim is recognized, this would not only require a substantial monetary compensation but may also lead to requests for compensation for Soviet actions in other countries. Latvia and Estonia have already calculated the damage of their countries' occupation, Poland, Moldova and even Afghanistan may also present a bill.²⁸⁹ However, despite the passions and counterclaims that Lithuania's demands incite in the parliament of Russia, the pragmatic aspect does not come under consideration because it is too far removed from the reality that Russia has constructed for herself. The incompatibility of historical identity narratives of Lithuania and

288See the press release of the ministry of foreign affairs in Russian language at <<http://www.mid.ru/Ns-dos.nsf/44a7dafc231dc11ac32576d6002f70c1/432569d800223f34c32576bd00399371?OpenDocument>> (last accessed on March 6, 2010).

289The parliament of Latvia established a commission for calculating the damage of the occupation in 2005, which set a preliminary estimation at more than USD 200 billion. Estonia set up a governmental commission to investigate the consequences of Soviet repressive policies in Estonia in 1993, which calculated that the monetary expression of human loss represents approximately USD 1.35 billion and the ecological damage – approx. USD 4 billion but the government decided not to demand compensation for the time being.

Russia has become too great for Lithuania's claims to compensation to be taken seriously.

Firstly, if Lithuania has decidedly rejected the fifty years under the Soviet rule even at the expense of turning the majority of population into collaborators with the occupation regime, Russia has left the Yeltsin period of national identity crisis by rehabilitating and embracing its Soviet past.²⁹⁰ In 2000, the Soviet national anthem was restored with new words, replacing the Patriotic Song of 1991, which lacked lyrics up until 1999 and did not appeal to the general public. In 2002, the name of the Independence Day on June 12 was changed into Russia Day, thereby eliminating the somewhat paradoxical implications of Russia declaring independence from the Russia-dominated Soviet Union. The red Victory flag was adopted as the official flag of the Russian army and permitted alongside the national flag on all occasions related to the World War II. While the political elites did not feel comfortable with many aspects of the Soviet identity, attempts were made to reinterpret rather than to reject that past.²⁹¹ And the heroism and the victory of the Russian people in the Great Patriotic War, as the World War II is referred to in Russia, has remained the most important event that connects Soviet and Russian identity narratives.

The dominant theme in the narrative of the Great Patriotic War is that Russians made enormous sacrifices to not only defend the country against the unprovoked German aggression but also to save Europe and liberate its nations from the scourge of Nazism. All public surveys from 1990s to 2000s confirm that around 80% of Russians see the Great Patriotic War as the main event in Russian history.²⁹² Victory in the Great Patriotic War, which sanitizes and structures the memory of the war, is the single most powerful symbol of identification in Russia, providing a point of reference for understanding the past, the present and the future, as well as for defining perceptions of Russia's

²⁹⁰On the Russian identity crisis, see K. E. Smith, *Mythmaking in the New Russia: Politics and Memory during the Yeltsin Era* (Ithaca, NY: Cornell University Press, 2002).

²⁹¹B. Forest and J. Johnson, "Unraveling the Threads of History: Soviet-Era Monuments and Post-Soviet National Identity in Moscow," *Annals of the Association of American Geographers* 92, 3 (2002): 529.

²⁹²See chapter 5 in M. Laruelle, *In the Name of the Nation: Nationalism and Politics in Contemporary Russia* (New York: Palgrave Macmillan, 2009).

geopolitical and cultural place in the world. According to Minister of Foreign Affairs Sergey Lavrov, during the Great Patriotic War “Russia – for the umpteenth time – fulfilled its historic mission of saving Europe from forced unification and its own folly. . . . We paid too high a price for this victory to allow it to be taken away from us”.²⁹³ As Lev Gudkov notes, the victory in the war retrospectively legitimized the Soviet totalitarian regime and created a condition where there is “no other coherent and systematically developed version of history and, correspondingly, no other version reproduced by all institutions of socialization. . . . [and] no elite that could propose a different, equally systematic point of view on the events of the war, or indeed any other assessment of, or moral stance towards the past”.²⁹⁴

In May 2009, Russian President Dmitry Medvedev issued a decree setting up a commission to counter attempts to falsify history to the detriment of Russia's interests.²⁹⁵ The commission, consisting of representatives of various ministries, the parliament, the Federal Security Service, the Foreign Intelligence Service, the Russian Academy of Science and other institutions, was charged with the collection and analysis of information about the falsification of historical facts and events that undermines Russia's international prestige. In 2007, President Putin urged teachers to focus on the Great Patriotic War and teach history in a way that inspires pride about the country: “we can not allow a sense of guilt to be imposed upon us”.²⁹⁶ A new teacher's manual was endorsed by Putin in 2007 to provide guidelines on the “correct” way of teaching history, which rehabilitates Stalin as “one of the most successful leaders of the USSR”.²⁹⁷ In February 2009, Minister of Emergency Situations Sergey

293S. Lavrov, “Tragedija Vtoroj mirovoj: kto vinovat?” [The tragedy of the Second World War: Who is to blame?] *Rossijskaja gazeta*, September 1, 2009), accessible at <<http://www.un.int/russia/new/MainRootrus/minmid.html>> (last accessed on March 28, 2010).

294L. Gudkov, “The fetters of victory: How the war provides Russia with its identity,” *Eurozine*, May 3, 2005, accessible at <<http://www.eurozine.com/pdf/2005-05-03-gudkov-en.pdf>> (last accessed on March 28, 2010).

295The text of the decree is available in Russian at <<http://document.kremlin.ru/doc.asp?ID=52421&PSC=1&PT=1>> (last accessed on March 6, 2010).

296Transcript of the Meeting with Participants in the National Russian Conference of Humanities and Social Sciences Teachers, June 21, 2007. Full text is available in Russian at <http://archive.kremlin.ru/appears/2007/06/21/1702_type63376type63381type82634_135323.shtml> (last accessed on March 6, 2010).

297Lucas, *The New Cold War*, 108. See also J. Zajda, “The Politics of the New History School Textbooks in the Russian Federation,” in *Globalisation, Ideology and Education Policy Reforms*, ed. J. Zajda (Dordrecht: Springer, 2010), 3-19.

Shoygu proposed amendments to the Criminal Code, which would provide punishment for the denial of the Soviet Union's victory in the World War II and the heroism of the Soviet peoples, aimed specifically at the Baltic States.²⁹⁸ It is evident that the Russian government is introducing institutional constraints to protect the official historical narrative, similar to those that have been introduced in Lithuania.

4.5 The international dimension of the conflict of historical and legal interpretations

It was argued so far that the course of bilateral relations between Lithuania and Russia was set when Lithuania chose to reestablish its independence in 1990 by claiming legal identity and continuity with the Lithuanian state that existed before its incorporation into the Soviet Union in 1940. This choice had profound influence on the legal, economic and political development of the country for the next two decades, shaped the official historical narrative and became the foundation stone of contemporary Lithuanian identity. The demand that Russia compensates the damages of the Soviet occupation was a logical step that followed from the occupation thesis and helped achieving certain political goals, such as making the presence of the Soviet army on the territory of Lithuania illegal and delegitimizing the Soviet rule in general and the local Communist Party in particular. This demand has by now lost its instrumental aspect and has become a function of identity in bilateral relations with the neighbor that is significant by virtue of its power in the region, as well as the place it is given in the historical narrative of Lithuania. Russia's refusal to accept the foundational story of the Lithuanian state, resulting from its choice to seek continuity with the Soviet Union in both legal and identity terms,

²⁹⁸The draft law on the amendments was introduced to the parliament and approved for passage in May 2009 but has not yet been passed. Nevertheless, this does not prevent state authorities taking a stand on matters of historical interpretation. See, for example, L. Harding, "Russian historian arrested in clampdown on Stalin era," *Guardian*, October 15, 2009, accessible at <<http://www.guardian.co.uk/world/2009/oct/15/russia-gulag-historian-arrested>> (last accessed on March 6, 2010).

is now a source of considerable ontological insecurity for Lithuania, which underlies physical security concerns and overrides material foreign policy and domestic considerations. While political actors and the public at large have no illusions about the likelihood of Russia compensating the damage of the Soviet occupation, abandoning the demand altogether is not an option and public debates tend to center on the best means to advance the demand, on whether this has to dominate other aspects of bilateral relations, and on whether a symbolic, rather than monetary compensation would suffice.

Given the deadlock in relations resulting from the incompatibility of self-narratives, the issue spilled to the wider European arena, where it was connected to the dominant Holocaust narrative and articulated in terms of human rights norms, rather than state values. While the main focus in the chapter is the bilateral dimension of the practice of state apologies, a brief discussion of the international aspect of the conflict between Russia and Lithuania is required for several reasons. First, Lithuania's claims towards Russia are virtually identical to the claims made by other Baltic States, turning it into a regional issue of somewhat different significance than what it would be in case it was a strictly bilateral issue. Second, while Lithuania's occupation thesis is generally accepted by other European states, it may be indirectly challenged by either rejecting its elements (e.g. that the Soviet repressions constituted a genocide) or its larger implications (e.g. that communism was a totalitarian ideology on par with Nazism) or by directly or indirectly endorsing the Russian narrative (e.g. by participating in Russian commemorative events). In other words, the ontological insecurity of Lithuania which is the product of bilateral relations may be abated or exacerbated at the European level.²⁹⁹ Finally, third and most important for the purposes of this chapter, an argument could be made that the compensation claims are

²⁹⁹The United States has been and remains the only significant actor outside of Europe that has relevance to the process of Lithuania's identity construction. Since the US position with regard to the occupation of the Baltic States remained constant throughout the Cold War and afterward and since the Baltic States' agenda is largely limited to the European Union, the transnational level here refers to the European level. It should be noted, however, that the US remains an active and relevant participant in this conflict of historical and legal interpretations. See, for example, the recent Senate resolution that urges the Russian Federation to acknowledge that the Soviet occupation of Latvia, Estonia, and Lithuania under the Molotov-Ribbentrop Pact and for the succeeding 51 years was illegal - S.CON.RES.87, 2008, accessible at <<http://www.opencongress.org/bill/110-sc87/show>> (last accessed on December 10, 2010).

primarily aimed at Europe, rather than Russia, in an effort to gain some kind of strategic/instrumental advantages, i.e. that the real reasons for the Baltic States' preference for conflict with Russia are located at the international, rather than bilateral level and are materially, rather than ideationally, rational. Therefore, the final section of the chapter will briefly overview the international dimension of the conflict of historical interpretations and address the above-mentioned counterargument.

4.5.1 Similarities between the Baltic States

Lithuania's case discussed in this chapter is in most regards identical to those of Latvia and Estonia, making it possible to treat it as one. The circumstances of their incorporation into the Soviet Union in 1940, the legal path chosen in restoring their independence, the legal foundations of these states and their relations with Russia are virtually identical, with the exception that the strict implementation of the continuity and identity thesis with regard to citizenship rights resulted in the discrimination of Russian minorities in Latvia and Estonia.³⁰⁰ While the greater presence and the situation of the Russian-speakers, as well as direct borders with mainland Russia introduced additional areas of tension and somewhat different dynamics in the relations between Latvia, Estonia and Russia, the basic pattern is the same: institutionalized identity narratives constrain the options available for policy makers, often at the expense of economic rationality.

Similarly to Lithuania, the demand for compensation of the damages of occupation often involves or is replaced by calls for an apology. Thus, in 2001, Estonia's Foreign Minister Toomas Ilves called for a formal apology³⁰¹; in 2004, Prime Minister of Estonia Mart Laar demanded that Russia

300For an argument that the denial of nationality to immigrants of the Soviet era was not discriminatory and a discussion of the legal principles involved see I. Ziemele, *State Continuity and Nationality: Baltic States and Russia: Past, Present and Future as Defined by International Law* (Leiden: Martinus Nijhoff Publishers, 2005). For the legal arguments involved in the restoration of Estonia's independence, see L. Mälksoo, *Illegal Annexation and State continuity: The Case of the Incorporation of the Baltic States by the USSR, a Study of the Tension between Normativity and Power in International Law* (Leiden: Martinus Nijhoff Publishers, 2003).

301Cited in L. Mälksoo, "State Responsibility and the Challenge of the Realist Paradigm: The Demand of Baltic Victims of Soviet Mass Repressions for Compensation from Russia" in *Baltic Yearbook of International Law* 3, ed. I. Ziemele,

apologizes for the Molotov-Ribbentrop Pact to the victims of Communism³⁰², and, in 2005, Prime Minister Andrus Ansip stated that Estonia expects an apology from Russia for the Soviet occupation and that such an apology would not mean that Estonia forgoes her right to demand material compensation.³⁰³ In 2005, President of Latvia Vaira Vike-Freiberga wrote that “Russia would gain immensely . . . by expressing its genuine regret for the crimes of the Soviet regime”.³⁰⁴ In 2009, former Minister of Foreign Affairs of Latvia Sandra Kalniete stated that Russia must offer both material compensation and an official apology³⁰⁵ Since it would hardly be possible for Russia to apologize to one Baltic state without apologizing to the others, these demands are interactive and mutually strengthening.

In addition to the Baltic States, a number of other Central and Eastern European countries bear historical grudges towards Russia in relation to the policies implemented by the Soviet Union during and after the Second World War as well. Poland, the Czech Republic, Slovakia, Romania, Bulgaria and Hungary – countries which share their historical narratives at least insofar as the end of the Second World War meant the arrival of externally imposed communist regimes for all of them – formed a group of potential allies for the Baltic States to rely on in seeking international support for their demands. While this potential alliance has not yet advanced far beyond the cooperation of the institutions that have mushroomed in Central and Eastern European countries since the end of the Cold War for the production and preservation of national memories, the attempts to include the Eastern

(Leiden: Martinus Nijhoff Publishers, 2003), 73.

302M. Laar, “When Will Russia Say 'Sorry'?” *The Wall Street Journal*, August 20, 2004, accessible at <<http://www.opinionjournal.com/editorial/feature.html?id=110005505>> (last accessed on March 28, 2010).

303“Estonija zhdet ot Rossii izvinenij za sovetSKUju okkupaciju” [Estonia expects an apology from Russia for the Soviet occupation] November 8, 2005, accessible at <<http://rus.delfi.ee/archive/article.php?id=11558082>> (last accessed on March 28, 2010).

304V. Vike-Freiberga, “Rights and Remembrance,” *The Washington Post*, May 7, 2005, accessible at <<http://www.washingtonpost.com/wp-dyn/content/article/2005/05/06/AR2005050601217.html>> (last accessed on March 28, 2010).

305A. Gluhih, “Kalniete: Rossija dolzhna ne tolko zaplatit, no i izvinitsja” [Russia must not only pay but also apologize] *Telegraf*, April 28, 2009, accessible at <<http://www.telegraf.lv/news/kalniete-rossiya-dolzhna-ne-tolyko-zaplatity-no-i-izvinitysya#>> (last accessed on March 28, 2010).

perspectives on the outcomes and the meaning of the Second World War are shaping the general lines in the quest for a shared European narrative, which may be regarded both as the larger context of and a different arena for the conflict of historical interpretations between Russia and Lithuania.³⁰⁶

4.5.2 Placing the issue on the European agenda

After Lithuania's accession to the European Union in 2004, the struggle to provide the legal and political support for the national narrative moved to the European level as well. Lithuanian and Baltic initiatives in the European Parliament (EP), the Council of Europe, and the Organization for Security and Cooperation in Europe (OSCE) can be seen as both an attempt to create the conditions for building pressure on Russia through the European institutions and an effort to increase European awareness of and sensitivity to the distinctive historical experiences of the Baltic States, thereby making their national identity construct European. At a conference on the Molotov-Ribbentrop Pact organized in the European Parliament at the initiative of the Baltic States in 2009, Speaker of the Parliament of Lithuania Irena Degutienė summarized the official position on why the issue should matter to contemporary Europe:

The assessment of Stalinist crimes is significant not only for the Baltic States or for Eastern and Central Europe. I am convinced that adequate evaluation of the crimes committed by the totalitarian regimes and, most importantly, of their consequences must become part and parcel of the common European identity and the shared value system. . . . The past might be a matter for historians but justice is a political principle, and therefore, the past becomes an issue for political communities and the matter of the common EU interest. . . . [T]he greatest tyrannies of the 20th century – the Soviet and Nazi totalitarian regimes – should be evaluated not only historically but also on the basis of universal and perpetual values, as well as on moral

³⁰⁶The problem of including the Central and Eastern European narratives into the larger European narrative is not likely to dissolve by itself or through socialization, if only because by now almost every Central and Eastern European country has an institution that deals with the preservation of contemporary historical memories: the Institute of National Remembrance in Poland (established in 1998); the Federal Foundation for the Reappraisal of the SED Dictatorship in Germany (1998); Latvia's Occupation Museum (1999); the Institute for the Study of Totalitarian Regimes in the Czech Republic (2007); the Nation's Memory Institute in Slovakia (2002); the Public Foundation for the Research of Central and East European History and Society in Hungary (2005); the Estonian Institute of Historical Memory (2008); the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile in Romania (2009), and others.

and political wisdom.³⁰⁷

Thus, the main aim of the representatives of Lithuania is set in accordance with the lowest common denominator of the said potential alliance between Central and Eastern European countries – to achieve that the communist crimes are assessed in Europe in the same way as the Nazi crimes, – and formulated in the language of human rights values.

Already in 2005, through the efforts of the Baltic and the Central European representatives, the EP resolution on the 60th anniversary of the end of the WWII included a clear reference to the occupation and an acknowledgment that “for some nations the end of World War II meant renewed tyranny inflicted by the Stalinist Soviet Union”.³⁰⁸ In 2005, the Lithuanian representatives unsuccessfully attempted to ban the Communist Party symbols in a proposed Europe-wide law on racism and xenophobia. In June 2005, despite the protests of the Russian delegation, the Parliamentary Assembly of the Council of Europe urged Russia to provide compensation for “persons deported from the occupied Baltic states”.³⁰⁹

The 2008 Prague Declaration on European Conscience and Communism set out the program for the joint Baltic and Central European campaign. Among other things, the declaration called for “reaching an all-European understanding that both the Nazi and Communist totalitarian regimes . . . be considered to be the main disasters, which blighted the 20th century”, for the “establishment of 23rd August, the day of signing of the Hitler-Stalin Pact, known as the Molotov-Ribbentrop Pact, as a day of remembrance of the victims of both Nazi and Communist totalitarian regimes, in the same way Europe remembers the victims of the Holocaust on January 27th”, and for the “adjustment and overhaul of

307The text of the speech is available at <<http://www.euractiv.com/en/enlargement/political-divide-remains-molotov-ribbentrop-pact/article-186424>> (last accessed on November 10, 2010).

308European Parliament Resolution on the sixtieth anniversary of the end of the Second World War in Europe on 8 May 1945, P6_TA(2005)0180, May 12, 2005, accessible at <<http://www.europarl.europa.eu>> (last accessed on December 10, 2010).

309See Council of Europe Parliamentary Assembly Resolution 1455 (2005) on Honoring of obligations and commitments by the Russian Federation. The full text is available at <<http://assembly.coe.int>> (last accessed on March 6, 2010).

European history textbooks so that children could learn and be warned about Communism and its crimes in the same way as they have been taught to assess the Nazi crimes”.³¹⁰ Following the Prague declaration, a declaration was passed in the European Parliament in 2008, calling on Member States to proclaim 23 August as the European Day of Remembrance for Victims of Stalinism and Nazism.³¹¹ In 2009, the European Parliament resolution called for a Europe-wide proclamation of 23 August as a Europe-wide Day of Remembrance for the victims of all totalitarian and authoritarian regimes, stating that “the ultimate goal of disclosure and assessment of the crimes committed by the Communist totalitarian regimes is reconciliation, which can be achieved by admitting responsibility, asking for forgiveness and fostering moral renewal”.³¹² During the debates preceding the resolution, MEP V. Landsbergis argued:

When we talk about the crimes of the communist regimes in Europe (and we are seeking reconciliation in Europe first), we should notice how increasingly refined are the ways in which evil is taking roots in the new lands. . . . Since Russia has disproportionate influence in European politics and shows no intent to apologize for its evil past and seek reconciliation, first of all with itself, it stands as the main obstacle for our idealist efforts to promote general European humanism. Still worse: part of our Europe is trying to appease neo-Stalinism which glorifies the cruelest of men matched only by Hitler. . . . This way Europe unintentionally becomes heir to Stalin's moral legacy.³¹³

In 2009, much to the chagrin of the Russian delegation, the OSCE Parliamentary Assembly carried a resolution on the Reunification of Divided Europe, put forward by Lithuania and Slovakia, which equated the Nazi regime with Soviet Stalinism and called for a day of remembrance for victims of both Stalinism and Nazism on 23 August.³¹⁴

Since Russia lacks comparable access to the institutional means for affirming its view of the Second World War at the European level, its response was largely limited to turning its own

³¹⁰The full text of the declaration is accessible at <<http://praguedeclaration.org>> (last accessed on March 6, 2010).

³¹¹European Parliament Declaration of the European Parliament on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism, P6_TA(2008)0439, September 23, 2008, accessible at <<http://www.europarl.europa.eu>> (last accessed on December 10, 2010).

³¹²European Parliament Resolution on European conscience and totalitarianism, P6_TA(2009)0213, April 2, 2009, accessible at <<http://www.europarl.europa.eu>> (last accessed on December 10, 2010).

³¹³The full text of the speech is available in English at <http://www3.lrs.lt/pls/inter/vytautas_landsbergis?rid=3552&kid=1&did=93831> (last accessed on December 10, 2010).

³¹⁴The full text of the declaration is accessible at <http://www.oscepa.org/images/stories/documents/activities/1.Annual%20Session/2009_Vilnius/Final_Vilnius_Declaration_ENG.pdf> (last accessed on March 6, 2010).

commemorations into international events of high visibility and to attempts at framing the Baltic revisionism as the rehabilitation of Nazism and thus non-European. As Viatcheslav Morozov notes, within the centuries-old Russian discursive division between the “true Europe” which is friendly to Russia and, in a sense, represents a projection of Russian values and priorities and the “false Europe” which is hostile to Russia and not genuinely European, the Baltic States were identified as “false” Europeans already in the beginning of the 1990s and accusations to that effect grew stronger whenever relations became more tensed.³¹⁵ Apart from the discrimination of the Russian minorities and the anti-Russian policies, the non-Europeanness of the Baltic States is indicated by the historical revisionism and the alleged rehabilitation of Nazism. Thus, for example, Chairman of the Foreign Affairs Committee of the Russian Parliament Dmitry Rogozin declared in 2003 that violations of the Russian-speakers' rights in Latvia meant the rebirth of fascism. In 2007, during a meeting with the European Jewish Congress, President Putin declared that :

History has proven more than once that forgetting the lessons of the past, attempts to rewrite history and sow the seeds of revanchism lead to the spread of nationalism and anti-Semitism. That's why one should be worried about the tendencies of historical revisionism in this area in Europe, including some countries of the European Union, attempts to question the liberating mission of the anti-Hitlerist coalition and the Soviet army during the Second World War and whiten the crimes of Nazism. . . . While the denial of Holocaust is forbidden in a number of European states, the Latvian and Estonian authorities are deliberately turning a blind eye to the glorification of the Nazis and their accomplices.³¹⁶

Similarly, the statements of the Russian Parliament in 2006 and 2007 in relation to the relocation of a Soviet war memorial in Tallinn accused Estonia of fostering neo-Nazism, xenophobia and national hatred, as well as glorifying of fascism.³¹⁷

315V. Morozov, “The Baltic States and Russia in the New Europe: a neo-Gramscian perspective on the global and the local” in *The Baltic States and Their Region: New Europe or Old?*, ed. D. J. Smith (New York: Rodopi, 2005), 277.

316The full text of the speech is available in Russian at <<http://archive.kremlin.ru/text/appears/2007/10/147892.shtml>> (last accessed on December 2, 2010).

317Statement by the State Duma on the manifestations of neo-Nazism and revanchism in Estonia, November 15, 2006 and Statement by the State Duma on the blasphemous disregard of the Estonian authorities to the memory of the soldiers-liberators who fell in the fight against fascism, April 27, 2007, both accessible at <<http://www.duma.gov.ru/>> (last accessed on December 2, 2010)

4.5.3 The politics of history at the European level

While there are strong material incentives for Lithuania to improve bilateral relations with Russia by abandoning calls for the occupation damage compensation, could it be that the actual target of the compensation claims is not Russia but Europe? In other words, could Lithuania be seen as – deliberately or for lack of better alternatives – sacrificing the prospect of better economic and diplomatic relations with Russia to be able to engage in rhetorical actions in Europe for strategic and/or material gains? Such a possibility need not be rejected as implausible because similar, if less devious, arguments have already been convincingly made about Central Europe. For example, Iver Neumann claims that Central Europeans used Europe's memories of Russia as a backward country and a potential military threat “as a manipulable resource of symbolic power in order to gain political advantages such as membership of NATO and of the European Union”.³¹⁸ Such an argument could rely on instances where depictions of Russia as an unrepentant and lawless state that routinely violates its international obligations were utilized to exert influence on political and economic developments in Europe.³¹⁹ Should the thesis that the Stalinist regime was as bad as the Nazi be incorporated into the European consciousness to the degree envisioned in the Prague declaration, it could perhaps bring symbolic capital that could be converted into pressure on European states regarding political, economic or military support in dealing with Russia.

However, the extent of the domestic institutionalization of the occupation thesis and the absence of politically robust counter-narratives within the country prevents interpreting Lithuania's efforts to

318I. B. Neumann, “Europe’s post-Cold War memory of Russia: cui bono?” in *Memory and Power in Post-War Europe*, ed. J. Muller (Cambridge: Cambridge University Press, 2004), 121.

319Perhaps the most notable of those was the ultimately unsuccessful campaign against the Nord Stream gas pipeline between Russia and Germany, which will be constructed under the Baltic Sea by 2011 and which will circumvent Ukraine, Belarus, the Baltic States and Poland, thereby enabling Russia to impose energy sanctions against these countries without disrupting gas supply to Western European countries. Announcement of the pipeline was met with open hostility by the Baltic States and Poland, branded as the new Ribbentrop-Molotov pact and attempts were made to shame Germany into abandoning the project. However, even in this case, the Baltic States grounded their criticism in the potential ecological threats of the project, rather than its geopolitical implications.

promote the issue of the Soviet crimes to the European level as merely a rhetorical action. Furthermore, the instrumental rationality of the Baltic States' efforts is dubious because, while they may potentially enable their future participation in the European politics above their economic weight class, they might also lead to a degree of political isolation since they come as a challenge to not only Russian but also the dominant Western narrative of the Second World War. The dominant narrative in Europe is built on the memory of the Second World War as a “good war” against the Nazism, which links the Atlantic-Western European and the Russian narratives, as well as the special significance assigned to the Holocaust, which overwrites the German experience of defeat and is supposed to provide a shared perspective required for the political project of the European Community.³²⁰ Inasmuch as the introduction of the dissonant Baltic and Central European narratives upsets the linkages between the different communities of memory in Europe, it provokes a reaction – while Russia talks about the rebirth and glorification of Nazism in the Baltic States, Western Europeans raise their concerns about the Baltic States' position to the Holocaust. Thus, attempts to equate the Nazi and the Soviet regimes have sometimes been condemned as a backdoor to antisemitism by means of denying the uniqueness of the Holocaust.³²¹ Politicians in Lithuania have gone a great length to prevent such an interpretation by offering an official apology before the Knesset in 1995 for those Lithuanians who had taken part in the Nazi persecution and killing of Jews during World War II, documenting the crimes, introducing Holocaust education into the school curriculum, and initiating the restitution of communal Jewish property, i.e. by engaging in *Vergangenheitsbewältigung* expected from a good European state. Nevertheless, the stronger the moves the Baltic States make on the European level to emphasize the similarity between the Soviet and the Nazi crimes, the louder are likely to be the voices that point out

320See K. Jaraych and T. Lindberger, “Contours of a Critical History of Contemporary Europe: A Transnational Agenda” in *Conflicted Memories: Europeanizing Contemporary Histories*, eds. K. H. Jarausch, T. Lindenberger, and A. Ramsbrock (New York: Berghahn Books, 2007), 1-23.

321See, for example, E. Zuroff, “Eastern Europe: Anti-Semitism in the Wake of Holocaust-Related Issues,” *Jewish Political Studies Review* 17, 1-2 (Spring 2005), accessible at <<http://www.jcpa.org/JCPA/Templates/showpage.asp?DBID=1&LNGID=1&TMID=84&FID=625>> (last accessed on March 6, 2010).

both their failures in addressing their role in the Holocaust and the contemporary manifestations of anti-Semitism, i.e. the questionable European character of these states.

In the light of the above, Lithuania's efforts to achieve the condemnation of the Soviet crimes in Europe appear not as an instrumental action to gain economic or political advantages and not merely a spillover resulting from the ontological insecurity in the bilateral relations with Russia but as an identity move to define its place in Europe, regardless of the costs and risks involved. As Maria Mälksoo argues, the Baltic States simultaneously seek recognition from and exercise resistance to the hegemonic “core European” narrative of what “Europe” is all about in order to become “fully European”.³²² If the historical apology for Lithuania's role in the Holocaust and the institutionalization of the Holocaust narrative serves to confirm the European character of the restored state, the campaign for equating the crimes of the two totalitarian regimes seeks to validate the national narrative by turning it into an accepted feature of the European memory landscape, first of all, via the official acceptance of symbolic dates marking the beginning and the end of the Second World War story (23 August 1939, rather than 1 September 1939 as the beginning of the war, and 1989, rather than 1945, as the end).

4.5.4 Law and history at the European level

Finally, it should be mentioned that this identity move not only faces competition from Russia or other European states but also opens the nationally constructed narrative to scrutiny by European institutions which are already outside the state-led politics of history and formulate their positions in terms of law. In this regard, the ruling of the Grand Chamber of the European Court of Human Rights (ECHR) in *Kononov v Latvia* has so far been the most remarkable event, which provides an illustration

³²²M. Mälksoo, “The Memory Politics of Becoming European: The East European Subalterns and the Collective Memory of Europe,” *European Journal of International Relations* 15, 4 (2009): 653-654.

of the ways in which the institutionalized human rights discourse can place limits on national narratives and therefore merits a brief discussion.

Vassili Kononov (a citizen of Latvia until 2000, when he was granted Russian citizenship) was found guilty by Latvian courts of war crimes committed as a Soviet partizan in 1944 and applied to the ECHR in 2004, complaining that the acts of which he had been accused (execution of villagers who allegedly had cooperated with the Germans) had not constituted an offense under either domestic or international law and that his conviction was therefore a political persecution by the Latvian state.³²³ Russia joined the case as a third-party in 2004, while Lithuania made written submission as a concerned party in 2009. In 2008, the ECHR held that there had been a violation of Article 7 of the Convention (no punishment without law), stating among other things that “National Socialism is in itself completely contrary to the most fundamental values underlying the Convention so that, whatever the reason relied on, it cannot grant any legitimacy whatsoever to pro-Nazi attitudes or active collaboration with the forces of Nazi Germany. . . . The villagers must have known that by siding with one of the belligerent parties they would be exposing themselves to a risk of reprisals by the other” and that, in any case, “the applicant could not reasonably have foreseen on 27 May 1944 that his acts amounted to a war crime under the *jus in bello* applicable at the time”.³²⁴ Following this judgment, Latvia requested the referral of the case to the Grand Chamber of the ECHR, which delivered its judgment in 2010. The Grand Chamber dismissed the Kononov's complaints, stating that there has been no violation of Article 7 of the convention. According to the judgment, even if it was considered that the villagers had committed war crimes and “even if the deceased villagers were considered combatants or civilians who had participated in hostilities, *jus in bello* in 1944 considered the circumstances of their murder and ill-treatment a war crime since those acts violated a fundamental rule of the laws and

323See Judgment of the Grand Chamber of the ECHR in the Case of Kononov v. Latvia, May 17, 2010, accessible at <<http://www.echr.coe.int>> (last accessed on December 1, 2010).

324Judgment of the Former Third Section of the ECHR in the Case of Kononov v Latvia, July 24, 2008, accessible at <<http://www.echr.coe.int>> (last accessed on December 1, 2010).

customs of war protecting an enemy rendered *hors de combat*.” In other words, regardless of whether the villagers were actively collaborating with the Nazi authorities against the Soviet partizans, since the villagers were not armed or actively resisting, their execution was a crime of war that violated one of the cardinal and intransgressible principles of humanitarian law – the obligation to avoid unnecessary suffering to combatants.

While the major concern for Latvia, Lithuania and Russia was setting a legal precedent for similar cases involving the activities and the status of the belligerent forces in the Baltic States at the time, one of the central points of interest was related to the legal and political implications of the Court's judgment on the diametrically opposed claims made in the case: the applicant claimed that Latvia was legally part of the Soviet Union in 1944, subject to its laws, while the respondent claimed that Latvia was under the unlawful Soviet occupation. In this regard, the Grand Chamber's judgment was a disappointment for both Russia and the Baltic States, since it stated that “it is not its role to pronounce on the question of the lawfulness of Latvia's incorporation into the USSR and, in any event in the present case, it is not necessary to do so”. Importantly, the judgment sets a legal precedent and a framework for moral evaluation of the activities of Lithuanian partizans, whose fight against the Soviet regime frequently included reprisals against those seen as communist collaborators, thereby undercutting the domestic narrative glorifying the partizans as the untarnished heroes of resistance to the occupation and, at the least, providing a powerful resource for counter-narratives in the construction of national identity. Russia condemned the judgment as “an attempt to cast doubt on several key political and legal principles that emerged following the Second World War and the postwar settlement in Europe” and “a justification of the Nazis and their accomplices [that] will be conducive to the further growth of the influence in Europe of revanchism and pro-Nazi and extremist/radical nationalist forces”.

³²⁵Statement by the Russian Foreign Ministry Following the Pronouncement on May 17, 2010, of the Ruling of the Grand Chamber of the European Court of Human Rights in the Case of Vasily Kononov, May 17, 2010, accessible at <<http://www.mid.ru>> (last accessed on December 1, 2010).

In short, the ECHR judgment failed to meet the political expectations of all the parties of the case, emphasizing instead the superiority of the principles of humanitarian law and the human-rights perspective over the vision of the world divided into friends and enemies.

4.6 Conclusion

This chapter discussed Lithuania's demands to Russia to examine the role of apology at the bilateral level. It was shown that material and instrumental reasons are insufficient for understanding Lithuania's demands for a compensation of the occupation damage. Since Lithuania is economically dependent in some areas on trade with Russia, since Russia is seen as a state that uses economic pressure for political aims, and since the issue of the occupation damage compensation is a major irritant in the relations between the two states, there is actually a material incentive for Lithuania to abandon its claims. It was argued that the main reason for disregarding the pragmatic interests is the legal construct used in the reestablishment of the Lithuanian state, which frames the Soviet period as occupation and structures the historical narrative, thus providing the foundations of contemporary national identity. The application of this legal construct in domestic law (the constitution, the national referendum, the criminal code, government and parliament resolutions), as well as its role in structuring the historical narrative, severely constrict the options available to policy-makers, leaving the choice of demands for material compensation or demands for symbolic compensation in the form of apology. It was further argued that, while Russia's rejection of Lithuania's demands is consistent with its material interest, Russia's position is grounded in a different assessment and legal characterization of the events in the Baltic States preceding their incorporation into the Soviet Union, which is determined by the national narrative of the causes and the consequences of the Second World War, as well as its centrality

to contemporary Russian identity. In other words, while the dispute in which the two countries are engaged is formulated in legal terms, it is fueled by the incompatibility of national identity narratives. The final section of this chapter looked at the international dimension of the conflict of legal and historical interpretations, arguing that it can be viewed not only as a spillover from the deadlock in bilateral relations but also as Russia's and Lithuania's attempts to define or redefine their relation to and their position in Europe. Both countries seek to validate their self-narratives by linking them to the “core” European narrative of the Second World War, in which the central role is played by the Holocaust: Russia – by emphasizing its historical role in the victory over the Nazism and depicting the Baltic narratives as historical revisionism that represents the rehabilitation of the Nazism and leads to anti-Semitism and national hatred; and Lithuania – by comparing the crimes committed by the Soviet regime to the Nazi crimes. It was further suggested in the chapter that the European level does not only serve as an arena for the expression of and negotiation over the conflicting historical interpretations of states but is also capable of independent influence to the processes of national identity construction through the European Court of Human Rights.

What does the case tell us about the practice of historical apologies? Several observations can be made. First, the case highlights an aspect that is unproblematic and therefore usually invisible in apologies that are demanded and actually given – namely, that an apology presupposes the essential sameness of both agents in time, whether it is the state or a group of people. Russia's refusal to accept Lithuania's claim to the continuity of the state is at the core of the conflict. In the absence of Russia's recognition of Lithuania's identity narrative, every visit by any politician to Moscow, every factory and enterprise that Russia expresses an interest in, every economic disagreement etc. are scrutinized in public and tend to acquire the dimension of an existential threat, thus making normal relations difficult, if not altogether impossible.

Second, both states' preference for conflict can be explained in terms of the costs to their

ontological security. For Lithuania, since the issue of the objective state identity is connected to the construction of the national trauma (executions, repressions and deportations depicted as a genocide), it has become the basis upon which the country defines its relation not only to Russia but also to Europe. The institutionalization of historical identity narrative by means of legal regulation, education and political practices (commemorations, speeches etc.) ensures that the pragmatic concerns of the day are usually assessed in terms of a conflict between values and interests. Abandoning claims toward Russia would require a reconceptualization of the legal and moral foundations of the state. On the other hand, since a shared view towards historical events is the precondition for Russia's apology for either the occupation or the Soviet crimes, it would entail a significant change of perspective in the Russian evaluation of the events of the World War II and moral assessment of the actions of both the Soviet state and its leaders. Such a change of perspective would go against the institutionalized narrative of the Second World War, which underlies and legitimates Russia's ideas regarding its contemporary place and role in European and world affairs.

Third, the case shows that the analytical distinctions proposed in chapters 1 and 2 between the objective and subjective state identity, as well as between diplomatic and historical apologies can be blurred in reality depending on the ways in which the relation between the state and its people is imagined. Lithuania's identity narrative erases any distinction between the state and the (ethnic) nation. The genocide against the Lithuanian people is seen as a direct consequence of the loss of statehood in 1940. This narrative magnifies the ontological insecurity resulting from Russia's refusal to apologize since it comes to represent a challenge to both objective and subjective aspects of state identity. It is noteworthy that, while at the bilateral level demands toward Russia focus on the unambiguous condemnation of the illegality of the Molotov-Ribbentrop Pact, the fact of the occupation and the issue of compensation – i.e. the confirmation of the validity of traditional international norms and state values, at the transnational level the emphasis tends to be placed on the crimes against humanity

perpetrated by the Soviet regime and the “universal and perpetual values”. While the shift in emphasis from the state-centered to the human centered position at the transnational level also serves to facilitate linkages and comparisons between the national narrative of the Second World War trauma to the European narrative of the Holocaust, this should not obscure the fact that in Lithuania's historical narrative there is no conflict between state values and human right values, which blurs the difference between the demands for a diplomatic and demands for a historical apology. One general implication of this is that the practice of historical apologies is not intrinsically inimical to the Westphalian state but rather depends on the domestic construction of state identity narratives, and specifically, the relations between citizenship and nationality, as was discussed in the previous chapter.

Chapter 5. Turkey and the demands for the recognition of the Armenian Genocide

5.1 Introduction

This chapter examines the relation between state/national identity and the practice of historical apologies at the transnational level by looking at the demands that Turkey recognize the deportation and extermination of the Armenians in the Ottoman Empire during the First World War as a genocide. While the most vociferous demands for Turkey's official apology for the genocide come from the Armenian quarters all around the world, the issue has attracted a growing interest from other states, international organizations, substate entities, as well as non-state actors.

The case is important for the argument advanced in the previous chapters in that it raises two puzzles. First, it is interesting why Turkey would refuse to apologize for or at least recognize the events that are widely considered to be the first “modern” genocide, even at the expense of improved relations with its neighbors and continuous damage to its international image. While the Republic of Turkey is legally a different entity than the Ottoman Empire, Turkey does not reject responsibility on this basis and it can be shown that the subjective state identity requirements for issuing a historical apology are largely met. Turkey does not reject the validity of the norm in question either: Turkey acceded to the Genocide Convention in 1950 and, perhaps even more importantly, the leadership of the Republic has shown willingness to engage in the discursive construction of the content of the norm.³²⁶ Finally, while

³²⁶For example, in 2009, Turkish Prime Minister Recep Tayyip Erdoğan declared that ethnic violence against the Uighurs – a Turkic-speaking Muslim minority in China – was tantamount to genocide. “Beijing critical over Erdoğan's ‘genocide’ description,” *Today's Zaman*, December 18, 2010, accessible at <<http://www.todayszaman.com/news-181877-beijing-critical-over-erdogans-genocide-description.html>> (last accessed on May 21, 2010). In 2010, Prime Minister Erdoğan justified his decision to meet with Sudanese President Omar Hassan al-Bashir, wanted by the International Criminal Court for war crimes in Darfur, by claiming that there was no genocide in Darfur because a Muslim could not commit genocide. While neither of these examples can be analyzed without the peculiar role that the human rights discourse

demands by Armenia and especially the Armenian diaspora may be comfortably ignored as not particularly important, Turkey is sensitive to pressure from the EU and the US. Given the fulfillment of the above-mentioned formal conditions for Turkey's apology, the importance of relations with key partners demanding an apology, and the absence of any obvious gain from refusing to apologize, it is not readily clear why Turkey does not adopt an instrumentalist approach to the issue, along the lines suggested by former US State Secretary Madeleine Albright: "Great nations can apologize. ... If this would help [Turkey achieve a leading role in the region], I personally think it's a good idea."³²⁷ Second, it is equally interesting why so many states would find it necessary to take a position in a disagreement over the interpretation of events that took place a century ago even if this predictably leads to the worsening of contemporary relations with Turkey. Without the appreciation of the role of identity and thereby history in the relations between states, both the demands for an apology for the genocide and the refusal to apologize are equally puzzling.

This chapter seeks to resolve these puzzles within the theoretical framework developed in chapters 1 and 2. I argue that demands for Turkey's apology for the Armenian genocide are part of the ongoing process establishing the notion of the crimes against humanity as a negative universal standard in the international community for the assessment and narrative organization of historical events, i.e. for the construction of state identities. In this particular case, the chief agents driving this process are non-state actors (organizations of the Armenian diaspora, the EU) that are less susceptible than states to state-centered or security-oriented arguments and countermeasures advanced by Turkey. Diaspora organizations were able to achieve relative success in promoting the international recognition of the Armenian genocide by tapping into the symbolic potential of the watershed event of the 20th century,

plays in the domestic political processes in Turkey, the statements of the prime minister reflect the appreciation, if not the internalization, of the norm. "Sudanese President Bashir's visit to Turkey in limbo," *Hürriyet Daily News and Economic Review*, November 8, 2009, accessible at <<http://www.hurriyetdailynews.com/n.php?n=a-muslim-can-never-commit-genocide-erdogan-defends-bashir-2009-11-08>> (last accessed on May 21, 2010).

327M. Albright, "America, Turkey and the World," transcript of the Inaugural Sakıp Sabancı Lecture, May 3, 2005, accessible at <<http://www.brookings.edu/fp/cuse/events/20050503.htm>> (last accessed on January 9, 2007).

asserting parallels and similarities between the Armenian genocide and the Holocaust. Insofar as Turkey's failure to apologize stems from reliance on different international norms, the demands for apology serve to affirm the superiority of the human rights law over the Westphalian law. On the other hand, I argue that Turkey's refusal to apologize can best be explained by the ontological security needs of the country. Recognizing that the Ottoman actions against the Armenian population constituted a genocide would require a major revision and re-employment of the historical self-narrative of the period, which is central to contemporary Turkey's identity. Such a revision is unacceptable to Turkey as it would decrease the ontological security of the state.

In developing these arguments, the chapter is organized in three parts. The first part describes the positions taken by the parties involved in the recognition of the Armenian genocide and argues that material reasons are insufficient for understanding their behavior. The second part analyzes the incompatibility of Turkish and Armenian historical narratives, which leads to an explanation of Turkey's refusal to recognize and apologize for the genocide as an ontological security issue. Differences between the employment strategies identifiable in the Turkish and the Armenian historical narratives (tragic vs. romantic) are compounded by the fact that they rely on different normative frameworks (human-rights oriented vs. state-centered). Finally, the third section examines the wider international normative context of the demands for the recognition of the Armenian genocide, which explains the involvement of the international community.

5.2 Controversy over the Armenian genocide

At the most general level, four parties can be identified showing interest in the resolution of the Armenian genocide issue: Turkey, Armenia, Armenian diaspora, and various transnational actors, each

possessing different motives and driven by different concerns. The controversy over the recognition of the Armenian genocide is viewed here in terms of the practice of state apologies – three of the four parties want Turkey to offer a historical apology and Turkey refuses. Before looking at the content of the historical dispute in which the parties are engaged in more detail, it is worth briefly describing their positions with regard to the issue, focusing on the material interests involved. What will be shown here is that the materialist/instrumentalist explanation of the conflict is not sufficient for understanding the parties' preference for conflict over resolution.

5.2.1 The Armenian diaspora

The Armenian diaspora can be said to represent what Jeffrey C. Alexander called a “carrier group” - collective agents engaged in the discursive construction of a set of events as a trauma and advancing claims about an injury and demands for emotional, institutional, symbolic and material reparation.³²⁸ The means by which the Armenian diaspora sought to garner wider support for their claims were as diverse as the diaspora itself: scholarly and fiction works, films, conferences and congresses, public commemorations and protest demonstrations, and even organized acts of terrorism. From 1973 to 1986, in an effort to attract global media attention to the “forgotten genocide”, the Armenian Secret Army for the Liberation of Armenia (ASALA) and the Justice Commandos Against Armenian Genocide (JCAG) assassinated 42 Turkish diplomats in various countries around the world.

³²⁹ However, toward the end of the Cold War, the diaspora's dominant strategy for the articulation of its

328J. C. Alexander, “Toward a theory of cultural trauma,” in *Cultural Trauma and Collective Identity*, eds. J. C. Alexander, R. Eyerman, B. Giesen, N. J. Smelser, and P. Sztompka (Berkeley: University of California Press, 2004), 11.

329In 1986, the attack on Turkish Airlines' check-in counter at Paris' Orly Airport, which killed 8 and injured 55 people, undermined the legitimacy of the use of terrorist means among the Armenian diaspora and marked the disintegration of both terrorist organizations. See L. Dugan, J. Y. Huang, G. LaFree and C. McCauley, “Sudden desistance from terrorism: The Armenian Secret Army for the Liberation of Armenia and the Justice Commandos of the Armenian Genocide,” *Dynamics of Asymmetric Conflict* 1, 3 (2008): 231-249.

claims and demands became focused on seeking political recognition of the Armenian genocide in their host countries. Thus, each and every official international affirmation of the Armenian genocide can be traced back to the efforts of the Armenian diaspora organizations or individual representatives.³³⁰

Like other carrier groups, the Armenian diaspora has both ideal and material interests. Ideally, the history of the expulsion of the Armenians from their ancestral lands and the genocide remains one of the central pillars of Armenian identity narratives and, as the binding power of religion and language diminishes, an increasingly important anchor of diaspora identity. Thus, the struggle for the international affirmation of the Armenian genocide both cements the Armenian diaspora and provides a symbolic expression of belonging to a community. Material interests include obtaining restitution or compensation for the loss of land and property as a result of the Armenian genocide.³³¹ In 2004, a class action lawsuit brought against the New York Life Insurance Company for unpaid life insurance benefits resulted in a settlement of \$20 million; in 2005, a class action lawsuit against French insurance company AXA resulted in a settlement of \$17 million; and, in 2006, Armenian-American lawyers filed a class action suit against Deutsche Bank and Dresdner Bank for withholding the assets of the Armenians killed in the genocide. In 2010, a lawsuit was launched in the United States against Turkish government and banks for the misappropriation of the Armenian assets.³³² Since the lawsuits were brought on behalf of the descendants of the victims of the Armenian genocide, it can be said that, at least in the United States, the diaspora has a clearly expressed material interest in advancing its claims.

³³⁰The approximate figure of Armenians living abroad is 5 million. For a general overview of the Armenian diasporas, see S.P. Pattie "Armenians in Diaspora" in *The Armenians: Past and Present in the Making of National Identity*, eds. E. Herzig and M. Kurkchian (New York: Routledge, 2005), 126-147.

³³¹ Some representatives of the Armenian diaspora go further by expressing their hopes for eventual territorial rearrangements, whereby Armenia would regain its ancestral lands. For example, Seto Boyajian, the former executive director of the ANCA (Armenian National Committee of America – the largest and the most influential Armenian organization in the United States), said that "If people think that Hai Tahd is only about recognition of the Armenian Genocide, they are wrong. . . . Many countries have recognized the Armenian Genocide and even when Turkey recognizes the Genocide, Hai Tahd will not be resolved. We should never forget the western lands. Restitution is at the core of Hai Tahd." Cited in G. Oshagan, "ARF Detroit Commemorates ARF's 116th Anniversary," *The Armenian Weekly* 72, 51 (2006), accessible at <<http://www.hairenik.com/armenianweekly>> (last accessed on January 10, 2007).

³³² Armenian-American lawyers sue Turkey for century-old losses, *Hürriyet Daily News*, July, 30 2010, available at <<http://www.hurriyetdailynews.com>> (last accessed on November 1, 2010).

5.2.2 The Armenian state

The Armenian state is an active participant in the narration of the Armenian genocide as a trauma. The task of achieving the international recognition of the Armenian genocide was raised already in the declaration of Armenia's independence in 1991 and has since then become an important part of the country's foreign policy, continuously reaffirmed by each newly-elect president. The narrative of the Armenian genocide has been heavily institutionalized. The state produces and reproduces knowledge on the Armenian genocide by means of school curricula, research in the Armenian genocide museum-institute, the Oriental Studies Institute under the National Academy of Sciences and other institutions, regular conferences on the genocide, commemorative events, as well as by supporting and rewarding research and related activities in the diaspora. The Criminal Code was amended in 2006 to include punishment for denial, derogation or justification of the genocide. Finally, the narrative is actively promoted abroad through embassies and international events.³³³ The international recognition and condemnation of the genocide is endorsed by the National Security Strategy adopted in 2007.

However, while the recognition of the Armenian genocide by Turkey and the Nagorno-Karabakh conflict are two of the most important issues dominating both Armenia's foreign policy in general and its relations with Turkey in particular, Armenia's demands toward Turkey have usually indicated sensitivity to the country's material interests. For the land-locked Armenia, the diplomatic freeze and the economic embargo imposed by Turkey in 1993 in relation to the Nagorno-Karabakh conflict entails enormous economic costs. It was excluded from two major projects undertaken in the region – the Baku-Tbilisi-Ceyhan oil and the Baku-Tbilisi-Erzurum natural gas pipelines, leaving it entirely dependent on the Russian oil and gas supply. A report by the World Bank in 2000 suggested

³³³The fact that Armenia made visiting the Armenian genocide museum part of the official state protocol is perhaps indicative of the enormous importance assigned to the Armenian genocide in the country's foreign policy.

that open borders with Turkey and Azerbaijan could result in significant increases in Armenia's exports (\$269-342 million) and a 30-38 % rise in the GDP.³³⁴ Thus, unlike the Armenian diaspora, which is not burdened by any pragmatic concerns, the Armenian state has generally tended towards compromises in an attempt to normalize relations with Turkey. Armenia's first president Levon Ter-Petrossian, himself a descendant of genocide survivors in Syria, avoided raising the issue of the Armenian in the bilateral relations between Armenia and Turkey altogether. The second president Robert Kocharian, strongly committed to the transnational genocide recognition campaign, argued that “if Turkey recognizes the Genocide, and actually apologizes to the Armenian people, then I am convinced that this atmosphere of relations . . . will evolve completely differently”, but nevertheless did not turn Turkey's recognition of the genocide into a precondition for the normalization of relations.³³⁵ Similarly, president Serzh Sargsyan stated that, while there is no doubt that there was a genocide, Turkey's non-recognition of the genocide is “not an insurmountable obstacle to restoration of relations between our countries” and, despite the initial reservations, conceded to the idea of Turkish-Armenian historians' commission for the discussion of the historical issues of the genocide.³³⁶

Armenia's policy of pursuing international recognition of the Armenian genocide and avoiding the issue in bilateral relations represents an attempt at balance between the desire to preserve unity between the state and diaspora and the economic needs of the country, as well as between ideal and material interests of the country.³³⁷

334“Discovering Common Grounds of Economic Cooperation,” press release by the Turkish Armenian Business Development Council, September 10, 2003, accessible at <<http://www.tabdc.org/release9.php>> (last accessed on December 20, 2006). However, another study conducted by the Armenian-European Political Legal Advice Center contended that the opening of the border with Turkey would result in the additional annual growth of just 0.67 % of its GDP. See H. Khachatrian, “No Big Gains to Armenia if Turkey Lifts Blockade,” *EurasiaNet*, August 9, 2005, accessible at <<http://www.eurasianet.org>> (last accessed on December 20, 2006).

335“President Robert Kocharian's Interview CNN-Türk,” January 29, 2001, accessible at <<http://news.president.am/>> (last accessed on September 15, 2007).

336See “Transcript: Armenia's Serzh Sargsyan,” *The Wall Street Journal*, April 23, 2009, accessible at <<http://online.wsj.com/article/SB124041090806043783.html>> (last accessed on November 10, 2010).

337A fuller picture would require analyzing how the narration of the Armenian genocide influenced Armenia's understanding of the Nagorno-Karabakh conflict, i.e. the ways in which ontological security concerns shaped the perception of military security interests.

5.2.3 International recognition of the Armenian genocide

The combined efforts of the diaspora and the Armenian state on the international arena eventually bore fruits. Over the last 40 years the Armenian genocide has been recognized by twenty one state.³³⁸ The unprecedented process of the international recognition of Armenian genocide began with Uruguay on the 50th anniversary in 1965 and Cyprus in 1982 and picked up the pace at the end of the Cold War. The recognition of the events in the Ottoman Empire in and around 1915 as a genocide is usually performed by legislative bodies in the form of resolutions, declarations and laws. In addition to the recognition by states, there has been wide recognition by sub-state entities, including regional legislative bodies³³⁹ and municipal bodies³⁴⁰, as well as international governmental and non-governmental organizations.³⁴¹

Importantly, the Armenian genocide has been affirmed by the European Parliament (EP) in 1987, 2000, 2002, and 2005. Turkey was officially recognized as a candidate for membership on December 10, 1999 and started negotiations for accession into the EU on October 3, 2005. The EP has an important monitoring role to play in the enlargement process. While the Parliament's reports are not binding on the European Council, its assent to the final terms of accession is required before the accession treaty can be signed and ratified. The so-called Eurlings report dealing with Turkey's

338Countries that officially recognize the Armenian genocide: Argentina, Armenia, Austria, Belgium, Canada, Cyprus, Chile, France, Greece, Italy, Lebanon, Lithuania, The Netherlands, Poland, Russia, Slovakia, Sweden, Switzerland, Uruguay, Vatican City and Venezuela.

339For example, Australian State Parliaments of New South Wales (2007) and South Australia (2009); Brazilian State Parliaments of Ceará and São Paulo; the Canadian provinces of Quebec (1980, 2003, 2004), Ontario (1980) and British Columbia (2006); the regional assemblies in Scotland, Wales (2006) and Northern Ireland; 43 of 50 states of the USA; the Supreme Council of Crimea in Ukraine. Information of the Armenian National Institute at <<http://www.armenian-genocide.org/affirmation.html>> (last accessed on April 10, 2010).

340For example, the municipal government of Paris (1998); Scotland's Cardiff (2004) and Edinburgh city councils (2005); city of Ryde in Australia (2005); Buenos Aires Provincial Parliament (2006); Switzerland's cantons of Geneva (2001) and Vaud (2003), the municipality of Rome (2000) and a great number of others. Information of the Armenian National Institute at <<http://www.armenian-genocide.org/affirmation.html>> (last accessed on April 10, 2010).

341For example, the World Council of Churches (1983); the Permanent Peoples' Tribunal (1984); the International Association of Genocide Scholars (1997), which also claims that there was a genocide against the Greek and Assyrian population in the Ottoman Empire; the International Center for Transitional Justice (2002); the Human Rights Association in Turkey (2006); the Elie Wiesel Foundation for Humanity (2007); Mercosur (2006).

accession talks represents the most significant indicator of the EP's position on the Armenian genocide issue. The provisional edition of the European Parliament resolution on the opening of negotiations with Turkey in 2005 called on Turkey to recognize the Armenian genocide and stated that this recognition was prerequisite for accession to the European Union.³⁴² Some members of the European Parliament explained the change and the strong wording of the draft resolution by the pressure of the Armenian lobby in Brussels.³⁴³ And even though the clause that stipulated the recognition of the genocide as a precondition for accession to EU membership was dropped from the Parliament's report before the final vote on 27 September, 2006, the report reiterated the Parliament's call to recognize the Armenian genocide and noted that "although the recognition of the Armenian genocide as such is formally not one of the Copenhagen criteria, it is indispensable for a country on the road to membership to come to terms with and recognize its past".³⁴⁴

The official recognition of the Armenian genocide by the legislative bodies of states all around the world represents a unique instance of the legislation of history. For example, the Belgian senate resolution of 1998 states that "there cannot be the slightest doubt over the historical evidence regarding the organized and systematic murder of the Armenians"³⁴⁵ The Russian Duma resolution of 1995 states that "irrefutable historic facts attest to the extermination of Armenians on the territory of Western Armenia from 1915 to 1922"³⁴⁶ Venezuela's National Assembly resolution states that "the first scientifically planned, organized and executed genocide in the history of humanity took place 90 years

342See paragraph 5 in P6_TA(2005)0350 European Parliament resolution on the opening of negotiations with Turkey, accessible at <<http://www.europarl.europa.eu>> (last accessed on April 11, 2010).

343For example, Graham Watson, leader of the Group of the Alliance of Democrats and Liberals in the European Parliament, said to *Zaman* daily that "... [The Armenian lobby] has a distorting effect on our politics". Quoted in S. Gültaşlı, "Fearless, Self-Assertive Armenian Lobby in Europe," *Zaman*, November 2, 2006, accessible at <<http://www.zaman.com/?bl=interviews&alt=&hn=37870>> (last accessed on January 6, 2007).

344See paragraph 50 in INI/2006/2118 European Parliament Report on Turkey's progress towards accession, accessible at <<http://www.europarl.europa.eu>> (last accessed on April 11, 2010).

345Résolution relative au génocide des Arméniens de Turquie en 1915, Document législatif no. 1-736/3 of 17 March 1998, accessible at <<http://www.senate.be>> (last accessed on April 10, 2010).

346The full text of the resolution is available in Russian at <<http://wbase.duma.gov.ru/ntc/vdoc.asp?kl=823>> (last accessed on April 10, 2010).

ago, perpetrated by the regime of the “Young Turks” and their ideology of “Panturkism” against the Armenian people, which led to the extermination of approximately two million people”.³⁴⁷ Most other resolutions name the events in the Ottoman Empire as a genocide and call on Turkey to condemn it, which in effect translates into demands for an official apology. In countries where the denial of a genocide is subject to criminal punishment, the political recognition of the Armenian genocide took the issue a step further. Thus, for example, in 1995, a French court in a civil proceeding ordered historian Bernard Lewis to pay a fine of one franc for denying the Armenian genocide in an article in *Le Monde* daily newspaper.³⁴⁸ In 2007, a Swiss district court found a visiting Turkish politician Doğu Perinçek guilty of genocide denial and fined him CHF 12,000.³⁴⁹

Can material or instrumental reasons explain the behavior of individual states and other international actors? While in most cases it is impossible to identify any such reasons behind the decisions of states to affirm the events of 1915 in the Ottoman Empire as a genocide, an argument could be made that, since the single most important driving force behind the widespread international recognition are the efforts of the Armenian diaspora organizations, the recognition in effect reflects the putative material interests of the Armenian lobbies in host states. Following this line of argument, it would be reasonable to expect genocide recognition by countries where the Armenian diaspora is either numerically or economically/politically strong. To a certain extent, this is true: France, Russia, and Lebanon – countries with some of the largest Armenian diaspora communities – have recognized the genocide. The organizations of the relatively large Armenian diaspora in the United States (the Armenian American Political Action Committee and the Armenian National Committee of America,

347The full text is available in Spanish at <<http://www.tsj.gov.ve/gaceta/Julio/280705/280705-38238-18.html>> (last accessed on April 10, 2010).

348While the court admitted that it had no mandate to judge whether the events in the Ottoman Empire were a genocide, it did precisely that by ruling that Lewis “neglected his duties of objectivity and prudence”. The full text of the court ruling is available in French at <<http://www.voltairenet.org/article14133.html>> (last accessed on April 10, 2010).

349“Turkish politician fined over genocide denial,” March 9, 2007 <<http://www.swissinfo.ch>> (last accessed on April 10, 2010). See also “Swiss court confirms conviction of Turks for genocide denial,” *Hürriyet Daily News*, February 11, 2010, accessible at <<http://www.hurriyetdailynews.com>> (last accessed on April 10, 2010).

Armenian Assembly of America, and the Armenian Youth Federation) exert continuous pressure on the legislators to recognize the genocide at both local, state and federal levels.³⁵⁰ However, the limited success achieved by the Armenian lobby in the United States shows also the weakness of the argument that the international recognition of the genocide can be accounted for solely by material interests of the diaspora. The genocide has not been recognized by Iran, Syria, Georgia or Ukraine, all of which have relatively large Armenian populations. And, on the other hand, the genocide has been recognized by countries in which the diaspora cannot be said to be numerous or influential (Lithuania, Slovakia, Venezuela etc.). Thus, even if it was accepted that the Armenian diaspora organizations and individuals were chiefly responsible for the resolutions passed in their host countries, the question should still be asked as to what was it that enabled them to persuade states to engage in actions that bring no conceivable advantages and that are likely to worsen relations with Turkey.

5.2.4 Turkey's policy

Turkey's responses to requests for the recognition of the Armenian genocide and the international affirmation of the genocide have evolved from indignant *ad hoc* reactions during the Cold War to a systematic foreign and domestic policy of denial in the post-Cold War era. While the history of the period (the disintegration of the Ottoman Empire, the First World War, and, especially, the early years of the Republic) constitutes the foundational identity narrative of the Turkish state, the fate of the Ottoman Armenian population received little attention until the international campaign for the recognition of the genocide picked up its pace in the 2000s.³⁵¹ In response to the claims advanced

³⁵⁰According to the 2000 census, there were approximately 400,000 citizens of Armenian origin. The campaign for the U.S. recognition of the genocide began already in 1975, intensifying after the end of the Cold War. On the goals and activities of the Armenian lobby in the US, see H. S. Gregg, "Divided They Conquer: The Success of Armenian Ethnic Lobbies in the United States," *The Rosemarie Rogers Working Paper Series* No. 13, MIT (2002), accessible at <<http://web.mit.edu/cis/www/migration/publications.html>> (last accessed on April 10, 2010).

³⁵¹For example, the relocation of the Armenian population has not been taught during the history lessons at school and has

internationally by the Armenian diaspora, the state has invested heavily in the institutionalization of the Turkish view of the events in and around 1915. Historical knowledge is produced and reproduced not only through an array of state-funded research institutions, such as the Turkish Historical Society, the Institute for Armenian Research, and the Council of Culture, Arts and Publications in Ankara, but also by official governmental bodies.³⁵² With the gradual lifting of the taboo on the public discussion of the issue in the 2000s, various attempts were made to regulate the domestic discourse. For example, in April 2003 the Turkish Ministry of Foreign Affairs issued a circular to all schools in Turkey, including Armenian schools, to prepare conferences and make essay competitions to show that the genocide allegations are ungrounded.³⁵³ An academic conference on the Armenian issue organized by three of Turkey's leading universities, Boğaziçi, Bilgi, and Sabancı was reported to have been canceled under government pressure in 2005. There were multiple instances of legal investigations against various public figures who spoke out about the Armenian genocide for “insulting Turkishness” under Article 301 of Turkey's Criminal Code, which was introduced in 2005.³⁵⁴ When a group of 200 renown intellectuals, writers and academics in Turkey issued a collective apology for the “Great Catastrophe” of the Armenians on December 15, 2008, it was condemned as a mistake or even an act of betrayal and an insult to the Turkish nation by politicians across the entire political spectrum in Turkey.³⁵⁵ In 2010, the Radio and Television Supreme Council imposed a broadcasting ban on the Turkish television

only recently entered the school curriculum as part of the course of the history of the Turkish revolution, rather than the history of the Ottoman Empire, generally outlining the official view of the events.

352For example, the issue of the Armenian genocide is directly addressed through publications on the websites of the Ministry of Foreign Affairs, the Ministry of Culture, the Turkish General Staff, and Turkey's foreign missions.

353Y. Türker, “Ermeniler raus!” [Armenians Out!], *Radikal*, March 21, 2010, accessible at <<http://www.radikal.com.tr>> (last accessed on April 8, 2010).

354Some of the high-profile figures against whom trials were initiated in relation to statements about the Armenian genocide include the Noble Prize winner Orhan Pamuk (2005), journalist Hrant Dink (2006), journalist Murat Belge (2006), and writer Tamer Demirel (2010).

355S. Rainsford, “Turkish thinkers' Armenia apology,” *BBC News*, December 16, 2008, accessible at <<http://news.bbc.co.uk/2/hi/europe/7784230.stm>> (last accessed on April 8, 2010). As of 2010, the Turkish courts were still deliberating whether the campaign is punishable under the earlier mentioned Article 301 of the Turkish Penal Code. See E. Önderoğlu, “Apologizing to Armenians not a Crime,” *Bia News Center*, January 11, 2010, accessible at <<http://bianet.org/>> (last accessed on November 10, 2010).

station Haber Türk for showing a program where writer Sevan Nişanyan talked on the Armenian genocide.

On the international arena, Turkey countered the issue of each affirmation of the Armenian genocide with a note of diplomatic protest, in some instances recalling its ambassadors for consultations and threatening the issuing state with economic or political sanctions. Two aspects of the Turkish policy are worth emphasizing here: first, the material and strategic costs of denial; and second, Turkey's attempts to treat the issue within the framework of traditional state values and by ordinary diplomatic means.

First, while Turkey's strategy of diplomatic pressure has not been entirely unsuccessful in some cases, it carries significant political and economic costs. Notably, Turkey has so far managed to prevent the official recognition of the genocide by the U.S. by means of diplomatic pressure, as well as an active public relations campaign.³⁵⁶ For example, in 1984, when a resolution to commemorate the Armenian Genocide was discussed in the U.S. House and Senate, the Turkish government threatened to close down U.S. military bases in Turkey and to terminate defense contracts with U.S. firms.³⁵⁷ In 2000, when the Armenian Genocide bill was discussed in the House of Representatives, Turkey threatened that the passage of the bill would damage cooperation on energy issues in the Caucasus, as well as lead to the closure of the İncirlik military base for US operations in Iraq.³⁵⁸ In October 2007 and in March 2010, Turkey withdrew its ambassador for consultations and canceled planned official visits, as well as

356The true extent of Turkish lobbying efforts is not known but can be gleaned from various reports in the media. For example, it was reported that the documented Turkish expenditures for lobbyists in the US in 2006-2007 amounted to \$3.2 million. M. W. Thompson, "Ex-congressmen lobby hard on Turkey's behalf," *The New York Times*. October 17, 2007, accessible at <<http://www.nytimes.com>> (last accessed on April 10, 2010). See also official data on Turkish lobbies in the US at <<http://foreignlobbying.org/country/Turkey>> (last accessed on April 10, 2010).

357P. Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (New York: HarperCollins, 2003), 387.

358See Statement by Ambassador Gündüz Suphi Aktan, The United States Training on and Commemoration of the Armenian Genocide Resolution Hearing Before the Subcommittee on International Relations House of Representatives, 106th Congress, 2nd Session, September 14, 2000, HR 398, accessible at <<http://chrissmith.house.gov/uploadedfiles/Armenian%20Genocide%20Resolution%20Hearing%202009-2000.pdf>> (last accessed on April 10, 2010).

threatened the closure of the İncirlik base. Due to Turkey's strategic and logistical importance to the United States, the diplomatic pressure has ensured that the Armenian genocide has not been officially recognized despite the continuous efforts of the Armenian diaspora organizations.³⁵⁹ In other cases, however, diplomatic measures turned out to be ineffective and harmful to Turkey itself. For example, as a consequence of Turkish response to the French legislative initiatives in 2001 and 2006, the French-Turkish trade links have suffered a blow.³⁶⁰ A consistent application of the tactics of retaliation by canceling defense contracts eventually deprived Turkey of reliable alternatives to its major weapons suppliers (the U.S. and Germany, which are unstable due to human rights-related constraints on procurement).³⁶¹ Furthermore, the blockade of Armenia cut Turkey off from a potential China-Central Asia-South Caucasus-Turkey-European Union transportation corridor, since the only railroad line that connects Turkey to Azerbaijan goes through Armenia.³⁶²

Taking into account the costs of denial, the Turkish policy appears to be irrational from the

³⁵⁹Even the U.S. case presents a picture of ambiguous success. For example, on June 5, 1996, the House of Representatives adopted an amendment to House Bill 3540 to reduce aid to Turkey until the Turkish government recognized the Armenian Genocide and took steps to respect the memory of its victims. See P. Tristram, "Full Text of House Resolution Recognizing the Armenian Genocide," accessible at <http://middleeast.about.com/od/turkey/a/me090318c_2.htm> (last accessed on December 10, 2010). Furthermore, applying diplomatic pressure involves strategic costs as well: during his visit to Ankara in 2010, chairman of the U.S. Senate Foreign Relations Committee John Kerry hinted that unless Turkey normalizes relations with Israel and backs the U.S. policy on Iran, Turkey might have problems with the Armenian Genocide Resolution next year. See "U.S. threatens Turkey with stronger support for Genocide Resolution," News.am, November 10, 2010, accessible at <<http://news.am/eng/news/37654.html>> (last accessed on December 10, 2010).

³⁶⁰Following the vote in the National Assembly in 2001, Turkey expressed official protest and recalled its ambassador. As reported by the media at the time, economic reprisals were mostly limited to defense area: reportedly, a \$249 million contract with the French company Alcatel for a spy satellite, a \$500 million deal to procure six Aviso submarines, a \$600 million project to jointly produce Eryx anti-tank missiles and a \$190 million contract with the French electronics group Thales were canceled (the latter was also barred from bidding for the airport radar contract, potentially worth \$35 million). Moreover, French companies were also sidelined in large public tenders in Turkey. In response to the French bill a wide range of civic initiatives against French products took place in October 2006: the Radio and Television Supreme Council (RTÜK) recommended a boycott of French-produced programs and films, the Ankara Trade Chamber threatened to boycott French products, the Turkish Consumers Union called for a boycott against French companies "Total" and "L'Oreal", while "Kiler", a leading retailer, has decided not to sell French goods.

³⁶¹See chapter 5 in P. Robins, *Suits and Uniforms: Turkish Foreign Policy Since the Cold War* (London: C. Hurst & Co, 2003), 194-198.

³⁶²After more than a decade of discussions and despite the campaign organized by the Armenian lobbies in the United States and in Europe to prevent it, the construction of the Kars-Akhalkalaki railroad line bypassing Armenia was finally begun in 2007 and is expected to be completed by 2012. The estimated cost of the project is \$600 million – for key data on the project, see <<http://www.railway-technology.com/projects/baku-tbilisi-kars>> (last accessed on November 10, 2010).

perspective of material interests. While in Turkey it is sometimes feared that the recognition of the genocide and an apology could lead to Armenian demands for restitution and compensation, these demands are already being made in the U.S. even without the U.S. or Turkey's recognition. Political recognition would not remove the substantial legal obstacles to compensation claims against the state that could be made through Turkish courts or the European Court of Human Rights.³⁶³ Recourse to the 1948 Genocide Convention would likely be unfruitful. An independent legal study conducted by the International Center for Transitional Justice in 2003 found that “the Events [in the Ottoman Empire during the early 20th century], viewed collectively, can be said to include all of the elements of the crime of genocide as defined in the Convention” but, nevertheless, “no legal, financial or territorial claim arising out of the Events could successfully be made against any individual or state under the Convention”.³⁶⁴ If the prospects for private claims are bleak, there is not even a theoretical possibility that the Armenian state could make territorial or financial claims on Turkey.³⁶⁵ In short, there is no reason to believe that Turkey’s acknowledgment of the Armenian genocide would create new basis for restitution claims or significantly enhance the position of those who demand it.

The second noteworthy aspect of Turkey's foreign policy with regard to the Armenian genocide is that the issue is approached within the framework of traditional state values. In its official responses Turkey has consistently emphasized that the recognition will damage relations between states and

363First of all, it is not clear whether any such case could be brought before the European Court of Human Rights because of the jurisdiction *ratione temporis*, since the Armenian genocide occurred long before the Convention entered into force and long before Turkey joined the Convention. The *ratione temporis* obstacle could be perhaps be challenged by arguing that the Armenian genocide resulted in a “continuing situation”, i.e. that the Turkish government continues the genocidal policies of the Ottoman Empire by destroying or allowing to decay the cultural heritage of Armenians (churches, monasteries, etc.). However, in any case, it is hard to see how Turkey’s recognition of the genocide would change the prospects of success for such a case.

364See “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,” The International Center for Transitional Justice, February 2003, accessible at <<http://www.ictj.org/en/news/pubs/index.html>> (last accessed on January 10, 2007).

365In an interview to CNN-TÜRK in 2001, President of Armenia Robert Kocharian admitted that “Genocide recognition does not create the legal bases to allow Armenia to present certain demands before Turkey. <...> It’s not that we don’t have legal bases because we don’t have documentation to prove whether the Genocide happened or not. <...> That’s not the problem. The problem is that those events have taken place in Turkey, and the Republic of Armenia did not exist at that time, and today’s Republic of Armenia is not the heir to those lands.” See “President Robert Kocharian’s Interview CNN-Türk,” January 29, 2001, accessible at <<http://news.president.am/>> (last accessed on September 15, 2007).

worsen security situation, as well as mentioned the activities of the Armenian terrorists. For example, the parliament's declaration issued in response to the French parliament's recognition of the genocide in 2001 emphasized that this decision was contrary to the interests of international peace and security; Minister of Foreign Affairs İsmail Cem stated that the decision would encourage Armenian terrorism and that France must assume responsibility for the safety of Turkish nationals residing in France; and the National Security Council declared that the decision would disrupt both Turkish-French relations and the stability and security of the region.³⁶⁶

5.2.4.1. “Leave history to historians”

In addition to framing the recognition of the Armenian genocide as a matter of bilateral diplomatic relations and regional/global security, consistent attempts have been made by Turkey to present the issue as outside the scope of “normal” relations between states. The one consistent theme that has emerged in official Turkish discourse in this regard was that history does not belong to politics. When Turkish President Ahmet Necdet Sezer first suggested leaving history to historians while speaking at the United Nations forum in 2000, he was chastised by the media at home for taking a weak stance against the “Armenian allegations”. However, since the relatively moderate and Europe-oriented Justice and Development Party came into power in 2003 this approach has resulted in a consistent policy. In April 2005, Prime Minister Tayyip Erdoğan sent a letter to the President of Armenia, inviting Armenia “to establish a joint group consisting of historians and other experts”, which could “shed light on a disputed period of history and also constitute a step towards contributing to the normalization of relations between our countries”.³⁶⁷ In contrast to the previous abortive civic attempt of the Turkish-

³⁶⁶The texts of the declarations are available in Turkish at <<http://www.belgenet.com/arsiv.html>> (last accessed on November 10, 2010).

³⁶⁷The text of this letter is available at <<http://www.turkishembassy.org>> (last accessed on January 8, 2007). Initially the letter was not answered by Armenian President R. Kocharian and rejected by the parties in the ruling coalition in

Armenian Reconciliation Commission, which was established in 2001 and decisively rejected by the Armenian diaspora around the world, this initiative is based on the idea that the governments of both countries would place the resolution of the issue into the hands of historians and subsequently accept their conclusions.³⁶⁸ In 2006, in reaction to the passage of the French bill, Turkey's chief negotiator in EU accession talks Ali Babacan insisted: "Leave history to historians".³⁶⁹ In 2009, the Consulate General of Turkey in Australia responded to the recognition of the genocide by the South Australian Parliament by claiming that "politicians can not and should not try to write history, particularly the history of countries and nations on the other side of the world and events nearly a century ago".³⁷⁰ In October 2009, the Armenian and Turkish governments agreed to set up a joint commission, the tasks of which would include "impartial scientific examination of historical documents and archives".³⁷¹ In 2010, the Ministry of Foreign Affairs reacted to President Barack Obama's statement on the Armenian Commemoration Day on April 24 by arguing that "the common history of the Turkish and Armenian nations has to be assessed solely through impartial and scientific data and historians must make their evaluations only on this basis."³⁷² Prime Minister Erdoğan fumed at the Armenian resolution passed by the Swedish parliament in 2010, recalling Turkey's ambassador for consultations and canceling a scheduled visit: "we will not give credit to those who fail to leave history to historians and those who

Armenia. As one member of the Armenian Revolutionary Federation succinctly commented, "It's not a bazaar". Quoted in Nursun Erel, "Senior ARF Party Official Giro Manoyan speaks to TNA: 'The perfect plan would be the Treaty of Sevres'," *The New Anatolian*, December 11, 2006, accessible at <<http://www.thenewanatolian.com/tna-19539.html>> (last accessed on January 10, 2007).

368On the activities of TARC, see *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation* (New York; Oxford: Berghahn Books, 2005) by David Phillips, who was the moderator of the commission. While Phillips contends that the commission was a success, its only significant act was to request the International Center for Transitional Justice to conduct a study on the Armenian Genocide before it stopped its activities in April 2004.

369Quoted in "French in Armenia 'genocide' row," *BBC News*, October 12, 2006, accessible at <<http://news.bbc.co.uk/2/hi/europe/6043730.stm>> (last accessed on January 7, 2006).

370"Press release regarding the motion passed on April 30th, 2009 by the South Australian Parliament", accessible at <<http://www.sydney.cg.mfa.gov.tr/ShowAnnouncement.aspx?ID=941>> (last accessed on November 10, 2010).

371However, Armenian President S. Sargsyan noted that the recognition of the Armenian Genocide would be a precondition and not an object of investigation for such a commission. See "Armenian President Says History Panel With Turkey Makes 'No Sense'," *Radio Free Europe*, April 7, 2010, accessible at <<http://www.rferl.org>> (last accessed on April 8, 2010).

372Press Release No.58 of 25 April 2009 Regarding the Statement of President Barack Obama on "Armenian Remembrance Day," accessible at <<http://www.mfa.gov.tr>> (last accessed on November 10, 2010).

refrain from archival documents and try to offend Turkey with tricks”³⁷³.

On the one hand, the policy adopted by Turkey represents an attempt to demote the issue from international arena to bilateral relations with Armenia, where Turkey has more political and economic leverage to control the outcomes, and to the less visible realm of the academia, where lengthy and complex discussions would blunt any calls for political action. On the other hand, the approach taken by Turkey is not only consistently Westphalian – where does the politics of history fit within the traditional division of high and low politics? – but also has an intrinsic appeal. After all, politicians and other laymen are rarely in position to pass a well-informed judgment on events that took place such a long time ago. The historian has the skills to identify and analyze primary sources and make educated guesses about past events. Thus, the historian can be expected to be far-better equipped to tell “what really happened.” Furthermore, it is usually expected that the historian’s analysis will be guided by the pursuit of truth, rather than political interests.

The discussion above shows that material interests are not sufficient to explain the positions taken and the policies adopted with regard to the Armenian genocide by at least three of the four parties. Even assuming that the diaspora campaign for the international recognition of the Armenian genocide is driven by expectations of material redress, the behavior of Armenia, Turkey and third states appears to be contrary to their material interests. Therefore the following section of the chapter will examine the issue in substance, analyzing how different interpretations of history, i.e. particular constructions of national identity, shape the perception of interests and thus result in different policy outcomes.

³⁷³Quoted in “Erdogan calls Sweden's so called “Armenian genocide” vote “inconsiderate”” at <http://www.historyoftruth.com/news/latest/6048-erdogan-calls-swedens-so-called-qarmenian-genocideq-vote-qinconsiderateq> (last accessed on April 8, 2010).

5.3 Competing historical narratives

In terms of the interpretation of the historical events of the Armenian genocide there are essentially two camps – one that denies that the Ottoman Empire under the rule of the Young Turks perpetrated a genocide against its Armenian subjects, and one that affirms the occurrence of genocide. In the first camp we find the Turkish state and those Turkish as well as a number of American historians who either doubt that the genocide took place or question the appropriateness of the term “genocide” to describe the events in question.³⁷⁴ The genocide “thesis” is supported by the Armenian state, the Armenian diaspora organizations, international organizations, as well as most historians working on the subject.³⁷⁵

The general outlines of the narratives about the events in the Ottoman Empire during the First World War put forward by the Armenians on the one side and the Turks on the other are fairly well known. According to the official Turkish version, the Empire’s entry into the war was exploited by the Armenian nationalists who joined the Russian forces advancing into the Ottoman territory, as well as conducted well-coordinated guerrilla warfare by “savagely attacking Turkish cities, towns and villages in the East; massacring their inhabitants without mercy, while at the same time working to sabotage the Ottoman army’s war effort by destroying roads and bridges, raiding caravans, and doing whatever else they could to ease the Russian occupation” in order to fulfill their aspiration to an independent state.³⁷⁶

Thus, the leadership of the Committee of Union and Progress (CUP), which was then in power in the

³⁷⁴See, for example, G. Lewy, *The Armenian Massacres in Ottoman Turkey: A Disputed Genocide* (Utah: University of Utah Press, 2005); S. J. Shaw, *History of the Ottoman Empire and Modern Turkey*, vol. 1&2 (Cambridge: Cambridge University Press, 1976-77); J. McCarthy and C. McCarthy, *Turks and Armenians: A Manual on the Armenian Question* (Washington, D.C.: Assembly of Turkish American Associations, 1989).

³⁷⁵V. Dadrian, R. Hovannisian, D. Bloxham and P. Balakian are perhaps the foremost and the most influential scholars of the Armenian genocide. However, the literature on the Armenian genocide is vast. H. Vassilian’s *The Armenian Genocide: A Comprehensive Bibliography and Library Resource Guide* (Glendale: Armenian Reference Books Co., 1992), lists nearly 400 books in English alone, while the Armenian Research Center at the University of Michigan boasts over 2300 library items (books, articles, newspaper commentaries, VHS tapes etc.) on the Armenian genocide.

³⁷⁶“10 Questions, 10 Answers,” publication prepared by the Ministry of Foreign Affairs of Turkey, accessible at <<http://www.mfa.gov.tr/MFA/Publications/MFAPublications/ArmenianAllegations/>> (last accessed on January 10, 2007).

Ottoman Empire, decided to relocate the rebellious and dangerous Armenian population from those areas where it may adversely affect the course of war with Russia. The relocation was well-intended although poorly executed because of the large-scale plague and famine resulting from the severe war-time shortages of food and medicine and compounded by the government's inability to establish control and maintain order in the region. Thus, according to the official version, "certainly some lives were lost, as the result both of large scale military and bandit activities then going on in the areas through which they passed, as well as the general insecurity and blood feuds which some tribal forces sought to carry out as the caravans passed through their territories."³⁷⁷ In other words, the relative weakness of the central government resulted in a failure to prevent inter-communal clashes but there was not any plan or intention to exterminate the Armenians. The accusations of systematic large-scale massacres voiced by the European powers at the time were merely part of war-time propaganda, colored by religious bias.

Conversely, according to the official Armenian story supported by the majority of Western historians in its general thrust, although not necessarily in particular details, the relocation was just a smoke-screen for the massacres of the Armenians. The systematic nature of the massacres, the formation of special "death squads", the involvement of local officials, the replacement of those officials who refused to execute "relocation" orders, as well as the lack of any preparations to shelter the "relocated" Armenians indicate that the central government aimed to exterminate the Armenians, thereby clearing the path for its pan-Turanian goals.³⁷⁸

Perhaps the major factual disagreement between the two camps concerns the number of the Armenians who lived in the Ottoman Empire before the First World War and the number who perished

³⁷⁷Ibid.

³⁷⁸See, for example, section "Armenian genocide: Responding to Turkish Denial" on the website of the Ministry of Foreign Affairs of Armenia, prepared on the basis of V. N. Dadrian's *The Key Elements in the Turkish Denial of the Armenian Genocide: A Case Study of Distortion and Falsification* (Cambridge, Mass.: Zoryan Institute, 1999), accessible at <<http://www.armeniaforeignministry.com/fr/genocide/dadrian/book/index.html>> (last accessed on January 10, 2007).

in and around 1915. Pro-Turkish scholars usually favor the Ottoman census, which registered 1,294,851 Armenian subjects in 1914, while pro-Armenian historians rely on foreign sources (estimations produced by foreign missions in the Ottoman Empire, travelers, religious missionaries, historians) and the statistical data of the Armenian Patriarchate, which set the number of Armenians anywhere between 1,5 and 3 millions.³⁷⁹ While the sources used by both sides may be equally unreliable (the Ottoman census – due to its method and tax evasion, while the foreign sources – due to contemporary political and religious bias of those who collected data, war-time propaganda etc.), these calculations are significant in that they prepare grounds for the discussion of the scale of atrocities that took place later. Depending on these estimations, the number of the Armenians who perished in the Ottoman Empire in and around 1915 ranges between 300,000 (the Turkish figure) and 2,000,000 (the top Armenian figure). Obviously, the death of 2 million or even 1.5 million of Armenians (the number habitually stated in the resolutions of parliaments around the world) would be impossible if one trusted the Ottoman census.

5.3.1 Disagreement over the legal characterization of the events of 1915

However, while the exact number of the Armenians living in the eastern provinces of the Ottoman Empire or their proportion to the Muslim population at the time is debated, it is agreed by all parties that by the end of the First World War there remained almost none. Was it a genocide or a disastrous policy decision under the conditions of a civil war? This is not merely a question of a more accurate description of the fate that befell the Armenians – the term genocide is at the core of the disagreement. The growing international pressure on Turkey, which was described in the previous

³⁷⁹See, for example, S. Shaw, “The Ottoman Census System and Population, 1831-1914,” *International Journal of Middle East Studies* 9, 3 (1978): 325-38.

section, does not seek that Turkey acknowledges the loss of Armenian lives in the deportations and massacres during the First World War but that it accepts the characterization of these events as a genocide.

Within the meaning of the 1948 Genocide Convention, genocide refers to (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the groups; e) forcibly transferring children of the group to another group”, if any of these acts are committed “with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such”. From the legal point of view, it does not matter if the number of victims was thousands or millions. The convention does not specify the number of the group’s members or the proportion of the group that is required for a crime to qualify as genocide, although in the opinion of some legal experts the scale of destruction may prove genocidal intent.³⁸⁰ Therefore, of the three elements of the legal definition of genocide (destruction, specific characteristics of a target group, and intent), genocidal intent is key in proving that the atrocities perpetrated against the Armenians was indeed a genocide. And since no authentic document has been found to show an explicit order from Istanbul ordering the mass murders of the Armenians, the analysis of events in and around 1915 becomes crucial in providing evidence for or against the existence of genocidal intent.

³⁸⁰For example, the 1985 Whitaker Report on Genocide suggests that “the relative proportionate scale of the actual or attempted destruction of a group by any of the means listed in Articles II and III of the Convention, is certainly strong evidence to prove the necessary intent to destroy a group, in whole or in part”. See B. Whitaker, *Revised and updated report on the question of the prevention and punishment of crime of genocide*, UN Doc. E/CN.4/Sub.2/1985/6, July 2, 1985, 16.

5.3.2 Disagreement over the genocidal intent

Historical studies that address the question of whether or not a genocidal intent can be discerned in the Ottoman government's decision to relocate the Armenian population generally agree upon which events and episodes are relevant for investigation. While it is neither possible nor necessary for our purposes to review or appraise the voluminous historical scholarship on the issue, it is worth taking a brief look at two of the most important studies in order to illustrate the nature of the debate taking place between the pro-Armenian and pro-Turkish camps.

First published in 1995, Vahakn Dadrian's *The History of the Armenian Genocide* was immediately hailed as "without doubt the most important work ever done on this subject", while Kamuran Gürün's *The Armenian File* stands out from a number of similar publications issued or supported by the Turkish Historical Society by virtue of its scholarly quality.³⁸¹ Dadrian's *The History* aims to put the Armenian genocide in comparative perspective and belongs to the increasingly rare class of historical works that purport to generalize history and "draw lessons" for today's world. In contrast, former ambassador's Gürün's work has a less ambitious aim "to address the general reader." In many ways, however, these two works may be regarded as representative of the respective official positions of Turkey and Armenia with regard to the Armenian genocide and are frequently cited as secondary sources by other scholars.

Both authors start with the discussion of the events before the First World War – the Sason uprising (rebellion) of 1894, the Zeitun uprising (rebellion) of 1895-96, the conflagration (rebellion) of Van in 1896, and the Adana massacres (incident) in 1909. If there is agreement between them over the significance of these events in relation to the subsequent fate of the Armenians, there could not be any

³⁸¹V. N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, 6th rev. ed. (New York: Berghahn Books, 2003), and K. Gürün, *The Armenian File: The Myth of Innocence Exposed* (Istanbul: Rüstem, 2001), first published in Turkish in 1983.

greater divergence in the interpretation of their cause and their meaning.³⁸² For Dadrian, the uprisings of the Abdul Hamit's era were caused by the abuses of the regime and "established a radical means of resolving conflict, as well as the cultural attitudes that produced genocide", while the Adana "holocaust" was a "rehearsal for the genocide".³⁸³ According to Gürün, the rebellions during the Abdul Hamit's period were provoked by the criminal and incendiary activities of the Armenian revolutionaries, who were encouraged by the imperialist schemes of the British and the Russians, and the government merely reacted. The Adana incident "appears as a case in which Armenians were responsible in so far as they engaged in provocation until it erupted, and the local government was responsible in that it was unable to control it once it happened".³⁸⁴

In their discussion of the events that took place in the Ottoman Empire during the First World War, Dadrian and Gürün follow closely the official narrative frameworks, the rough outlines of which have been presented above. Again, the authors are largely in agreement over which events took place and which facts matter and offer a diametrically opposed interpretation of these events and facts. Thus, for example, Dadrian claims that some 2,345 Armenian political and community leaders were arrested on April 24, 1915, which is today commemorated as the beginning of the Armenian genocide, and executed subsequently, aiming to weaken Armenian community.³⁸⁵ For Gürün, the arrest of 235 ringleaders of Armenian political parties, chiefly responsible for the inciting disobedience and violence in the Empire strained by the war, marked the beginning of the government's attempt to take control of the situation. According to him, the full extent of the seriousness of the situation was demonstrated by Van rebellion in April of 1915, which resulted in the Russian occupation of the city, as well as the

382It must be noted that there are factual disagreements over the number of Armenian victims. Dadrian claims that approximately 200,000 Armenians were killed in 1894-96, while Gürün finds that a total of 20,000 Armenians were killed, balanced by an equal number of Muslims. The figures given for Adana massacres are more similar: Dadrian estimates 25,000, while Gürün calculates 17,000 of Armenians and 1,850 of Muslims killed.

383Dadrian, 181-183.

384Gürün, 169-170.

385Dadrian, 221.

concurrent rebellions of Zeitun and Muş: “every inch of the country was filled with [Armenian] deserters; every part was subject to the attacks of brigands”.³⁸⁶ Meanwhile, Dadrian claims that there were only “sporadic acts of sabotage by individuals and groups of Armenians” provoked by the widespread governmental harassment”.³⁸⁷ The uprisings mentioned by Gürün were “local, very limited, and above all, highly defensive initiatives” that should be seen as “improvised last-ditch attempts to ward off imminent deportation and destruction”.³⁸⁸

Finally, the third distinctive period that both authors find relevant to the historical analysis of the Armenian genocide and incorporate into their narratives consists of the years between the end of the First World War and the founding of the Turkish Republic. The main focus here is on the British attempts to punish Turkish officials for war crimes in 1919; the legal efforts to prosecute Turkish military and government officials in domestic courts in 1918-1921; the Treaty of Sèvres, which was signed between the Entente and the Ottoman Empire in 1920 and provided for an establishment of an independent Armenian state on part of the former territories of the Empire; and the Turkish-Armenian war in 1920. In Dadrian’s account, the attempts at international and domestic trials are represented as a regrettable failure of the international community to seek and establish justice, while the Turkish-Armenian war – an unmistakable continuation of the genocidal policies, indeed, a “miniature genocide”.³⁸⁹ According to Gürün, the trial in Istanbul was the product of the British pressure, as well as attempts by local political actors to get rid of powerful opponents, while the failure to set up an international or British tribunal for suspected Turkish war criminals detained in Malta merely showed the absence of any serious evidence.³⁹⁰

³⁸⁶Gürün, 202.

³⁸⁷Dadrian, 221.

³⁸⁸Dadrian, “The Signal Facts Surrounding the Armenian Genocide and the Turkish Denial Syndrome,” *Journal of Genocide Research* 5, 2 (2003): 276.

³⁸⁹On the post war trials, see chapters 17-18 in Dadrian’s *The History of the Armenian Genocide*.

³⁹⁰Gürün, 232-240. The Malta detainees question attracted relatively substantial attention in Turkish historiography and much has been made of the fact that the British were unable or unwilling to obtain evidence necessary for the trial – see, for example, B. N. Şimşir, *The Deportees of Malta and the Armenian Question* (Ankara: Foreign Policy Institute, 1984).

5.3.3 Incompatibility of the legal frames of reference in historical narratives

Several observations can be made from the illustration above. First, due to the explicit or implicit but always discernible focus on the absence or presence of *mens rea* in the actions of the Ottoman government, the study of the Armenian genocide often translates into something similar to the collection of forensic evidence in pretrial investigations. Events leading up to 1915 are analyzed as establishing the character of the regime suspected of the crime of genocide, where pro-Turkish historians are acting as the defense and pro-Armenian historians as the prosecution. Michael Mann suggests that the pro-Armenian scholars often tend to project the genocidal policies of 1915 backwards and find coherence and purpose behind the unfolding of events, which were perhaps lacking at the time of their occurrence.³⁹¹ While it may be argued that any emplotment of events necessarily contains a certain degree of reading backwards and filling in of the gaps to create a coherent historical narrative, this practice makes all the more sense at the juncture of history and law and may be expressed in legal terms as “establishing a criminal record”. A long criminal record reduces the odds that a crime was (the result of) an accident. In this context, the consistent theme of “impunity” for Ottoman crimes that runs through Dadrian’s narrative and connects the peace-time Ottoman actions in the Abdul Hamit’s era to the war-time treatment of the Armenians by the Young Turk regime is aimed to strengthen the prosecution’s case.³⁹² In a similar vein, most discussions of the Armenian genocide by the “prosecution” do not fail to mention that the Armenians lived in the area for more than 3000 years and list the systematic abuses inflicted on the Armenians upon the subsequent arrival of the Turks, while the

391See chapters 5 and 6 in M. Mann's *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005), which provide one the most impartial treatments of the subject.

392Dadrian makes this connection even more explicit in his over works, arguing, that “irrespective of apparent or purported major differences between the two regimes, the Sultan’s and that of the Young Turks, the historical record of the consequences of the series of their lethal acts of repression attests to a cardinal fact, namely, the two regimes converge in the development of a continuum of a policy of elimination targeting the Armenian population of the Empire”. Quoted in Dadrian, “The Signal Facts Surrounding the Armenian Genocide,” 271.

“defense” puts heavy emphasis on the exceptional level of religious tolerance in the Ottoman Empire throughout the centuries and the privileged position of the Armenian minority before the First World War.

Second, the “prosecution” and the “defense” are appealing to different sets of laws. It is important to note that the argument advanced by the pro-Turkish camp usually relies on the traditional understanding of international law and state responsibility. More specifically, the legal doctrine of the state of necessity is often explicitly invoked and almost always implied in the discussion of the treatment of the Armenians by the Ottoman Empire during the First World War. The basic idea encapsulated in this doctrine is very similar to the idea behind the right of self-defense found in the criminal codes of most countries: the state is permitted to suspend the rule of law and derogate from its international obligations under certain extraordinary situations that pose a fundamental threat to the state.³⁹³ Gürün and, generally, the official Turkish narrative present the deportations of the Armenians as justified under the circumstances of war and in the context of the rapid disintegration of the Ottoman Empire (the empire lost 80% of its territory and 75% of its population between 1878 and 1916) and argue that, in the aftermath of the disastrous Battle of Sarıkamış, the activities of the Armenian rebels and their collaboration with the advancing Russians put the very existence of the empire in question.³⁹⁴ Thus, for example, Gürün argues that “every country, during war, sends citizens of the enemy within its borders to concentration camps” and that “during war, the first obligation of the State is to protect the country, and this means to struggle with the enemies of the country according to the rules of war.”³⁹⁵ According to Gürün, the deportations should be seen as a relatively benign treatment of the Armenians, who had betrayed the country at the time of war. In contrast, the Armenian narrative generally tends to

³⁹³On the doctrine of necessity, see P. Weidenbaum, “Necessity in International Law,” *Transactions of the Grotius Society* 24 (1938): 105-132.

³⁹⁴The Battle of Sarıkamış took place between December 29, 1914 and January 4, 1915 and resulted in the total annihilation of the Ottoman forces on the Caucasus front – the estimates of the Ottoman losses range from 175,000 dead out of an army of 190,000 to 60,000 dead out of an army of 90,000.

³⁹⁵Gürün, 203.

downplay the fact that the Ottoman Empire was at war and focus on the gross abuses inflicted upon the Armenians and the Armenian community in general. Dadrian's view that the Ottoman Empire entered the war in order to be able to exterminate the Armenians may be regarded as an extreme example of this tendency. The Armenian historical narrative capitalizes on the preeminence of the contemporary human rights discourse, extrapolating the existence of the human rights norms from the statements of protest and condemnation made by the Western governments at the time of the Armenian genocide.

5.3.4 Different strategies of emplotment

The final observation that can be made about the debate between the pro-Armenian and pro-Turkish historians, as represented by Gürün and Dadrian here, is that historical facts, i.e. raw facts, are often not even contested because as such they are meaningless.³⁹⁶ Dadrian and Gürün construct their stories upon the same historical events to arrive at completely different and mutually exclusive interpretations. It must be noted that, naturally, the fact that there may be more than one interpretation of events says nothing about their validity or scholarly quality. Clearly, there are differences between the selection and the doctoring of evidence, between an interpretation that is influenced and one that is guided by the historian's political views. In this context, it is worth quoting at length Richard J. Evans, who acted as counsel in the notorious case of the Holocaust-denier David Irving in 2000:

Reputable and professional historians do not suppress parts of quotations from documents that go against their own case, but take them into account and if necessary amend their own case accordingly. ... They do not invent ingenious but implausible and utterly unsupported reasons for distrusting genuine documents because these documents run counter their arguments... They do not eagerly seek out the highest possible figures in a series of statistics, independently of their reliability or otherwise, simply because they want for whatever reason to maximize the figure in question. ... They do not willfully invent words, phrases, quotations, incidents, and events for which there is no historical evidence to make their arguments for plausible to the readers.³⁹⁷

³⁹⁶For an interesting discussion of the role of courts in interpreting the "raw facts" of the history of the Armenian genocide, see M. Nishanian, "The Truth of the Facts: About the New Revisionism," in *Remembrance and Denial: The Case of the Armenian Genocide*, ed. R. G. Hovannisian (Detroit: Wayne State University Press, 1998), 249-271.

³⁹⁷R. J. Evans, *Lying about Hitler: History, Holocaust, and the David Irving Trial* (New York: Basic Books, 2001), 250.

There are good reasons to doubt whether the history of the Armenian genocide has always been written by reputable historians in the sense of Evans' definition.³⁹⁸ However, what seems to be clear is that a joint commission of Armenian and Turkish historians could hardly lead to the discovery of new facts or an impartial view of the known facts.³⁹⁹ While pro-Turkish and pro-Armenian historians do tend to rely on different sets of sources, the major area of disagreement is not the facts but their emplotment.

If the Armenian narrative is unmistakably tragic, focusing on the persecution and extermination of the Armenians in the Ottoman Empire and their expulsion from their ancestral lands, the Turkish narrative subsumes the Armenian tragedy under the larger romantic story of the country's life-and-death struggle against the partition of the Ottoman empire by the European imperialist powers, focusing on the affairs of the state and the "war of rejuvenation", in the course of which the current Republic was born. The romantic view towards the history of the period makes the Armenian claims about the genocide dissonant or simply unbelievable in Turkey. In this regard, statements by Prime Minister Erdoğan are representative of the general Turkish stance towards the issue.⁴⁰⁰ As Erdoğan said on the 95th anniversary of the Dardanelles naval victory on 18 March 2010:

Let me strongly emphasize: this country's soldiers are so great that they are larger than history and the history of this country is so pure, glorious and magnificent that such a bright truth cannot be distorted by [foreign] parliaments. . . . Such unjust decisions and irresponsible explanations that are advanced in countries that pester Turkey do not mean anything more than defaming a nation that should be given an apology. Countries that cause millions of people to die in world wars should reevaluate their own conceptions, actions, wrongdoings and should not make the mistake of slandering an oppressed and innocent nation that was only doing self-defense. . . . In our civilization, there is no killing, slaughtering, or genocide. Our civilization is that of love, tolerance and brotherhood.⁴⁰¹

398 Accusations of doctoring, falsifying or forging documents are frequently heard from both "camps". See for example T. Akçam, "Anatomy of a Crime: The Turkish Historical Society's Manipulation of Archival Documents," *Journal of Genocide Research* 7, 2 (2005): 255–277, and T. Ataöv, *Documents on the Armenian Question: Forged and Authentic* (Ankara: Barok Ofset, 1985).

399 Such commissions have been established with varying degrees of success in other countries, e.g. the German-Czech Historians Commission over the controversial subject of the expulsion of the Sudeten Germans, the intergovernmental of Ukrainian and Russian historians to investigate the 1932–33 famine, the various historical commissions for restitution of Jewish property, as well as the growing number of truth commissions in the aftermath of civil wars or conflicts.

400 See for example, "Erdoğan Ermeni açılımına kapalı: 'Benim ecdadım soykırım yapmaz,'" [Erdoğan is reserved about the Armenian opening: 'My ancestors would not commit genocide'] *Radikal*, December 8, 2009, accessible at <<http://www.radikal.com.tr>> (last accessed on December 8, 2009).

401 The full text of the speech is available in Turkish at the website of the Justice and Development Party - "Başbakan Erdoğan: 'Tarih Parlamentolarda Yazılmamalı,'" [Prime Minister Erdoğan: Parliaments should not write history],

While Turkish historians and politicians often point out that a great number of Muslim lives were lost as well in the nineteenth and early twentieth century as a result of ethnic cleansing in the Balkans, the First World War and the inter-communal strife in the eastern provinces, the real trauma is not the loss of individual lives but the loss of territories and the potential loss of the state. As many authors noted, the state-centered emplotment of the events of the period gave rise to the so-called Sèvres syndrome in Turkey, the belief that Turkey is encircled by enemies on all sides and beset by internal traitors who seek to weaken and divide the country.⁴⁰² This belief shaped Turkey's foreign policy and security culture, making the values of territorial integrity and non-interference of paramount importance, as well as influenced the way in which domestic problems, such as the Kurdish issue, are conceptualized and addressed.⁴⁰³ The key role assigned to the narrative of the Independence War in the construction of contemporary Turkish identity fueled the myth of Turkey as a military-nation, where Turkish military is synonymous with Turkish national identity, which has had a profound impact on the evolution of civil-military relations in particular and the democratic development of the country in general.⁴⁰⁴ In other words, much of Turkey's contemporary foreign and domestic policies, as well as domestic power configurations, are built on the foundational narrative of the Independence War.

Turkey's refusal to recognize the Armenian genocide originates but also reinforces Turkey's identity as a peaceful and benevolent state and a tolerant nation, which unlike many European states

accessible at <<http://www.akparti.org.tr>> (last accessed on April 8, 2010).

402The Treaty of Sèvres (1920) was the peace treaty between the Ottoman Empire and the Allies at the end of the World War I, whereby the Allies essentially divided the Empire's territories among themselves. The treaty was never ratified by the Ottoman Empire and was superseded by the Treaty of Lausanne (1923) as a consequence of the military success of the Turkish War of Independence. On the Sèvres Syndrome, see Dietrich Jung, "The Sèvres Syndrome: Turkish Foreign Policy and its Historical Legacies", in *Oil and Water: Co-Operative Security in the Persian Gulf*, ed. Bjorn Moller (London: I.B. Tauris Publishers, 2001): 131-159; Dietrich Jung and Wolfango Piccoli, *Turkey at the Crossroads: Ottoman Legacies and A Greater Middle East* (London: Zed Books, 2001), 115-118.

403On Turkey's security culture, see M. Aydın, "Securitization of History and Geography: Understanding of Security in Turkey," *Southeast European and Black Sea Studies* 3, 2 (2003): 163-184; M. Mufti, "Daring and Caution in Turkish Foreign Policy," *Middle East Journal* 52, 1 (1998): 32-50.

404A. G. Altınay, *The Myth of the Military Nation: Militarism, Gender, and Education in Turkey* (New York: Palgrave Macmillan, 2004).

was never involved in colonialism and did not oppress its religious minorities, much less committed a genocide. The romantic view toward the Turkish history is fairly standard in Turkish historiography and its echoes can frequently be heard in the public discourse. For example, in his book *Turkey in Europe and Europe in Turkey*, which can be read as a detailed manifesto on how Turkey sees itself and wishes to be seen by others, President Turgut Özal argues that the Turks were welcomed by the various peoples inhabiting Anatolia, rather than conquered it, because of their synthesizing, ecumenical approach, uniting the different communities in tolerance; that the Ottomans did not initiate but were rather drawn into the wars of the other great European powers; that the “colossally unjust” Sevres Treaty, which left to the Turks “only a remnant of territory on which it would have been difficult to establish even the shadow of a state”, dealt a death-blow to the Turkish nation and yet the hopelessness of the situation “only rendered the struggle more heroic, and its leader more valiant”; and, finally, that the “anachronistic question” of the genocide was a projection of Europe's own suppressed feelings of hatred towards ethnic subgroups and foreign workers.⁴⁰⁵ While Özal is distinctive in that he placed a special emphasis on Turkey's contribution to and links with the European civilization, the themes of exceptional tolerance and peacefulness, as well as the heroism and self-sacrifice of the Turkish nation in the face of injustices are deeply etched in Turkey's identity narrative.

Since a historical apology for the Armenian genocide would require incorporating the Armenian perspective and a revision of the Turkish narrative, the international demands for Turkey to “come to terms with its history” become an ontological security issue. Turkey's official recognition of the Armenian genocide would necessitate a reappraisal of the role of the state and the military and cast a shadow on both the last days of the Ottoman Empire and the early days of the Republic, for the Committee of Union and Progress was not an aberration but a bridge between the Empire and the

⁴⁰⁵Turgut Özal was Prime Minister of Turkey from 1983 to 1989 and President of Turkey from 1989 to 1993. See T. Özal, *Turkey in Europe and Europe in Turkey* (Nicosia: K. Rustem and Brothers, 1991), 259-260, 303.

Republic.⁴⁰⁶ Neither the intervention by the Western powers, nor the population exchanges resulting from the Treaty of Lausanne, nor the Kurdish problem, including its contemporary manifestations, would appear in the same light in the narrative reconfigured around the recognition of the genocide and its implications. In short, a genuine historical apology would require a major revision of the history of Turkey with profound and potentially uncontrollable effects on the construction of national identity and national politics, and as such is unacceptable.

5.4 Armenian genocide and international norms

The disagreement over the legal characterization of events a century ago, however horrible these events may have been, would likely remain an issue for historians and other scholars and it would not become a source of ontological insecurity for the Turkish state without the growing pressure of the international community, which presents a challenge to Turkey's self-narrative and self-understanding that is increasingly difficult to ignore. Turkey could dismiss the claims of the Armenian diaspora as biased and tainted with terrorist activities, bereft of practical consequences to high politics and the solution of the pressing issues of the day. Turkey has sufficient means at its disposal to manage the small, impoverished and isolated neighboring state of Armenia. However, the repeated challenges to its self-image as a tolerant nation-state from European countries and the United States, as well as a multitude of transnational actors necessitate a response and that response has so far failed to resolve the issue.

This leads us to the second question of this chapter – why can't the other states and transnational

⁴⁰⁶As E. J. Zürcher argues, there was political, ideological and economical continuity between the Empire and the Republic, while many aspects of Kemalist ideology, which included positivism, militarism, nationalism and a state-centered worldview, were shared with the Young Turks. See E. J. Zürcher, *The Young Turk Legacy and Nation Building From the Ottoman Empire to Atatürk's Turkey* (I.B. Tauris, 2010).

actors leave history to historians? If the importance of the Armenian genocide to the identity of the Armenian state, the Armenian diaspora, and the Turkish state can account for the controversy surrounding the interpretation of the events that took place a century ago, what reasons, other than the material interests which in most cases cannot be identified, could explain the involvement of the third states and other international actors? In other words, what is the significance of both demands for historical apologies and refusals to apologize to the world society? The last section of the chapter will provide an examination of the reasons for the involvement of the international community.

In Turkey, the declarations of recognition by other states are typically explained in terms of their domestic politics (populist strategies to gain votes) and the widespread racist and anti-Turkish sentiments among their populations. While domestic politics may play a role in countries with large Armenian populations (France, Russia, the U.S.), it is not sufficient to explain the decisions taken in countries where the Armenians are few. Reducing the recognition to domestic politics ignores both the stated reasons of the actors themselves and the larger normative climate in which those reasons take shape. A fuller view of the phenomenon of recognition requires appreciation of the centrality of the norm prohibiting genocide in the post-Cold War international normative system, as well as the success of the Armenian diaspora's attempts to link the Armenian genocide to the Holocaust, *the* genocide of the twentieth century, which in the West came to symbolize radical evil and the denial of which is now prohibited in many countries in Europe.

5.4.1 The doctrine of necessity

First of all, it should be noted that the doctrine of necessity implied in standard pro-Turkish accounts of the relocation of the Armenian population in the Ottoman Empire is at odds with the

current thinking in human rights law. The doctrine of necessity (and its domestic counterpart – the state of emergency) is tightly connected to the idea of sovereignty as the source of the legal order.⁴⁰⁷ According to the doctrine, the state has the right to temporarily suspend the legal order in order to preserve it. In contrast, the human rights law tends to project the definition of legal order as being outside the purview of any particular state and is therefore in conflict with the doctrine of state sovereignty.⁴⁰⁸ Article 15 of the European Convention on Human Rights (1950) and Article 4 of the International Covenant on Civil and Political Rights (1966) provide for the derogation from the obligations to protect human rights set forth in these instruments under the circumstances of “threat to the life of the nation”. However, while the description of the circumstances is rather ambiguous and permissive, the idea of basic, non-derogable human rights (e.g., the right to life, the prohibition on torture, the freedom of religion) has already been firmly embedded in both international human rights law and the constitutional law of many signatories to the Universal Declaration of Human Rights (1948).⁴⁰⁹ If we weighed the right of a state to self-preservation as part of the “fundamental rights” of states and the inalienable (non-derogable) basic human rights, the scale would presently be tilted towards the rights of individuals in most Western countries. Thus, even without characterizing the events in the 1915 as a genocide, the idea that the state is entitled to ethnic cleansing for security purposes is unacceptable in the current normative framework.

407See G. Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005). For an introductory discussion of the conflict between human rights and state sovereignty, see J. Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003), 108-127, 242-258.

408There have been attempts to redefine the meaning of the doctrine and restrict its use in situations where human rights are involved – see R. Boed, “State of Necessity as a Justification for Internationally Wrongful Conduct,” *Yale Human Rights & Development Law Journal* 3, 1 (2000): 4-12.

409See, for example, R. B. Lillich, “The Paris Minimum Standards of Human Rights Norms in a State of Emergency,” *The American Journal of International Law* 79, 4. (1985): 1072-1081; D. O'Donnell, “Commentary by the Rapporteur on Derogation,” *Human Rights Quarterly* 7, 1 (1985): 23-34; T. Meron, “On a Hierarchy of International Human Rights,” *The American Journal of International Law* 80, 1 (1986): 1-23.

5.4.2 Genocide as the crime of crimes

However, while the state may still defend its right to suspend some human rights under certain circumstances in accordance with the doctrine of necessity, the prohibition of genocide in the contemporary international normative system permits no exceptions and thus represents a clear limitation on state sovereignty.⁴¹⁰ As the crime of crimes, since its definition in the 1948 UN Convention, genocide has become a universally accepted negative norm of the international community. If norms are understood as “shared expectations about appropriate social behavior held by a community of actors”, the legal concept of genocide came to denote a minimum threshold of state behavior, the ultimate violation that cannot be justified by any contingency.⁴¹¹

Perhaps the single most important factor that contributed to the construction and the strengthening of this legal norm were changes in the representation of the Holocaust in the West. As Jeffrey C. Alexander argues, by the late 1970s, through complex cultural construction the Holocaust came to be represented as the most tragic event in Western history, simultaneously a sacred-evil - “an evil that recalled a trauma of such enormity and horror that it had to be radically set apart from the world and all its other traumatizing events”, and an engorged metaphor of archetypical tragedy “providing a standard of evaluation for evility of other threatening acts”.⁴¹² According to Alexander, the symbolic extension of the moral implications of the Holocaust beyond the immediate parties involved stimulated and unprecedented universalization of political and moral responsibility, which influenced the identification, understanding and judgment of contemporary and earlier mass killings and contributed to the absolutist character of the new legal standard for international behavior – the

410See, for example, L. May, *Crimes against Humanity: A Normative Account* (Cambridge: Cambridge University Press, 2005).

411M. Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996), 22.

412J. C. Alexander, “The Social Construction of Moral Universals: The “Holocaust” from War Crime to Trauma Drama,” *European Journal of Social Theory* 5, 1 (2002): 51.

prohibition of genocide.

5.4.3 Linking the Armenian genocide to the Holocaust

Similarly, David B. MacDonald notes that the Holocaust has become a symbol of secularized evil in the Western world, which has profound influence on how other ethnic and social groups choose to represent their collective histories.⁴¹³ The Armenian diaspora's efforts to attract international attention to the Armenian genocide and achieve its official recognition are not an exception in this regard. In drawing parallels between the Armenian genocide and the Holocaust, scholars in the pro-Armenian camp noted the feeling of superiority that Muslims felt towards the Armenian minority and their discrimination, the ideological bases of the regimes, the similarity of the measures taken on the path to extermination, the involvement of the Ottoman secret police, the horrible conditions of the Armenians in the concentration camps.⁴¹⁴ Attention is drawn to the involvement of prominent Nazi's who served in the Ottoman Empire at the time⁴¹⁵, as well as the famous Hitler quote, wherein he allegedly justified the physical destruction of enemies by noting “Who, after all, speaks today of the annihilation of the Armenians?”⁴¹⁶ Regardless of the contested the validity of the thesis on the similarity between the Holocaust and the Armenian genocide, its practical application proved to be valuable in mobilizing support for the recognition and in criticizing the position and the actions of the Turkish government.⁴¹⁷

The link made between the Armenian genocide and the Holocaust facilitated the comparison of

413D. B. MacDonald, *Identity Politics in the Age of Genocide: The Holocaust and Historical Representation* (London: Routledge, 2008), 3.

414See Chapter 23 “The Armenian Genocide in Relation to the Holocaust and the Nuremberg Trials” in Dadrian's *History*, 394-419.

415Dadrian, *History*, 424-427.

416Pro-Turkish historians claim the quote is a forgery. See T. Ataöv, “Hitler and the Armenian Question” (Ankara: Ankara Üniversitesi, 1984), accessible at <<http://www.ataa.org/reference/question-ataov.html>> (last accessed on April 10, 2010).

417Some Holocaust scholars, including Deborah Lipstadt, Michael Marrus and Steven Katz, express reservations regarding the equation between the Armenian genocide and the Holocaust.

Turkey's denial to Holocaust denial and paved the way for a widely accepted argument that the denial of the genocide is tantamount to the final phase of the process of annihilation, when “following the physical destruction of a people and their material culture, memory is all that is left and is targeted as the last victim”, and that the international community is bound by duty to intervene in order to prevent the altering or erasing of the past.⁴¹⁸ This argument has been echoed more than once in the parliamentary debates preceding the voting on Armenian genocide resolutions. For example, in introducing an amendment that linked Turkey's denial of the genocide to United States foreign aid levels at the US House of Representatives in 1996, Senator Carolyn Maloney argued that “Turkey must stop its historical revisionism. By once and for all acknowledging the crimes against humanity committed by the Ottoman Empire, Turkey will take a great stride forward in its international relations . . . for the simple cause of truth and human decency.”⁴¹⁹ During the debates in the Canadian Senate over the formal recognition of the Armenian genocide as “the first genocide” in the twentieth century, Senator Raymond Setlakwe extended the argument further: “it is because humanity is far from being safe from a repetition of this massacre that it is all the more important that the massacre be recognized.”⁴²⁰ The 2001 report of the Foreign Affairs Committee of the French National Assembly on the recognition of the Armenian genocide stated that “we know now more than ever that to deny genocide is to kill the victims a second time and thus rekindle the pain of survivors and their descendants” and emphasized the “duty to remember”, as well as the symbolic and educational value of the recognition.⁴²¹

In Europe especially, condemning the Holocaust in particular and genocide in general now

418R. Hovannisian “Denial of the Armenian Genocide in Comparison with Holocaust Denial” in *Remembrance and denial: the case of the Armenian genocide*, ed. R. G. Hovannisian (Detroit, MI: Wayne State University, 1998), 202.

419See “US house of Representatives Debate regarding U.S. House of Representatives Resolution 3540,” June 11, 1996, accessible at <<http://www.crag.org.uk/Resolutions/Debate16.html>> (last accessed on January 20, 2007).

420Canadian Senate debate on the Recognition and Commemoration of Armenian Genocide (27 March 2001), accessible at <<http://www.crag.org.uk/Resolutions/Debate1.html#Anchor5>> (last accessed on January 20, 2007).

421Rapport de M. François Rochebloine, au nom de la Commission des Affaires Étrangères, No. 2855, accessible at <<http://www.assemblee-nationale.fr/11/rapports/r2855.asp>> (last accessed on November 10, 2010).

represents a shared negative identity, in the sense that it defines what Europe is not and should not be. In this regard, the debates in the European parliament on the Armenian genocide are revealing. As the co-president of the European Greens Daniel Cohn-Bendit put it during the joint debate on Turkey's progress towards accession in November 2000: "[the Armenian genocide] is a clear fact, just as it is clear that Turkey, like any civilized society, should get used to the idea of facing up to its past, however terrible it may have been. This is one of the indispensable conditions in terms of ideology and civilization needed for any country to join Europe".⁴²² According to MEP Yasmine Boudjenah, "Acknowledging this act of genocide does not mean that the present-day Turkey is a barbaric nation. Quite the contrary, a nation only grows in stature by facing up to its past. How could Europe maintain its credibility with regard to the state violence perpetrated in the world today, even, at times, including genocide, if it were to embrace Turkey as a Member while brushing aside its history?"⁴²³ In the context of the ongoing debates about the positive identity of the European countries, the recognition of the Armenian genocide becomes a test of Europeanness for Turkey.⁴²⁴

While parliament declarations on the recognition of the Armenian genocide and, especially, the French law prohibiting denial of the Armenian genocide were unprecedented, they are not exceptional but rather represent a new trend in the consolidation of the norm prohibiting genocide, both through the development of new legal instruments internationally, such as the International Criminal Court and though domestic legal initiatives, such as laws against Holocaust denial. Similar logic to that underlying the recognition of the Armenian genocide produced EP resolutions that recognized the Ukrainian Holodomor as a crime against humanity (2008) and called for EU-wide commemoration of

422Minutes of the joint debate on Morillon report (A5-0297/2000) on Turkey's progress towards accession, November 14, 2000), accessible at <<http://www.crag.org.uk/Resolutions/Debate7.html>> (last accessed on January 20, 2007).

423Ibid.

424In this context, the striking difference in the perception of the issue in Europe and in Turkey is perhaps best illustrated by Prime Minister Erdoğan's threats to deport 100,000 illegal Armenian workers from Turkey in response to the Swedish parliament's recognition of the Armenian genocide in 2010. See "Turkey threatens to expel 100,000 Armenians," *BBC News*, March 17, 2010, accessible at <<http://news.bbc.co.uk/2/hi/8572934.stm>> (last accessed on April 8, 2010).

the 1995 Srebrenica genocide on 11 July (2009).

5.5 Conclusion

This chapter examined the international demands that Turkey recognizes the Armenian genocide. First, it was argued that material and instrumental reasons are insufficient to explain the phenomenon. While the Armenian diaspora, the single most important force acting as a catalyst for the these demands, may be said to have an expressed material interest insofar as the international recognition could facilitate claims for restitution or compensation, this by itself cannot adequately explain neither the cases where the Armenian lobbying activities were successful nor the cases where they did not result in the recognition without appreciating the role of the larger normative framework which enables the Armenian efforts to compete against and, in some instances, prevail over the material or strategic interests of third states in their relations with Turkey. Material factors are insufficient to explain the policy of the Armenian state either: while the general tendency to avoid the genocide recognition issue in bilateral relations with Turkey is consistent with the need to improve political and economic relations, Armenia's support for the international recognition appears to be in contradiction with the fulfillment of the said need if the centrality of the Armenian genocide to the contemporary Armenian identity is not taken into account. It was further argued that a possible instrumentalist explanation of the involvement of third states in the conflict over the genocide recognition as a consequence of their domestic election processes would be incomplete and inadequate without analyzing the normative bases of the Armenian claims. Finally, it was argued that Turkey's policy of denial is also contrary to the country's material and strategic interests because it entails substantial costs in terms of political and economic relations with other states. Since the recognition of the genocide

would not create additional bases for the legal pursuit of the material claims by the Armenian diaspora or the Armenian state, it follows that Turkey's refusal to recognize the genocide entails costs without identifiable gains and thus requires an explanation in terms of non-material interests.

Second, since the possible material/instrumentalist explanations were found lacking, the chapter examined the role of identity in the conflict by turning to the historical narratives underlying the demands for the recognition of the genocide on one side and Turkey's refusal to recognize it on the other. Two major areas of incompatibility between the Turkish and Armenian narratives were found – the incompatibility of emplotment, i.e. the use of different story frameworks for the selection and organization of events, factors, motives etc., and the incompatibility of legal frames of reference for the moral evaluation of the stories constructed upon those different plots. The Armenians see the events in 1915 as a tragedy, a form of the representation of human suffering where the narrative is descending and ultimately offers no possibility of transcendence, while the Turkish side views it as an episode in a larger romantic story of the collapse of the Empire and the birth of the Republic, where the narrative is ascending and the tragic elements in the story are redeemed by the heroic actions of the protagonists and the outcomes of the struggle. If the Armenian side focuses on the legal characterization of the events as a genocide, the Turkish state-centric perspective is based on the traditional legal norms, such as the doctrine of necessity.

Third, the discussion of the differences in the historical narratives enables better understanding the international involvement in the conflict over historical interpretation. It was suggested that the recognition of the Armenian genocide by other states and their demands that Turkey recognizes it as well stem from the importance of the norm prohibiting genocide in the international normative system. The response from the Western parts of the international community, especially Europe, is motivated by unacceptability of the justification for human suffering in the Turkish narrative and the relative success of the Armenian scholars in establishing parallels between the Armenian genocide and the Holocaust,

as well as the widespread idea that impunity for and denial of genocide create conditions for its recurrence.

What are the implications of the international community's pressure for Turkey to recognize and apologize for the Armenian genocide? In other words, what are the international dimensions of the practice of state apologies? In the context of the case discussed in this chapter, two aspects of the practice of historical state apologies are worth emphasizing. First, demands for apologies mean demands for the affirmation of the importance of the relevant norms and the values that they embody to the contemporary relations between states. If, as in the case discussed here, the human rights values are in conflict with the state-centric values, demands for a historical apology serve to promote the superiority of human rights norms. In short, demands for historical apologies contribute to the development of customary international law by strengthening the human rights law component in it. However, the practice reaches beyond the formal signing of treaties and agreements and current adherence to standards for international behavior embedded in them to extend to past events, thus not only limiting the sovereignty of states over their population but also limiting their control over the narration of their histories and hence the construction of their identities. While in the case examined in this chapter calls for the recognition of the Armenian genocide are conspicuously absent from certain parts of the world (Asia and Africa) and thus prevent making sweeping generalizations about the universality of this development, it is nevertheless noteworthy that the reevaluation of the past in the light of current international norms came to be regarded as close to a formal requirement for good membership in parts of the international society (e.g. the European Union).

Conclusion. The practice of apologies, state identity, and the international normative system

This dissertation examined the role of identity in the practice of state apologies. Were it necessary to summarize the argument advanced in this study in one paragraph, the following could hopefully rise up the task. Changes in the international legal (normative) system since the end of the Second World War related to the development of the human rights law led to the emergence of historical apologies in the well-established practice of state apologies. Historical apologies require that states reassess their past policies and actions in the light of contemporary human rights values, which influence state identity in various ways – it may affect how a state is seen internationally or by its neighbors and it may change how it sees itself. If identity is conceptualized as a story that one tells about oneself, historical apologies require a revision of that story by incorporating the victim's perspective. While apology holds a promise of reconciliation and improved relations with the injured party, states may nevertheless refuse to apologize, even when there are material incentives to do so and even when they accept that the type of policies or acts for which an apology is demanded are wrong. When the part of the story which needs to be revised to make an apology is considered to be so important to self-understanding as to be protected and cultivated by means of research and education, commemorative practices, and law, states may refuse to apologize in order to preserve their ontological security. Demands for historical apologies, apologies and refusals to apologize influence further development of the international legal (normative) system by endorsing or denying a more expansive notion of state responsibility and by establishing hierarchies among competing norms.

The concluding chapter will unpack and discuss the different issues raised by the above

argument. For the sake of clarity, this discussion will be presented as a series of statements, which together constitute the findings of the study. However, the task in this chapter is not merely to summarize what was argued in the previous chapters but also to attempt to bring the themes that emerged in the dissertation together, as well as gauge their significance and implications to the practice and the study of international politics.

1. State apologies for historical wrongs represent a change in the existing practice, rather than an unprecedented phenomenon.

Contrary to the widespread idea found in the literature that public apologies represent a new “age of apologies”, this study viewed state apologies for historical wrongs as part of the long-established practice. Three relevant periods can be identified in this practice, each related to the gradual, centuries-long normative transformation of the international system as a result of conflict and war and each producing different types of apologies. The Westphalian Peace, which followed one of the most destructive wars in the history of Europe, marked the end of a gradual shift from the concepts and institutions of the society of the medieval Europe, defined by the overlapping layers of authority and the horizontal integration as Christendom, to the fragmented and verticalized modern society of sovereign states.⁴²⁵ This change led to the emergence of diplomatic apologies alongside religious apologies. As this study has shown, international law and diplomacy – the institutions of the society of states that emerged in the 17th century – are crucial for the understanding of the practice of diplomatic apologies. A further change in the practice of apologies was related to the modification of the content of the principle of legitimacy which was brought by the French Revolution and finalized by the World War I. The gradual erosion of the idea of the rule by divine right and the spread of the idea of nation as

⁴²⁵See A. Watson, *The Evolution of International Society: A Comparative Historical Analysis* (London: Routledge, 1992), 186-189. On territoriality as a modern principle of political differentiation, see chapter 7 in J. G. Ruggie, *Constructing World Polity: Essays on International Institutionalization* (London: Routledge, 1998).

a sovereign in Europe marked the transformation of state apologies from interpersonal to institutional. Finally, the World War II in general, and the Holocaust in particular, can be seen as watershed events that prompted a new transformation of the Western society of states, especially in Europe, characterized by a new institutional architecture and a shift from nation-state-centered to human-centered values. This change brought historical apologies into practice.

Viewing the phenomenon of historical apologies as a practice not only permits tracing its genealogy and comparing it to its earlier forms but also points our attention to the ideal of conduct, which defines a particular practice. This study argued that, at its core, an apology involves acknowledgment of responsibility for a transgression, as well as regret and a disposition to avoid transgressing in the future. To put it simply – changes in the practice of state apologies are dependent on changes in the way the following questions are answered: what is the state responsible for and to whom, as well as what is the nature of its responsibility.

2. Changes in the practice are related to the incorporation of human rights norms into international law.

The study showed that diplomatic apologies are demanded and given for violations of the norms of traditional international law, the organizing principle of which is the idea of state sovereignty. Diplomatic apologies reflect the values of the normative system that regulates relations between units that are supposed to be independent, equal, impermeable and guided by internally and autonomously formulated national interests. To invoke the Realist metaphor of states as the billiard balls, diplomatic apologies are meant to extinguish the sparks that fly as the balls clash and preserve the appearance of their solidity. As noted in chapter 2, diplomatic apologies also have a dynamic role in that they help negotiating the meaning and the consequences of the clashes and may lead to new rules and new expectations of behavior; however, their routine function is to prevent the sparks from spreading into a

fire by reaffirming respect for sovereignty. In this sense, diplomatic apologies are much like apologies that we give for accidentally stepping on someone's foot on a busy street and can be analyzed as part of the written and unwritten rules of the game of politeness in the society of states.

Historical apologies are demanded and given for violations of human rights norms, which have been progressively incorporated into public international law since the Second World War. The organizing principle of the human rights law is the prohibition of crimes against humanity, which in effect defines the limits of the idea of state sovereignty. It was argued in the dissertation that the change in the normative framework of apologies has important consequences to the practice of state apologies, of which two deserve special attention:

- **Entities other than states become subjects of international law.** This has several effects on the practice of state apologies. First, groups within and outside the state acquire the legal and moral status to demand acknowledgment of the violation of their rights by state policies or actions not only via domestic legal system of the violating state but also internationally. It should be noted that the legal means for the defense of individual rights on the international arena are fairly limited at this time, with several notable exceptions (e.g. the European Court of Human Rights). However, the incorporation of the human rights norms into the international law has enabled sub-state and non-state entities, as well as groups of individuals to formulate and present their demands in terms of international law in ways that challenge the legitimacy of states. A large part of demands for historical apologies today are pressed by groups that were invisible and did not have a voice on the international arena before the advent of the human rights law. Second, as illustrated by the examples of the Armenian diaspora and the Muslim community in Denmark, these groups may often be insensitive to the material or strategic interests of states, immune to diplomatic pressure, and therefore able to formulate their demands in idealist terms. This is not to say that demands for historical apologies are never

driven by hopes for material gains but that their demands may be based on “pure” law, undiluted by pragmatic considerations. In this regard, the traditional dynamics of interstate relations and the effectiveness of instruments of international politics in the arsenals of states are altered. Third, the new international rights of individuals are accompanied by the emergence of individual accountability for international crimes, which complicates the attribution of responsibility to collectivities, i.e. puts into question the very ability of states to apologize on behalf of their people.

- **State responsibility is expanded: from bilateral obligations to obligations *erga omnes*.**

There is an agreement in the legal literature that aggression, genocide, crimes against humanity, war crimes, slavery and slave-related practices, as well as torture are part of *jus cogens*, which holds the highest hierarchical position among all other norms and principles of public international law.⁴²⁶ The state has an obligation to all other states to ensure that these norms are not violated even in times of war and to achieve that the perpetrators of such crimes are punished. In other words, many of the wrongs for which historical apologies are demanded would fall under the category of international crimes that give rise to obligations *erga omnes*. If diplomatic apologies are typically a matter for bilateral relations in which third states are not supposed to get involved, historical apologies can in principle be demanded by any state in the world. While agreement in the legal literature does not necessarily translate into consistent state practice, the special status of some human-rights norms became apparent in the discussion of international demands for the recognition of the Armenian genocide. It is this idea that states have an obligation to the international community to protect certain norms (and conversely – that the international community has the right and even the duty to demand their protection) that

⁴²⁶See M. C. Bassiouni, “International Crimes: “Jus Cogens” and “Obligatio Erga Omnes,” *Law and Contemporary Problems* 59, 4 (1996): 63-74.

underlies the European parliament's demands towards Turkey, the pleading of the Parliamentary Assembly of the Council of Europe that Russia must compensate persons deported from the Baltic States and even the involvement of Muslim countries in the Danish cartoon controversy.

3. Due to the nature of the human rights norms, state identity becomes important in the practice of apologies.

Since statutes of limitations do not apply to violations of peremptory norms, since basic human rights norms are supposed to provide not only legal but also moral standards that states must observe with regard to their subjects, and since human rights are supposed to be universal, i.e. they are and must be the same everywhere and at all times, demands that states apologize for historical wrongs can concern events in the faraway past that in some cases even predate the emergence of the contemporary human rights regime. While the distinction between legal and moral responsibility may be blurred in some demands for historical apologies, the temporal dimension in historical apologies means that the attribution and acceptance of responsibility involve identity work. In order to apologize, the state must regard itself and be regarded by others in some important way the same as the one that committed a wrongdoing. This identification may be achieved by asserting the legal or institutional continuity of the state or the continuity of the nation that presumably creates the state and changes its institutions and the laws of the country, or a mixture of the two; however, in all cases it involves telling a story that establishes the link between an act in the past and an agent in the present. In this way demands, refusals and apologies involve state identity.

4. Demands for apologies present challenges to state identity

This dissertation argued that historical apologies affect state identity at three levels – domestic, bilateral, and transnational. An apology ideally involves reaching an agreement between the perpetrator

and the victim about what happened and why what happened was bad, whereby the perpetrator accepts the victim's perspective to the extent necessary to reach such an agreement. Therefore, demands for historical apologies were conceptualized here as requests that the state revises its narrative to include the narrative of the group that was wronged. In other words, demands for apologies can be seen as first-, second- and third-person plural challenges to the state's view of itself; state apology ideally indicates that these challenges have been met and the identity narrative of the state has been appropriately revised; while refusals to apologize indicate that the state rejects the said challenges. It should be noted that reality exhibits far more complexity than what could be covered in a discussion based on the idea of the standards of apology. Ambiguous and partial apologies for historical wrongs that are not followed by consistent actions abound, and, in any case, the plurality of first, second and third personal perspectives ensures that the outcomes of an apology will frequently be subject to questioning or even reversal through subsequent speech-acts or actions. Japan, the representatives of which have been issuing imperfect historical apologies for almost two decades now, is perhaps the best-known case but certainly not the only one. However, this complexity does not diminish the value of analyzing the internal logic of the practice of apologies which has very real consequences to states and people. If challenges to state self-narratives sound too far removed from reality, the images of terrorist attacks, burning embassies and mass protests may be invoked.

This study examined three cases to illustrate the effects of the practice of apologies at transnational, bilateral and domestic levels. The Danish cartoon controversy illustrates the role that domestic demands for an apology play in the construction of national identity. The Danish case differs significantly from the other two cases in that it lacks the temporal dimension. The central issue here is negotiating the basis of state unity, rather than continuity in time, both of which are required for accepting responsibility. The demands for apology presented a challenge to Denmark's self-narrative as a liberal and tolerant state, to which Denmark responded by advancing a particular interpretation of

what it means to be a liberal state.

Lithuanian demands that Russia compensates the damage caused by the 50 years of Soviet occupation amount to a request that not only accepts its continuity with the Soviet Union (which Russia does) and responsibility for its crimes but that it also incorporates the Baltic States' view of the Second World War and its consequences. The demands pose a challenge to Russia's self-narrative as the liberator of Europe during the Second World War, which provides internal and, to a certain extent, external legitimacy for its aspirations to regional and global leadership. Furthermore, partly because Lithuania lacks the means necessary to evoke the desired response from Russia in bilateral relations, the demands to spill over to the European level, where they become a factor in defining Russia's place in Europe.

Finally, the international demands that Turkey recognizes the Armenian genocide amount to a request that Turkey revises its history to include the Armenian narrative and to align it with the normative framework of the human rights norms. Turkey's rejection of the characterization of the events in the Ottoman Empire in 1915 as genocide can be seen as genocide denial, which affects its relations with other states, as well as its standing in the international community. In Europe, where the Holocaust narrative is becoming a cornerstone of a shared European identity and where many states have criminalized the denial of the Holocaust, Turkey's denial of the Armenian genocide undermines its self-presentation as a democratic country and a regional leader. Turkey's ability to "face its past" has been seen as a test of its Europeanness and even as an informal condition for membership in the European Union. Since Turkey's official view of the historical events in question is state-centered and imbued with state values and since contemporary Turkish policies, including the policies aimed at resolving the "Armenian issue", are built almost exclusively on the traditional state values, the case offers perhaps the clearest illustration of the tension resulting from changes in the international legal (normative) system and the socializing function of demands for historical apologies.

The discussion of the three cases shows that demands for historical apologies and refusals to apologize have an impact on state identity construction at all three levels simultaneously, of which the transnational level seems to be the most important in terms of the challenge to state self-narratives. Demands of the Danish Muslim community towards the Danish government, Lithuania's demands towards Russia, as well as demands by the Armenian diaspora and the Armenian state towards Turkey would not have had the same impact if they had not spread to the international arena. The ability of the a carrier group to move their demands to the transnational level and enlist the support of other states and non-state entities increases pressure on the state from which an apology is demanded and forces it to define its relation not only to the carrier group and its past actions but also to the society of states and the norms that bind it. This is consistent with arguments in other Constructivist studies, which argue that social interaction shapes state identity. However, the argument departs from mainstream Constructivist approach in that social interaction does not necessarily change state identity and identity construction is ultimately a domestic enterprise. Interaction with other states, entities or groups provides raw facts which acquire meaning and become sources of identity by means of emplotment and narration, performed domestically. States enter social interactions already endowed with a sense of self and these interactions, such as demands for apologies, may leave their self-understandings unchanged or even reinforced despite the pressures of socialization.

5. States refuse to apologize for past wrongs if the challenge to state identity leads to ontological insecurity.

This study explained why states refuse to apologize for past violations of human rights norms in terms of the costs of apology to their ontological security. If apologizing requires a revision of a part of the self-narrative that is central to the state's self-understanding, the state may find conflict preferable to reconciliation that would make it ontologically insecure. This dissertation argued that ontological

security that results from the stability of the self-narrative of the state can be more important than material or strategic interests in explaining state refusal to apologize, as well as demands for apologies. Thus, Turkey's refusal to recognize the Armenian genocide can best be explained by centrality of the heroic narrative of the Independence war to contemporary Turkish identity; Lithuania's demands to Russia and Russia's refusal to apologize for the occupation of the Baltic States – by the centrality of the narratives of the Second World War in their identity narratives; while the Danish government's refusal to apologize for the publication of offensive cartoons – by the Liberal-Conservative coalition's articulations of Denmark as a liberal society that values homogeneity and not cultural diversity.

One key feature in the cases that emerged from the discussion of the cases was the institutionalization of the official narratives in all the relevant states. The institutionalization does not only involve educational policies, commemorative practices, research institutions and museums created to preserve and cultivate the state-endorsed narratives, but also legal measures that support the official view (e.g. citizenship laws, pension laws) and protect it from domestic challenges (e.g. the criminalization of genocide denial in Lithuania and Armenia, the punishment of insults to the nation in Turkey, attempts to introduce “history laws” in Russia). The institutionalization of the official narratives increases their stability by erecting barriers and creating disincentives for domestic political forces to engage in alternative identity constructions. While the anti-immigration and pro-integration laws passed by the Liberal-Conservative coalition in Denmark in support of their vision of Denmark are part of “normal” politics, the securitization of history that can be discerned in the other two cases discussed in this study is a new and curious trend. Since such a trend can be observed in many other countries as well, it deserves a separate investigation in the context of the ontological security needs of states and loss of state control over the flow of information as a consequence of IT innovations.

6. Historical apologies have an impact on further transformation of the international normative system

All practices are oriented towards performing practical functions. In this regard, the change in the practice of apologies brought by the incorporation of the human rights norms into international law has several consequences. First, if the function of diplomatic apologies was primarily conflict diffusion and restoring the *status quo ante*, historical apologies have a transformative effect. As noted in the literature on public apologies, a genuine apology for historical wrongs can contribute to reconciliation and set the foundations for lasting peace. As noted in this study, however, historical apologies require an identity change and, in cases when this change would lead to ontological insecurity, may deepen conflicts, rather than resolve them. Second, while diplomatic apologies had a function in the articulation of the the content and extent of norms via customary law, historical apologies serve to promote human rights norms, often – although, as the case of Lithuania showed, not necessarily - at the expense of state values. Since historical apologies often involve an idea of expanded state responsibility (responsibility to the victims of the past wrongdoing but also the international community at large), groups demanding apologies can rally support among a number of states and thus the practice holds the potential for a more profound impact on the development of international norms.

One of the questions regarding the practice of state apologies that was not addressed in this study concerns the impact of the Cold War on the practice. While the basic institutions and the rules based on human rights norms were put in place shortly after the World War II, historical apologies did not make a significant appearance before the end of the Cold War. Is it significant that the Soviets propagated a doctrine of human rights different from the West, considering human rights as state-given and thus local, rather than natural and thus universal? What effect did the Cold War have on the ontological security needs of the states? These and similar questions related to the understanding of the practice of apologies from the structural point of view could be explored by looking at the interplay

between the narrative of states and the meta-narratives of the international society during the Cold War, as well as by treating the Cold War as a linguistic, rather than an exclusively material phenomenon.⁴²⁷

⁴²⁷On meta-narratives, see J. M. Bernstein, “Grand Narratives” in *On Paul Ricoeur: Narrative and Interpretation*, ed. D. Wood (London: Routledge, 1991), 102-124. For a constructivist take on the Cold War, see G. Duffy and B. Frederking, “Changing the Rules: A Speech Act Analysis of the End of the Cold War,” *International Studies Quarterly* 53 (2009): 325–347.

Bibliography

References to books:

Addison, Paul, ed. *Firestorm: The Bombing of Dresden, 1945*. Chicago, Ill.: Ivan R. Dee, 2006.

Agamben, Giorgio. *State of Exception*. Chicago: University of Chicago Press, 2005.

Akçam, Taner. *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*. London: Zed Books, 2004.

Altınay, Ayşe Gül. *The Myth of the Military Nation: Militarism, Gender, and Education in Turkey*. New York: Palgrave Macmillan, 2004.

Amstutz, Mark R. *The Healing of Nations: The Promise and Limits of Political Forgiveness*. Lanham, Md: Rowman & Littlefield Publishers, 2005.

Arendt, Hannah. *Responsibility and Judgment*. New York: Schocken Books, 2003.

Aristotle. *Nicomachean Ethics*. Translated by J. A. K. Thomson. Harmondsworth: Penguin, 1953

Ataöv, Türkkaya. *Documents on the Armenian Question: Forged and Authentic*. Ankara, Barok Ofset, 1985.

Atkins, Kim. *Narrative Identity and Moral Identity: A Practical Perspective*. New York: Routledge, 2008.

Austin, John Langshaw. *How to Do Things With Words*. Oxford at the Clarendon Press, 1962.

Bach, Kent, and Robert M. Harnish. *Linguistic Communication and Speech Acts*. Cambridge MA.: MIT Press, 1979.

Balakian, Peter. *The Burning Tigris: The Armenian Genocide and America's Response*. HarperCollins, 2003.

Barkan, Elazar. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W.W. Norton, 2000.

- Barkan, Elazar, and Alexander Karn. *Taking Wrongs Seriously: Apologies and Reconciliation*. Stanford University Press, 2006.
- Bartelson, Jens. *A Genealogy of Sovereignty*. Cambridge: Cambridge University Press, 1995.
- Borneman, John. *Settling Accounts: Violence, Justice, and Accountability in Postsocialist Europe*. Princeton, N.J.: Princeton University Press, 1997.
- Bratman, Michael E. *Faces of Intention*. New York: Cambridge University Press, 1999.
- Brooks, Roy, ed. *When Sorry Isn't Enough: The Controversy Over Apologies and Reparations for Human Injustice*. New York University Press, 1999.
- Brown, Penelope, and Stephen C. Levinson, *Politeness: Some Universals in Language Use*. Cambridge: Cambridge University Press, 1987.
- Bruner, M. Lane. *Strategies of Remembrance: The Rhetorical Dimensions of National Identity Construction*. Columbia: University of South Carolina Press, 2002.
- Buzan, Barry. *From International to World Society? English School Theory and the Social Structure of Globalization*. New York: Cambridge University Press, 2004.
- Campbell, David. *Writing Security: United States Foreign Policy and the Politics of Identity*. University of Minnesota Press/Manchester University Press, 1998.
- Carr, David. *Time, Narrative, and History*. Indiana University Press, 1991.
- Connerton, Paul. *How Societies Remember*. Cambridge: Cambridge University Press, 1989.
- Dadrian, Vahakn N. *The Key Elements in the Turkish Denial of the Armenian Genocide: A Case Study of Distortion and Falsification*. Cambridge, Mass.: Zoryan Institute, 1999.
- _____. *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*. 6th rev. ed. New York: Berghahn Books, 2003.
- Der Derian, James. *On Diplomacy: A Genealogy of Western Estrangement*. Oxford, 1987.
- _____. *Critical Practices in International Theory: Selected Essays*. Routledge, 2009.
- Derrida, Jacques. *On Cosmopolitanism and Forgiveness*. Translated by M. Dooley and M. Hughes.

Routledge, 2001.

Deutschmann, Mats. *Apologising in British English*. Umeå: Umeå University Press, 2003.

Donnelly, Jack. *Universal Human Rights in Theory and Practice*. 2nd ed. Ithaca: Cornell University Press, 2003.

Dumberry, Patrick. *State Succession to International Responsibility*. Leiden: Martinus Nijhoff Publishers, 2007.

Dyukov, Alexandr. *Pakt Molotova-Ribbentropa v voprosach i otvetach [Questions and Answers about the Molotov-Ribbentrop Pact]*. Fond Istoricheskaya Pamyat: Moscow, 2009.

Elster, Jon. *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences*. Cambridge: Cambridge University Press, 2007.

Erskine, Toni, ed. *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations*. New York and Basingstoke: Palgrave Macmillan, 2003.

Evans, Richard J. *Lying about Hitler: History, Holocaust, and the David Irving Trial*. New York: Basic Books, 2001.

Feinberg, Joel. *Doing and Deserving*. Princeton: Princeton University Press, 1970.

Finnemore, Martha. *National Interests in International Society*. Ithaca: Cornell University Press, 1996.

French, Peter A., and Howard K. Wettstein, eds. *Shared Intentions and Collective Responsibility*. Malden, MA : Blackwell Pub., 2006.

Gailius, Bernardas. *Partizanai tada ir šiandien [Partizans Then and Now]*. Versus aureus: Vilnius, 2006.

Gibney, Mark, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner. *The Age of Apology: Facing up to the Past*. Philadelphia: University of Pennsylvania Press, 2008.

Giddens, Anthony. *The Consequences of Modernity*. Stanford, CA: Stanford University Press, 1990.

- Gilbert, Margaret. *Sociality and Responsibility: New Essays in Plural Subject Theory*. Lanham: Rowman & Littlefield, 2000.
- Goffman, Erving. *Interaction Ritual: Essays on the Face-to-Face Behavior*. New York: Pantheon Books, 1967.
- Goldhagen, Daniel. *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*. New York: Knopf, 1996.
- Goldsmith, Jack L., and Eric A. Posner. *The Limits of International Law*. Oxford University Press, 2005.
- Gries, Peter H. *China's New Nationalism: Pride Politics, and Diplomacy*. Berkeley: University of California Press, 2004.
- Gürün, Kamuran. *The Armenian File: The Myth of Innocence Exposed*. Istanbul: Rüstem, 2001.
- Hansen, Lene. *Security as Practice: Discourse Analysis and the Bosnian War*. London and New York: Routledge, 2006.
- Hart, H. L. A. *Punishment and Responsibility*. Oxford: Clarendon Press, 1968.
- Hein, Laura, and Mark Selden, eds. *Censoring History: Citizenship and Memory in Japan, Germany and the United States*. Armonk, NY: Sharpe, 2000.
- Henkin, Louis. *International Law: Politics and Values*. London: Martinus Hijhoff Publishers, 1995.
- Herman, David, ed. *The Cambridge Companion to Narrative*. Cambridge: Cambridge University Press, 2007.
- Herman, Judith L. *Trauma and Recovery: The Aftermath of Violence--from Domestic Abuse to Political Terror*. New York: Harper Collins, 1992.
- Hidden, John, Vahur Made, and David J. Smith. *The Baltic Question during the Cold War*. London and New York: Routledge, 2008.
- Holzgrefe, Jeff L., and Robert O. Keohane. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. New York: Cambridge University Press, 2003.

- Hutchinson, John. *Nations as Zones of Conflict*. London: Sage Publications, 2005.
- Jung, Dietrich, and Wolfango Piccoli. *Turkey at the Crossroads: Ottoman Legacies and A Greater Middle East*. London: Zed Books, 2001.
- Klabbers, Jan, Martti Koskenniemi, Olivier Ribbelink, and Andreas Zimmerman, eds. *State Practice Regarding State Succession and Issues of Recognition: The Pilot Project of the Council of Europe*. The Hague: Kluwer Law International, 1999.
- Krasner, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press, 1999.
- Landa, Jose A. G., and Susana Onega, eds. *Narratology: An Introduction*. London and New York: Longman, 1996.
- Laruelle, Marlène. *In the Name of the Nation: Nationalism and Politics in Contemporary Russia*. New York: Palgrave Macmillan, 2009.
- Lazare, Aaron. *On Apology*. Oxford: Oxford University Press, 2004.
- Leech, Geoffrey N. *Principles of Pragmatics*. New York: Longman, 1983.
- Leitenberg, Milton. *Soviet Submarine Operations in Swedish Waters 1980-1986*. The Washington Papers/128. New York: Praeger, 1987.
- Lerner, Mitchell B. *The Pueblo Incident: A Spy Ship and the Failure of American Foreign Policy*. Lawrence, Kansas: University Press of Kansas, 2002.
- Lewy, Guenter. *The Armenian Massacres in Ottoman Turkey: A Disputed Genocide*. The University of Utah Press, 2005.
- Lieven, Anatol. *The Baltic Revolution: Estonia, Latvia, Lithuania and the Path to Independence*. Yale University Press, 1994.
- Lind, Jennifer M. *Sorry States: Apologies in International Politics*. Ithaca: Cornell University Press, 2008.
- Linde, Charlotte. *Working the Past: Narrative and Institutional Memory*. Oxford: Oxford University

Press, 2009.

Long, William J., and Peter Brecke. *War and Reconciliation: Reason and Emotion in Conflict Resolution*. Cambridge, MA: MIT Press, 2003.

Loukacheva, Natalia. *Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut*. University of Toronto Press, 2007.

Lucas, John R. *Responsibility*. Oxford: Oxford University Press, 1993.

Lucas, Edward. *The New Cold War: How the Kremlin Menaces Both Russia and the West*. Palgrave Macmillan, 2008.

MacDonald, David B. *Identity Politics in the Age of Genocide: The Holocaust and Historical Representation*. London&New York: Routledge, 2008.

MacIntyre, Alasdair. *After Virtue*. University of Notre Dame Press, 1981.

Mälksoo, Lauri. *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR, a Study of the Tension between Normativity and Power in International Law*. Leiden: Martinus Nijhoff Publishers, 2003.

Mann, Michael. *The Dark Side of Democracy: Explaining Ethnic Cleansing*. Cambridge: Cambridge University Press, 2005.

Marek, Kristina. *Identity and Continuity of States in Public International Law*. Droz: Geneve, 1968.

Marrus, Michael R. *Official Apologies and the Quest for Historical Justice*. Toronto: Munk Centre for International Studies, 2006.

Marshall, Frederic. *Titles, Decorations and Forms Or International Vanities*. Barber Press, 2007.

May, Larry. *Crimes Against Humanity: A Normative Account*. Cambridge: Cambridge University Press, 2005.

McCarthy, Justin, and Carolyn McCarthy. *Turks and Armenians: A Manual on the Armenian Question*. Washington, D.C. Assembly of Turkish American Associations, 1989.

McSweeney, Bill. *Security, Identity and Interests*. Cambridge: Cambridge University Press, 1999.

- Miller, David. *National Responsibility and Global Justice*. New York: Oxford University Press, 2007.
- Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.
- Müllerson, Rein. *International Law, Rights and Politics: Developments in Eastern Europe and the CIS*. London and New York: Routledge, 1994.
- Nardin, Terry. *Law, Morality, and the Relations of States*. New Jersey: Princeton University Press, 1983.
- Nobles, Melissa. *The Politics of Official Apologies*. Cambridge University Press, 2008.
- Negash, Girma. *Apologia Politica: States and Their Apologies by Proxy*. Westport, Connecticut: Lexington Books, 2006.
- Nozaki, Yoshiko. *War Memory, Nationalism and Education in Postwar Japan, 1945-2007: The Japanese History Textbook Controversy and Ienaga Saburo's Court Challenges*. New York: Routledge, 2008.
- Oakeshott, Michael. *On Human Conduct*. Oxford: Clarendon Press, 1975.
- Ogiermann, Eva. *On Apologizing in Negative and Positive Politeness Cultures*. Amsterdam: John Benjamins Publishing Company, 2009.
- O'Neill, Barry. *Honor, Symbols, and War*. Ann Arbor: University of Michigan Press, 1999.
- Özal, Turgut. *Turkey in Europe and Europe in Turkey*. Nicosia: K. Rustem and Brothers, 1991.
- Pardoe, Julia. *Louis the Fourteenth, and the Court of France in the Seventeenth Century*. New York: James Pott & Company, 1902.
- Phillips, David. *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation*. New York and Oxford: Berghahn Books, 2005.
- Radzik, Linda. *Making Amends: Atonement in Morality, Law, and Politics*. Oxford: Oxford University Press, 2009.
- Rasmussen, Anders F. *Fra socialstat til minimalstat [From Social to Minimal State]*. Copenhagen: Samleren, 1993.

- Ratner, Steven R., and Jason S. Abrams. *Accountability for Human Rights Atrocities in International Law*. 2nd ed. Oxford: Oxford University Press, 2001.
- Ricoeur, Paul. *Time and Narrative*, 3 vols. Translated by Kathleen McLaughlin and David Pellauer. Chicago: University of Chicago Press, 1984, 1985, 1988.
- _____. *From Text to Action: Essays in Hermeneutics II*. Translated by Kathleen Blamey and John B. Thompson. Northwestern University Press, 1991.
- Ringmar, Erik. *Identity, Interest and Action: A Cultural Explanation of Sweden's Intervention in the Thirty Years War*. Cambridge: Cambridge University Press, 1996.
- Risse-Kappen, Thomas, Stephen C. Ropp, and Kathryn Sikkink. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press, 1999.
- Robins, Philip. *Suits and Uniforms: Turkish Foreign Policy Since the Cold War*. London: C. Hurst & Co, 2003.
- Ruggie, John G. *Constructing World Polity: Essays on International Institutionalization*. London: Routledge, 1998.
- Schmitt, Carl. *The Crisis of Parliamentary Democracy*. Translated by Ellen Kennedy. Cambridge: The MIT Press, 1985 [1923].
- Schneider, Christoph. *Der Warschauer Kniefall: Ritual, Ereignis und Erzählung*. Konstanz: UKW Verlagsgesellschaft, 2006.
- Senn, Alfred E. *Lithuania, 1940: Revolution from Above*. Amsterdam and New York: Rodopi, 2007.
- Shaw, Malcolm N. *International Law*. 5th ed. Cambridge: Cambridge University Press, 1997.
- Shaw, Stanford J. *History of the Ottoman Empire and Modern Turkey. Vol. 1&2*. Cambridge: Cambridge University Press, 1976-77.
- Sicker, Martin. *The Genesis of the State*. New York: Praeger, 1991.
- Şimşir, Bilal N. *The Deportees of Malta and the Armenian Question*. Ankara: Foreign Policy Institute, 1984.

- Sloterdijk, Peter. *Theory of the Post-War Periods: Observations on Franco-German relations since 1945*. Translated by Robert Payne. Vienna: Springer-Verlag, 2009.
- Smith, Anthony D. *The Nation in History: Historiographical Debates about Ethnicity and Nationalism*. Brandeis University Press, 2000.
- Smith, Kathleen E. *Mythmaking in the New Russia: Politics and Memory during the Yeltsin Era*. Cornell University Press: Ithaca, NY, 2002.
- Smith, Nick. *I Was Wrong: The Meanings of Apologies*. Cambridge: Cambridge University Press, 2008.
- Steele, Brent J. *Ontological Security in International Relations: Self-identity and the IR state*. New York: Routledge, 2008.
- Steiner, Henry J., Philip Alston and Ryan Goodman, eds. *International Human Rights in Context: Law, Politics, Morals*. 3rd ed. Oxford: Oxford University Press, 2008.
- Strang, Heather, and John Braithwaite, eds. *Restorative Justice: Philosophy to Practice*. Aldershot, Hants, England: Ashgate, 2000.
- Sunga, Lyal. *Individual Responsibility in International Law for Serious Human Rights Violations*. Leiden: Martinus Nijhoff Publishers, 1991.
- Surgailis, Gintautas. *Rusijos kariuomenės išvedimas 1990-1993 [The Withdrawal of the Russian Army in 1990-1993]*. Vilnius: Lietuvos karo akademija, 2005.
- Taylor, Charles. *Sources of the Self: The Making of Modern Identity*. Cambridge, MA: Harvard University Press, 1989.
- Tavuchis, Nicholas. *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford: Stanford University Press, 1991.
- Teitel, Ruti G. *Transitional Justice*. Oxford: Oxford University Press, 2000.
- Thompson, Janna. *Taking Responsibility for the Past: Reparation and Historical Injustice*. Cambridge: Polity Press, 2002.

- Vassilian, Hamo B. *The Armenian Genocide: A Comprehensive Bibliography and Library Resource Guide*. Glendale: Armenian Reference Books Co., 1992.
- Vincent, Andrew. *Theories of the State*. Oxford, U.K.: Blackwell, 1994.
- Vincent, R. John. *Human Rights and International Relations*. New York: Cambridge University Press, 1986.
- Vitas, Robert A. *The United States and Lithuania: The Stimson Doctrine of Nonrecognition*. Praeger Publishers: New York, 1990.
- Walt, Stephen. *The Origins of Alliances*. Ithaca, NY: Cornell University Press, 1987.
- Watson, Adam. *The Evolution of International Society: A Comparative Historical Analysis*. London: Routledge, 1992.
- Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. Edited by Guenther Roth and Claus Wittich, translated by E. Fischoff. New York: Bedminster Press, 1978.
- Weiler, Joseph H. H., Antonio Cassese, and Marina Spinedi, eds. *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility*. Berlin: Walter de Gruyter, 1989.
- Weiner, Brian A. *Sins of the Parents: The Politics Of National Apologies In The United States*. Philadelphia: Temple University Press, 2005.
- Welsh, Jennifer M., ed. *Humanitarian Intervention and International Relations*. New York: Oxford University Press, 2004.
- Wendt, Alexander. *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999.
- White, Hayden. *The Content of the Form: Narrative Discourse and Historical Representation*. Baltimore: The Johns Hopkins University Press, 1987).
- Wight, Colin. *Agents, Structures and International Relations: Politics as Ontology*. Cambridge: Cambridge University Press, 2006.

Williams, Norman P. *The Ideas of the Fall and of Original Sin*. London: Longmans, Green & Co., 1927.

Yamazaki, Jane W. *Japanese Apologies for World War II: A Rhetorical Study*. New York: Routledge, 2006.

Ziemele, Ineta. *State Continuity and Nationality. Baltic States and Russia: Past, Present and Future as Defined by International Law*. Leiden: Martinus Nijhoff Publishers, 2005.

Zimmerman, Michael J. *An Essay on Moral Responsibility*. Totowa, N.J.: Rowman and Littlefield, 1988.

Zürcher, Erik J. *The Young Turk Legacy and Nation Building From the Ottoman Empire to Atatürk's Turkey*. I.B. Tauris, 2010.

Žalimas, Dainius. *Lietuvos Respublikos nepriklausomybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės* [International Legal Grounds and Consequences of the 11 March 1990 Restoration of the Independence of the Republic of Lithuania]. Vilnius: Demokratinės politikos institutas, 2005.

References to chapters in edited books:

Abi-Saab, Goerges. "The Changing World Order and the International Legal Order: The Structural Evolution of International Law Beyond the State-Centric Model". In *Global Transformation: Challenges to the State System*, edited by Yoshikazu Sakamoto, 439-462. Tokyo: United Nations University, 1994.

Abrahamsen, Samuel. "The Rescue of Denmark's Jews". In *The Rescue of the Danish Jews: Moral Courage Under Stress*, edited by L. Goldberger, 3-13. NY: New York University Press, 1987.

Alexander, Jeffrey C. "Toward a theory of cultural trauma". In *Cultural Trauma and Collective Identity*, edited by Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser, and Piotr Sztompka, 1-30. Berkeley: University of California Press, 2004.

Arendt, Hannah. "Organized Guilt and Universal Responsibility". In *The Portable Hannah Arendt*, edited by P. Baehr, 146-56. Penguin Books, 2000.

Ashmore, Richard D., and Lee Jussim. "Introduction: Toward a Second Century of the Scientific Analysis of Self and Identity". In *Self and identity: fundamental issues*, edited by Richard D.

Ashmore and Lee Jussim, 3-23. New York : Oxford University Press, 1997.

Austin, Paddy. "Politeness Revisited: The Dark Side". In *New Zealand Ways of Speaking English*, edited by A. Bell and J. Holmes, 276-95. Clevedon, Avon: Multilingual Matters, 1990.

Bernstein, Jay M. "Grand Narratives". In *On Paul Ricoeur: Narrative and Interpretation*, edited by David Wood, 102-124. London: Routledge, 1991.

Biersteker, Thomas J., and Cynthia Weber. "The Social Construction of State Sovereignty". In *State Sovereignty as Social Construct*, edited by Thomas J. Biersteker and Cynthia Weber, 1-22. Cambridge: Cambridge University Press, 1996.

Burgh, Richard. "Guilt, Punishment, and Desert". In *New Essays in Moral Psychology*, edited by F. Schoeman, 316-338. Cambridge: Cambridge University Press, 1987.

Clunan, Anne L. "Redefining Sovereignty: Humanitarianism's Challenge to Sovereign Immunity". In *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, edited by Noha Shawki and Michaelene Cox, 7-27. Farnham: Ashgate, 2009.

Fain, Haskell. "Some Moral Infirmities of Justice". In *Individual and Collective Responsibility. Massacre at My Lai*, edited by P. A. French, 29-34. Cambridge: Schenkman Publishing Company, 1972.

Fawn, Rick. "Ideology and National Identity in Post-Communist Foreign Policies". In *Ideology and National Identity in Post-Communist Foreign Policies*, edited by R. Fawn, 1-83. Frank Cass Publishers: London, 2005.

Gibney, Mark, and Niklaus Steiner. "Apology and the American 'War on Terror'". In *The Age of Apology: Facing Up to the Past*, edited by Mark Gibney, 287-315. University of Pennsylvania Press, 2008.

Hart, Herbert L. A. "Responsibility". In *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross, 549-572. 4th ed. Belmont: Wadsworth Publishing Company, 1991.

Held, G. "Politeness in Linguistic Research". In *Politeness in Language. Studies in its History, Theory and Practice*, edited by R. J. Watts, S. Ide & K. Ehlich, 131-53. Berlin and New York: Mouton de Gruyter, 1992.

Hovannisian, R. "Denial of the Armenian Genocide in Comparison with Holocaust Denial". In *Remembrance and Denial: The Case of the Armenian Genocide*, edited by Richard G.

Hovannisian, 201-236. Detroit, MI: Wayne State University, 1998.

Jaraych, Konrad, and Thomas Lindberger. "Contours of a Critical History of Contemporary Europe: A Transnational Agenda". In *Conflicted Memories: Europeanizing Contemporary Histories*, edited by Konrad H. Jarausch, Thomas Lindenberger, and Annelie Ramsbrock, 1-23. New York: Berghahn Books, 2007.

Jung, Dietrich. "The Sèvres Syndrome: Turkish Foreign Policy and its Historical Legacies". In *Oil and Water: Co-Operative Security in the Persian Gulf*, edited by Bjorn Moller, 131-159. London: I.B. Tauris Publishers, 2001.

Mälksoo, Lauri. "State Responsibility and the Challenge of the Realist Paradigm: The Demand of Baltic Victims of Soviet Mass Repressions for Compensation from Russia". In *Baltic Yearbook of International Law* 3, edited by Ineta Ziemele, 57-77. Leiden: Martinus Nijhoff Publishers, 2003.

Marrus, Michael R. "Papal Apologies of Pope John Paul II". In *The Age of Apology: Facing Up to the Past*, edited by Mark Gibney et al., 259-287. Philadelphia: University of Pennsylvania Press, 2008.

Morozov, Viatcheslav. "The Baltic States and Russia in the New Europe: a neo-Gramscian perspective on the global and the local". In *The Baltic States and Their Region: New Europe or Old?*, edited by David J. Smith, 275-292. New York: Rodopi, 2005.

Neumann, Iver B. "Returning Practice to the Linguistic Turn". In *Pragmatism in International Relations*, edited by Harry Bauer and Elisabetta Brighi, 82-103. New York: Routledge, 2009.

_____. "Europe's post-Cold War memory of Russia: cui bono?" In *Memory and Power in Post-War Europe*, edited by Jan-Werner Muller, 121-136. Cambridge: Cambridge University Press, 2004.

Nichanian, Marc. "The Truth of the Facts: About the New Revisionism". In *Remembrance and Denial: The Case of the Armenian Genocide*, edited by Richard G. Hovannisian, 249-271. Detroit: Wayne State University Press, 1998.

North, Joanna. "The 'Ideal' of Forgiveness: A Philosophical Exploration of Forgiveness: A Philosopher's Exploration". In *Exploring Forgiveness*, edited by Robert D. Enright and Joanna North, 15-34. The University of Wisconsin Press, 1998.

Onuf, Nicholas. "Parsing Personal Identity: Self, Other, Agent". In *Language, agency, and politics in a constructed world*, edited by François Debrix, 26-50. New York: M.E.Sharpe, 2003.

- Pattie, Susan P. "Armenians in Diaspora". In *The Armenians: Past and Present in the Making of National Identity*, edited by E. Herzig and M. Kurkchian, 126-147. New York: Routledge, 2005.
- Renan, Ernest. "What is a Nation". In *Becoming National: A Reader*, edited by Geoff Eley and Ronald Grigor Suny, 41-55. New York and Oxford: Oxford University Press, 1996.
- Ricoeur, Paul. "Life in Quest of Narrative". In *On Paul Ricoeur: Narrative and Interpretation*, edited by David Wood, 20-34. London&New York: Routledge, 1991.
- Rose, Caroline. "The battle for hearts and minds: Patriotic education in Japan in the 1990s and beyond". In *Nationalisms in Japan*, edited by Naoko Shimazu, 131-155. New York: Routledge, 2006.
- Rotberg, Robert I. "Truth Commissions and the Provision of Truth, Justice and Reconciliation". In *Truth vs. Justice*, edited by R.I. Rotberg and D. Thompson, 3-22. Princeton: Princeton University Press, 2000.
- Scruton, Roger. "The First Person Plural". In *Theorizing Nationalism*, edited by Ronald Beiner, 279-280. New York: State University of New York Press, 1999.
- Takahashi, Tetsuya. "The national politics of the Yasukuni Shrine". In *Nationalisms in Japan*, edited by Naoko Shimazu, 155-181. New York: Routledge, 2006.
- Wæver, Ole. "Identity, Communities and Foreign Policy: Discourse Analysis as Foreign Policy Theory". In *European Integration and National Identity: The Challenge of the Nordic States*, edited by Lene Hansen and Ole Wæver, 20-49. London and New York: Routledge, 2002.
- Wendt, Alexander. "Social Theory as Cartesian science: An auto-critique from a quantum perspective". In *Constructivism and International Relations: Alexander Wendt and His Critics*, edited by Stefano Guzzini and Anna Leander, 178-217. London and New York: Routledge, 2006.
- Zajda, Joseph. "The Politics of the New History School Textbooks in the Russian Federation". In *Globalisation, Ideology and Education Policy Reforms*, edited by Joseph Zajda, 3-19. Springer Netherlands, 2010.
- Žalimas, Dainius. "Legal and Political Issues on the Continuity of the Republic of Lithuania". In *Baltic Yearbook of International Law Vol. 1*, edited by Ineta Ziemele, 1-21. Leiden: Martinus Nijhoff Publishers, 2001.

References to journal articles:

- Abdel-Nour, Farid. "National Responsibility". *Political Theory* 31, 5 (2003): 693-719.
- Akçam, Taner. "Anatomy of a Crime: The Turkish Historical Society's Manipulation of Archival Documents". *Journal of Genocide Research* 7, 2 (2005): 255-277.
- Alexander, Jeffrey C. "The Social Construction of Moral Universals: The "Holocaust" from War Crime to Trauma Drama". *European Journal of Social Theory* 5, 1 (2002): 15-85.
- Alexandrowicz, Charles H. "New and Original States: The Issue of Reversion to Sovereignty". *International Affairs* 45, 3 (1969): 465-480.
- Ammitzbøll, Pernille, and Lorenzo Vidino. "After the Danish Cartoon Controversy". *Middle East Quarterly* 14, 1 (Winter 2007): 3-11.
- Anderson, Rachel. "Redressing Colonial Genocide Under International Law: The Hereros' Cause of Action against Germany". *California Law Review* 93 (2005): 1155-189.
- Augoustinos, Martha, Amanda LeCouteur, and John Soyland. "Self-sufficient arguments in political rhetoric: constructing reconciliation and apologising to the Stolen Generations". *Discourse and Society* 13 (2002): 105-42.
- Aydın, Mustafa. "Securitization of History and Geography: Understanding of Security in Turkey". *Southeast European and Black Sea Studies* 3, 2 (2003): 163-184.
- Ayoob, Mohammed. "Humanitarian Intervention and State Sovereignty". *The International Journal of Human Rights* 6, 1 (2002): 81-102.
- Barkin, J. Samuel, and Bruce Cronin. "The State and the Nation: Changing Norms and Rules of Sovereignty in International Relations". *International Organization* 48, 1 (1994): 107-130.
- Bassiouni, M. Cherif. "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'". *Law and Contemporary Problems* 59, 4 (1996): 63-74.
- Bates, Stanley. "Responsibility of 'Random Collections'". *Ethics* 81, 4 (July 1971): 343-349.

- Bayer, Annette C. "How Can Individualists Share Responsibility?". *Political Theory* 21, 2 (1993): 228-248.
- Blum-Kulka, Shoshana, and Elite Olshtain. "Requests and apologies: A cross-cultural study of speech act realization patterns". *Applied Linguistics* 5, 3 (1984): 196-213.
- Boed, Roman. "State of Necessity as a Justification for Internationally Wrongful Conduct". *Yale Human Rights & Development Law Journal* 3, 1 (2000): 4-12.
- Borneman, John. "Can Public Apologies Contribute To Peace? An Argument for Retribution". *Anthropology of East Europe Review* 17, 1 (1999): 7-20.
- . "Reconciliation after Ethnic Cleansing: Listening, Retribution, Affiliation". *Public Culture* 14, 2 (2002): 281-304.
- Brown, Rachel. "The Emplotted Self: Self-Deception and Self-Knowledge". *Philosophical Papers* 32, 3 (2003): 279 - 300.
- Cohen, Jonathan. "Legislating Apology: The Pros and Cons". *University of Cincinnati Law Review* 70 (2001): 819-95.
- Craven, Matthew C. R. "The Problem of State Succession and the Identity of States under International Law". *European Journal of International Law* 9, 1 (1998): 142-162.
- Crocker, David A. "Reckoning with Past Wrongs: A Normative Framework". *Ethics and International Affairs* 13, 1 (1999): 43-64.
- Cunningham, Michael. "Prisoners of the Japanese and the Politics of Apology: A Battle over History and Memory". *Journal of Contemporary History* 39, 4 (2004): 561-574.
- Dadrian, Vahakn N. "The Signal Facts Surrounding the Armenian Genocide and the Turkish Denial Syndrome". *Journal of Genocide Research* 5, 2 (2003): 269-279.
- Davidson, J. Scott. "The Rainbow Warrior Arbitration concerning the Treatment of the French Agents Mafart and Prieur". *The International and Comparative Law Quarterly* 40, 2 (1991): 446-457.
- Davis, Paul. "On Apologies". *Journal of Applied Philosophy* 19, 2 (2002): 169-173.

- Demos, Raphael. "Legal Fictions". *International Journal of Ethics* 34, 1 (1923): 37-58.
- Duffy, Gavan, and Brian Frederking. "Changing the Rules: A Speech Act Analysis of the End of the Cold War". *International Studies Quarterly* 53 (2009): 325-347.
- Dugan, Laura, Julie Y. Huang, Gary LaFree, and Clark McCauley. "Sudden Desistance from Terrorism: The Armenian Secret Army for the Liberation of Armenia and the Justice Commandos of the Armenian Genocide". *Dynamics of Asymmetric Conflict* 1, 3 (2008): 231-249.
- Eisnaugle, Carrie J. N. "An International "Truth Commission": Utilizing Restorative Justice as an Alternative to Retribution". *Vanderbilt Journal of Transnational Law* 36, 1 (January 2003): 209-242.
- Evinch, Günay. "The Armenian Cause Today". *The Turkish American* 2, 8 (2005): 22-29.
- Feinberg, Joel. "Problematic Responsibility in Law and Morals". *The Philosophical Review* 71, 3 (July 1962): 340-51.
- _____. "Collective Responsibility". *The Journal of Philosophy* 65, 21 (Nov. 7, 1968): 674-688.
- Forest, Benjamin, and Juliet Johnson. "Unraveling the Threads of History: Soviet-Era Monuments and Post-Soviet National Identity in Moscow". *Annals of the Association of American Geographers* 92, 3 (2002): 524-547.
- Gibney, Mark, and Erik Roxstrom. "The Status of State Apologies". *Human Rights Quarterly* 23 (2001): 911-939.
- Gill, Kathleen. "The Moral Functions of an Apology". *Philosophical Forum* 31, 1 (2000): 11-27.
- Goebel, Julius. "The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars". *The American Journal of International Law* 8, 4. (1914): 802-852.
- Govier, Trudy, and Wilhelm Verwoerd. "The Promise and Pitfalls of Apologies". *Journal of Social Philosophy* 33, 1 (Spring 2002): 67-82.

- Gries, Peter H. "A 'China Threat'? Power and Passion in Chinese 'Face Nationalism'". *World Affairs* 162, 2 (Fall 1999): 63-75.
- Gries, Peter H., and Kaiping Peng. "Culture Clash? Apologies East and West". *Journal of Contemporary China* 11, 30 (2002): 173-178.
- Hayner, Priscilla B. "Fifteen Truth Commissions—1974 to 1994: A Comparative Study". *Human Rights Quarterly* 16, 4 (1994): 597-675.
- Held, Virginia. "Can a Random Collection of Individuals Be Morally Responsible?". *Journal of Philosophy* 67, 14 (July 1970): 471-81.
- Holder, Cindy. "Debating the Danish Cartoons: Civil Rights or Civil Power?". *UNB Law Journal* 55 (2006): 179-185.
- Hough, William J. H. "The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory". *New York Law School Journal of International and Comparative Law* Vol.6, No.2 (1985): 391-446.
- Hutchison, Emma, and Roland Bleiker. "Emotional Reconciliation: Reconstituting Identity and Community after Trauma". *European Journal of Social Theory* 11, 3 (2008): 385–403.
- Jacobsen, Walter L. "A Juridical Examination of the Israeli Attack on the USS *Liberty*". *Naval Law Review* 36 (1986): 69-119.
- Janes, Henry L. "The Black Warrior Affair". *The American Historical Review* 12, 2 (1907): 280-298.
- Jensen, Tina Gudrun. "To Be 'Danish', Becoming 'Muslim': Contestations of National Identity?". *Journal of Ethnic and Migration Studies* 34, 3 (2008): 389 – 409.
- Kahn, Robert A. "The Danish Cartoon Controversy and the Exclusivist Turn in European Civic Nationalism". *Studies in Ethnicity and Nationalism* 8, 3 (2008): 524-542.
- Kelsen, Hans. "Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals". *California Law Review* 31 (1943): 530-571.

- Kinnvall, Catarina. "Globalization and Religious Nationalism: Self, Identity, and the Search for Ontological Security". *Political Psychology* 25, 5 (2004): 741-767.
- Koji, Teraya. "Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-Derogable Rights". *European Journal of International Law* 12, 5 (2001): 917-941.
- Kort, Louis. "What is an Apology?" *Philosophical Research Archives* 1 (1975): 78-87.
- Kramer-Moore, D., and M. Moore. "Pardon Me for Breathing: Seven Types of Apology". *ETC.: A Review of General Semantics* 60, 2 (2003): 160-170.
- Kristof, Nicholas D. "The Problem of Memory". *Foreign Affairs* 77, 6 (1998): 37-49.
- Lazare, Aaron. "Go Ahead, Say You're Sorry." *Psychology Today* 28 ,1 (1995): 40-42.
- Leich, Marian Nash. "Denial of Liability: *Ex Gratia* Compensation on a Humanitarian Basis". *The American Journal of International Law* 83, 2 (1989): 319-324.
- Levi, Deborah L. "The Role of Apology in Mediation". *New York University Law Review* 72 (1997): 1165-1210.
- Lewis, Margareth K. "An Analysis of State Responsibility for the Chinese-American Airplane Collision Incident". *New York University Law Review* 77 (2002): 1404-1441.
- Lægaard, Sune. "The Cartoon Controversy: Offence, Identity, Oppression?". *Political Studies* 55 (2007): 481-498.
- Lillich, Richard B. "The Paris Minimum Standards of Human Rights Norms in a State of Emergency". *The American Journal of International Law* 79, 4. (1985):1072-1081.
- Linde-Laursen, Anders. "Is something rotten in the state of Denmark? The Muhammad cartoons and Danish political culture". *Contemporary Islam* 1, 3 (2007): 265-274.
- Mälksoo, Maria. "The Memory Politics of Becoming European: The East European Subalterns and the Collective Memory of Europe". *European Journal of International Relations* 15, 4 (2009): 653-680.

- May, Larry. "Collective Inaction and Shared Responsibility". *NOÛS* 24 (1990): 269-278.
- McCloskey, Henry J. "The State as an Organism, as a Person, and as an End in Itself". *The Philosophical Review* 72, 3 (1963): 306-326.
- Meier, A. J. "Conflict and the Power of Apologies". *Philologie in Netz* 30 (2004): 1-17.
- Mèndez, Juan E. "Accountability for Past Abuses". *Human Rights Quarterly* 19 (1997): 255-282.
- Meron, Theodore. "On a Hierarchy of International Human Rights". *The American Journal of International Law* 80, 1 (1986): 1-23.
- Mitzen, Jennifer. "Ontological Security in World Politics". *European Journal of International Relations* 12, 6 (2006): 341-70.
- Mufti, Malik. "Daring and Caution in Turkish Foreign Policy". *Middle East Journal* 52, 1 (1998): 32-50.
- Murata, Kumiko. "Has He Apologized or Not?: A Cross-Cultural Misunderstanding Between the UK and Japan on the Occasion of the 50th Anniversary of VJ Day in Britain". *Pragmatics* 8, 4 (1998): 501-513.
- Nagel, Thomas. "Moral Luck". *Proceedings of the Aristotelian Society* 50 (1976): 137-151.
- Neumann, Iver B. "Beware of Organicism: The Narrative Self of the State". *Review of International Studies* 30 (2004): 259-267.
- O'Donnell, Daniel. "Commentary by the Rapporteur on Derogation". *Human Rights Quarterly* 7, 1 (1985): 23-34.
- Phillips, Ann L. "The Politics of Reconciliation Revisited: Germany and East-Central Europe". *World Affairs* 163, 4 (Spring 2001): 171-91.
- Quine, Willard V. "On What There Is". *The Review of Metaphysics* 2, 5 (1948): 21-38.
- Regan, Dennis T., and Judith Totten. "Empathy and Attribution: Turning Observers into Actors". *Journal of Personality and Social Psychology* 32, 5 (1975): 850-856.

- Ringmar, Erik. "On the Ontological Status of the State". *European Journal of International Relations* 2, 4 (1996): 439-466.
- Sereni, Angelo P. "Agency in International Law". *The American Journal of International Law* 34, 4 (1940): 638-660.
- Shakun, Melvin F. "United States-China Plane Collision Negotiation". *Group Decision and Negotiation* 12 (2003): 477-480.
- Shaw, Stanford. "The Ottoman Census System and Population, 1831-1914". *International Journal of Middle East Studies* 9, 3 (1978): 325-38.
- Schlenker, Barry R., and Bruce W. Darby. "The Use of Apologies in Social Predicaments". *Social Psychology Quarterly* 44, 3 (1981): 271-278.
- Schimmelfennig, Frank. "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union". *International Organization* 55, 1 (2001): 47-80.
- Skidmore-Hess, Daniel. "The Danish Party System and the Rise of the Right in the 2001 Parliamentary Election". *International Social Science Review* 78, 3-4 (2003): 89-110.
- Somers, Margaret R. "The Narrative Constitution of Identity: A Relational and Network Approach". *Theory and Society* 23, 5 (1994): 605-649.
- Stahn, Carsten. "Accommodating Individual Criminal Responsibility and National Reconciliation: The UN Truth Commission for East Timor". *The American Journal for International Law* 95, 4 (October 2001): 952-966.
- Stowell, Ellery C. "The General Smedley D. Butler Incident". *The American Journal of International Law* 25, 2 (1931): 321-324.
- Taftt, Lee. "Apology Subverted: The Commodification of Apology." *The Yale Law Journal* 109, 5 (January 2000): 1135-1160 .
- Teitel, Ruti G. "Transitional Justice Genealogy". *Harvard Human Rights Journal* 16 (2003): 69-94.

- Valencia, Mark J., and Ji Guoxing. "The "North Korean" Ship and U.S. Spy Plane Incidents: Similarities, Differences, and Lessons Learned". *Asian Survey* 42, 5 (2002): 723-732.
- Villadsen, Lisa Storm. "Speaking on Behalf of Others: Rhetorical Agency and Epideictic Functions in Official Apologies". *Rhetoric Society Quarterly* 38, 1 (2008): 25-45.
- Wagatsuma, Hiroshi, and Arthur Rosett. "The Implications of Apology: Law and Culture in Japan and the United States". *Law&Society Review* 20, 4 (1986): 461-498.
- Weidenbaum, Paul. "Necessity in International Law". *Transactions of the Grotius Society* 24 (1938): 105-132.
- Wendt, Alexander. "The state as person in international theory". *Review of International Studies* 30, 2 (2004): 289-316.
- Wexler, Jodi. "The Rainbow Warrior Affair: State and Agent Responsibility for Authorized Violations of International Law". *Boston University International Law Journal* 5 (1987): 389-412.
- White, Hayden. "The Value of Narrativity in the Representation of Reality". *Critical Inquiry* 7, 1 (1980): 5-27.
- Zarakol, Ayşe. "Ontological (In)security and State Denial of Historical Crimes: Turkey and Japan". *International Relations* 24, 1 (2010): 3-23.
- Žalimas, Dainius. "SSRS okupacijos žalos atlyginimo įstatymas ir Rusijos Federacijos atsakomybės tarptautiniai teisiniai pagrindai" ["The Law on Compensation of Damage Resulting from the USSR Occupation and the International Legal Grounds for Responsibility of the Russian Federation"], *Politologija* 4, 44 (2006): 3-53.
- "Contemporary Practice of the United States Relating to International Law". *American Journal of International Law* 626, 95 (2001): 630-33.
- "World War II Era Claims against Japanese Companies". *The American Journal of International Law* 95, 1 (2001): 139-143.

References to online sources:

- Ažubalis, Audronius, Andrius Kubilius, Kęstutis Škiudas, and Jonas Urbanavičius. *Tėvynės sąjunga ir Lietuvos energetinis saugumas 2008* [Fatherland Union and the Energy Security of Lithuania 2008]. <http://www.tsajunga.lt/index.php/leidiniai/12> (accessed March 6, 2010).
- Chernychenko, S.V. “Ob “okkupacii” Pribaltiki i narushenii prav russkojazychnogo naselenija” [“On the “occupation” of the Baltic States and the violations of the rights of the Russian-speaking population”], *Mezhdunarodnaja zhizn*, 2004. <http://www.ln.mid.ru> (accessed May 10, 2010).
- Danish Ministry of Refugee, Immigration and Integration Affairs. “International Migration and Denmark 2006”. <http://www.nyidanmark.dk> (accessed April 18, 2010).
- Dulyan, Alexey. “Molotov-Ribbentrop Pact: A Portrait against the Historical Background”. *Mezhdunarodnaja zhizn*, 2009. <http://www.ln.mid.ru> (accessed May 10, 2010).
- Ersbøll, Eva. “Country Report: Denmark”. EUDO Citizenship Observatory, 2009. <http://eudo-citizenship.eu/> (accessed December 10, 2010).
- European Commission for Democracy through Law. “Report on the Relationship between Freedom of Expression and Freedom of Religion: The issue of Regulation and Prosecution of blasphemy, religious insult, and incitement to religious hatred”. Adopted by the Venice Commission at its 76th Plenary Session at Venice 17-18 October 2008. <http://www.venice.coe.int/docs/2008/CDL-AD%282008%29026-e.asp> (accessed April 18, 2010).
- Gregg, Heather S. “Divided They Conquer: The Success of Armenian Ethnic Lobbies in the United States”. The Rosemarie Rogers Working Paper Series No. 13, MIT, 2002. <http://web.mit.edu/cis/www/migration/publications.html> (accessed December 10, 2010).
- Gudkov, Lev. “The fetters of victory: How the war provides Russia with its identity”. *Eurozine*, May 3, 2005. <http://www.eurozine.com/pdf/2005-05-03-gudkov-en.pdf> (accessed March 28, 2010).
- Kan, Shirley A., coordinator. “China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications”. Congressional Research Service Report No. RL30946, 2001. <http://www.fas.org/sgp/crs/row/RL30946.pdf> (accessed June 7, 2010).
- Leonard, Mark, and Nicu Popescu. “A Power Audit of EU-Russia Relations”. European Council on Foreign Relations, November 7, 2007. http://www.ecfr.eu/content/entry/commentary_pr_russia_power_audit/ (accessed June 7, 2010).
- Lex, Sine, Lasse Lindekilde and Per Mouritsen. “Public and Political Debates on Multicultural Crises in Denmark”, A European Approach to Multicultural Citizenship: Legal, Political, and

Educational Challenges. European University Institute, 2007. http://emilie.eliampep.gr/wp-content/uploads/2009/07/emilie_wp2_denmark_final.pdf (accessed May 10, 2010).

Navari, Cornelia. "The Concept of Practice in the English School". Paper presented at the annual meeting of the ISA's 50th Annual Convention "Exploring the Past, Anticipating the Future", New York Marriott Marquis, New York City, NY, USA, Feb 15, 2009. http://www.allacademic.com/meta/p313325_index.html (accessed June 7, 2010).

Paulauskas, Kęstutis. "The Baltics: from nation states to member states". *EU Institute for Security Studies*, Occasional Paper 62, February 2006. <ftp.infoeuropa.euroid.pt/000037001-000038000/000037506.pdf> (accessed on December 10, 2010).

The 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," February 2003. <http://www.ictj.org/images/content/7/5/759.pdf> (accessed December 10, 2010).

Ukabiala, Jullyette. "Slave Trade A 'Crime Against Humanity'". *Africa Recovery* 15, 3 (2001). <http://www.un.org/ecosocdev/geninfo/afrec/vol15no3/153racis.htm> (accessed May 10, 2010).

United Nations. "Reports of International Arbitral Awards: Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair". April 30, 1990. http://untreaty.un.org/cod/riaa/cases/vol_XX/215-284.pdf (accessed May 18, 2010).

United Nations. "Report of the International Law Commission on the Work of its Fifty-Third Session (23 April - 1 June and 2 July - 10 August 2001)", UN GAOR, 56th Session, Supplement No. 10, UN Doc A/56/10, 2001. <http://untreaty.un.org/ilc/reports/2001/2001report.htm> (accessed May 18, 2010).

United Nations. "Whitaker Report: Revised and updated report on the question of the prevention and punishment of the crime of genocide". UN Doc E/CN.4/Sub.2/1985/6, July 2, 1985. <http://www.preventgenocide.org/prevent/UNdocs/whitaker/> (accessed May 10, 2010).

Vilhjálmsón, Vilhjálmur Ö., and Bent Blüdnikow. "Rescue, Expulsion, and Collaboration: Denmark's Difficulties with its World War II Past". *Jewish Political Studies Review* 18, 3-4 (2006). <http://www.jcpa.org> (accessed May 10, 2010).

Zuroff, Efraim. "Eastern Europe: Anti-Semitism in the Wake of Holocaust-Related Issues". *Jewish Political Studies Review* 17, 1-2 (Spring 2005). <http://www.jcpa.org> (accessed March 6, 2010).