Հարգելի՛ ընթերցող.

ԵՊՀ հայագիտական հետազոտությունների ինստիտուտը, չհետապնդելով որևէ եկամուտ, իր կայքերում ներկայացնելով հայագիտական հրատարակություններ, նպատակ ունի հանրությանն ավելի հասանելի դարձնել այդ ուսումնասիրությունները:

Մենք շնորհակալություն ենք հայտնում հայագիտական աշխատասիրությունների հեղինակներին, հրատարակիչներին:

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ARMEN MARUKYAN

THE BASIS AND OPPORTUNITIES OF APPLYING TO INTERNATIONAL COURT ON THE CASE OF THE ARMENIAN GENOCIDE

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ARMEN MARUKYAN

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By this research is made an attempt to highlight the basis and opportunities of applying to the International Court of Justice on the case of the Armenian Genocide by combining historical facts with international legal norms and principles.

This book is intended for the experts who research the Armenian Question and History of the Armenian Genocide, particularly for the ones who work on reclaiming issues, for students and for interested readers, also.

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INTRODUCTION

The Armenian Genocide perpetrated by the Turkish government is not only a historical but also a political and legal issue, therefore, there ought to be certain evaluation of all these three dimensions.

The Armenian Genocide as a tragic event which took place at the end of the XIX century and at the beginning of the XX century was given a historical evaluation by not only the Armenian historians but also by foreign, and specialists on Genocide Studies. Thousands of researches and archival documents have been published which absolutely state the crime committed against the Armenian people. However, Turkey as the responsible country not only changes or tampers with the historical facts, but administrates a denial policy of the Armenian Genocide at the state level. So with such policy, from the historical aspect, Turkey has turned the Armenian Genocide to a political issue. As the Armenian Genocide was a criminal policy against Armenians as an ethnic group which was planned in advance and was implemented step by step, therefore it should be given a political assessment. A number of governmental and non-governmental international organizations and more than two dozen countries have given a political assessment to the Armenian Genocide qualifying it as a serious international crime. However, Turkey does not want to accept the resolutions of condemnation and recognition of the Armenian Genocide, moreover, undertakes various methods to prevent the record of the Armenian Genocide in new countries. This behavior adopted by the modern Turkey leaves no other choice to Armenians, as people who are victims of this crime, to transfer the case of the Armenian Genocide to international legal framework and to resolve it in the International Court.

It should be noted that from the point of international law some research has been done by both Armenian and foreign experts to give a

legal assessment to the Armenian Genocide, highlighting Turkey's responsibility for the crimes perpetrated against the Armenian people. A serious contributor to this case is the renowned Yuri Barseghov[1], the outstanding Armenian international law expert.

These issues were discussed in the Diaspora and in Armenia by such specialists as Sh. Toriguian[2], V. Dadrian[3], P. Ohanyan[4], H. Hakobyan[5], I. Arabyan[6], V. Vardanyan[7], A. Papian[8], and other foreign specialists such as A. De Zayas[9] and Yves Ternon[10].

[1]**Барсегов Ю.,** Геноцид армян – преступление против человечества, Ер., 1990; Арбитражное решение президента США по армяно-турецкой границе, Ер., 1995; Ответственность государства за геноцид в международном праве,"Геноцид – преступление против человечества. Материалы I московского международного симпозиума", М., 1997; Financial responsibility for the Armenian Genocide, Yerevan, 1999; Геноцид армян – преступление по международному праву, М., 2000; Турецкая доктрина международного права на службе политики геноцида (о концепции члена "комиссии примирения" Гюндуз Актана), М., 2002; Геноцид армян: ответственность Турции и обязательства мирового сообщества, документы и комментарий. Составитель, ответственный редактор, автор предисловия и комментария д.и.н., профессор Ю. Г. Барсегов, т. 1, М., 2002, т. 2, ч.1, М., 2003. т. 2, ч. 2, М., 2005; К вопросу о применимости конвенции 1948 года к геноциду армян, "Вестник Армянского института международного права и политологии в Москве", N 1, М., 2004; Новый этап признаний как условие реализации ответственности Турции за геноцид, "Вестник Армянского института международного права и политологии в Москве", N 3, Ер., 2005.

[2] Toriguian Sh., The Armenian Question and International Law, Beirut, 1976. The Killing of the Armenians and the American Congress, Comp. and the introduction by Sh. Torikyan, Beirut, 1978.

[3] Dadrian V. N., The Key Elements in the Turkish Denial of the Armenian Genocide: A case study of distortion and falsification, Toronto, 1999; Дадриян В., Геноцид армян: содержание преступления, Ер., 2005; Обзор материалов турецкого военного трибунала по обвинению в геноциде армян: характер и значимость четырех основных серий судебного разбирательства, "Геноцид – преступление против человечества. Материалы I московского международного симпозиума", М., 1997.

[4] Оганян П., Геноцид армянского народа и защита прав человека, Ер., 2004.

[5] Hakobyan H., The Idea of Returning to Motherland and the Modern International Law, Yerevan, 2000. The Historical and the Legal basis of the Emigrated Armenians' Claim to Return to Motherland, Yerevan, 2002.

[6] Arabyan I., The Genocide and its Punishment, Yerevan, 1996.

[7] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, Bulletin of Noravank Scientific Educational Foundation, N 1(17), Yerevan, 2006. On Legal Analysis Concerning to the Armenian Genocide Prepared for the International Center for Transitional Justice, The Issues of the History and Historiography of the Armenian Genocide, N 8, Yerevan, 2003. Основания

However, it should be noted that studies and research done in legal dimension are of scientific nature, whereas it is necessary to transfer historical facts and international legal knowledge to practical application. Thus, the practical opportunities given to the Armenian nation by the modern international law should be clearly considered. These opportunities would solidify submitting a lawsuit against Turkey in the international court which would satisfy the claim in the court.

Considering the fact that in international law much importance is given to law implementation practice which plays a significant role in enriching the theory of international law and creating new international legal norms, it is also necessary to study the trial proceedings of genocide committed against other nations in national, international and internationalized courts which observe such proceedings as a precedent for presenting and satisfying the claim on Armenian Genocide in international court.

The criminal acts of genocide in national courts: the Trial of the Young Turks, the Leipzig War Crime Trials, the cases of Soghomon Tehlirian and Adolf Eichmann, in internationalized courts: in the Special Court for Sierra Leone (SCSL), in Extraordinary Chambers in the Courts of Cambodia (ECCC), in Special Panels for Serious Crimes in East Timor and in Special Tribunal for Lebanon (STL), as well as in international courts: in ad hoc tribunals and International Criminal Courts (ICC) for Rwanda, former

международно-правовой ответственности за геноцид армян, "Вестник Армянского института международного права и политологии в Москве", N 3, Ер., 2005.

[8] Papian A., Legal Bases for the Armenian Claims (Collection of Articles), Yerevan, 2007. Sound the alarms! This is our final Sardarapat, Yerevan, 2009. Hayrenatirutyun (Reclaiming the Homeland): Legal Bases for the Armenian claims and Related Issues (Collection of Articles), 2012, Yerevan.

[9]Alfred de Zayas, Memorandum on the genocide against Armenians 1915-1923 and the application of the 1948 Genocide Convention, 2004.

[10] Ternon Y., *Impunity, Revenge* and *Denial*: Armenian Genocide In Front Of International Official Channels, Yerevan, 2003.

Yugoslavia, Tokyo and Nuremberg, and the condemnation of the people accused of crime of genocide and crimes done to humanity in International Criminal Court, and in the UN International Court of Justice, the case materials brought against Yugoslavia to bear responsibility, the indictments, proceeding's committees and judgments can be viewed as example and basis, and be used for submitting a claim to the UN International Court of Justice in the case of the Armenian Genocide.

Since the experience and actions of courts and particularly the examination of the decisions made is signified, we found it appropriate to take steps towards studying the courts' performance which focus on crimes committed against humanity. These steps must be taken prior to presenting any content on the Armenian Genocide.

Nowadays there are many internationalized judicial bodies for the cases of the genocide crimes, but the most authoritative role in solving the international conflicts continues to belong to the UN International Court of Justice. At first sight the idea to create special ad hoc international tribunal for the case of the Armenian Genocide seems very attractive, as it was in creating ad hoc tribunals for former Yugoslavia and Rwanda, but there are some circumstances that make us take a sober view of the situation and give preference to the UN International Court of Justice. First the creation of the International Criminal Tribunals for the former Yugoslavia in 1993 and for Rwanda in 1994 was when it hadn't been yet adopted the regulations of Rome Statute of the ICC. It is obvious in 2002, after operation of ICC the UN Security Council would hardly create a special international tribunal to discuss the case of genocide which was included in the list of crimes and were under the jurisdiction of ICC. Besides as it is known ad hoc tribunals are international courts which make individuals and not the states accept liability. In the practice of UN Security Council there have not been the cases of creating ad hoc international judicial bodies which will be endowed with the power to bring to liability the states which have made

international offenses or international crimes[11]. This is explained in the way that the UN International Court of Justice is itself endowed with corresponding power and there is no need to create a new ad hoc court to call to liability the states. The same can be told about the ICC which also investigates international crimes and individuals who committed international crimes, but it doesn't investigate the cases of states. The ICC has also enacted the provisions about the time limit, according to which the ICC has announced beyond its jurisdiction to investigate the cases which have been performed before adopting Rome Statute of the ICC. So, the creation of international-national tribunals, as it has been done in the cases of East Timor, Sierra Leone, Cambodia and Lebanon doesn't have any advantages, as those courts are also endowed only with the competence to judge individuals. Thus, it is more appropriate to introduce the application against Turkey to the UN International Court of Justice.

[11] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, Bulletin of Noravank Scientific Educational Foundation, N 1(17), Yerevan, 2006, p. 63.

CHAPTER 1

The Main Components of the Application that will be Submitted to the UN International Court of Justice on the Case of the Armenian Genocide

In order to apply to the UN International Court of Justice for the case of the Armenian Genocide Armenia as a plaintiff should prepare an application submitted to the court. Besides the documents proving the introduced provisions must be attached, but there is no need to overload the application with secondary appendixes and artificially enlarge the volume of the submitted document[12].

Generally the application submitted to the international judicatures is structurally similar to the corresponding documents submitted to the national courts, but certainly, there are some specifics. In the application the plaintiff country must first mention which are the court jurisdiction grounds to investigate that case, then the factual circumstances of the claim must be introduced evaluated from the legal point, and finally the document must be concluded by the requirements submitted to the court[13].

At the beginning of the application Armenia can ground the jurisdiction of the International Court to investigate the case of the Armenian Genocide with the provisions of the article 9 of the UN Genocide Convention, according to which the disputes between Convention member countries are settled by the International Court[14]. We can cite the decision of the court for the case of Bosnia and Herzegovina against Yugoslavia in 1996, when the extreme positions of two sides were evaluated as a dispute existed between them, and it was recorded the sides as the member

[12]Практические директивы Международного суда ООН. http://www.un.org/ru/icj/practice_directions.shtml
[13]Международное право, отв. ред. Г.В., Игнатенко, О. И., Глунов, с. 713.
[14]Права человека. Сборник международных договоров, с. 782.

countries of the UN Genocide Convention having signed that document had assumed some responsibilities, therefore the court relying on the article 9 of the UN Genocide Convention was competent to investigate that case[15]. All the enumerated circumstances exist in the case of the Armenian Genocide, so International Court is component to investigate this case.

While compiling the application it is necessary to take into consideration that while assessing submitted evidences the International Court is led by the following standards:

a) the information source (is it biased or neutral); b) the methods of receiving information (for example, are they anonymous reports in media or the information given by the court or pretrial bodies); c) the quality and the content of the information (here it is about the facts that are mutually accepted by disputing sides, or about the facts that are above suspicion)[16]. If we are led by these standards while submitting the factual circumstances of the Armenian Genocide we must rely on the following basic documents, certainly, maintaining chronological order:

1. The joint declaration of the Entente Powers on May 24, 1915, which condemned the mass murders of the Armenians during the perpetration of the Armenian Genocide. This document was officially published in the capitals of three countries and was handed to Turkish authorities.

2. The indictments of Young Turks' leaders and other court procedures in Turkish Military Tribunals from the April 28, 1919 to June 5, shorthand record of trials and verdicts which give sufficient and reliable information about the organized policy of Turks for mass extermination of the Armenians in the Ottoman Empire.

[15] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, p. 55-56.
[16] www.un.org/ru/icj/who_sits.shtml

3. The Treaty of Sevres which was signed by Turkish legal authorities and the victorious countries on August 10, 1920.

4. The arbitration decision of Woodrow Wilson, the US president demarcated Armenian-Turkish boundaries on November 22, 1920.

5. The Treaty of Lausanne on July 24, 1923, on the protection of the rights of non-Muslim population, particularly the Armenians.

6. The advisory conclusions of the authoritative specialists of international law on the restoration of the rights of the migrants on August 2, 1929.

The following documents can be submitted as supplementary evidences:

7. The documents of the genocide perpetrated in the former Yugoslavia, the case Bosnia and Herzegovina against Yugoslavia in the UN International Court of Justice.

8. The documents of the International Criminal Court.

9. The advisory conclusions of the UN International Court of Justice on the arbitral verdict of the King of Spain on the territorial dispute of Honduras vs. Nicaragua.

10. The resolutions recognizing and condemning the Armenian Genocide by the international non-governmental organizations.

1. The first most important component of the application submitted to the International Court on the case of the Armenian Genocide must be the joint declaration simultaneously published in three capitals of the allied countries of Entente: Paris, London, and Petrograd on May 24, 1915. This declaration was transferred officially to the Turkish authorities. It was a joint declaration that condemned the mass killing of the Armenians. In the declaration it is clearly described the attitude of the Turkish government towards the massacre of the Armenians, not only in the way of the

"connivance", but also with "direct support"[17]. It is principal to record the fact that new crimes are committed which note that the previous acts to abolish the Armenians were also crimes and underline the connection of the new crimes with the previous ones. From the point of the international law the statement is significant that by qualifying the Armenian Genocide as a crime against "humanity and civilization" the personal criminal liability of the international crime is put on Turkish government and on the members of its local representatives. So, the declaration internationally put the start of the personal liability of the individuals in the mass killing of the members of any national group, and it obviously and not ambiguously rejected the opportunity to refer to the theory of "state action" according to which the behavior of state authorities was attributed to the state which excluded the personal responsibility of individuals who were the perpetrators of those actions[18]. According to the declaration, the official status of the individuals who were guilty for the extermination of the Armenians can't be considered as a justifying factor to mitigate their punishment regardless that they were the either members or the representatives of the government.

It is important to know that the joint declaration of Entente Powers has become a significant document in order to assess legally and politically other similar cases. During the Second World War on October 30, 1943, the declaration was adopted by the initiative of USSR on "The brutalities implemented by pro-Nazi (fascist) groups". This declaration almost literately repeated the provisions and formulations of the joint declaration of Entente Powers. In the Moscow declaration of anti-Nazi (fascist) coalition as in the joint declaration of Entente Powers personal liability for mass murder was put on the German officers and soldiers, as well as on the

[17]Международные отношения в эпоху империализма, Документы из архивов Царского и Временного правительства. 1878–1917, М.-Л., 1931–1940, серия III, т. 7, ч. 2, с. 252.
[18]Геноцид армян в Османской империи. Сборник документов. Под редакцией М. Нерсисяна, Ер., 1983, с. 280.

members of Nazi party who had taken part in those actions[19]. This document laid the foundation for the process that after the end of the Second World War the victorious powers of anti-Nazi coalition could undertake the trials in order to convict the Nazi criminals. Unfortunately, the Entente Powers didn't show the same sequence and determination after the First World War in order to perform effectively the provisions of joint declaration, particularly to create international tribunal.

It is important to note that on May 28, 1948, before adopting the UN Genocide Convention the UN War Crimes Commission considered the formulation "crime committed against humanity" given to the massacre of the Armenians in the joint declaration of Entente powers on May 24, 1915, similar to the crimes which were qualified as inhuman acts, i.e. genocide against their own subjects by international law during the Nuremberg trials[20]. As it is known the Nazi criminals were called to the responsibility not only for war crimes but also for the crimes acted against humanity, including for the genocide (holocaust).

2. In the case of Bosnia and Herzegovina against Yugoslavia the court was leaded by the principle of **res judicata***[21] (claim preclusion) coming out from which the court considered credible the decisions and the verdicts of professional judicatures, particularly the documents of International Criminal Tribunal of the former Yugoslavia. It means that during the investigation of the case of the Armenian Genocide these principles can also be used, thus the materials on the trials of the Young Turks in Turkish

[19] Внешняя политика Советского Союза в период Отечественной войны. Сборник материалов и документов, т. 1, М., 1946, с. 418–419.

[20] Геноцид армян: ответственность Турции и обязательства мирового сообщества, т. 2, ч.2, с. 651.

* res judicata (Latin word for a matter [already] judged), the legal system, according to which special court decision can be regarded as precedent in order to investigate the similar cases and make decisions.

[21] Barnett P. R., Res judicata, Estoppel and Foreign Judgment, Oxford University Press, 2001, p. 18.

Military Tribunals, the documents and materials of Bosnia and Herzegovina against Yugoslavia which is a precedential case for Armenian Genocide, and the documents and materials of ICC must be assessed as credible evidences.

For example, in the precedential decision of the case of Bosnia and Herzegovina against Yugoslavia it is clarified what means to exterminate the part of the victim genocide group. For this point the court has separated three main features: quantitative, qualitative and feature of possibility. Regarding the first feature, it was mentioned that the loss of the part of the victim group must have significant quantitative results for the whole group. The second feature refers to the significance of the destroyed part for the whole group. The third determined that the destruction of the part of the victim group could be done also in the limited geographical territory[22]. It means that when the genocide perpetrator hasn't had the opportunity to spread the crime over larger territories and has done it only against the part of the group living in the specific area, it doesn't matter, the case is qualified as genocide. It is not difficult to notice that the mentioned features completely correspond with the Armenians who were subjected to genocide, as from the quantitative point the significant part of the Armenians were annihilated, from the qualitative point the effective sector has been destroyed, including the intelligentsia which made a base of the nation. Concerning the possibility of committing the crime it should be mentioned that if at the beginning of the war the criminal acts of Turkish authorities were performed in the territory of the Ottoman Empire, then at the end of the war these crimes spread over the Armenians living in East Armenia and Transcaucasia as a result of retraction of Russian army and the invasion of Kemalists.

Based on the same res judicata principle the documents and materials of the Young Turks' trial should be combined with the components of

[22] Мезяев А. Б., Решение Международного суда по делу Босния и Герцеговина против Сербии и Черногории, http://old.tisbi.org/science/Layout/2007/Liss1/Mezjaev.htm]

crimes of ICC in the application on the case of the Armenian genocide, as the features of the objective side of the criminal group of the Armenian genocide are clarified. According to the article 6 of that document, the specific characteristics of five criminal acts of that crime are presented in the UN Genocide Convention. From these five characteristics the following three are general:

a) Crime committed against the representatives of the concrete national, ethnic, racial or religious group;
b) The perpetrator of the crime has been intended to exterminate completely or partially the national, ethnic, racial or religious group;
c) The crime has been committed within the same content behavior against that group, or it has been a separate action which itself could bring to the extermination of that group.

Besides the mentioned general provisions the private features of the specific criminal cases are clarified in the components of crimes of ICC. Thus, according to the paragraph 6 (b) to cause someone intellectual disability means not only tortures, rapes and sexual violence, but also inhuman and degrading attitude, but it is underlined that act can't be limited only by the mentioned ones[23]. According to the paragraph 6 (c) which refers to the creation of inhuman conditions, particularly the deprivation of food and medical service, systematic deportation of the people from one place to another, and it is noted again that the act isn't limited by the mentioned ones[24].

The paragraph 6 (e) of the components of the crimes clarifies the features of forcibly transferring children from one group to the other group. It is specially clarified that the term "forcibly" is not restricted only by the exerting physical force and is expressed also in the form of compulsion and

[23] Элементы преступлений Международного уголовного суда, с. 125. http://www.mup-info.com/mup/sites/all/themes/newspro/docs/elementy-prestypleniy.pdf
[24] Ibid.

threat which can be displayed with the fear to make violence with psychological pressure or the use of situations that involve compulsion. Besides the upper age limit is specified up to eighteen years old, and as the feature of that crime it is stressed that the perpetrator of the action has known that the children were under eighteen[25].

There are many evidences and testimonies in the judicial materials of the Young Turks of Turkish Military Tribunal such as the indictments, the shorthand records and the verdicts which completely correspond to the above mentioned features of the objective side of the criminal group of genocide crime perpetrated against the Armenians.

During the whole trial of the Young Turks the defendant was led by the "state action doctrine" which was rejected by the international law. The defendant was also guided by the law about the deportation which had been confirmed by sultan. According to that law the deportation of the Armenians during which the mass killings of the Armenians took place wasn't the personal initiative of the Young Turks, but it was an obligatory action which was coming from the state necessity. So, the liability of the perpetrated actions completely fell on Turkish state, as it is adopted in the international law that the country bears international legal responsibility for the publishing the laws which contradict the general principles of the international law[26]. It means the "Deportation law" and the "Law on abandoned property" which was adopted by the Young Turks government evidently contradicted the general principles of the international law, and the Turkish state should have take responsibility for that as Nazi Germany did in the International Military Tribunal for so called "Nuremberg laws" adopted by Germany itself and for the discriminatory laws. By these laws

[25] Ibid.
[26] Левин Д. Б., Ответственность государств в современном международном праве, М., 1966, с. 70.

privileges of Germans were confirmed, and all the other nations were considered outlaw[27].

Surely the applicant couldn't allow such a thing, as it was inclined in advance to ascribe all the responsibility on the Young Turks' party. Opposing the state action doctrine the applicant country tried to put all the responsibility of the mass murder of the Armenians on the individuals, excluding the possibility of the liability of the Turkish state. Whereas in the international law it had started to put responsibility for international serious crime both on the state and on the individuals, and also, the bearing of responsibility by the state couldn't release the individuals from the responsibility and vice versa[28].

It is noted in the indictment that it doesn't worth mentioning the article 92 of the Constitution, as the crime committed as a ruling result of the ministers or the members of the Council of Ministers concerns to the political crime. Concerning the article 33 of the Constitution a minister is deprived of privileges of law in the case of taking part in a crime or committing it[29]. Thus, the applicant was inclined to describe the perpetration of the Armenian massacres as a simple crime, whereas then the crimes committed by the Young Turks were qualified as political in judicial verdicts. So, during the trial the principle issue was the extermination of the Armenians, serious grounds occurred for the applicant to enlarge the field of accusation, and include the accusation for the "government failure" and for creation the forth branch of authority in all the structures of

[27]Решетов Ю. А., Борьба с международными преступлениями против мира и безопасности, М., 1983, с. 46.

[28] Bassiouni M. Ch., A Draft International Criminal Code and Draft Status for an International Criminal Court. Dordrecht, 1987, p. 48.

[29] The Armenian Genocide According to the Documents of the Trial of the Young Turks, by A.H. Papazyan, Yerevan, 1988, p. 48.

government[30]. It is an obviously invented formulation, as the "government failure" means takeover the state authority, so it was not about the creation of the criminal forth branch of authority inside the government as Ittihad or Special Organization, but it was about the occupation and possession of whole state government. However by this invented formulation the applicant tried again not to let the spread of liability on the Young Turks government which was introducing the state government after taking over the authority.

The indictment included such crimes as: massacre, to take over the properties and goods, to destroy the houses and dead bodies, rapes, tortures and pursuits. Then an appendix was added: the crimes were committed in a "new organized way", when deported people were collected group by group and then were killed. In the new way of the indictment it was emphasized clearly that the deportation wasn't the military obligation, and it wasn't due to the discipline demand. It was noted, that the deportation was intended and the decision on it was made by the Ittihadist Central Committee, so the tragic consequences of that decision were obvious almost in every corner of the Ottoman Empire[31].

The encoded telegrams and the letters which were brought in the first and second indictments gave evidence that the deportation had been intended and organized by the secret order and command of special center, and besides it was clearly noted they hadn't been limited and hadn't had local feature. The applicant underlined that the presence of the intention of crime was beyond the suspicion, and it couldn't be justified just bringing the justifications of mass deportations of population or the justification to punish the disloyal community, especially as it was mentioned in one of the indictments the deportation hadn't been a military obligation or it hadn't

[30]Дадриян В., Обзор материалов турецкого военного трибунала по обвинению в геноциде армян, с. 42.

[31] Ibid., p. 43.

been the means to establish order. As the indictment records the aim of the Young Turks' state program was "at last to solve all the unsolved problems". It is obvious, that the first of them was the Armenian question[32]. It was underlined in the indictment of the chief prosecutor that the deportation of the Armenians was an excuse for massacre, and it was a confirmed fact which was as obvious as two plus two is equal to four[33]. The intent of that plan was confirmed by the testimonies of general Vehib.

It was also noted in the indictment that in order to cover the plan of the extermination of the Armenians the government had realized their decisions by written and oral secret orders and commands which then had been destroyed[34]. Virtually the Turkish judicature itself accepted the existence of such secret orders, considering them important circumstance for describing the working style of the Young Turks.

On June 19, 1919, it was also mentioned in the indictment that regional secretaries had illegally interfered into the affairs of government and had taken part in the crimes of Talaat Pasha and his partners according to the oral and written secret orders of the government and party's Central Committee[35]. Those judgments were very controversial, as on one hand it was mentioned that the responsible secretaries had interfered into the affairs of the government illegally, but on the other hand it was noted they had implemented not only the orders of the party, but also the commands of the government, and therefore had taken part in the crimes of Talaat Pasha, the Interior Minister of the Turkey and his partners. They "intended to divert the state from its legitimate path"[36].

[32]Барсегов Ю. Г., Турецкая доктрина международного права на службе политики геноцида, с. 39.
[33] Ibid.
[34] Ibid.
[35] The Armenian Genocide According to the Documents of the Trial of the Young Turks, pp. 22, 135.
[36] Ibid., p. 135.

The crimes were committed in the highest state level according to the indictment, and even if it is viewed from the point of diverting the state from its legitimate path, anyway the country should take responsibility for allowing that "deviation", and only this can be considered the way to return the state to its legitimate path.

The court rejected the statement of the defendant that the crimes had been the result of the applying the law, as according to the court even if it would have been taken into consideration that the deportation had been combined with massacre, the murder wouldn't stop being murder and if only the connection between mass killings and executive power would be proved, the court could take into consideration the arguments of the defendant[37]. Actually from the very beginning of the judicial procedure even without investigating the arguments and just relying on the indictments, the court was led by the presumption not to admit the participation of the government in mass murder. But during the judicial procedure necessary and sufficient evidences were presented the massacre had been a result of the policy implemented by all the defendants, but according to the formulation of the court the defendants had done it not as ministers, but as members of the secret organization.

The court also mentioned that the argument of the defendant had no connection with the investigation of the "murders and personal illegal enrichment" done by the defendants noted in the indictment[38].

So, we should state the accusation was deliberately formed to confirm the personal guilt of the defendants and the guilt of the Young Turks' party which wasn't led by the principle of the government officials, because this would result the undesirable liability of Turkish state; the fact from which the Turkish Military Tribunal avoided so much. On the base of the formed

[37]Дадрян В., Обзор материалов турецкого военного трибунала по обвинению в геноциде армян, с. 41
[38] Ibid.

accusation the Turkish court rejected reference "on the state action" formulation, noting that even if the massacre would be discussed as a phenomenon typical to deportation, it was a murder, and therefore, it was a separate and independent act.

The chief prosecutor Mustafa Nazmi Pasha gave clarification in his own turn that the crimes enumerated in the indictment had been committed not by the government but from the name of Central Committee and based on the decisions of its plenary sessions[39]. On the base of this clarification the court noted that the reference to the action of the country could have been discussed on the condition if there were evidences that the massacre hadn't been intended and had been the inevitable result of the performance of official duties[40]. The court led by the political strategy of the government of sultan concluded the massacre had been a part of the policy and decisions that had been implemented by the defendants: as the members of secret conspirator organization, and not by the ministers and government within the framework of official duties[41].

The question is raised which government includes such aims in the "framework of its official duties". It is obvious, that it is impossible to imagine even theoretically a government which will be officially led by those norms. So the prototype of the system was formed in the Ottoman Empire which existed later in Nazi Germany during the years of holocaust.

Thus, these substantiations couldn't stand any criticism, as it was evident that the members of that Secret Organization were the same ministers of the government, and Secret Organization had coalesced in the government, becoming the real government of the Ottoman Empire. It is not accidental, that the government of the Ottoman Empire during the

[39] The Armenian Genocide According to the Documents of the Trial of the Young Turks, p 16.
[40] Барсегов Ю. Г. Турецкая доктрина международного права на службе политики геноцида, с. 40.
[41] Ibid.

period of Great War in the diplomatic documents was called "Young Turks' government" which emphasized in the best way the historical fact of coalescence of the Young Turk party with the Ottoman Empire. Accordingly, it is impossible to separate them from each other, and conversely we should state the identification of them. Finally the member of the Young Turks' Party and the whole government, regardless the fact which organization it joined, it represented the Turkish state in the face of that government. Therefore any actions performed by them should be assessed in justice as an action of the representative of the state authority, for which not only the individual is responsible but also the country which that individual represents, in this case the Ottoman Empire. Otherwise this individual must not occupy that high position and must not represent the country. But in the Ottoman Empire in the conditions of coalescence of the Young Turks party and state government, belonging to the party and being the member of the Secret Organization was an important condition for having high public position.

It follows, that it is impossible to blame the Young Turks government without accusing Turkish state and Turkish authorities, and vice versa. Even if we suppose for a while Turkey as a state didn't want the massacre that had happened with the Armenians, in any case, Turkish government is guilty for allowing the coalescence of the Young Turks with state authority, and therefore is guilty for the steps of that authority. No matter how much some people in Turkish government would have tried to justify themselves, the apparent resistance wasn't shown against the Young Turks' policy, and it proves that all the members of the government didn't oppose that political power accepting what was happening. Knowing about the massacre of a nation, and the fact that they hadn't taken any steps to prevent it and their indifference, according to the UN Genocide Convention is anyway punishable and for Turkish state it can be viewed as complicity of the genocide in the best case.

Besides the court tries to separate from each other the terms of "intent" and "performance of the official duties" considering they can't be joined together, because the "unavoidable result" of it could have been the mass extermination of the Armenians in the territories of the Empire and, particularly in their own historical homeland. Whereas the facts directly indicates the intentional plans of the Young Turks' party to eliminate the Armenians were turned to the public plan of the Young Turks' government of the Ottoman Empire, and this plan was actualized using the whole public resources. It should be noted without coming to the power and using the public resources the Young Turks' party wouldn't have been able to implement that plan: only the public power and the sources gave them such an opportunity. Naturally these obvious arguments were ignored by the Turkish jurisdiction, because they were very dangerous for them.

Then the court in its private decision paid attention to the fact that the leading role in the committed crimes had belonged to the Young Turks' party, and "individual crimes" had been committed under the condition of this party's leading role[42]. It is evident that Turkish military court was in a paradoxical situation: on the one hand it strived to present those massive crimes as an ordinary individual crime, but on the other hand the massive nature of murder and violence was so obvious that it was impossible to show them as an individual crime. Thus, the court had to accept the fact that those crimes had been organized in advance, and it was ascribed only to the Yong Turks' party. But even with this formulation it was very important decision, because it meant that there were other parties in the Ottoman Empire, but none of them was accused for being the leader of the massive crime only for the simple reason that just the Young Turks' party possessing all public power and using all its resources had accomplished the mass massacres and expropriation of the properties of the Armenians.

[42] Дадриян В., Обзор материалов турецкого военного трибунала по обвинению в геноциде армян, с. 41.

The verdicts of the Turkish Military Tribunals themselves directly and indirectly confirm the fact of coalescence of the Young Turks' party with state authority:

a) Besides the main verdict the Turkish Military Tribunal made a special decision about the criminals who were in escape, by which it was adopted that the Young Turks' party had taken into its hands the whole power of the state[43]. So, based on this, it can be claimed the country was responsible for the crimes committed by the Young Turks, because the country had allowed them to take into their hands the whole power.

b) The court accused the Young Turks not only for the Armenian massacres, but also for losing some parts of the Empire during the Great War as a result of their political criminal mistakes[44]. The court accused the Young Turks because they hadn't even discussed the issue of declaring war in the Mejlis (parliament), while the masters even had hesitated to make decisions and give orders concerning these issues[45]. We consider this a very important argument which states again that the whole power of the state belonged to the Young Turks. This argument also emphasizes that the state must be liable for the crimes committed by the Young Turks.

c) Sheikh-ul-Islam Musa Kazim Efendi, the main spiritual leader who could have had a great influence and could have prevented all those cruelties didn't do any significant step. Though he tried to justify himself in the court that he wasn't liable for the criminal actions of the members of the government and only the Ministry of Interior was to be blamed. However, he admitted that Islam and party were united together, and any decision of the party was a subject for immediate implementation. Besides

[43] The Armenian Genocide According to the Documents of the Trial of the Young Turks, p 113

[44] Ibid., p. 119.

[45] Ibid., p. 120.

he gave evidence that coming out the party meant to renounce Islam[46]. The testimonies of spiritual leader characterized the fact that not only Islam but also the whole state was combined with the Young Turks' party and made a unit.

d) Talaat, Enver, Djemal and Nazim Bey were convicted according to the paragraph 1st of the Article 45 of the Turkish Criminal Code which states if the participation of the people is proved in the initiatives to change forcibly the form and nature of the government fixed in the Constitution, these people must be executed[47]. According to the Turkish Criminal Code, taking over the state power was among the worst state and political crimes in the country; therefore in this case, when Young Turks took over the state power, the Turkish state along with the Young Turks have become responsible for the crimes, particularly for the Armenian mass slaughters.

3. The next important components of the application on the case of the Armenian Genocide are the corresponding provisions of the Treaty of Sevres. The articles 226 and 228 were coming from «The laws and customs of war» provisions of the Hague Conventions admitted in 1899, and edited in 1907. These provisions repeated the articles of the Treaty of Versailles, Treaty of Saint-Germain, Treaty of Trianon, and Treaty of Neuilly which were about the punishment of war criminals. By the article 230 Turkish government recognized the right of Allied Powers to call to criminal responsibility not only the individuals who were convicted for the crimes committed against the laws and customs of war, but also they were obliged to hand the individuals of the Allied Powers who committed crimes in the territories which were the part of the Ottoman Empire by August 1, 1914[48].

[46] Ibid., p. 19.
[47] Ibid., p. 126.
[48] Ternon Y., Impunity, Revenge and Denial: Armenian Genocide In Front Of International Official Channels, p. 11.

It was obvious, unlike the articles 226 and 228 the article 230 didn't concern war crimes, but it was a result of Joint Statements of the Allied Powers (May 24, 1915), as the Allied Powers had promised to call to liability the defendants for the mass killings of the Armenians.

This provision was extremely important because Turkey couldn't avoid handing the people who were accused for the massacres of the Armenians in the deserts of Mesopotamia just using the justification that they couldn't hand the people who had committed crimes in the territories that didn't belong to them anymore.

According to the same article, Allied Powers reserved the rights to choose the court should judge the guilty individuals, and the Ottoman government was bound to recognize that court. Besides, it was mentioned about the opportunity of creation special International Criminal Court for the first time during the history of the international relations. In the case, when during the required time the League of Nations would create a court which would be competent to condemn the mentioned atrocities, the Allied Powers would hand the defendants to that court, and Turkish government would be bound to recognize that court[49]. Thus, the Treaty of Sevres created a legal ground for the prosecution of the Ottoman Empire for the crime committed against their subjects[50].

In the report of May 28, 1948, the UN War Crimes Commission paid special attention on the article 230 of the Treaty of Sevres, and interpreted that by this article the victorious powers pursued the goal to realize the obligation of the Joint Declaration of Entente Powers according to which those who were guilty for committing crime against humanity must have been called to liability. Such kind of crimes against humanity were the

[49] Барсегов Ю., Турецкая доктрина международного права на службе политики геноцида, с. 32–33.
[50] Ternon Y., Impunity, Revenge and Denial: Armenian Genocide In front Of International Official Channels, p.11.

crimes committed in the Ottoman Empire against the subjects who weren't Turks, particularly against the Armenians and Greeks, and that was a precedent for the corresponding articles 6c and 5c of the regulations of Nuremberg and Tokyo tribunals[51].

According to the article 144 of the Treaty of Sevres, financial liability was also defined for the expropriation of the Armenian properties in the Ottoman Empire by the way of the committing the genocide. By that article Turkey was bound to consider out of effect the law and its amendments on "abandoned property" of the Ottoman Empire of 1915, with which help it tried to "legalize" the policy of the mass expropriation of the Western Armenians who subjected to genocide. Also, the article banned adopting such kind of laws in the future[52]. The significance of that article is extremely important for the Armenians who were the victims of the genocide in order to restore the rights for their properties.

In that article the concrete mechanisms for the restoration of the property rights were defined. According to it, the Turkish government was bound to contribute to the citizens of the Empire who had been deported or those who, being scared of the atrocities had migrated after January 1, 1914, to return to their residences[53].

The Ottoman government accepted that in the case to found the movable or immovable properties of the mentioned citizens or the communities of the Empire, no matter who would possess that property at that time, it would be returned immediately to its legal owners, i.e. Western Armenians. By the way, the returned properties must have been exempt from debts by which they could have been loaded by the new owners, and

[51] Геноцид армян: ответственность Турции и обязательства мирового сообщества, т. 2, ч. 1, с. 651.

[52] Armenia in the Documents of International Diplomacy and Soviet Foreign Policy (1828-1917), Ed. by John Kirakosyan, Yerevan, 1972, p. 678.

[53] Ibid, p. 679.

this property must have been returned without any compensation to the new owners[54].

Besides defining provisions about the restoration of the property rights of the Western Armenians, the article provided mechanisms controlling the process. The Ottoman Empire agreed that the arbitration commissions could be organized by the Council of the League of Nations composed from a representative of the Turkish government and a representative of the victim community; the president of that commission must have been a person appointed by the Council of the League of Nations. This commission must have investigated the issues and disputes concerning the property and must have tried to solve these problems. Also, it must have been endowed by broad rights, particularly to make orders concerning:

a) the estate restoration and recovery jobs;

b) the issue on the isolation of the guilty people for the atrocities and deportations, and the issue of their properties;

c) the issue of returning back the properties of those members of the victim community who got dead or disappeared after January 1, 1914;

d) the issues of the canceled acts on the real estate sale or acts, confirming the rights of the ownership which were made after January 1, 1914.

By the way, in the cases the commission would have canceled the rights of new owners; the liability of transmitting that property to new owners must have been on Turkish government. The Ottoman Turkey was bound to contribute within the limits of powers to the realization of the decisions, and the decisions of the commission were indisputable. They couldn't be opposed by any other decisions made by the Ottoman judicial or administrative authorities[55].

[54] Ibid.

[55] Ibid, p. 680.

Actually by this article rather realistic and effective means and mechanism were proposed for the restoration of financial losses of the Armenian population and for overcoming the effects of those losses. All these have not lost the modernity, and can be fully practiced in the base of abolishing financial consequences of the Armenian Genocide, with the difference that the Council of the League of Nations will be replaced by the UN Security Council.

The article 144 of the Treaty of Sevres was amended by the article 228 which defined the property, rights and interests in Turkey of former Turkish nationals who acquire *ipso facto* the nationality of an Allied Power or of a new state in accordance with the provisions of the present treaty, of any further treaty regulating the disposal of the territories detached from Turkey, shall be restored to them in their actual condition[56]. This meant that the deprivation of the Western Armenians from submission by Turkey authorities or the acquirement of the submission of a new state by the Western Armenians couldn't be basis for the Ottoman authorities to deprive the Armenians from property, rights and interests.

Though the Treaty of Sevres wasn't ratified and was not used because of the changes in the political life of Turkey and geopolitical processes, but it was quite a legal document. Though at the time of signing the treaty the actual power in Turkey was in the hands of the Kemalists, on July 22, 1920, in Constantinople the legitimate government of Turkey voted in favor of signing the treaty of peace and authorized Turkish official delegation to sign the Treaty of Sevres[57]. As it is known even not ratified treaty doesn't completely release the countries having signed that treaty from their liabilities, especially while signing the document the Turkish official delegation didn't exceed its powers. The article 18 of Vienna

[56]Treaty of Peace with Turkey. Signed at Sevres. August 10, 1920, p. 66. http://treaties.fco.gov.uk/docs/pdf/1920/TS0011.pdf

[57] Барсегов Ю., Геноцид армян-преступление по международному праву, с. 184.

Convention on the "Law of Treaties" in 1969 put some liabilities on the courtiers having signed that treaty (from the time of signing to the period of ratification of the treaty) to abstain from such actions which could affect the object and purpose of the treaty[58], but new Turkish rulers took consistent steps to neutralize the provisions of the Treaty of Sevres[59].

Besides we must record even in the case of not being ratified, the provisions of the Treaty of Sevres were used partially to release the Arabic territories from the Ottoman Empire which was defined by the Treaty of Sevres, and took place before signing the next treaty (Treaty of Lausanne)[60].

4. The next important component of the application should be considered the US president Woodrow Wilson's arbitral award decision on demarcation of Turkish-Armenian boundary on November 22, 1920, which was an international judicial act that called to labiality Turkey: the country, which was guilty for perpetration of the Armenian Genocide.

That arbitration certainly had its historical and legal backgrounds. After the First World War the issue of separating Armenia from Turkey was directly connected with the policy of the mass killings of the Armenians in the memorandum of the US president Woodrow Wilson which was handed to Ottoman Empire's government on August 22, 1919, by Admiral Mark L. Bristol, U.S. High Commissioner in Constantinople[61].

The issue of legal and political grounds of termination of dominance of Turkey towards Armenia became the investigation for the special King-Crane Commission created by the US president. In the report of the Commission submitted on August 28, 1919, the following arguments were presented as the special grounds for the separation of the historical homeland of the Armenians from Turkey:

[58] Международное право в документах, с. 75.

[59] Toriguian Sh., The Armenian Question and International Law, p. 87.

[60] Ibid, p.132

[61] Барсегов Ю. Г., Арбитражное решение президента США по армяно-турецкой границе, с. 6.

1. the proved inability of Turks to govern the others;
2. the repeated massacres as an adopting of intent policy;
3. the complete absence of compassion for committed massacres or the ambitions to refuse the committed crimes, moreover their attempts to justify their actions;
4. the extremely hostile attitude toward the Armenians, and the constant threat of the massacres and slaughters;
5. the complete failure of the articles* of the Treaty (1878) which was aimed at the protection of the Armenians;
6. the availability of sufficient evidences that these two nations couldn't live peacefully together.

All these made the members of the King-Crane Commission come to the following conclusions:

1. the experience of Turkish governing mustn't be repeated;
2. it is more accurate the Armenians and Turks have separate states;
3. the elementary justice demands the separation of the territory from Turkey where the Armenians can be centralized without being obliged to live under Turkish rule;
4. nothing except the mentioned can give the Armenians sufficient security guarantees;
5. it is necessary to insist on the building of separate Armenian state either for the interests of the Armenians, or for the interests of the Turks, or for the interests of the whole world and peace[62].

The arguments and the conclusions of commission are necessary and sufficient corroborations for future arbitration in the issue of demarcation of Turkish-Armenian boundary by Woodrow Wilson. Nowadays these

* It is about the 61st and 62nd articles of Berlin Treaty.
[62] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 6-7.

corroborations are very contemporary in the denial policy of the Armenian Genocide.

This approach was then adopted by the Supreme Council of Allied Powers when Great Britain, France, Italy, Japan, and the USA on January 30, 1919, noted in their joint resolution that coming out from the historical abuse of Turkish government towards its nations, and especially coming out from terrible extermination of the Armenians in the previous years, the allied and united powers came to the agreement that Armenia must be completely separated from Turkey[63]. The Supreme Council of Allied Powers refused all the arguments submitted in the memorandum of the new sultan's government on June 17, 1919, with the help of which the attempt was made to keep Turkey from the liability of the Armenian massacres and call the members of the Young Turks' rulers to the criminal liability. The Council clearly formulated its conclusion on the restriction of the power of the Turkish government only towards the Turks, and concluding from this the fate of other nations living in Turkey must have been decided taking into consideration their interests and wishes[64].

In respond to the Turkish arguments the USA reacted more sharply. R. Lansing, United States Secretary of State noted in the telegram addressed to the American Commission participated in Paris Peace Conference on August 16, 1919, that "US president wanted to warn Turkish authorities that if they didn't take immediate and effective measures in order to prevent those brutalities and carnage committed towards Armenians in Caucasus, and other places by Turks, Kurds and other Muslims, they would be deprived of support in the issues that concerned the reservation of sovereignty even on the Turkish part of the Ottoman Empire. That was defined by the paragraph 12th of the conditions of peace, and that decision

[63] Ibid., pp. 7-8.
[64] Ibid, p. 8.

could lead to the complete elimination of the Empire and the complete change of the peace conditions"[65].

The suggestion of Supreme Council of Allied Powers to Woodrow Wilson to take the role of the arbitrator was made in San Remo conference on April 25, 1920, and on May 17, 1920, Wilson announced he agreed to be an arbiter. The next day on April 26, the Supreme Council of Allied Powers informed the League of Nations about the suggestion to Woodrow Wilson to become an arbiter in drawing Turkish-Armenian boundaries, and on May 11, the terms of peaceful settlement were transferred to the Turkish delegation[66]. The statement that the ground of Woodrow Wilson's arbitral award was the Treaty of Sevres which hadn't been ratified, so it didn't have legal power, didn't correspond to the reality. That arbitration had connection with the Treaty of Sevres, as by the article 89 of that treaty new ten states: Belgium, Greece, Hedjaz, Poland, Portugal, Romania, The Serb-Croat-Slovene state, Czecho-Slovakia and the parties of the dispute Armenia and Turkey had joined to the four countries of Supreme Council of Allied Powers: The British Empire, France, Italy and Japan which had been mentioned in the Treaty of Sevres as Principal Allied States, and had previously applied with the request to make US president an arbiter[67]. So the Treaty of Sevres was only a supplementary legal ground for an arbitral award as an addition to the suggestion to the US president to become an international arbiter before it, but regardless that the process of arbitration was in progress. Moreover, according to the article 89 of the Treaty of Sevres member states didn't condition the adoption of arbitral award with any circumstances, but they agreed to adopt the award immediately, and

[65] Барсегов Ю., Турецкая доктрина международного права на службе политики, с. 27.
[66] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 15.
[67] Armenia in the Documents of International Diplomacy and Soviet Foreign Policy (1828-1917), p. 673.

Turkey which was a side of dispute additionally reaffirmed that position renouncing their rights towards the territories transferring to Armenia[68].

Thus, the process of arbitration had started before signing the Treaty of Sevres; therefore it was quite an independent international legal document for Great Britain, France, Italy and Japan as members of Supreme Council of the Allied Powers on the one hand, and for a president of US - on the other[69].

The suggestion of arbitration to especially Woodrow Wilson in determining borders of Armenia indeed, had its grounds which were caused by the required principles for the choice of international arbiter: justice and impartiality. Based on the circumstances that the USA hadn't been at war with Turkey, and it was in relations not only with official authorities of the Ottoman Empire, but also with Turkish nationalists made the candidacy of US president the best option for the role of arbiter to clarify the boundaries of Armenia and Turkey[70]. Thus, the principle of neutrality and disinterestedness towards parties of dispute was provided which was an obligatory condition for a settlement of international disputes with the help of arbitration according to corresponding international norms relevant at that time, and especially according to Hague Convention for the "Pacific Settlement of International Disputes" 1899 and 1907.

As the political substantiation of this arbitration was a respond note signed by Alexandre Millerand, Prime Minister of France on July 17, 1920, against the protest of Turkish delegation. The respond note particularly read: "The Turkish government hadn't performed their duties to protect their non-Turkish subjects from loot, violence and murder. Moreover, many evidences showed the government had taken the liability to organize and lead the most brutal attacks on the population whom it should have

[68] Ibid., p. 676.
[69] Барсегов Ю., Геноцид армян-преступление по международному праву, с.182.
[70] Ibid., p.181.

protected. For that reason the Allied Powers couldn't make changes in those provisions which defined to create independent Armenia"[71].

Though the initiated and conducted arbitration on demarcating Turkish-Armenian borders had begun on the base of decision and will of victorious countries*, nevertheless it didn't contradict and was implemented according to the existed legal norms of that time. Thus, according to the article 54 of Hague Convention for "Pacific Settlement of International Disputes" and according to the article 81 of the same, but already edited (1907) convention it was stated "if the arbitral award was made according to the order and the agents of the parties were kept informed, it meant that the dispute subject was solved once and for all and couldn't be reversed"[72].

The arbitration of Woodrow Wilson was limited with concrete territories by the Supreme Council of the Allied Powers. While implementing the demarcation of the Turkish-Armenian borders the arbiter must have been limited with Van, Bitlis, Erzerum, and Trabzon provinces, by which he should have created conditions for the access to the Black sea for Armenia. Without it the arbitration would have been incomplete, and the states took liability to take possible measures for the US president to be able to provide access to the sea[73].

The US president's decision about borders between Armenia and Turkey on the access of Armenia to the sea and on the demilitarization of Turkish territories adjacent to Armenian borders was signed by Woodrow Wilson on November 22, 1920. On December 6 it was officially transferred to the Supreme Council of the Allied Powers[74] and was published on

[71] Ibid., p. 183.

* The same can be told about Nuremberg and Tokyo Trials after World War II organized by the coalition of anti-Nazi countries.

[72] http://www,pca-cpa.org/showpage.asp?pag_=1187

[73] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 14.

[74] Papian A., Legal Bases for the Armenian Claims (Collection of Articles), Yerevan, 2007, p. 75.

December 17, entering into force. The arbiter within his jurisdiction and based on the territorial limitation by Supreme Council of the Allied Powers while actualizing the demarcation of Turkish-Armenian boundary confirmed the title and the rights of the Armenians on Van, Bitlis, Erzerum and Trabzon which had been former territories of the Ottoman Empire, this demarcation would have given Armenia also an access to the Black Sea. So, the territory which should have been transferred to Armenia would be approximately 103.599 square kilometers. Despite the fact that it was impossible to materialize the arbitral award because of the new geopolitical changes, it continues to remain the main consequence of the Armenian genocide: the international document which hasn't lost its legal power in order to settle the Armenian-Turkish territorial boundary dispute.

The proof of the above stated is the decision of the UN International Court of Justice on the same content territorial dispute Honduras vs. Nicaragua, by which the arbitral award of the King of Spain was adopted as a legal ground to settle that dispute. This case can be a good precedent for recognizing the legitimacy of the arbitral award of Woodrow Wilson, so we find it appropriate to refer to that case briefly.

The King of Spain made an arbitral award on the case of demarcating borders between Honduras and Nicaragua on December 23, 1906. On July 1, 1958, Honduras applied to the UN International Court of Justice, asking the court to realize the requirements of that arbitral award. Nicaragua in its turn demanded the court to decide that the arbitration of King of Spain couldn't be compulsory for them. With the correlation of votes 14 in favor and 1 against the court made decision on November 18, 1960, that the award was legal and Nicaragua was bound to realize its requirements.

The court confirmed in its decision that Honduras and Nicaragua had signed so called Gamez-Bonilla Treaty on October 7, 1894, according to which the Mixed Boundary Commission should demarcate boundary between countries. The points which hadn't been settled by the commission

should be submitted to the arbitral tribunal which would be composed of one representative from each country and of one member of the foreign diplomatic corps accredited to Guatemala[75]. In the case of impossibility to appoint a representative from diplomatic corps the parties agreed to transfer contentious issues to the government of Spain or to the government of any other country of Central America[76]. In 1900-1901, the Mixed Boundary Commission managed to demarcate the boundary between two countries, but some disagreements emerged connected with the coastal area of Atlantic Ocean, regarding which the King of Spain made an arbitral decision on December 23, 1906.

In several years, on March 19, 1912, the Minister of Foreign Affairs cast doubt on the legitimacy and obligation of the arbitration for his country which became a subject of a new dispute. After the failed attempts to solve the problem with the help of direct negotiations and mediators, Honduras and Nicaragua decided to transfer the solution of the problem to the UN International Court of Justice on the base of the agreement achieved on July 21, 1957, in Washington. Honduras stated there were all the grounds to claim that arbitration was obligatory as the decision had been made in a proper way, and for arguing that arbitration Nicaragua should submit proofs for its illegitimacy. Nicaragua opposed that as Honduras relied on that arbitration for solving the problem of boundary between them, thus Honduras itself should bring proofs for the legitimacy of that arbitration and the proofs that King of Spain who had made arbitral decision had been endowed with that competence[77].

Nicaragua found the confirmation of the King of Spain as an arbiter had been performed by the violation of the articles 3 and 5 of Gamez-

[75]Краткое изложение решений, консультативных заключений и постановлений Международного суда (1948-1991), Нью-Йорк, 1993, с. 69.
[76] Ibid.
[77]Ibid., p. 70.

Bonilla Treaty, but the court concluded the requirements of Gamez-Bonilla Treaty had been fulfilled as the presidents of two countries had expressed their satisfaction with the appointment the King of Spain as an arbiter on October 6 and 7, 1904. The King of Spain announced about his agreement to become an arbiter on October 17. Based on these facts the court couldn't make any other decision but to confirm the appointment of the King of Spain as an arbiter was legal.

Nicaragua wanted to introduce that the Gamez-Bonilla Treaty had lost its power before the King of Spain gave his agreement to become an arbiter, and according to the article 9 of the Treaty the time of the 7-year treaty signed on October 7, 1894 had expired on October 7, 1904. Honduras announced in its turn that the treaty entered into force later on December 24, 1896 from the date of the exchange of ratification documents, so the time of the treaty had expired on December 24, 1906, and not in 1896. Despite the fact it wasn't mentioned in the treaty about its date of entry into force, the court adopted as a ground the reference about the exchange of ratification documents in the treaty, considered the arguments of Honduras as natural and considered it impossible, that on October 2, 1904, 5 days after application of the sides for the King of Spain to become an arbiter the term of the treaty would have been stopped.

Regarding the impartiality and legitimacy of the arbitral award of the King of Spain, it should be mentioned, that the King of Spain didn't receive any claim to clarify the award from Nicaragua, what meant that Nicaragua had accepted it and only after some years on March 19, 1912, the Minister of Foreign Affairs raised an objection against the award[78].

After the rejection of its arguments Nicaragua tried to substantiate that the King of Spain had exceeded his powers and his decision hadn't been sufficiently justified, but the court answered that it had already been in the

[78] Ibid., p.71.

field of decision-making authority of an arbiter and couldn't be disputed, as by handing the dispute to the arbiter, they had adjusted to any decision made by him.

It isn't difficult to notice there are some generalities between the arbitral awards of King of Spain and Woodrow Wilson. First both arbitral awards concerned the territorial boundary disputes: the first concerned Honduras and Nicaragua, and the second Armenia and Turkey. In both cases neutral and disinterested arbiters were chosen, who didn't have any direct interest in that dispute.

Based on all of these we find the investigation of this arbitration on boundary issue in International Court can be a very important precedent ground in order to investigate the legitimacy and obligation of the arbitral award of US president Woodrow Wilson on the issue of demarcating Turkish-Armenian boundaries in the same court.

Despite the obvious similarities there are significant differences which should be taken into consideration. First it should be mentioned there was a simple territorial boundary dispute between two Latin American countries which wasn't the result of such an international serious crime as genocide. It is natural that Latin American countries Honduras and Nicaragua handed the dispute existed between them to the arbiter King of Spain by their mutual agreement, but the issue of demarcating the boundaries of Armenia and Turkey was handed to the US president Woodrow Wilson by the Supreme Council of victorious states of the First World War. The purpose of it was to call to liability the criminal state Turkey depriving it of the future opportunities to spread its power over the Armenians who were the victims of the genocide, and to restore legal rights and interests of the Armenians on the great part of their exacted homeland.

Taking into consideration the attempts of Nicaragua to dispute the arbitral award of the King of Spain in boundary problem between Honduras and Nicaragua, it can be concluded that Turkey will put forward the same

arguments against the arbitration of Woodrow Wilson which were brought by Nicaragua, so we should be ready to respond all these arguments. It is necessary to note, Turkey will try to dispute the legitimacy of the arbitration of Wilson in the UN International Court of Justice.

It is significant that as Nicaragua hasn't protested and has adjusted to the arbitration of the King of Spain, the same way Turkey hasn't disputed publicly and officially the arbitral award of Wilson, but using the illegal Treaties of Alexandrapol, Moscow and Kars which were imposed to Armenia, Turkey has tried to force to renounce the Treaty of Sevres which though concerns the same problems, but from the legal point of view is an independent international legal document, so we should be able to use it skillfully.

5. As the researches and views of authoritative international law experts have particular significance for the international court, it is appropriate to use as a component of the application on the Armenian Genocide advisory conclusions of specialists given to the issue of the Armenian refugees in 1929.

The Armenian refugees who spread all over the world after the genocide tried to clarify their opportunities to restore their violated rights according to the international law valid at that time. Taking into account the Armenian Question was at a deadlock in the League of Nations as well as the negative attitude of Turkey on June 5, 1929, "The Central Committee for Armenian refugees" applied to provide advisory conclusion to the four authoritative international law experts of those times: Gilbert Gidel, Albert de Lapradelle, Louis Le Fur and Andre Mandelstam. The following questions were put forward by the Central Committee for Armenian refugees:

1. Do the general principles of the international law and the valid norms allow depriving the Armenians of the Ottoman Empire of citizenship

on the basis that they haven't participated in the so called liberation movement?

2. Do the general principles and norms of the international law allow Turkey to confiscate the property of the Armenians who were outside of Turkey, or the properties of the Armenian community of Turkey? This phenomenon had started even before signing the Treaty of Lausanne and continued after it. If the answer is negative, does it mean that the same norms and principles oblige Turkey to return to the Armenians outside the country their property, and to the Armenian community inside - the country?

3. Are the disputes which can rise between the government of Turkey and any other state signed the Treaty of Lausanne or between the member states of the Council of League of Nations, considered international disputes, and are they subjects to be transferred to the investigation of the Permanent Court of International Justice on the demand of one of the sides according to the article 44 of the Treaty of Lausanne[79].

It is obviously seen from the introduced issues the Central Committee for Armenian refugees was deeply concerned about the fact that the Turkish authorities not being satisfied with committing the Armenian genocide and taking away from them their homeland, had already passed to the stage of enjoyment of the fruits of their crimes which was expressed in the way of illegal expropriation of the property of the Armenians who had been subjected to genocide and forcibly expelled from their homeland. So, the committee tried to clarify from international law experts the legitimacy of those actions, as well as the opportunities which could be given by the norms and principles of international law in order to struggle against these illegalities.

[79] Барсегов Ю., Геноцид армян – преступление по международному праву, М., 2000, с. 207.

Four international law experts discussed the above mentioned three questions on the base of the international norms and principles during two months and on August 2, 1929, submitted advisory conclusion in which the negative answer was given to the first question stressing that despite the reasons of the Armenians to leave the Ottoman Empire the government of Turkey didn't have any right to deprive them of citizenship and the rights to return back. At the same time it was noted the so called act of amnesty of Turkish government didn't absolutely have any connection with the rights of coming back of emigrants, and that act could have been implemented only after the returning back of emigrants to their homes[80]. The experts stated the deprivation the former citizens of their rights had the nature of criminal punishment, but it should have its very serious substantiation, because states deprived their subjects of citizenship in very extreme cases. In this case, according to the specialists it was absolutely unjustified and illegal, as the fact that deported Armenians hadn't taken part in liberation movement couldn't be a ground for the deprivation them of their civil rights. In the opinion of the experts Turkey couldn't even justify itself with the argument that providing citizenship is the sovereign right of any state, as the exclusive competences of the state are limited by the norms of international law[81].

Negative answer was given to the first part of the second question also, mentioning that neither norms of international law, nor the Treaty of Lausanne gave right to Turkey to seize the property from the Armenians regardless the fact it was before or after the Treaty of Lausanne[82]. Based on this the specialists gave positive answer to the second part of the second question emphasizing that the Turkish government was obliged to return back the seized property of the Armenians and as a justification for it the

[80] Ibid., p. 208.
[81] Ibid., p. 209.
[82] Ibid., p. 210.

articles from the post-war treaty were cited by which the protection of private property and the principle of restoration of damaged and seized property was stressed[83].

Regarding the third question, the specialists mentioned the question of the Armenians' expropriated property could get the nature of international dispute and become the subject of investigation of the Permanent Court of International Justice according to the article 44 of the Treaty of Lausanne, and the article 14 of the regulations of the League of Nations, but it could happen just in the case if the country which approaches were different from the views of Turkey applied to the Permanent Court of International Justice[84]. The member states of the Treaty of Lausanne have that right up to date and can apply to the UN International Court of Justice, the heir of the Permanent Court of International Justice.

Thus, yet in 1929, the authoritative international law experts revealed the nature of Turkey's illegal policy towards the Armenians which definitely contradicted the norms of the international law of those times.

6. The next component of the application is the articles of the Treaty of Lausanne on the protection of the rights of non-Muslim population of Turkey. As it is known, according to the articles 37 and 44 of Lausanne Treaty, Turkey took new liabilities connected with the protection of the rights of its non-Muslim population. Particularly according to the article 37, Turkey accepted the arrangements fixed in the articles from 38 to 44 were recognized as basic laws and no regulations or official actions could contradict it or took priority on it[85]. According to this article, Turkey was obliged to conform the Turkish government's legislation concerning the rights of non-Muslim population to the articles of Lausanne Treaty.

[83] Ibid., p. 211.
[84] Ibid., p. 211.
[85] http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

According to the article 38, the Turkish government was obliged to ensure the full and complete protection of life and property of the whole population of Turkey regardless of gender, nationality, language, race or religion[86]. The demand of the article 38 was privatized by the first and second paragraphs of article 39 which stated that non-Muslim minorities which were the subjects of Turkey should have the same rights as the Muslim population[87].

The article 40 of the treaty defined that non-Muslim minority should have equal rights to found and conduct charity, religious and social establishments. On the base of the same article they got the right to use their religion and language freely[88].

It was defined by the article 41 that the Turkish government should create favorable conditions for the subjects of Turkey to open elementary schools in order to be able to educate their children with their mother language, especially in the cities and villages where the non-Muslim population formed significant number[89].

It is important to mention that according to the article 42, the Turkish authorities were obliged to ensure the protection of churches, synagogues, cemeteries, and other religious institutions of non-Muslim minorities. Thus, according to this article, the Armenian churches not only shouldn't have been destroyed, but conversely they should have been restored[90].

Finally, the resolutions of the international and governmental organizations which recognize and condemn the Armenian Genocide can be submitted to the application as supplementary credible and objective evidence. These resolutions should be accompanied with the letters of the

[86] Toriguian Sh., Armenian Question and International Law, p. 186.
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Papian A., Legal Bases for the Armenian Claims, p. 38.

heads of those organizations: World Peace Congress (1965), World Council of Churches (1983, 1989), The Permanent Peoples' Tribunal (1984), International Association of Genocide Scholars (1997, 2005, and 2007), Christian Youth Association (2002), and Nobel Prize Awarded Organization (2007).

After submitting of factual circumstances and evidences with the help of the above mentioned components and after being evaluated from the legal point of view the application must be concluded by the requirements expressing the demands of the Armenians concerning the losses and their circumstances after the Armenian Genocide.

Losses and circumstances are conditionally divided into following groups:

a) deprivation of homeland, b) human losses, c) loss of cultural heritage, d) financial losses, e) mental illnesses and psychological complexes.

Deprivation of homeland: The deprivation of the Armenians from their cradle was the major loss of the Armenian Genocide. At the same time it was a significant motivation and purpose for the organizers of genocide to commit that crime[91]. As it concerns, the loss of the great part of the homeland it should be clarified what consequences it had and how it impacted on the future life and development of our nation.

On the one hand, the result of losing homeland was the formation of the Diaspora, as the Western Armenians who had survived from the genocide by a miracle having lost their homelands had to start everything from scratch and pass the difficult path of adjustment in a foreign environment. On the other hand, the loss of the great part of the homeland and the exile of the survivors from Western Armenia split the Armenian nation, undermined the unity, enervated forces and prevented normal

[91]Melkonyan A., The Lessons and the Messages of the Armenian History, p. 427.

development perspectives. As a result of genocide two major sectors of the Armenian nation have been geographically removed from each other which have caused a gap between them. So, Western Armenians have become the Diaspora Armenians, and Eastern Armenians along with a part of the Western Armenians settled in Eastern Armenia started to be called Armenians. Living in different regimes, they have acquired diverse thinking which complicates the process of solving pan-Armenian issues.

The number of **human losses** during the Armenian Genocide was about 1.5 million. While clarifying the number of human losses, it should be taken into consideration the number of the Armenians who were forced Islam during the policy of the genocide, because they are also losses of the genocide of the victim nation: as a result of simulation these people stopped to consider themselves Armenians.

After clarifying the number of human losses it is necessary to find out what results they had and how they impacted on the nation's future reproduction, and how much would be the population of Armenia today – a century later of the crime, if the victims of the crime were alive. In this sense we should take into consideration that Western Armenian families had many children. Besides, each 25 years goes the regeneration of the population, thus during the previous century it should have been done 4 times, if they were not be subjected to genocide.

Loss of cultural heritage: As a result of the genocide, the Armenians were caused great cultural losses. According to the Turkish official information of 1914, Western Armenians had 83 primacies, 1860 Armenian churches and chapels, 451 monasteries, and about 2000 schools[92]. According to the data of UNESCO in 1974, after 1915 only 913 buildings remained from all Western Armenian monasteries and churches, 464 of which were completely destroyed, 252 were turned into ruins, and 197 needed

[92]Astoyan A., Expropriation of the Armenian Properties in the Ottoman Empire (1914-1923), "Vem", # 3(31), Yerevan, 2010, pp. XVI-XVII.

restoration[93]. It is obvious that Armenian primacies and schools suffered the same fate. It should be noted, when we speak about «Ongoing Genocide», we mean the destructive policy of Turkey officially conducted against the Armenian historical monuments, churches and monasteries. The purpose of that policy is to eliminate everything in Western Armenia that prove and give evidence about the real owners of that territory: the Armenians.

By saying loss of cultural heritage we mustn't be limited only with the destruction of the historical monuments. Raphael Lemkin, the originator of the term "Genocide" and one of the authors of UN Convention on the Prevention and Punishment of the Crime of Genocide (December 9, 1948) gave the clear definition of national-cultural genocide for the first time in his report during the fifth convention of the regulation of international criminal law in Madrid in 1933. Introducing in details the massacre of the Armenians in Ottoman Empire, Raphael Remkin called it "anonymous crime" and considered its manifestation "the actions of vandalism which were directed to the destruction of cultural values of national, religious, race and ethnic groups by prohibiting the **use of national language, by destructing printed books, schools, historical monuments, places of worship** (A.M.)"[94].

Thus, the destruction of the thousands of manuscripts summarizing millennial scientific thoughts and genius of the Armenian nation must also be considered as a manifestation of cultural genocide against the Armenians. So, the organizers of genocide have cut us from thoughts and soul of our ancestries, from the priceless knowledge that our ancestries tried to transfer to us by those manuscripts[95]. The causes of the cultural genocide can't be recovered by any financial compensation.

[93]Armenian-Turkish Relations, Problems and Perspectives. Parliamentary hearings, December 19-20, 2007, Yerevan, 2011, p. 144.

[94] Барсегов Ю. Геноцид армян – преступление по международному праву, с. 7.

[95] Стратегические последствия геноцида армян, "Византийское наследство", (информационно-аналитический журнал), Ер., 2002, N 3, с. 15.

Regarding the financial losses of the Armenian Genocide, it is mainly mentioned the memorandum presented by the National Delegation of Armenians headed by Poghos Nubar Pasha at the Paris Peace Conference of 1919, according to which the financial losses of the Armenians during 1915-1919 count 19.130.982.000 French franks[96]. Though, if we take into account how and when the memorandum was formed and presented at the conference, it becomes obvious that the number pointed can't be considered as a starting point since the National Delegation did not have more than one month for that serious and responsible work during which it was impossible to collect full information and coordinate them comprehensively. In Poghos Nubar Pasha's memorandum there aren't especially registered those financial losses that were done to Armenians from Baku by Turkish-Azerbaijani troops in 1918, and naturally the financial losses done by Kemalists to Eastern Armenians in 1920, to Armenians of Cilicia in 1921, to Armenians of Smyrna in 1922 couldn't be registered after presenting the document[97]. Thus, according to some authors, the indicated account of the financial losses done to Armenians in accordance with the continuation policy of the genocide must be increased by at least 20%[98].

In order to get a clear idea what economic benefits Turkey has obtained from massacre and deportation of the Armenians, it is enough to mention that despite the difficult conditions of war and the paralyzed economy of the empire, country's budget experienced unprecedented economic growth: so, if in 1913-1918 it constituted 35 million Ottoman gold, then in 1915-1916 it became 38 million ottoman gold, and in 1917-

[96] Losses of the Armenian People Caused by the Armenian Genocide, by Barseghyan L., Yerevan, 1999, p. 13.

[97] Barseghov Yu., Financial responsibility for the Armenian Genocide, p. 11.

[98] Dadayan Kh., The Economic Constitute of the Armenian Genocide, and Financial Compensation Issue, Conference in Nicosia on the problems of Western Armenians' Claims, April 18-19, 2008, (Collection of Scientific Articles), Moscow, 2008, p. 180.

1918 - 85 million[99]. It is obvious, in this condition the growth of the budget could have been afforded only by confiscation of the property and estate of the Armenians. Here it is appropriate to record the fact, that the Turkish state was actually enjoying the consequences of the crime: the Armenian Genocide.

Poghos Nubar's memorandum should also be specified by compensation documents of the damage done to Jews by Germany during the Holocaust, particularly according to Luxembourg Agreement concluded on September 10, 1952, by which Germany was obliged to start compensate the losses done to the Jewish people during the Holocaust[100].

Besides, doing such calculations there should be considered the fact of Turkey's illegal confiscation of the Armenian community's estates by violating the provisions of the Treaty of Lausanne[101]. The mass expropriation of the Armenian properties during the Armenian Genocide prevented the possibility of multiplication of wealth. Tens of thousands of the Armenians, who survived the genocide, losing their property, had to start from scratch in abroad, bearing untold social and economic deprivation. That is why, we should not forget about the missed profit when calculating the financial effects of the Armenian Genocide. Also, with consequences of the financial losses there should be calculated the inflation and bank interests that has increased the amount during the past decades by which the final amount of financial losses done to the Armenians will be completed.

Mental illnesses and psychological complexes: The psychological stresses caused in the consequences of the Armenian Genocide also left

[99] Astoyan A., Expropriation of the Armenian Properties in the Ottoman Empire (1914-1923), p. XXIX.

[100] Marutyan H., German Reparations to Jewry: Formation, Process and Recent Situation, Conference in Nicosia on the problems of Western Armenians' Claims, April 18-19, 2008, (Collection of Scientific Articles), Moscow, 2008, pp. 81-83.

[101] Toriguian Sh., The Armenian Question and International Law, p. 138.

their effect and had an impact on the Armenian people's future activity. This side of the issue is not less important than the above mentioned ones. The Armenian people gained a lot of psychological barriers and fears which have directly and non-directly affected and continue to affect not only the survivors of the genocide, but also the next generations. By the way, it is not only about the direct survivors and their generations, but the Armenian people as a whole, causing them inferiority complexes. The fear that one day the same can be repeated hasn't disappeared, since the guilty side hasn't accepted its guilt and hasn't confessed, moreover, it continues to reject the historical fact. Losing the great part of its homeland, the Armenian nation is deprived from the opportunity to see its own living space and the national values left from the ancestors. One of the inferiority complexes caused from it can be considered that some people have skepticism and lack of confidence towards the nations' future, own forces and abilities and addiction to foreign-reliance[102]. So instead of aspirations of development and performance, the Armenian people in Armenia and the Diaspora has mastered for decades, and still masters the Philosophy and Psychology to Survive.

A serious psychological damage was caused to forcibly Islamized Armenians during the genocide who under threat of death were forced to refuse from their national origin, and accept foreign religion and features. They have lived and continue to live in Turkey in atmosphere of fear for decades, hiding their real identity[103]. Nowadays there is a positive trend among so-called "hidden Armenians", as some of them already talk about their Armenian roots and even try to come to their Christian religion, though we must confess, that it is done through serious psychological complexes, first of all by overcoming the fear.

[102] Стратегические последствия геноцида армян,"Византийское наследство", с. 16.

[103] Heterolingual and Heteroreligious Armenians, Yerevan, 2007.

The policy of Republic of Turkey to deny the Armenian Genocide calls the committed crime into question and dishonors the memory of innocent victims, offenses not only their descendants' dignity, but also the pride of all Armenians. Thus, that policy must be considered as a supplementary psychological attack on the Armenians as the victims of genocide.

On the base of all the above mentioned Armenia should require the court to compel Turkey the followings as temporary measures:

1. To stop the denial policy of the Armenian genocide: it is the continuation of the committed genocide and its new manifestation. This requir ment can be substantiated with the provisions of the article 9 of the UN Genocide Convention which define the investigation of dispute about the responsibility of history in the international court, including the article 3 where is also mentioned the complicity to genocide[104].

2. To suspend the application of the article 301. As it is known, the article 301 of Turkish Criminal Code is used to judge the human rights activists, journalists for having opinions on history or other area that are different from official approach. On June 1, 2005, the article 301 replaced the article 159 of former Criminal Code on the base of which criminal liability as imprisonment was defined for the "defamation* of Turkish identity, State and State Structures". Amnesty International has condemned the article 159 and has called Turkey not to use and remove it[105].

3. To recognize the verdicts of the Turkish Military Tribunals legal and to repeal the decisions of Kemal's regime to review those verdicts.

[104]Права человека. Сборник международных договоров, с, 781.

*In the written explanation which was attached to the project submitted to the Turkish Parliament the examples were brought for such kind of actions: preaching in favor of withdrawing the troops from Cyprus or the acceptance of the version of solving the problem, which damaged Turkey, or accepting the historical truth, that the Armenians were subjected to genocide during the First World War and after it.

[105] http://www.amnesty.org/en/alfresco_asset/c8f87ee9-a303-11dc-8d74-6f45f39984e5/eur440352005en.htm

4. To stop the glorification and honor of the individuals who committed crimes in the territory of Turkey during the First World War, and publicly announce them criminals.

5. To implement the liability to protect non-Muslims' rights according to the articles 38-44 of the Treaty of Lausanne. The decision of Supreme Court of Republic of Turkey in 1974 to seize the property of national minorities and to hand it to the state treasury should be considered as the next manifestation of expropriation of the Armenian community of Turkey. This was a flagrant violation of provisions of the Treaty of Lausanne. This fact made Abdullah Gul, the president of Turkey to confirm "the non-Muslim asset law" on February 26, 2008. The law was adopted by Grand National Assembly of Turkey with great difficulty, according to which, the country should have returned the property of non-Muslim communities, particularly Armenians during 18 months[106]. However, even after adopting the law nothing has been done practically: the Armenian community continues to have financial losses, and this issue continues to remain in the centre of the attention of international community. The latter demands from Turkey to respect the interests and rights of non-Muslim communities.

The followings can be submitted as general requirements:

1. To recognize the arbitral award of US president Woodrow Wilson on the demarcation of the Turkish-Armenian boundaries as a legal ground for the main consequence of the Armenian Genocide: the deprivation of homeland.

2. On the base of the principle of **Ex injuria jus non oritur*** the action of Turks to enjoy the fruits of the Armenian Genocide, particularly

[106] Dadayan Kh., The Economic Constitute of the Armenian Genocide, and Financial Compensation Issue, p. 185.

* Law does not arise from injustice.

to seize the property of the victims of genocide must be considered illegal, so Turkey must be obliged to give the financial compensation to the heirs of the victims or genocide survivors, or the representatives of their profits and rights. To denounce publicly the "Law on Abandoned Properties" adopted by Turkish government and to recognize the provisions of the article 144 of the Treaty of Sevres as a legal mechanism for the financial compensation to the heirs of victims or genocide survivors, or their representatives.

CHAPTER 2

The Trial Procedures and the Determination of Possible Options on the Case of the Armenian Genocide in the UN International Court of Justice

Apart from preparing the application before applying to the UN International Court of Justice, there should be a thorough examination of the procedural specifics and possibilities of the International Court in order to use them correctly and prevent the possible steps which could be taken by the opponent.

Generally the UN International Court considers the case when:

1. The parties of the dispute transfer the dispute to court on a special bilateral agreement and clearly mark on the issues that they have agreed to transfer to court trial.

2. When one of the countries, taking the basis of the specific contract provision, transfers the case against the other country to the International Court's examination on a unilateral announcement. The practice of the International Court's activity shows that 75% of the cases have been transferred to it unilaterally[107].

The Article 9 of the UN Convention on Genocide gives such opportunity to the other member countries of the convention. As is well known, the Republic of Armenia is a member of Genocide Convention since June 23, 1993, and the Republic of Turkey is a member of this Convention since July 31, 1950. So, according to the Article 9 of this document, Armenia may transfer to the UN International Court's examination the dispute of interpreting, applying or executing of the convention without an agreement with Turkey[108].

During the USSR period, the examination of the Armenian Genocide case in the UN International Court of Justice was impossible,

[107] www.un.org/ru/icj/who_sits.shtml

[108] Права человека. Сборник международных договоров, с. 782.

however, today, there aren't any obstacles against Republic of Armenia to exercise its right to bring forth such request[109].

In the accompanying document of the letter sent by the Minister of Foreign Affairs of the applying country, the subject of the dispute and the parties involved must be specifically listed. Those countries relations with the court who are the parties of the case are verified through the Secretariat. The plaintiff country introduces the application to Secretariat of the Court, and the Secretary immediately transfers it to the other parties and judges, and informs the UN Chief Secretary and all the other States Members which have the right to appeal to court. First, the official name of the case is mentioned the plaintiff country, then the word "against", and at the end the respondent country. In this case the name of the case will be "Armenia against Turkey".

After transferring the case to the court, Armenia must have representatives present in the court: for this position can be nominated Armenia's ambassador in the Netherlands or a representative of the MFA's juridical service who acts on behalf of the Government and can take such obligations. The representative has right to receive the judicial documents from the Secretary of the Court, present the arguments, and make suits of his/her country in the court. The Armenian delegation may include a representative and a deputy in the court who is a professional in the subject of international law, and assists the representative in preparing the documents and the oral presentations[110]. This delegation presented to the court is endowed with diplomatic privileges and is intact which is necessary to do its duties. By the way, it is not required that the representative and the deputy have Armenian citizenship. Armenia can hire reputable experts in international law who may be even experienced former members of the

[109] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, pp. 54-55.
[110] www.un.org/ru/icj/who_sits.shtml

International Court and are well aware of the court proceedings. In fact, the prosecutor country's financial expenses during the court are limited only by the remuneration of the members of the delegation. The remaining expenses are covered by the budget of the International Court.

One of the important specifics of the UN International Court is that the country with a specific case which doesn't have its representative in the delegation can run its ad hoc judge. This means that Armenia besides its delegation, can run its ad hoc judge in the International Court, and it's not necessary that he/she has to be an Armenian citizen. As a rule, the sides of the dispute in this position, are held from previous members of the International Court, or are the lawyers who have big authorship in the field of international law who can provide great help in the case of protecting the countries' rights as ad hoc judges have the same rights upon this cases together with permanent judges including the voting when making a decision[111]. The presence of ad hoc judges ensures the equality of all sides of the dispute and the opportunity to present their positions, clearly.

However, the International Court has brought some limitations to this case. In October 2001, there were applied instructions adopted to complete the court regulation brought by the UN International Court of Justice for those countries applying to court which referred to right organization of the technical side of the judicial procedures and were intended to increase the efficiency of court proceedings providing a quick and impartial trial case. By the VII applied instruction of this document, the court forbade the parties to appoint ad hoc judges for those individuals whose lawyers were proceeding currently or within three years. The parties were also asked to refrain from involving in the judicial process of ad hoc judging. By the VIII order, the same prohibition applies on engagement of court judges, ad hoc judges, secretary, his deputy, or any court senior

[111] Международное право, Отв. редакторы Г.В. Игнатенко, О.И. Глунов, с. 426.

official who were appointed for the positions listed three years before taking a specific case[112]. Armenia should take into account these changes when appointing its ad hoc judge, so that the proposed candidates are not rejected by the court.

Though by the judicial charter it is also intended to create a practice to carry out separate instances of the judicial proceeding with accelerated procedure, but it is not profitable in terms of examination of the Armenian Genocide, because then there will not be any opportunity to fully present the evidence based on committed crimes. In addition, it is it is necessary to have Turkey's agreement in order to carry out such trial procedure, as it is not known what type of tactics and what strategies it will adopt in this case.

After receiving the claim, the court reserves the right to hire any individual with given instruction to provide an expert opinion.

It is important to mention that if the parties do not insist for these trial proceedings to remain closed, then the proceedings will remain open. Armenia will certainly benefit from open proceedings, but Turkey will try to avoid it as there will also be members of the media, members of diplomatic corps, lawyers and other specialists interested in this trial present in such proceedings.

The court may examine the case in the absence of one of the parties. In such case the other party may apply to the court with a request to make a decision in his favor; however, prior to that, the court must be ensured that it has the jurisdiction to investigate the case and that the prosecutor's claim is justified[113].

First, the trial is conducted in writing and later verbally. The parties submit to court the required written documents during the written proceeding. This phase lasts a few months to several years depending on the

[112] Практические директивы Международного суда ООН.
http://www.un.org/ru/icj/practice_directions.shtml
[113] Международное публичное право. Под редакцией К. А. Бекяшова, М., 1998, с. 143.

complexity of the case, the number of documents and filing deadlines. The documents of written procedure are as follows: *memorándum, anti memorandum, response, and response on response*[114]. Plaintiff's memorandum (the application) is in a written format during the written proceeding and the defendant responds to it in a written memorandum. If the parties claim or if the court deems it necessary, the second phase of presentation the competitive documents can be assigned during which the plaintiff country answers the memorandum, and the respondent responds to it. The written phase of the trial ends with presenting of the last written document. By court's applied instructions documents II instruction, it is required that in any document submitted to the court, parties are not responding to positions and arguments of the opponent, and only to present their own position and arguments. Thus, parties are required to briefly summarize their own position in the final section of the presented documents[115].

By the paragraph 1st of the article 9 of the same document, it is prohibited to submit to court any new written documents after the end of the written trial. If one of the parties in accordance with court convention's 1st and 2nd paragraphs and after the written procedure has been completed, wants to present a new document, it must do so during the oral examination and it must justify the reason necessary to submit additional documents which previously was prevented to do during the written trial. By the 3rd paragraph of the same directive, in case of disagreement of the opposing party, the inclusion of the new document is resolved by the court if it finds that its inclusion is necessary and justified. By the 4th paragraph if such document is attached to the case file, the other party is permitted to submit its new documents along with its considerations, but this should solely refer

[114] Международное право, с. 476.
[115] Практические директивы Международного суда ООН.
http://www.un.org/ru/icj/practice_directions.shtml

to the contents of the document presented by the other party[116]. The Armenian side must take into account this thesis during creating and presenting of the memorandum (the application) and during presentation to answer abjections during written proceeding.

The oral phase of the trial which can last from two to six weeks, takes place in the same order as presentation of the written documents. The right of the first speech belongs to the plaintiff, in this case to Armenia, and then both parties have a chance give two speeches in the same manner. In the VI instruction of the applied instructions document, it is stated that the parties' oral statements should be as short as possible and to the point, refer to case and not to repeat the arguments and justifications of written documents, presenting only those questions which focus on those which are disaccords or dissolutions between the parties[117].

Often the countries against whom a claim is submitted to the International Court, present the preliminary objections challenging the jurisdiction of the court on an exact case, or stating that there is no dispute with another country or that it has no legal nature, etc[118]. When the defendant raises this and other types of preliminary objections, the case is terminated and begins a separate stage of investigation, which again includes both written and oral procedures, which eventually end with the court's decision regarding to preliminary objections. Court announces its decision on the preliminary objection in an open session. The court may: 1. accept the objection, after which the examination of the case stops; 2. reject the objection, which the examination of the case restarts from the stage where it was stopped; 3. attach the objection to the case file fully or

[116] Ibid.
[117] Ibid.
[118] Международное право, отв. ред. Ф.И. Кожевников, М., 1987, с. 475.

partially, or declare that the decision to the objection will be made during the examination of the case[119].

In all probability, Turkey will try to litigate Court decision making authority on Armenian Genocide's case, when Armenia, based on Article 9 of the Convention of December 9, 1948, will use its right to unilaterally appeal to the International Court. Instant objections of the Turkish side may distract the court from examining the case for some time.

It should be noted that the Turkish attorneys have experimented the practice of challenging the court's jurisdiction during the trial of Young Turk leaders at Turkish military tribunal.

The defense of the Turkish Military Tribunals referencing to Article 31 of the Turkish Constitution which considers a jurisdiction of the Supreme Court to account the ministers was not competent to judge the Young Turks by the defendants[120]. In their opinion, the Article 33 should not apply to accused. It is noted in Article 92 which states that the case should be handed to the Supreme Court. The advocates believed that even if Article 33 of the Turkish Constitution applied to their defense by which the case was not transferred to the Supreme Court, the case should be examined in a criminal court rather than in a military tribunal[121]. It was clear that the defendants' attorneys were trying to interrupt the proceedings with an excuse to transfer the entire case to another court. However, Young Turks' military tribunal's jurisdiction failed at all of their attempts.

The court rejected the defense's objections to the jurisdiction of the military tribunal. Considering the fact that military force was put into effect by the Young Turk regime, and continued to remain in force, therefore neither the Article 32 nor the Article 33 of the Constitution could not be

[119] Международное право, с. 475.
[120] The Armenian Genocide According to the Documents of the Trial of the Young Turks, p. 16.
[121] Ibid., p.16.

applied according to the court which the defense insisted on[122]. The court pointed Article 113 of the Turkish Constitution relating to the entry into force of the law of war, after which a temporary suspension of civil rights action was planned. The court once again stressed the indictment formulated: "as long as military law exists, civil rights keep silent", and therefore military courts are the only punitive mechanisms of the country. Finally, the court stated, that the imperial edict published by sultan has a power of law which gives to court the necessary authority and jurisdiction for the examination of the defendant's guilt and their condemnation[123].

Turkey has played this trick in the International Court, when made a preliminary objection during the examination of the Greek-Turkish dispute on coastal areas of the Aegean Sea on December 19, 1978, challenging the court's jurisdiction to examine the case. This time, however, the court accepted that it is not competent to investigate the case[124], which puts an end to the investigation of the mentioned case. It is expected that Turkey will try to repeat this in the case of the Armenian Genocide in an effort to end any further investigation of the Armenian Genocide's claim.

The answer to such preliminary objection brought forth by Turkey, one can discuss the decision of the International Court's case of Bosnia and Herzegovina against Yugoslavia in 1996. Yugoslavia (Serbia and Montenegro) also tried to challenge the court's jurisdiction in its preliminary observation during the examination of this case. To confirm its jurisdiction in this case, the court must first discover if there is a dispute between the parties in accordance with the requirements in Article 9 of the UN Genocide Convention. Considering the contradictory positions of the parties and referring to its previously expressed positions, the court decided

[122] Барсегов Ю. Г. Турецкая доктрина международного права на службе политики геноцида, с. 40.
[123] Ibid.
[124] Международные суды и международное право, с. 32.

that there would continue to be a situation where the two parties are in an extreme opposite sides regarding the performance or non-performance of some contractual obligations, legal dispute clearly exists between them during the denial of claims presented by Bosnia and Herzegovina presented by Yugoslavia[125]. Besides, the court decided Yugoslavia is legally bound by the Genocide Convention obligations within the initiation of the case against it, and by Article 9 of the Genocide Convention the court is competent to consider the case[126]. This conclusion also served as a basis for the court to reject the preliminary objection of Yugoslavia, and to continue to examine the case in substance.

It is obvious, Armenia and Turkey have clearly expressed opposing views on the case of the Armenian Genocide connected with some contractual issues, arising from the claims of the Genocide Convention, and connected with the performance of obligations. In this case, Armenia, in its response to court should bring to court's attention relevant documents/arguments to the case, and the court may reject the preliminary objection of Turkey. The statistics of the International Court indicate that when the defendant attempts to challenge the court's jurisdiction, in 65% of cases, the court considers itself competent to investigate such cases[127].

After rejecting the litigating of the court's jurisdiction, Turkey may continue its tactics of delaying the proceedings and divert of the examination of the case, trying to present new. initial objections which insist that:

a. plaintiff's memorandum (the application) is groundless, as the subject of the dispute is prior to the UN Genocide Convention, that is the

[125] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, p. 56.
[126] Ibid., pp. 55-56.
[127] www.un.org/ru/icj/who_sits.shtml

known provision of retroactivity of the Genocide Convention will be promoted;

b. events occurred during the Ottoman Empire, and the Republic of Turkey is not its successor;

c. the plaintiff is not eligible to submit such claim.

By the V instruction of the application instructions document, the court clarifies the terms of the respondent's answer to examine the preliminary objections faster, limiting them to a maximum of four months from the date of filing of the preliminary objections[128]. Armenia can and should properly answer them in a specified time frame. We shall introduce Armenia's possible answers to the Turkish objections.

a) The Retroactivity Issue of the UN Genocide Convention

From the view of the international law the application of the UN Convention on the Prevention and Punishment of the Crime of Genocide applied in 1948, is extremely important for the Armenian Genocide: it's an issue of retroactivity towards the Armenian Genocide.

We shall immediately note, the UN International Court of Justice has already officially referred and expressed its view on this case when on May 28, 1951 by the request of the General Assembly it issued an advisory opinion connected with making reservations on Convention on the Prevention and Punishment of the Crime of Genocide provisions. In the advisory opinion of the UN International Court of Justice it was particularly noted that the principles underlying the Convention are recognized as mandatory by all civilized nations even without a contractual booking[129].

[128] Практические директивы Международного суда ООН. http://www.un.org/ru/icj/practice_directions.shtml

[129] Геноцид армян: ответственность Турции и обязательства мирового сообщества, т. 1, док 15, с. 32.

Thus, the court emphasizes the fact that even in the absence of this Convention, the provisions are mandatory for civilized countries, so the dates of sighing and of the entry into force of the Convention cannot be used for limiting the application of provisions. It means that Turkey's possible reservations or claims about Convention's retroactivity can't be significant to resolve the issue.

Besides, it is worth to mention, after accepting the UN Convention on Genocide in 1948 and after entering into force in 1951, the international law continued to develop, accepting new international legal documents in a result. 20 years after accepting the Convention on "Prevention and Punishment of the Crime of Genocide" on November 26, 1968, the United Nation accepted another convention on "No statutory limitations towards the crimes against humanity and martial crimes". The contracting parties note in this Convention that there is no any provision on the antiquity for punishing or bringing into responsibility for war crimes or crimes against humanity in any declaration, act or convention[130]. Moreover, it emphasizes that by this Convention in international law it is universally applied "the principle according to which there is not any statute of limitations to war crimes and crimes against humanity"[131]. In the first article the mandatory provision of Convention is explicitly mentioned "No statutory limitations towards the crimes against humanity and martial crimes", and "any expiration dates are not applied against war crimes and crimes against humanity **regardless of the date of execution (A.M.)**"[132].

Thus, emphasizing that there was not a provision about statute of limitations in any international document before, as well as, taking into account the fact that these crimes are serious from the view of international law, the UN put the circulation of this Convention in international law and

[130] Права человека. Сборник международных договоров, с. 786.

[131] Ibid.

[132] Ibid.

the principle of not applying expired dates to war crimes and crimes against humanity.

The Convention also clarifies the question of what is meant by saying "war crimes and crimes against humanity". According to Article 2 of Convention "genocide is also considered as a crime against humanity, which is set by UN Convention on "Prevention and Punishment of the Crime of Genocide" in 1948, even if the operations do not constitute a violation of domestic law in the country where they are made"[133].

If we ignore for a moment the trial of former members of Young Turks' government in the Turkish Military Tribunal, then we may claim that this article of the Convention refers to Turkey directly and with double basis. The reason is the first Turkish state and the real organizers of the crime avoided the responsibility, and Turkey as the successor of the Ottoman Empire not only freed prisoners convicted of genocide of the Armenians by military tribunals, but also continued to deny the undeniable facts of the crime and claim on statute of limitations of the UN Genocide Convention of 1948. Taking into account the fact that the UN Convention of 1968 explicitly refers to Convention of 1948, we can simultaneously record that in fact the first is the addition and continuation of the second, and it should be considered that with new convention the UN apparently made an adjustment on the issue of application and retroactivity of UN Genocide Convention of 1948.

Preliminary objections of Turkey connected with retroactive issue of the UN Genocide Convention can also be countered with the fact that crimes against humanity and particularly genocide conviction in trials of the Nuremberg and Tokyo tribunals were made retroactive, their jurisdiction is established, and it is not a subject of review.

[133] Ibid., p. 787.

Finally, we should take into account the fact that the results of the Armenian Genocide are still not overcome, and the Armenian people continue to fight. So, it is a continuing crime. As is known, continuing crimes are the similar criminal acts aimed at a common goal and comprise a total unity. The beginning of the continuing crime is considered as a performance of the first action or inaction of the similar actions which is one among these criminal actions, and which constitute the components of one general crime, and the end is the last criminal action or the inaction[134]. These indications of the continuing crime are fully consistent with the denial policy of the Armenian Genocide by the Republic of Turkey at the state level. In this case, the discussion of UN Genocide Convention retroactive issue is meaningless.

b) The Issue of the Republic of Turkey being the Successor of the Ottoman Empire

The issue of jurisdiction of the Republic of Turkey being the successor of the Ottoman Empire is also very important, as by proving this fact it is possible to prosecute Turkey for the done crime.

After the collapse of the Ottoman Empire and its disappearance as a state, a number of the new countries like Iraq, Syria, Jordan, Israel, Lebanon, Saudi Arabia, etc. appeared in its former territories. But is Turkey a new country or is the successor of Ottoman Empire after its collapse?

Theoretically, clarification related to the succession issue is connected with the fact whether the newly generated state retains the main features of the previous state, its historical connection, main population, ethnicity, language, and continues the management of its titular nation and

[134] Кибальник А. Г., Современное международное уголовное право, с. 166.

other characteristics. If the answer is positive, then we do not deal with a newly generated state but with the successor of the previous state[135].

It becomes evident through this provisions that Turks have dominated during the Ottoman Empire and this has transferred to the possession of modern Turkey. It is noteworthy that 85 percent of public servants and 93 percent of military officers retained their positions in the new republic[136]. It is not accidental, since many of the Young Turks later became leaders of the Kemalist' movement and regardless the method of management, in the case of the republican rules the power of the Turks continued on this territory like during the Ottoman Empire. Turkey has also kept its historical connection with the Ottoman Empire, and the Turkish people kept its traditions and language. So, it is obvious that in the face of Turkey we deal with the successor of the Ottoman Empire.

Turkey's being the successor of the Ottoman Empire is not limited only by theoretical justifications. In practice, the question of succession of Turkey appeared after the Lausanne Conference in 1925 when the issue of the debt of the former Ottoman Empire was discussing. It was to be determined who shall assume the obligation of paying the debt in the non-existence of the state. The Turkish side declared in its characteristic manner that it has no connection with the Ottoman Empire which doesn't exist anymore. Turks claimed that the repayment of the debt is to be made through paragraph 2nd of the Article 5 of the Treaty of Lausanne, according to which Turkey was created after the collapse of the Ottoman Empire among Syria, Lebanon and Iraq. So if there is a problem with the repayment of debts of the Ottoman Empire, it must be distributed to all newly generated states. The creditor countries absolutely did not agree with this.

[135] Toriguian Sh., The Armenian Question and International Law, p. 193.
[136] Дадриян В., Геноцид армян как проблема международного уголовного права The Issues of the History and Historiography of the Armenian Genocide, N 13, Yerevan, 2006, p. 8.

Finally the issue was transferred to international arbitration. The international arbitrator Bourel decided that according to the international law Turkey was the only successor of the Ottoman Empire, and so it should pay its debt[137]. Although the Ottoman debt issue has led to the identification of Turkey's recognition as the successor of the Ottoman Empire, nevertheless from the legal point of view Ottoman debt repayment factor was not a cause of Turkey's succession, but a consequence. Thus, arbitrator Bourel first recognized Turkey as the only successor of the Ottoman Empire, and logically it has to pay the debts of the former Ottoman Empire. So, in this case it is appropriate to speak of complete succession rather than of partial, since the solution of the issue of Turkey's succession refers to not only the obligation of repayment the Ottoman debt, but also to the international responsibility for mistakes made by the Empire[138].

Joe Verhoeven, a professor at Catholic University of Leuven and international law expert writes on the issue of Turkey's succession: "No matter what shocks and fluctuations have happened in Turkey after the establishment of the Kemalists and the dissolution of Ottoman Empire, there was never any doubt that the Turkish state established after the end of war is not identical with the state which entered into an alliance with Germany before the war. This conclusion was convincingly confirmed by arbitrator Bourel when the issue of Ottoman national debt was being examined in 1925"[139].

Based on this decision, Turkey assumed the obligation to pay the debt of the Ottoman Empire, and despite of huge concessions managed to

[137] Toriguian Sh., The Armenian Question and International Law, p. 195.
[138] Ibid.
[139] Геноцид армян: ответственность Турции и обязательства мирового сообщества, т. 1, с. 768.

pay the debt only in June 1944[140]. The fact that Turkey paid Ottoman Empire's debt till 1944 finally confirms that Turkey has already accepted it is the successor of the Ottoman Empire. Besides, Turkey by Articles 12 and 17 of the Treaty of Lausanne, also agreed with some provisions signed in documents by Ottoman Empire on alienation of some territories[141].

Finally, present Turkish top government officials do not hide the connection of Turkey with the Ottoman Empire, and Neo-Ottomanism is declared a landmark in Turkey's foreign policy with all the ensuing consequences. For instance, Istemihan Talaye, Turkish Minister of Culture has publicly declared the Republic of Turkey is the continuation of the Ottoman Empire which heritage is a part of Turkish history, and according to the minister, feeling shame for that is equal to denial of one's own existence[142].

By denying the Armenian Genocide, the republican Turkey automatically confirms its succession of the Ottoman Empire in the sense that in fact it continues its policy and, therefore, assumes the responsibility for the crime[143].

The changes in regime and territories of Turkish state cannot have any influence on the fact that Turkey is the successor of the Ottoman Empire. So, if Turkey is recognized as the Ottoman Empire's successor and as such has taken its duties connected with the repayment of the legal debt, then it has to take the responsibility for the done crimes, in particular for the Armenian Genocide.

[140] Dadayan Kh., The Economic Constitute of the Armenian Genocide, and Financial Compensation Issue, p. 179.
[141] http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne
[142] Dadrian V. N., The key elements in the Turkish denial of the Armenian Genocide: A case study of distortion and falsification, Toronto, 1999, p. 5.
[143] Melkonyan A., The Lessons and the Messages of the Armenian History, Yerevan, 2013, p. 212.

c) The Issue of the Legal Identity of the Republic of Armenia on the case of overcoming the consequences of the Armenian Genocide

To overcome the consequences of the Armenian Genocide, it is also essential to present international legal claims to nowadays Turkey by the third Republic of Armenia or clarify the issue of the right to present as a plaintiff in international courts. Theoretically, the resolution of issues related to the Armenian Genocide must assume that part of the Armenian people who are directly affected by the policy of it, as a result being spread throughout the world, forming the Armenian Diaspora. However, under current international legal system the subjects of the international law, i.e. sovereign states can apply to the UN International Court of Justice. On the other hand, most of the Armenians in Armenia are also the descendants of the victims and survivors of the genocide, so even if the Diaspora has a right, anyway, the descendants of the victims and survivors of genocide living in Armenia could not stay out of the process.

As for the legal identity of the international law, the Republic of Armenia can represent and protect the interests and rights of the descendants of the victims and survivors of genocide who are its citizens. For the protection and presentation of the rights and interests of the Diaspora who are the descendants of the Western Armenians, it is necessary the authorized and legitimate body of the Western Armenians gives it such right.

The authorization issue has been resolved since 1919, when the Second Congress of the Western Armenians delegated such right to the first Republic of Armenia. On February 12, 1919, according to paragraph 5th of the "Political Resolution" adopted by the Assembly, the Executive body of the Western Armenians along with the Government and Parliament of the

Republic of Ararat was to take the real steps to declare United and Free Armenia[144].

With this formulation the authorized and legitimate body of the Western Armenians in fact autorized the first Republic of Armenia to appear on its behalf as a claimant for occupying its homeland in a result of genocide, as the declaration of United and Free Armenia implied the distribution of rights of the first Republic of Armenia on West Armenia. The first Republic of Armenia has assumed the responsibilities in it turn. In pursuance of the decisions of the Second Congress of the Western Armenians which took place in February Alexander Khatisyan, the Prime Minister on May 28th, the independence anniversary, adopted the Declaration of Free, Independent, and United Armenia with which the authorities proclaimed themselves as the owners of the West Armenia, also[145].

As for current Republic of Armenia being the successor of the Republic of 1918-1920, then on December 2, 1920, under the sovietization of Armenia with Yerevan agreement, the rights and obligations of the first Republic also transferred to Soviet Armenia. In fact the government of the Soviet Armenia undertook the succession of the first Republic[146]. Then the Soviet Armenia first became the part of the Transcaucasian Socialist Federative Soviet Republic and then part of the Soviet Union, transferring its succession to the USSR[147]. The striking example, perhaps, is that after the end of the Second World War on July 22, 1945, during the sixth meeting of the Big Three leaders of Allied Powers in Potsdam Conference, the Soviet Union on behalf of the Soviet Armenia raised territorial claims to Turkey,

[144] Melikyan V., The National Congresses of the Western Armenians, and the Stages of the Armenian Question in 1917-1923, Yerevan, 2007, p. 10.
[145] Melkonyan A., The Issues of the History and Demography of Armenia, Yerevan, 2011, p. 387.
[146] Torguian Sh., The Armenian Question and International Law, p. 200.
[147] Ibid.

demanding the return of Kars and Ardahan[148]. This fact also clearly shows that the USSR has inherited the succession of the Soviet Armenia; otherwise, Turkey or Allied Powers would discuss USSR right to act on behalf of the Soviet Armenia. After the collapse of the USSR the present Republic inherited the succession of the Soviet Armenia. This fact is enshrined in the Declaration of Independence of RA, in the preface of which it is indicated that the Republic of Armenia is developing the democratic traditions of RA created on May 28, 1918[149]. So, the present Republic of Armenia, as the successor of the first Republic has inherited the right transferred to the first Republic by the authorized and legitimate body of the Western Armenians who were victims of the genocide. Thus, it has the right to present as a representative of the present Diaspora's interests in the international court.

In addition to the preliminary objections, Turkey as a defendant can also submit countersuit against Armenia in its antimemorandum, accusing it in slandering the Turkish state and compromising its reputation and require the court to establish the fact of defamation. Generally the counterclaim as well as the preliminary objections, aims to expand the subject of dispute to offset in this way the plaintiff's arguments. In the case of presenting the counterclaim Armenia is to prevent the suspension of the investigation of actual case and demand that the court answered the question during the investigation of the actual case, because only in this way it is possible to determine whether the plaintiff's claim is grounded or the defendant's counterclaim.

The acceptance of preliminary objections or counterclaim of Turkey by the court is not beneficial to Armenia, because in that case the actual examination of the case may end in that phase. Therefore, Armenia should

[148] The Berlin (Potsdam) conference of the Big Three Leaders of the Allied Powers: USSR, USA, and Great Britain (July 17, 1945 – August 2), Yerevan, 1989, p. 168.
[149] Armenian Declaration of Independence, August 23, 1990.

actively participate in related examinations and neutralize Turkey's arguments.

Separate from the main case, an examination may start in the case of demanding temporary measures. The court may impose temporary measures on the request of one of the parties, either on its own initiative, if it knows that the rights which form the subject of decision being made in future are under immediate threat[150]. The aim of temporary measures is kind of temporary judicial prohibition which actually freezes the situation till the final decision of the court.

For instance, Armenia may demand from the court to impose Turkey the temporary measures indicated in the subheading of application components. Such policy on genocide case has been successfully enforced in the UN International Court of Justice during the examination of the case of Bosnia and Herzegovina against Yugoslavia. The conjecture to satisfy the demands of temporary measures presented by the plaintiff had its subsequent impact on the course of further proceedings, giving a significant advantage to Bosnia and Herzegovina, and notably weakening the positions of Yugoslavia as a defendant.

Indeed, in contrast to the trial started against Yugoslavia in International Court, we cannot expect the consistent support of the Western countries which was provided to Bosnia and Herzegovina. In the case of coordinated and active actions of the Diaspora lobbying and other structures, as well as of the representatives of diplomatic missions, we can only expect some moral support. It is obvious that submitting to the International Court on the genocide case we have to rely on our own strength and abilities, and don't make such strategic and tactical mistakes during the trial which were observed in Serbia's actions during the trial of Bosnia and Herzegovina against Yugoslavia. This means that one-sided,

[150] Международное публичное право, с. 143.

biased actions of the court or the possibility of applying double standards should be detected and prevented by us.

This procedural trick requiring temporary measures could be and should be applied in the case of examining the case of the Armenian Genocide before Turkey will present its preliminary objections, or come up with a countersuit. The decision on temporary measures is made in an accelerated procedure, and the decision is announced in open session in one to four weeks. In terms of some tactical view such decision will give some advantage to Armenia as a plaintiff, in terms of continuing the trial in a more favorable position.

As for the implementation of the temporary measures, then in some cases the countries have refused to implement them. Particularly by the decision of the first temporary measures on the case of Bosnia and Herzegovina against Yugoslavia in 1993, invoked the parties to immediately stop acts of genocide and refrain from any action that might complicate or prolong the dispute.

In its second decision the court officially noted that despite its earlier decision and the UN Security Council resolutions, Bosnia and Herzegovina's population still carries enormous suffering and human losses. The court decided that the situation doesn't require new temporary measures but immediate and effective use of measures previously listed[151].

Considering this fact, if court makes an appropriate decision, but Turkey decides not to implement, Armenia should not wait till the final decision on the actual case and immediately can submit to the UN Security Council. Moreover, according to paragraph 2nd of Article 41 of the court charter immediately informs about its temporary measures to the parties as well as the Security Council[152].

[151] www.un.org/ru/icj/who_sits.shtml
[152] Международное публичное право, с. 144.

An adjacent examination can also start when a third country applies to the court with request to let it take part in the examination of the case, as it also has a juridical interest in that case[153]. That is possible, for instance, in the case of the countries of the Entente in May 24, 1915, when Russia, France and Great Britain had already given the legal and political rating to the Armenian Genocide during its execution time, or in the case of the United States which president Woodrow Wilson made the arbitral decision on the Turkish-Armenian boundary on November 22, 1920, allocating a territory of 103.000 square kilometers to Armenia, and thus, calling Turkey, as a genocidal state for the political responsibility.

The basis for adjacent examination is also the union of cases, if the court finds that the parties of the different trials are promoting the same arguments and justifications to the same respondent on the same question[154]. That is possible, if for instance, one of the countries which signed the Treaty of Lausanne, for example, Greece applies to the International Court against Turkey for breaking and not taking the obligation of protecting the rights of the non-Muslims Armenians and Greeks. That right is given to the countries of the Treaty of Lausanne by paragraph 4th of Article 44 of the document, according to which by the demand of any of the countries of the Treaty of Lausanne the case can be transmitted to the Permanent Court of International Justice whose verdict was to be final[155]. Practically each of the countries of the Treaty of Lausanne can even today apply to the Permanent Court of International Justice with issues of violating the rights of non-Muslim population.

In such situation Armenia can petite with a request to unite that case or cases, and also the case against Turkey. If court decides to unite the cases, then the parties with previous cases will be permitted to have only

[153] www.un.org/ru/icj/who_sits.shtml

[154] Ibid.

[155] Treaty of Lausanne http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

one ad hoc judge, and starting from that time they have to present unite documents and oral arguments.

Surely, it is reasonable, that in both cases other countries won't have such interest in these cases as Armenia or Diaspora, so, it is obvious, that a huge preparatory work is to be done to cause an appropriate disposition among the population and authorities of indicated countries.

After the hearings the court starts the examination of its decision which passes in closed session. At first the judges share their thoughts, and then the president of the court separates those questions which needs court's discussion and decision. Then each of the judges prepares his/her written initial decision which spheres among the other judges, thus giving an opportunity to have an idea about the opinion of the majority. Although the discussions are held in closed sessions, the final verdict is announced in an open one. In a few weeks the second discussion takes place. After it ends based on the opinions of judges, the court creates a committee which includes two judges and court's president presenting the majority opinion, and has to prepare the project. This project in its turn is spread among the judges to do the last corrections, then considering this, the committee presents to the judges the final project. During the second reading speech the project passes with open voting. The judges have to vote "favor" or "against", and can't refrain. In case of equal voice-allocation, the president's vote is determinant. Judges can attach their special opinion to the resolution by which they explain their approaches[156].

As a rule, the final resolution is made in 3-6 months related to the complexity of the case. The average duration of the trial proceeding examination is four years. Such a long time frame of the procedure is due to the fact that the procedures used during the trial make it possible to make decisions at the highest professional level. Besides, it should not be

[156] Международное публичное право, с. 143.

forgotten that 15 judges and more participate in the trial, and the parties are not individuals but countries, so the judicial error is to be excluded. The trial consists of presenting multiple and various documents and of their detailed study. Also, the technical questions may appear connected with translations, finance charges and coping with other difficulties which are also take time. The sides of dispute also play their role in the procedural delays: they may try to artificially extend the trial and win time. Such actions are particularly beneficial for the Turkish side.

That is why Armenia has to efficiently use its procedural opportunities and rights provided by court rules and practical directives, and demand from the court to pressure on the defendant Turkey, so it didn't try to abuse its rights.

Court's verdict is a document which consists of approximately 50 pages, written in English and French on both sides of the pages. The parties of dispute are provided with a copy of the decision; the third copy is kept in the court archives. The text consists of three parts:

a) Introduction, where the judges and the representatives of the parties are indicated, and where is given a brief background to the trial, as well as the documents submitted by the parties;

b) The grounds for the decision which summarizes the essential facts and indicates the underlying arguments;

c) The verdict itself, stating how the judges voted and the final verdict was made based on all that.

The court verdict is final and is not a subject to appeal. It is indispensable for the parties of dispute. This is also stated in the paragraph 2nd of Article 94 of the UN Rule of Law[157]. Anyway, a party of dispute can apply to court with a request to interpret the verdict.

[157]Международное право, с. 477.

The party of dispute can submit to the court with request to make changes in the verdict in the case when there are new circumstances which were unknown before and which can have a decisive impact on the outcome of the case. However, the verdict can't be changed if it was made 10 years ago[158].

If one of the parties considers that the other party does not fulfill the requirement of Article 94 of the UN Rule of Law, then it can present this issue to the Security Council which in case of necessity must take measures to execute the court verdict[159].

An exceptional case of court verdict was the case of Nicaragua vs. United States. In 1986, Nicaragua applied to the Security Council, asking the court to ensure the execution of the verdict which was made against the United States: the last was found guilty in doing military and paramilitary operations against Nicaragua[160]. Nicaragua's application was not submitted, as the US used its veto power and only in 1991, when after elections the government in Nicaragua was changed, the issue was settled after negotiations. Fortunately, Turkey is not a nuclear country and is not a permanent member of the UN Security Council, so it cannot use veto power, though it has allies which have such right and this fact cannot be neglected.

Three possible options may be used on the case of the Armenian Genocide:

First option: if Turkey's preliminary objections, regarding with retroactivity of the UN Genocide Convention and with the court not having jurisdiction are accepted by the court and the actual examination of the Armenian Genocide is prevented, then the court will reject the application on the ground that the events mentioned in the application took place

[158]Международное публичное право, с. 143-144.

[159] Международное право. Переработанное и дополненное издание, с. 428.

[160] Международные суды и международное право, с. 24.

before the creation and entering into force of the UN Genocide Convention and in its ensuing record, that the Republic of Turkey cannot be responsible for the obligations assumed under the UN Genocide Convention, and the court, responsively, cannot have jurisdiction in this case. This option, however, is less likely, based on the circumstances above.

Second option: assuming Turkey's preliminary objections mentioned above, the court can refer to its advisory opinion about the UN Genocide Convention in its verdict of 1951, and record that the crime of genocide as such without any conventional obligation is a serious violation of customary international law norms[161]. This would be a compromise decision which in practice won't help us, but somehow it will be recorded that what happened to the Armenians was genocide, but the UN Genocide Convention cannot be applied retroactively to that crime. Unfortunately, we have already come across with such verdict which was a result of the accursed Turkish-Armenian Reconciliation Commission activities*(TARC), which has applied to International Center for Transitional Justice** (ICTJ)

[161] Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, p. 57.

* This non-official Commission consisting of 6 Turkish and 4 Armenian former officials and politicians, established on July 10, 2001, and lasted till the summer of 2003, declared that its aim was to start dialog between Armenians and Turks, and point the opportunities of the ***reconciliation*** (A.M.) of two countries. Though the Diplomatic Academy of Vienna had officially assumed the creation of this commission and the pilot project of its activity, and David Phillips, the American conflict expert was assigned as a project coordinator, anyway it was obvious the activity of the commission was directed by US Department of State.
Ananyan A., A New Attempt for Armenian-Turkish Dialog (Turkish-Armenian Reconciliation Commission Activities), pp. 142,148.

** The center was established in 2001, and was engaged in doing different political and legal studies for various institutions which refer to the phase of transition from dictatorship structure to democracy or in the phase of armed conflict, it referred to such democrat countries where there were problems of historical justice. Besides doing such kind of studies, the aim of the center is also the ***reconciliation*** (A.M.) of the conflicting countries. For more information about the center's activity visit www.ictj.org

with the request to give an advisory opinion on the case of relevance to UN Genocide Convention on the Armenian Genocide[162].

On February 10, 2003, the authors of the report in their analysis published by ICTJ operating in US, based on the provisions of Article 28 of the Vienna Convention on "Law of International Contracts", according to which the contract is applicable after entering into force, if different intentions do not appear from the contract, or if it is not approved by other means[163], it is considered that the Genocide Convention which entered into force on January 12, 1951, cannot be retroactively applied to the events taken place before that, i.e. to the Armenian Genocide[164]. So, the authors of the analysis have observed the UN Genocide Convention of December 9, 1948, as a usual international contract and have retroactively used against it the Convention of Vienna of 1969 on "Law of International Contracts" which in their opinion, is a document which encodes the norms of international contractual right, and by that reason it is applicable to any international contract. Without doubting in encoded nature of Vienna Convention of 1969, and the fact that it is retroactively applied to the UN Genocide Convention, meanwhile should be noted that the last one is not an ordinary, but universal and multilateral international-legal contract which in its turn encodes international customary legal norms on such serious international crimes, like genocide. So, like the Vienna Convention of 1969, the UN Genocide Convention can be applied retroactively. For in both cases a new invention isn't made, but the norms which were already

[162] Vardanyan V., On Legal Analysis Concerning to the Armenian Genocide Prepared for the International Center for Transitional Justice, The Issues of the History and Historiography of the Armenian Genocide, N 8, Yerevan, 2003, p. 51.

[163] Международное право в документах, сост. сборника Н. Т. Блатова, М., 1982, с 79.

[164] Vardanyan V., On Legal Analysis Concerning to the Armenian Genocide Prepared for the International Center for Transitional Justice, The Issues of the History and Historiography of the Armenian Genocide, p. 50.

applicable in the international law before the signing of that documents have been completed and coordinated.

For the sake of truth, we should note that such response of the authors of analysis is expected based on the question, since TARC asked ICTJ to respond, if the Genocide Convention is applicable to the events taken place at the beginning of the XX century. It is quite natural that in case of such formulation there would be such answer. If, as the analysis authors point, other international law provisions besides Genocide Convention, or the application of some other country's laws, or questions about law they haven't examined, then it's quite natural that they would come to such conclusion[165]. Though such formulation of the analysis already means that the authors besides the UN Genocide Convention were well aware of other norms of international law and of the state laws that bring to responsibility individuals and formulations, but due to some consequences didn't wish to observe the issue of their examination with their help. The fact that the authors of the analysis deliberately avoided to discuss the issue of their examination by the provisions and contextual documents of Joint Declaration of the Entente Powers of May 24, 1915, the German court verdicts and documents of the Turkish Military Tribunals and of the murder of Talaat Pasha, the articles regarding to the punishment part of the Treaty of Sevres signed on August 10, 1920, the arbitral award on Turkish-Armenian boundary made by US president Woodrow Wilson on November 22, 1920, the provisions and verdicts of the Nuremberg Tribunal's rules of law, the UN General Assembly's Resolution 95/1 on Nuremberg Principles, the UN Convention on the "Non-Applicability of Statuary Limitations to War Crimes and Crimes Against Humanity" applied on November 26, 1968, etc., is definitaly undermining the value of the legal analysis. In our opinion, despite the question that they were asked to give an opinion about,

[165] Ibid., p. 50.

truly impartial and independent experts are required to perform their work conscientiously and comprehensively, not limiting the discussion of the case in two papers.

Besides, the authors of the analysis confess they haven't made independent examination of the factual circumstances of the events taken place at the beginning of the XX century, i.e. the Armenian Genocide, and that the legal analysis is made on the basis of the documents which were provided to ICTJ by TARC[166]. If we take into consideration the fact that TARC's the Armenian and Turkish members have given to ICTJ materials containing contradictory information, then it becomes quite clear that the controversy has automatically moved on to the text of analysis. Meanwhile, impartial and independent experts should not be fulfilled by materials provided by TARC but are obliged to independently find out the factual circumstances concerning the case before doing legal analysis.

As for the second part of the analysis, the authors themselves decided to examine and found that the term genocide as it was applied to the Genocide Convention corresponds to the events taken place at the beginning of the XX century. Here begins the contradictory and conflicting opinions contained in the document. If, answering the first question, the authors point out that Genocide Convention is aimed to future and quote the provision of Article 1 of the document, that "countries obligate to prevent the crime of genocide"[167], then answering the second question, they are contradicting their previous views, by suddenly remembering the idea found in the introduction to the Convention that "at all periods of history genocide has inflicted great losses on humanity"[168]. In contrast to the first question, the authors surprisingly show comprehensive approach connected

[166] Ananyan A, A New Attempt for Armenian-Turkish Dialog, pp. 134, 140.

[167] Права человека. Сборник международных договоров, том 1 (часть вторая). Универсальные договоры ООН, Нью Йорк и Женева, 1994, с. 780.

[168] Ibid.

with the second question and mention the UN General Assembly Resolution No. 95/1 and 96/1. Thus, answering the questions, the reference and applicability of the international legal documents is done by the authors selectively.

We can separate the positive aspects of the ICTJ analysis that the authors based on the provisions of Article 9 of the UN Genocide Convention and quoting the International Criminal Tribunal's verdict on the case of Bosnia and Herzegovina against Yugoslavia in 1996, record the responsibility for the crime of genocide is set for countries besides individuals[169].

Concluding the ICTJ analysis we can say that it is a compromise and contradictory document which raises more questions than gives answers. This analysis reminiscent of the European Parliament "Resolution on a political solution to the Armenian Question" of June 17, 1987, in which on one side, it is recorded that the Armenian Genocide corresponds to the definition of the Genocide Convention and on the other side, it is mentioned that modern Turkey cannot be considered responsible for this crime[170]. In general, the application of such compromise documents by which their authors consider that in that way they converge the parties of dispute and contribute to their reconciliation are actually very dangerous. Documents contanting semisolution create bad precedents while recognizing the Armenian Genocide: the Turkish side may come to the absurd conclusion, refering to such documents and even genocide

[169] Vardanyan V., On Legal Analysis Concerning to the Armenian Genocide Prepared for the International Center for Transitional Justice, The Issues of the History and Historiography of the Armenian Genocide, pp. 49, 59.

[170] European Parliament Resolution on a political solution to the Armenian question, Doc. A2-33/87,
http://www.europarl.europa.eu/intcoop/euro/ pcc/aag/pcc_meeting/resolutions/1987_07_20.pdf

recognition cannot have legal consequences for it[171]. We expect that in its preliminary observations the Turkish side will try to use formulations of the document which are favorable, cutting them from the general context, and we must be ready to give a proper response to such developments. The issue is that both the resolution of the European Parliament and the formulations in the ICTJ analysis were adopted without the participation of the Armenian side. If our absence during the acceptance of the first document is somehow justified by the fact that being a part of the Soviet Union, Armenia was practically deprived of the opportunity to participate in the process, and the Diaspora was performing indirect experiments to influence the authorities, then we cannot say the same about the ICTJ analysis. In the case of making such assessments in the ICTJ's analysis, the Armenian members of the TARC obviously have their guilt, letting themselves to formulate as the issue of the Armenian Genocide on Genocide Convention in the application to ICTJ, creating a good chance for the authors of the analysis to avoid the comprehensive discussion of the issue[172].

On the other hand, we think even in the correct formulation of the issue, there would be compromising answer in the analysis, since the creation and the activity of TARC and its application to ICTJ is not a legal but merely a political activity, so the analysis was more a political or politicized report than a legal. This analysis was just aimed at the continuation of the TARC activity but not at its interruption, and it needs to please both the Turkish and Armenian members of the commitee who in report found what they wanted, so it is difficult to consider it a proper legal document made of high professional level. Apparently the extensive mastermind of the creation and avtivity of the TARC, the US State

[171] Vardanyan V., On Legal Analysis Concerning to the Armenian Genocide Prepared for the International Center for Transitional Justice, The Issues of the History and Historiography of the Armenian Genocide, p. 58.

[172] Ibid., pp. 53, 55.

Department hadn't randomly ordered ICTJ the analysis about the Armenian Genocide who just like TARC didn't want to solve the subject of dispute but to reconcile the parties of the dispute, though the organizers of the process couldn't manage it too, since both Turkish and Armenian members dissatisfied with the analysis soon announced their withdrawal from the Commission, which led to its dissolution.

Third option: if Armenia manages to neutralize the preliminary objections of Turkey with proper and convincing counter arguments, and if they are not denied by the court with the case not being rejected in the first phase, continues to be actually examined, the approval of which even in the case of Turkish denial counter arguments cannot raise serious difficulties, then the court, examining the factual circumstances of the case and ensuing legal justifications, listening to the claims of Armenia, will by all means examine the case on the basis of Convention retroactivity and will make an appropriate decision. Maybe in this case not all claims of Armenia will be satisfied but probably they will be partially satisfied, somehow depending on the fact how the Republic of Armenia will substantiate each of the claims.

CONCLUSIONS AND RECCOMENDATIONS

As we see, having factual circumstances in our hand, as well as the current international legal norms give Republic of Armenia which is the legate of the Armenian people who are the victims of the genocide total opportunity to present and defend the rights and interests of the victims, survivors and successors of the Armenian Genocide in the international courts. However, we need to pay serious attention to the strategic and tactical issues for starting the process, in the way to keep high level of work efficiency and to avoid useless loss of time and efforts.

For instance, in this particular study we came to the conclusion that it is possible to present the application on the case of the Armenian genocide in the UN International Court of Justice against the criminal state.

Regarding the strategic issues, we have to note, before presenting a claim against Turkey for the Armenian Genocide in the UN International Court of Justice the relevant experts and institutions of both Armenia and Diaspora must develop the supporting historic and legal packet of documents jointly which justify the claims against Turkey for overcoming the consequences of the Armenian Genocide. In that conceptual document should be given the answers to the questions such as: what do we specifically understand saying the consequences of the Armenian Genocide and how or what extent do we imagine the overcoming or partial eliminating these consequences, knowing the fact that there are consequences which are simply unrecoverable. Based on this conceptual document, the relevant organizations and professionals of Armenia and the Diaspora jointly should make efforts to develop also a tactical and practical document called the "Action plan for overcoming the consequences of the Armenian Genocide" where will be mentioned the methods and mechanisms by which it will be possible to overcome those consequences. One of the most crucial challenges in the Action Plan must be the division

of the activities between Armenia and the Diaspora, depending on their competence, skills and experience.

It is not a secret that the geopolitical processes, rearrangement of forces and interests have a certain impact on the international law and especially on the usage of its norms. Considering above mentioned, the Armenian genocide process which is appealed to the UN International Court of Justice should be thoroughly prepared and secured by the preceding and parallel ongoing political process.

Politically oriented preparatory activities can include the following actions:

1. Closely collaborate with the countries and the international organizations which have recognized and condemned the Armenian Genocide. This cooperation will rationalize the resolutions and decisions which are made by those countries. It is necessary these countries evince a practical assistance when Armenia appeals the Armenian Genocide case to the UN International Court of Justice.

2. Start close collaboration also with the nations who subjected to genocide in general and particularly with the ones who have suffered from the Ottoman Empire and its successor Turkey. This collaboration will ensure the support of these nations when Armenia appeals the Armenian Genocide case to the International Court.

3. Armenia and the Diaspora should gain an influence on the players who have active role in foreign affairs and on the decisions that will be made in the International Court on Armenian Genocide case by using their contradictions with Turkey.

4. We need to create exoteric brochures and booklets in those countries which the Armenian Genocide haven't yet recognized and condemned. It is preferable to make it by the Armenia's diplomatic representations to make the case more official. We also need to create such a favorable public opinion and disposition, that even these countries taking

into account this fact will not interfere or counteract the Armenian Genocide case in the International Court.

Summarizing all the mentioned facts, definitely our struggle won't be finished by the 100th anniversary of the Armenian Genocide. It will continue as long as Armenian nation hasn't reached the total condemnation of this crime and overcome its consequences. But it is clear, that it will not be 100th anniversary anymore. This is very important period for our nation which we must cross by gaining serious breakthrough and progress in our claiming. In particular, this breakthrough can be appealing a claim to the UN International Court of Justice by Republic of Armenia against Turkey on the case of the Armenian Genocide. This step will force Turkey to give an answer for the criminal actions have been made by Turkey and its predecessors against the Armenian people in prestigious international court. After this the court has to evaluate a crime with its consequences for genocidal state.

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