NATIONAL CONGRESS OF WESTERN ARMENIANS
ԱՐԵՎՄՏԱՀԱՅՈՑ ԱԶԳԱՅԻՆ ՀԱՄԱԳՈՒՄԱՐ

CONGRÈS NATIONAL DES ARMÉNIENS OCCIDENTAUX
НАЦИОНАЛЬНЫЙКОНГРЕССЗАПАДНЫХАРМЯН

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REPORT

Concerning the rights

Of Western Armenians

Paris, 28 March 2015.

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Concerning the rights of Western Armenians

The report was prepared for the 4th Congress of Western Armenians. (28-29 March 2015, Hotel Meridien Etoile, Paris, FRANCE.)

The report was prepared by an NCWA expert committee including experts in History, International law, Turkish studies, Kurdish studies, Political Science, Psychology, Social sciences and Philosophy.

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A. HISTORICAL CONSIDERATIONS

The term "Western Armenians" denotes the heirs of the ethnic Armenian citizens of the Ottoman Empire, who have been exterminated, forcefully displaced and deported or Islamized from 1894 to 1923. The majority of Western Armenians (over 7 millions) currently live in the Armenian Diaspora, Turkey and the Republic of Armenia.

Pursuant to the divisions of Historical Armenia (in 387, 591, 1555 and1639) the notions of Eastern and Western Armenia emerged. The Armenian population of Western Armenia remained mostly as the ethnic majority in its homeland up until the First World War.

The complexity of the issues pertaining to the protection of rights of Western Armenians is known under the headline of the "Armenian Question".

The main reason for the emergence of the Armenian Question is the traditional occupation/possession of the majority of agricultural lands of the western part of the Armenian Highland (Eastern part of the Ottoman Empire) by Armenians. As a consequence of the 1831 Ottoman census and due to the rapid changes in the social mindset of the Ottoman military system (caused by the elimination of the social group of Janissaries, the bourgeoisie tendencies of the Ottoman military class, the loss of the European provinces etc.), it became apparent that the significant part of the agricultural lands of the Empire were exploited traditionally by the Christians. In the conditions of dissolution of the Empire, this posed a great danger to the ethnic Turk and mostly Kurdish and other Ottoman nations.

The question of Western Armenia and Western Armenians as an issue of international diplomacy emerged in 1878 at the Berlin international conference. Article 61 of the Treaty of Berlin enshrined the obligation of the Ottoman Empire to undertake reforms for the Armenian population of the Empire's Armenian regions (Western Armenia), which the big powers were to supervise. The then superpowers, including the Ottoman Empire, were signatories to the treaty.

The subsequent stages of activation of the Armenian Question were also mostly connected with the intensification of persecutions and violence against the Western Armenians on the territory of the Ottoman Empire, as well as with the intensification of the military activities in which the Turkish State was involved.

In 1895 the British government developed a plan for reforms, according to which Western Armenia should be a self-governing unit under the protectorate of the European Powers. With the participation of Russia and France the plan was finalized and became known under the name of the "May Reforms". The plan provided for administrative, judicial and other reforms in Western Armenia, including the enforcement of the central power in the six Armenian vilayets (Erzurum, Bitlis, Van, Sebastia (Svaz), Mamuretul Aziz (Kharberd), Diyarbakir), development of social life and economy, protection of the Christian population, as well as for the international supervision over the execution of the reforms.

The attempts for the implementation of the reforms, appliance of the pressure from the West and the arrangement of the Armenian armed self-defense movements were taking place parallel to the wide scale massacres in 1894-1909, which resulted in the forced transfer of thousands of Armenian

families to other parts of the Ottoman Empire or forced islamization. Thus, the "white genocide" of the Armenian culture and cultural values was under way.

In November 1910 the conference of the Ittihad va Tarakki Cemiyeth (Young Turks) party, in opposition to the development of self-governance tendencies within the Empire, made a decision to create a Turkish heartland and to rapidly expel the Christian populations from their millennial motherland.

In the context of territorial and global challenges, Armenians were divided into two groups – the pro-Ottoman Armenians and the secessionists. The positivism brought by the 1908 revolution of the Young Turks was followed by the Adana massacres and ubiquitous disappointment, after which the anti-Ottoman sentiments started to gradually intensify with the Armenians.

On 26 January 1914 a Russian-Turkish accord was signed in Constantinople on Armenian reforms, according to which the 7 vilayets were unified into 2 sections: the first one would include Trebizond, Erzurum, Sebastia vilayets, and the second one Van, Bitlis, Kharberd and Diyarbakir vilayets. Governance thereof was delegated to two supreme wardens, which would be appointed by the Supreme Port with the approval of the Great Powers.

In 1914-1918, realizing that the Christian superpowers were pushing the Armenians towards self-governance, the leaders of the Young Turks government of the Ottoman Empire took advantage of the First World War and initiated the process of final solution of the Armenian Question through extermination of the Armenian population of the Ottoman Empire and by removing the Armenian demographic presence from Western Armenia (Armenian vilayets). In order to create "legal" grounds for the forced deportations, organized pillage, kidnapping and islamization of women and children and the ever-present massacres, the Young Turk leaders adopted through the Ottoman Mejliss a series of laws on deportations, liquidation of the abandoned property and others, which were in stark contradiction with the obligations of the Ottoman Empire under international treaties, the customary international law (general international law) existing at that moment, as well as the Ottoman Constitution.

Subsequent to the Mudros Armistice Convention, the Armenian Question gained loud resonance during the Paris Peace Conference of 1919-1920. On 12(25) February 1919 the two Armenian delegations in Paris signed the memorandum on the Armenian national claims. The "Armenian claims" were (1) recognition (giving effect to) the independent Armenian State, composed of the unified 7 Armenian vilayets, Cilicia and the Transcaucasian Armenian Republic; (2) the Paris Peace Conference was to grant a single state, the USA, a special mandate of 50 years over those territories; (3) the Conference was to decide the amount of financial compensation and to restore all the losses suffered by the Armenian people due to massacres, deportations, seizure of property and destruction; (4) Turkey was to undertake to pay compensation for its requisitions and as a just reparation to the rightful Armenians to restitute the real estates, churches, schools, monasteries with adjacent lands and property within their territory, which were taken in any manner whatsoever from the Armenians; (5) the national or private Armenian property was to be transferred to the Armenian Patriarchy of Constantinople; (6) any individual of Armenian descent, who was living in a foreign country and had become a national thereof, would be granted a right, together with his/her minors, to become a citizen of Armenia.

However, due to the newly established cooperation between the Russian Soviet Federative Socialist Republic and the leader of the nationalist movement *de facto* acting on the territory of the Ottoman Empire, Mustafa Kemal, which cooperation was aimed at the failure of the 1920 Treaty of Sevres, the Armenians were forced to face not only the advancement of the Kemalist forces, but also the intervention of the Red Army and the Azerbaijani-Tatar militia. As a consequence of the discursive approach of the Allied Powers, which won the First World War, and due to finding themselves amidst the manifest anti-Armenian, gradually strengthening unity of the Soviet and Kemalist

systems, the Armenians not only lost the opportunities created by the Treaty of Sevres, but also the independence of the State declared in 1918.

The US Senate did not accept the Armenian mandate and France signed the Accord of Ankara and transferred Cilicia to the Kemalists, contrary to the April 24, 1915 declaration of the Entente States and failing to protect the rights of Armenians that were being subject to deportations for the second time. The victorious Entente States did not even pursue for the recognition of the declared crimes against humanity by a court of law. The United Kingdom transferred the Young Turk leaders that were awaiting trial in Malta, which became prominent political figures of the Republic of Turkey after their return with impunity.

Guided by their own political, strategic and economic priorities, the third States, which periodically voiced the concerns of the Armenians living on the territory of the Ottoman Empire, thus, were unable to pursue against Constantinople their international obligations to the end. Hence, the Armenians faced their historical challenges in solitude, while hoping for the humanitarian intervention of third States. The Peace Treaty adopted as a consequence of the Lausanne Conference (20 November 1922 – 24 July 1923) confirmed the state borders of the Republic of Turkey. During the July 17 session in Lausanne the idea of "An Armenian National Home" was substituted for the issue of "Armenian refugees", *i.e.* transformed into a human rights protection issue, which was delegated to the League of Nations. Article 2 of the Treaty of Lausanne confirmed the Turkish borders with Bulgaria and Greece, while Article 3 – with Syria and Iraq. The Turkish claims with respect to its Eastern border (with ASSR) were addressed in Article 16 of the Treaty of Lausanne, according to which the renouncement of title over certain territories by Turkey did not "prejudice any special arrangements arising from neighborly relations which have been or may be concluded between Turkey and any limitrophe countries" (meaning the treaties of Moscow and Kars).

Despite the efforts of the Central Committee on Armenian Refugees, established in Paris, Turkey has till our days failed to perform its international obligations undertaken in Lausanne and by other international treaties pertaining to the repatriation of the Ottoman Armenians, protection of historical monuments and restoration of the rights of the returned.

B. POLITICAL CONSIDERATIONS

The policy of persecutions, ethnic cleansing, mass atrocities and deportations of the Armenian population on the territory of the Ottoman Empire has led to the deprivation of the Armenians of their homeland and to the destruction of their inherited cultural values, lives and properties.

The double standard policies, pursued by different governments and administrations of the Ottoman Empire and later the Republic of Turkey against the Western Armenians, despite *prima facie* being aimed at reforms and liberal developments, have led to the elimination of the Armenian element within the Eastern part of modern Turkey.

Those double standard policies reflected in the following:

1. starting from the beginning of the 19th century and for approximately hundred years the Ottoman Empire, desiring to modernize the institutions of its own political system based on the Western model and to save the Empire from early collapse, has undertaken legislative and constitutional reforms (adopting tanzimats and the two Ottoman Constitutions), as well as has signed international treaties pertaining to the protection of fundamental rights of its subjects/citizens (the Treaty of San Stefano and the Treaty of Berlin, the 1907 Hague Convention (IV), the 1914 Russian-Turkish Accord, etc.);
2. on 13 May 1914 the Ottoman government confirmed the accord presented on 2 June 1913 by Russia (earlier confirmed by France and the United Kingdom), which would guarantee to a certain extent the improvement of the living conditions of the Armenians inhabiting the six Armenian vilayets and secure their rights as a minority;
3. during the First World War, while making use of the global crisis, the Young Turk government of the Ottoman Empire planned and carried out acts of mass extermination and forced deportation of the ethnic Armenian population of the Ottoman Empire, coupled with their deprivation of Ottoman (Turkish) nationality and systematic deprivation of property, resulting in the surviving Armenians finding refuge in Caucasus and Russia, Middle East and Central Asia, Eastern and Western Europe, Australia and America.

The Roots of the Present Political Necessities

The Western Armenians have lived through all the tragic aspects deprivation of homeland and are currently standing at an important historical and political point.

1. The Western Armenians are de facto present in all the geopolitical developments and in all active international platforms, be that economic, political or cultural.

2. The gradual revelation of the Turkish citizens of Armenian descent – Muslim, Christian (apostolic, catholic, missionary), atheist and other – is an issue of primary importance. A significant part thereof has been merged either before the First World War or afterwards (1922-1938).
3. The existence of the independent Republic of Armenia, as a subject of international law, as well as the fact of all-Armenian unification over the realization of the right of self-determination of Artsakh is, of course, matters of primary importance.

The Principles for Self-Organization and for the Claims of Western Armenians

1. Beginning with 1912, the delegation of Western Armenians to Paris, created by the encyclical of the Catholicos of all Armenians George V of Tbilisi, has pursued the goal of creating a plenipotentiary representative body of the Western Armenians, which would consistently pursue the rights of the Western Armenians by calling on Turkey to implement reforms.
2. In 1917 and 1919 two congresses of Western Armenians were held in Yerevan by the leaders of Western Armenians and the heads of the national delegation to Paris, which had the goal of solving the Armenian Question and the issues of Western Armenian deportee-refugees by returning them to their native lands and by restoring their rights.
3. The Central Committee of Armenian Refugees, acting in 1921-1945 in Paris with the authorities of the national delegation, presented to the League of Nations legal opinions provided by prominent experts of international law (Gilbert Gidel, Albert de Lapradelle, Louis Le Fur and Andre Mandelstam), confirming the undeniable rights of the Western Armenians to return to their homeland, restore their property and status, as well as the possibility to raise these issues before international courts of law.
4. On 10 December 2011 the Western Armenians have restored their authorized representative body by convening the Third Congress of Western Armenians in Paris, which is a nationwide authorized representative body for the purposes of pursuing compensation for the losses suffered by the Western Armenians and restoration of their rights.
5. The 4th Congress of the Western Armenians is the rightful successor of the aforesaid historical, legal and political developments.

The Political Value of the Material, Moral and Human Losses of Western Armenians, Already Suffered and Still Ongoing

1. Altogether the losses suffered by the Western Armenians include the loss of habitat, the economic, cultural and historical environment, national values, traditions and national memory, which losses are still ongoing in our days.
2. None of the losses of the Western Armenians described above have been restored up to this date.

3. The damages today exceed significantly the damages presented in the memorandum of the Armenian delegation to the 1919 Paris Peace Conference (19,130,932,000 franks of which 4,532,472,000 were intended for the Republic of Armenia).
4. The losses continue to damage and to hinder the moral and material development of Armenians and their intentions for self-fulfillment. Today those damages include also the lost profits. Moreover, the ongoing losses and negative consequences caused by the Armenian Genocide *inter alia* include:
    - the continuous threat to the Armenian communities within the Middle East;
    - the threat of gradual loss of national identity and the Western Armenian language within the Armenian Diaspora;
    - the still ongoing process of emigration of Western Armenians that have found refuge in the Republic of Armenia from their historical habitat, due to the continuous blockade and the state of war into which the Republic of Armenia (as well as the NKR) was forced by Turkey and Azerbaijan.

Conclusions

Taking into consideration the aforementioned political realities;

Taking into consideration the deprivation of homeland and of property of the Armenian subjects/citizens of the Ottoman Empire, which deprivation from the end of the 19th century till today has been regulated by Ottoman and afterwards by Turkish laws, other state acts;

Taking into consideration that these laws and acts contradict the constitutions of the Ottoman Empire and of its continuation, the Republic of Turkey, the international treaties signed by them, as well as customary international law;

Taking into consideration the geopolitical reality of the Republic of Armenia and of Artsakh, as well as the declared and undisputed necessity for distribution of roles between the National Congress of Western Armenians and the newly independent Armenian statehood,

The Fourth National Congress of Western Armenians of March 28-29, 2015 hereby initiates the process for the acknowledgement and restoration of damages caused to the Western Armenians.

It is the unified position of the Western Armenians, *i.e.* the heirs of the Armenian subjects/citizens of the Ottoman Empire that the necessity of restoration of the demographic and geopolitical existence of the Western Armenians in their homeland as a consequence of restoration of damages already caused and ongoing is irrefutable. In order to reach this supreme purpose, the 4th National Congress of Western Armenians confirms the existence of two inseparable and equal goals:

A. The reparation of damages caused to the Western Armenians and restoration of their rights;
B. The return of Western Armenians to their homeland and creation of conditions in Turkey, favorable for such return, through reforms and through the establishment of the primacy of human rights values in Turkey.

Based on this collective awareness and in order to exercise its perpetual and irrefutable rights, the 4th National Congress of Western Armenians is ready to simultaneously follow two paths: the path

of dialogue with the Turkish society and the Turkish authorities and the path of legal action in order to restore the collective and individual damages caused to the Western Armenians, which are still continuing.

In order to elaborate the above primary postulates, the 4th National Congress of the Western Armenians has confirmed the main directions of action for the materialization of the realistic aspirations and irrefutable legal claims for the return of the Western Armenians to their homeland.

C. LEGAL CONSIDERATIONS

1. MATERIAL INTERNATIONAL LAW EXISTING AT THE END OF THE 19TH AND THE BEGINNING OF THE 20TH CENTURY PROHIBITED STATES FROM ENGAGING IN VIOLENCE AGAINST THEIR OWN POPULATION AND OBLIGED THEM TO PROTECT NATIONAL MINORITIES

Though in its recent *Croatia v. Serbia case* the International Court of Justice indicated that "the duty to punish acts of genocide, like the other substantive provisions of the [Genocide] Convention, was intended to apply to acts taking place in the future and not to be applicable to those which had occurred during the Second World War or at other times in the past",[1] this does not mean that what later became known as genocide and was codified under the Genocide Convention, was not prohibited earlier yet in the form of a customary rule of international law.

The primary question here is not in applicable definitions, but whether international law as it stood at the end of the 19th and in the beginning of 20th century prohibited States from destroying part of their own population, in particular whether international law prohibited the intentional destruction, in whole or in part, of a national, ethnic, racial or religious group, or whether all such hideous acts, despite being against the human moral and principles of humanity, were within the sovereign prerogative of States.

In such evaluation the elements of customary international law – uniform and general practice and the *opiniojuris*– need to be assessed.

The first indications that the international community started to frown upon state violence against its own population comes from the practice of states in their justification of wars. Starting from late 18th century the concept of humanitarian intervention gained wide popularity within the international community. States such as Russia, France and Britain made it habitual to declare wars, justifying their actions by the need of protection of different groups and minorities within the State against which war was being waged.

From 1827 to 1830 Great Britain, France and Russia invoked the right to protect the revolutionary Greek population in justification of their military actions against the Ottoman Empire during the Greek War of Independence. In 1860 the European Powers, led by France, intervened in order to stop the massacres of Christian Maronites in the territory of Lebanon. From 1866 to 1868 Austria, France, Italy, Prussia and Russia intervened in the administration of Crete to protect its Christian population. During 1875-1878 Russia intervened into the Balkans in favor of Christians in Bosnia, Herzegovina and Bulgaria, persecuted by the Turkish forces. In 1903-1908 the European great powers intervened into Turkey to protect the Macedonian population.

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[1] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, 2015 I.C.J-unreported, ¶97.

These actions of the States are *prima facie* evidence that the international community viewed State or State sponsored violence against part of its own population as unacceptable and not within the internal domain of sovereign States, something that could justify intervention by a third party.

The Treaty of Berlin of 1878 was a further step in this process. Article 62 of that treaty indicated specifically that "[i]n every part of the Ottoman Empire difference of religion shall not be held as a reason of exclusion or unfitness in anything that relates to the use of civil or political rights, admission to public employment, offices, and honors, and the exercise of all professions and industries, whatever the locality may be. All shall be admitted, without distinction of creed, to give evidence before the tribunals".

Also according to Article 61 "[t]he Sublime Porte engages to carry out without further delay the ameliorations and reforms which are called for by local needs in the provinces inhabited by Armenians, and to guarantee their security against the Circassians and the Kurds." A similar undertaking was also provided under Article 16 of the Preliminary Treaty of Peace, signed in San Stefano earlier in 1878.

Notably, under international law, the obligation to prevent violence against a group (a positive obligation of action) necessarily implies the prohibition of the commission of violence against that group (a negative obligation to refrain from action).

This was the position of the International Court of Justice in *Bosnia and Herzegovina v. Serbia and Montenegro*, according to which "[i]t would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of [prohibited acts] by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law".[2]

Importantly the Treaty of Berlin was effective at the moment the Armenian Genocide was carried out, it was not denounced and it was not terminated. Obligations under Article 61 and Article 62 were and remained effective.

A further proof customary rules prohibiting States from engaging into acts of violence against its own population is implicit in the Hague Conventions of 1899 and 1907.

Importantly, the preambles of 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land and the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land make a clear reference to customary rules ("usages" and "laws of humanity"), which protect not only in war but also in peacetime. Thus, the preambles state:

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants […] remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

Thus, the foundation for what later became known as crimes against humanity was the belief that

[2] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 2007 I.C.J. Reports 43, p. 113, ¶166.

"laws of humanity" constituted the higher law background from which states would periodically select what they agreed to be binding as an international legal obligation.[3]

That the meaning vested with these provisions was going beyond just the law of armed conflicts and also covered the protection of the civilian population against their own States, became more obvious on 24 May 1915 through the joint declaration of the Allied Powers and was given a more precise legal form by the 1919 Report of the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties.

The 24 May 1915 joint declaration of the Allied Powers, Britain, France, and Russia, condemning the Turkish government for a "a crime against humanity" is yet another proof of practice of States, made with the requisite acknowledgment that a legal obligation is necessarily involved (*opiniojuris*). The well-known declaration read:

> In view of these new crimes of Turkey against humanity and civilization, the Allied Governments announce publicly to the Sublime Porte that they will hold personally responsible for these crimes all members of the Ottoman Government, as well as those of their agents who are implicated in such massacres.

This was further manifested in the 1919 Report of the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties, a body composed of representatives of the USA, France, Great Britain, Italy, Japan, Belgium, Greece, Poland, Romania and Serbia, which reported to the Preliminary Peace Conference that brought about the Treaty of Versailles. This body, while addressing the acts of Turkey, Germany, Austro-Hungary and Bulgaria and making a reference to the 1907 Hague Convention, spoke of necessity to punish individuals engaged not only in violations of the "laws and customs of war", but also in violations of the "laws of humanity".

According to the report of the Commission,[4] the victimization of the civilian Armenian population of Turkey by Turkish public officials was conducted on a widespread and systematic scale pursuant to state policy during the conduct of an international armed conflict, and that such conduct justified extending the laws of armed conflict, as contained in the 1907 Hague Convention, to cover this type of situation.

In other words, the Commission concluded that Turkey's conduct was within the scopes prohibited by the "laws of humanity" and that the conduct in question should be considered a "crime against the laws of humanity". In so doing, the Commission argued that the same protection afforded to the civilian population of a combatant state should be extended to the domestic civilian population of a state that is at war with one state. Thus, it extended the same prohibitions that applied to the civilians of one state when in a conflict with another state, to the same conduct when performed by state agents when directed against their own civilian population.

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[3] MICHAEL CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY: HISTORICAL EVOLUTION AND CONTEMPORARY APPLICATION: HISTORICAL EVOLUTION AND CONTEMPORARY APPLICATION (Cambridge University Press 2011), introduction.

[4] Published in 14 AMERICAN JOURNAL OF INTERNATIONAL LAW (1920), pp. 95-154.

Another proof of emergence of existence of such customary rules prohibiting the violence by States against their own populations during the late 19th and early 20th centuries is the fact of widespread codification of the so-called minority rights treaties right after the establishment of the League of Nations (during a period when the atrocities of the Turkish state against Armenians were still ongoing).

The Treaty of Berlin, described above, was just a precursor to a vast majority of treaties that came into effect right after the creation of the League of Nations. The so-called minority treaties and peace treaties with clauses for the protection of the rights of minorities between the Principal Allied and Associated Powers, on one hand, and Poland (28 June 1919, Article 2), Austria (10 September 1919, Article 63), Bulgaria (27 November 1919, Article 50), Romania (19 December 1919, Article 2), Hungary (4 June 1920, Article 55), Greece (10 August 1920, Article 2), Turkey (24 July 1923, Article 38), on the other, all contained a similar undertaking "to assure full and complete protection of life and liberty to all inhabitants […] without distinction of birth, nationality, language, race or region". These were also followed by a series of unilateral declarations by States, as well as resolutions of the League of Nations on the obligation of States to protect their minorities.

Notably, such rapid and widespread codification would not be possible should there not be customary rules existing prior to the process of codification.[5]

Thus, in the context of the 1917-1919 Åaland Island dispute between Finland and Sweden, which concerned the protection of the Swedish minority living on an island under Finish control, the Commission of Rapporteurs and the International Committee of Jurists appointed by the Council of the League of Nations to provide an opinion on the matter, contemplated the possibility of "separation of a minority from the State of which it forms a part and its incorporation in another State" as "a last resort when the State lacks either the will or the power to enact and apply just and effective [protective] guarantees."[6]

Thus, only a few years after the initiation of the Genocide of the Armenian people and when it was still ongoing, the League of Nations spoke openly about the duty of States to protect minorities under their control.

Based on the foregoing there is vast amount of State practice, expressed through declarations (justifying interventions through the need of protection of human lives), treaties and resolutions of international bodies that evidence the existence of general and uniform practice of States in condemning State violence against its own population and show that the prohibition of such behavior was accepted as law (*opiniojuris*).[7]

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[5] According to the International Court of Justice treaties may play an important role in recording rules deriving from customary international law. *See Continental Shelf Case (Libyan Arab Jamahiriya/Malta)*, 1985 I.C.J. Reports 13,p. 29, ¶27

[6] Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Council Doc. B7 21/68/106 (1921), pp. 318 and 327; also Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question, LEAGUE OF NATIONS OFFICIAL JOURNAL (1920), p. 6.

[7] For the requisite elements of custom *see Asylum (Colombia/Peru)*, 1950 I.C.J. Reports 266, p. 276; *North Sea Continental Shelf (Federal Republic of Germany v. Denmark and Netherlands)*, 1969 I.C.J. Reports 9, p. 43, ¶74.

Thus, customary international law already at the end of the 19th and the beginning of the 20thcenturies prohibited the commission of acts of violence by States against their own population. Furthermore, in case of Turkey there was also a treaty obligation undertaken pursuant to the Treaty of Berlin, creating an obligation for Turkey to protect its Armenian population and prohibiting Turkey from engaging in any acts of violence against that population.

2. DOMESTIC OTTOMAN LAWS REITERATE THE UNDERTAKINGS OF THE THEN TURKEY NOT TO ENGAGE IN VIOLENCE AGAINST ITS OWN POPULATION AND TO PROTECT ITS MINORITIES

The said international obligations were further reinforced by Turkey's domestic undertakings. For the period at issue, the Ottoman Empire has consistently showed through its domestic laws, adopted from 1839 to 1913, its acceptance of the international standards already described above. Thus, it has never showed its objection (at least in law if not in fact) to the developments of general international law.

The domestic Ottoman laws adhering to the then international standards of protection of rights of own nationals/subjects include:

(1) the 1839 Edict of Gülhane (Tanzimat of Reorganization), which *inter alia* declared that "[p]erfect security" was to be granted to "the inhabitants of the empire, with regard to their life, their honor, and their fortune, as the sacred text of our law demands";
(2) the 1856 Ottoman Reform Edict, which further reiterated the right to security of persons and their property irrespective of their religion and prohibited the forced alteration of religion;
(3) the 1876 Constitution, which *inter alia* provided equal rights for all Ottomans,[8] without prejudice to religion (Article 17), including the right to liberty (Article 9) and the right to "[r]eal and personal property" (Article 21), while prohibiting expropriation that is not "for reasons of public utility duly proved" and "without previous payment" of the "value of the property to be expropriated";
(4) the Young Turks' Proclamation for the Ottoman Empire of 1908, which reiterated that every citizen of the Empire "will enjoy complete liberty and equality, regardless of nationality or religion" (Article 9) and that "the property rights of landholders" should be protected (Article 14).

Apart from being an additional reinforcement showing that Turkey had in fact undertaken international obligations to protect its minorities,[9] the said documents effectively nullify any possible claim that Turkey could have been a persistent objector[10] to the developing international standards for the protection of minority rights and prohibition of state violence against its own population. Not only had Turkey never opposed to such developments, to the contrary, Turkey had implemented those standards into its domestic legislation.

Based on the foregoing, Turkey was under an obligation both under international law (be that customary or treaty) and under the domestic Ottoman laws not to forcefully deport, commit or permit the commission of violence against its own Armenian population, not to bereave that population of their own cultural heritage or expropriate the material property thereof, whatever the name of those actions under the laws inter-temporal to the events of 1894-1923 (with their culmination in 1915).

This is further confirmed by a 1929 legal opinion provided by prominent experts of international law and members of the International Law Institute Gilbert Gidel, Albert de Lapradelle, Louis Le Fur

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[8] The term "Ottomans" referred to all of the subjects of the Empire "no matter what religion they profess[ed]" (Article 8).

[9] The International Court of Justice has treated domestic laws as state practice that can be used for the deduction of international customary rules. *See e.g. Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, 2012 I.C.J. Reports 99, p. 130, ¶70.

[10] *See e.g. Fisheries Jurisdiction (United Kingdom v. Norway)*, 1951 I.C.J. Reports 116, p. 131; *Asylum*, *supra* note 7, p. 277.

and Andre Mandelstam,[11] which reiterated that under general international law and under its treaty obligations existing at the moment Turkey (1) had no right to prevent Armenians from returning to their lands; (2) had no right to expropriate the property of Armenian individuals and of the Armenian community in general, by way of justifying these actions as being due to the absence Armenians from the country and had an obligation to return the expropriated properties to their legitimate owners, and that (3) any differences of opinion with respect to the above issues could be brought before the Permanent Court of International Justice by parties to the Treaty of Lausanne pursuant to Article 44 of the said instrument.

[11]Consultation de Gilbert Gidel, Albert de Lapradelle, Louis Le Fur and Andre Mandelstam, Confiscation des Biens des Réfugiés Arméniens par le Gouvernement Turc (Imprimerie Massis, Paris 1929), pp. 45-48.

3. EXISTENCE OF *DOLUSSPECIALIS* (THE SPECIAL INTENT) TO ANNIHILATE THE ARMENIAN POPULATION

As it has already been shown above, the Ottoman Empire did have a legal obligation not to engage in the destruction of its own Armenian population. This obligation existed irrespective of the fact whether those acts should be called violations of "laws of humanity" (as defined under the Hague Convention and in the 1919 Report of the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties), "crimes against humanity and civilization" (as defined in the joint declaration of the Allied Powers) or simply violations of the undertakings of the Ottoman Empire under Articles 61 and 62 of the Treaty of Berlin.

The issue of qualification of those acts as genocide, *i.e.* the question of how those acts would be called should they take place today, is of rather political and moral, rather than of legal significance.

Taking that into consideration, the said acts still need to be qualified in the context of contemporary legal terminology.

Thus, the requisite elements of genocide, as the crime is defined under the Convention on the Prevention and Punishment of the Crime of Genocide, are (1) the acts, defined under Article 2, points (a), (b), (c), (d) and (e) of the Genocide Convention (*actusreus*) and (2) the specific genocidal intent ("intent to destroy in whole or in part, a national, ethnic, racial or religious group") (*dolusspecialis*).[12]

The acts, committed by the Ottoman Empire and continued by the Republic of Turkey have been discussed under the historical part of the declaration; here the special intent (*dolusspecialis*) to destroy the Armenian population living on the territory of the Ottoman Empire shall be addressed.

The special intent can be deduced from official statements of the Ottoman Empire officials, the organized way of the systematic extermination and destruction of the Armenians, as well as from sheer numbers.

Thus, according to the practice of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the genocidal intent, the *dolusspecialis*, can be deduced *inter alia* from the general context of acts, "the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups"[13] or from the pattern of purposeful action,[14]"scale of atrocities committed, their general nature, in a region or a country".[15]It can also be inferred from the words and deeds of perpetrators.[16]

That said, the numbers and the systematic nature of the acts, the high level of organization of the forced transportation of the Armenian population to the Syrian deserts and their annihilation

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[12]*See e.g.* ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW (Oxford University Press 2003), pp. 96-105.

[13]*Prosecutor v. Akayesu*, Judgment of 2 September 1998, Case no.I.C.T.R.-96-4-T, ¶523;*Prosecutor v. Rutaganda*, Judgment of 6 December 1999, Case No.I.C.T.R.-96-3-T, ¶398; *Prosecutor v. Jelisić*, Judgment of 5 July 2001, Case No.I.T.-95-10-A, ¶47.

[14]*Prosecutor v. Kayishema*, Judgment of 21 May 1999, Case No.I.C.T.R.-95-1, ¶93; *Prosecutor v. Musema*, Judgment of 27 January 2000, Case No.I.C.T.R.-96-13-A, ¶167.

[15]*Akayesu*, *supra* note 13, ¶523

[16]*Kayishema*,*supra* note 13, ¶93.

whether through starvation or through attacks from Kurds, armed militia and the Turkish forces are on their own sufficient to prove the genocidal intent.

The statements made by the Turkish officials, stand as additional proof, cementing the claim for the special intent to destroy the Armenians of the Ottoman Empire. One of such statement is recalled by Henry Morgenthau, of Talaat Pasha responding the following to his pleas to ameliorate the condition of Armenians: "The hatred between the Turks and the Armenians is now so intense that we have got to finish them. If we don't, they will plan their revenge."[17]

These, however, are only part of evidence showing the existence of the special intent to destroy Armenians. The intentional creation of the image of an internal enemy for the Armenians, starting from February 26, 2015 in conditions of the Jihad declared on 14 November 1914;adoption of laws on deportation and on deprivation of Armenians of their citizenship; adoption of laws prohibiting the return of Armenians; deportation and destruction of the Armenian population of Zeytun from February to April 1915 which was used as a model for the acts to follow; arrest and murder of part of the Armenian intellectuals, parliamentarians and public figures; internment of deported people in dislocation camps; kidnapping of Armenian women and children from the Armenian community and their allocation within the Arab, Kurd, Turkish and other communities; adoption of laws with respect to the "abandoned property", creation of liquidation commissions and transfer of that property to Turks and Kurds; transfer of the Armenian business capital to Turks; nationalization of financial means, gold, bonds and securities belonging to Armenians and held at Turkish banks; transfer of the Armenian lands to the balance of the State; destruction of cultural property, as well as the elimination of Armenian cultural, regional and educational institutions all add up to the undeniable conclusion that the massacre of the Armenian population of the Ottoman Empire was conducted with the special intent to destroy that population and did not simply amount to a transportation of people which somehow resulted to the accidental destruction of hundreds of thousands. It was a premeditated and a carefully planned act, perpetrated with the requisite intent in order to be called genocide under the present day legal terminology.

[17] *See* Opinion ofGeoffrey Robertson Q.C., *Was There an Armenian Genocide?* (9 October 2009),available at http://groong.usc.edu/Geoffrey-Robertson-QC-Genocide.pdf.

4. THE REPUBLIC OF TURKEY IS THE CONTINUATION OF THE OTTOMAN EMPIRE UNDER INTERNATIONAL LAW

That the contemporary Republic of Turkey, declared in 1923, is the continuation of the Ottoman Empire, and thus is the one bearing responsibility for the Armenian Genocide, is manifest under international law.

The fact that Turkey shrank in size, population or that the ruling system changed or that its capital was transferred from one city to another do not do much to its international personality. As it was indicated by James Crawford, a renowned expert of international law and now a judge sitting at the International Court of Justice, territorial changes, internal revolutions and changes in the size of population, in no way affect the identity and continuity of States.[18]

That the Republic of Turkey is the continuation of the Turkish Empire is well accepted by the international community. Thus, in the so-called *Ottoman Debt Arbitration* case, notably initiated pursuant to article 47 of the Treaty of Lausanne, signed by the Republic of Turkey, the arbitral tribunal (sole arbitrator), appointed by the Council of the League of Nations indicated:

> "En droit international, la République turque doit être considérée comme continuant la personnalité de l'Empire Ottoman" (Under international law, the Turkish Republic was deemed to continue the international personality of the former Turkish Empire).[19]

The fact that the Republic of Turkey is the continuation of the Ottoman Empire and the sole state that may bear responsibility for the acts of the Ottoman Empire was reaffirmed also in the so called *Lighthouses Arbitration case* between Greece and France.[20]

This is further reaffirmed by the practice of third states that have consistently treated the Turkish Republic as the continuator of the Ottoman Empire. Thus, several provisions of the Treaty of Lausanne itself make it clear that the states parties to that instrument treated the Republic of Turkey as the continuator of the Ottoman Empire.

According to Article 1 of the Treaty of Lausanne "from the coming into force of the present Treaty, the state of peace will be definitely re-established between" the parties. Notably, "re-establishment" of the peace, which existed before the War, necessarily presupposes the idea of continuity between the Ottoman Empire and Turkey.[21]

Also, pursuant to Article 58 states parties renounced their claims for "damage suffered respectively by **Turkey** and the said Powers and their nationals (including juridical persons) between the 1st August 1914, and the coming into force of the present Treaty [1924], as the results of acts of war or measures of requisition, sequestration, disposal or confiscation" (emphasis added). Thus, all the states parties to the Treaty of Lausanne, including the Republic of Turkey itself, referred to the state

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[18] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW (2nd ed., Clarendon Press, Oxford 2006) pp. 678-679.

[19] *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, [1925] 1 U.N.R.I.A.A. 529, p. 573.

[20] *Affaire relative à la concession des phares de l'Empire ottoman (Grèce, France)*, [1956] 12 U.N.R.I.A.A. 155, p. 216.

[21] Patrick Dumberry, *Is Turkey the "Continuing" State of the Ottoman Empire under International Law?*, 59 NETHERLANDS INTERNATIONAL LAW REVIEW 235 (2012), p. 257.

that existed between 1914 and 1924 as Turkey with the understanding that the state existing between 1914 and 1924 was the same state that had actually signed the Treaty of Lausanne.[22]

Furthermore, the fact that the treaties signed by the Ottoman Empire, like the Hague Conventions of 1907, the Barcelona Convention and Statute on Freedom of Transit of 1921 and others, remain binding for the Republic of Turkey is yet another confirmation that the international community and the Republic of Turkey itself, despite its public pronouncements, treated the Republic of Turkey as the continuator of the Ottoman Empire. Notably, recognition by third states plays an important role for assessing the issue of continuity when some ambiguities may exist.[23]

Given the above, the fact that the Republic of Turkey shares the same legal personality as the Ottoman Empire is beyond doubt.

However, even if one would assume that the Republic of Turkey is not the continuation of the Ottoman Empire; the former would still be responsible for the extermination of Armenians as the successor of the Ottoman Empire and a State, which furthermore continued the same policies initiated by the latter.

Thus, international law defines succession as "the replacement of one state by another in the responsibility for the international relations of territory". This is the definition used by the two Vienna Conventions on succession of States,[24] documents the majority of whose provisions are considered declaratory of existing customary law.[25]

The same definition of succession was used by the International Court of Justice in the case concerning *Land, Island and Maritime Frontier Dispute*.[26] Thus, rights and duties of States are intrinsically linked to territory. And the state built on a territory of a previous state, enjoying the benefits and fruits that its predecessor has reaped, must also bear responsibility for the acts that the latter has committed.

An important aspect of the *Lighthouses Arbitration case*, referred to above, that is decisive for the issue of Turkey's responsibility, is the determination that if a new State continues the original internationally wrongful act committed by the predecessor State, that new State should be held accountable not only for its own act committed after the date of succession but also for the damage which was caused by the predecessor State before the date of succession.[27] Thus, even if the Republic of Turkey were not a continuator of the Ottoman Empire, the mere fact that it, too, engaged in atrocities against the Armenian people and *de facto* continued what the Ottoman Empire had started, is in itself enough to speak of modern Turkey's responsibility for the 1915 events.

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[22] *Ibid.*

[23] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (6th ed., Oxford University Press, Oxford 2003), p. 82.

[24] Vienna Convention on Succession of States in respect of State Property, Archives and Debts, Art. 2(1)(a), April 8, 1983, Sales No.E.94.V.6; Vienna Convention on Succession of States in respect of Treaties, Art.2(1)(b), August 23, 1978, 1946 U.N.T.S. 3.

[25] MALCOLM N. SHAW, INTERNATIONAL LAW (6th ed., Cambridge University Press 2008), p. 959.

[26] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening (El Salvador/Honduras: Nicaragua intervening)*, 1992 I.C.J. 351, p. 598, ¶399.

[27] *Affaire relative à la concession des phares de l'Empire ottoman*, *supra* note 20, p. 198.

In this regard several facts concerning the atrocities initiated by the Turkish nationalist forces(which later declared the Republic of Turkey and undertook its governance) and attempts by the Republic of Turkey to erase traces of Armenian presence on its territory should be mentioned here.

During the 1920 Armenian-Turkish War the nationalist Turkish forces committed massacres in Kars and Alexandropol, reportedly killing 60,000 civilians (numbers according to the Soviet account). Furthermore, the Republic of Turkey has constantly contributed to the dissemination of Armenophobia through articles in newspapers and even public statements of high-ranking officials to this day, and has manifestly failed to conduct effective prosecution of individuals guilty of murdering ethnic Armenians even in our days (fact acknowledged by the European Court of Human Rights *e.g.* in the *Dink v. Turkey* case); has during its early years continued the policy of relocation of the Muslim population to the territories previously inhabited by Armenians; has changed toponyms of Armenian origin; converted many Armenian churches to mosques; continued the policy of effectuating laws on abandoned property starting from 15 April 1923, while prohibiting any claimant action initiated based on powers of attorney; and adopted laws on revocation of the Turkish citizenship; introduced disproportionately high taxes for the remaining Armenians in 1942 in an obvious attempt to prevent the return of the Armenian population; adopted laws prohibiting the return of the Armenians to their lands; adopted acts forbidding the disclosure of information concerning the title and documents pertaining to the abandoned real property, thus violating the undertakings pursuant to the Treaty of Lausanne and even under contemporary international instruments, like the European Convention on Human Rights.

5. PROOF OF DAMAGES CAUSED, STANDARD OF PROOF, BURDEN OF PROOF

The deprivation of Western Armenians of their homeland, cultural heritage, property and lives is a complex phenomenon and the damages caused by the latter are no less multifaceted, including both pecuniary and non-pecuniary aspects. These include damages for the lives lost; property destroyed and expropriated; lost revenues; moral damages for the continuous denial of facts and continuous falsification of history, denying not only the Armenian Genocide but also denying the Western Armenians their own history; damages for the destruction and alteration of historical monuments etc.

As long as the property damages are concerned the primary source of information of course would be the data under control of the Turkish General Directorate of Land Registry and Cadastre. However on 29 June 2001, the latter issued an order, forbidding the disclosure of any information pertaining to the "abandoned property" in manifest violation of the "right to effective remedy" and the right to "peaceful enjoyment of property" respectively under Article 13 and Article 1 of Protocol 1 of the European Convention on Human Rights. This fact, as it will be indicated below, has significant effects on the standard of proof and the burden of proof.

One important attempt of making a preliminary assessment of the damages caused was done in 1919, an initiative of Avetis Aharonyan and Boghos Nubar Pasha, presented to the 1919 Paris Peace Conference. The memorandum for material reparations (compensation), labeled "Tableau approximatif des réparations et indemnités pour les dommages subis par la nation arménienne en Arménie de Turquie et dans la République Arménienne du Caucase", addressed the alterations of the figures of the Armenian population on the territory of the Ottoman Empire during the First World War.

According to the memorandum the total number of Armenians living within the Ottoman Empire as of 1914 was 2,026,000. Only 226,000 Armenians living in Constantinople and Smyrna were not affected by the Armenian Genocide, the remaining 1,800,000 were deported, killed or found refuge in Europe, Middle East and Caucasus, leaving their property behind.

Based on the statistical principles, those 1,800,000 Armenians comprised 360,000 families (1 family – 5 persons ratio), of which ¼ (90,000 families) lived in towns, while the remaining ¾ (270,000 families) lived in the rural area.

The memorandum indicated the figure 19,130,932,000 franks (based on the rate applicable in 1919) as the amount of the damages caused, of which 14,598,460,000 was the damages caused to the Armenians of the Ottoman Empire and 4,532,472,000 was the damages caused to the Armenians of the Republic of Armenia and Caucasus.

These calculations, of course, do not include the revenues lost by businesses and properties from 1919 till our days, they do not cover the interest accrued towards financial means, gold, bonds, securities and other financial instruments belonging to Armenians and held with Turkish banks and financial institutions, they do not cover the non-pecuniary damages for the deprivation of homeland and cultural heritage, destruction of cultural monuments and falsification of history.

However, despite all that, the memorandum on reparations is an official document accepted at the Paris Peace Conference and as such proves to be an invaluable starting point for the evaluation of the damages caused to the Western Armenians.

While addressing the issue of damages caused and also taking into consideration the century long activities of the Turkish State towards the destruction and classification of evidence, reference must be had to the standard of proof and the burden of proof that should be used. In this respect the standards used by international courts, such as the International Court of Justice become of primary importance.

Thus, notably, according to the practice of the International Court of Justice, the threshold of proof can be decreased in situations, such as the situation with the 1915 events (that took place completely on the territory of modern day Turkey, and partially, Syria), when the responsible party has full control over the territory where the disputed events took place and when access of the claimant to evidence is limited.

Thus, the International Court of Justice indicated in the *Corfu Channel case*:

> By reason of this exclusive control, the other [party], the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such [party] should be allowed a more liberal recourse to inferences of fact and circumstantial evidence.[28]

Another important factor here, is that we are dealing with events that received widespread public coverage and acknowledgement during the period contemporaneous to it. Such events, receiving extensive public coverage, have been qualified by the ICJ as "matters of public knowledge" which require less probative value in order for their existence to be established.[29]

The above factors and international standards are to be taken into consideration in order to reduce the threshold of proof. *Prima facie* evidence is sufficient to prove the claims of the Western Armenians, after which the burden of proof will shift to the Republic of Turkey to prove the opposite.

[28] *Corfu Channel (UK/Albania)*, 1949 I.C.J. Reports 4, p. 18.

[29] *United State Diplomatic and Consular Staff in Tehran (U.S.A. v. Iran)*, 1980 I.C.J. Reports 3,p. 9, ¶12.

6. PROOF OF ACCEPTANCE OF FACTS

Acceptance of facts by state officials and public figures, representing a given State play a major role under international law. On one hand, such acceptance may have higher evidentiary value while proving certain disputed facts, while on the other hand acceptance done in the form of endorsement may also play a role of acknowledgement and adoption by a State of certain acts as its own, for which it will bear responsibility. That is yet another underpinning for the argument of responsibility of contemporary Turkey for the atrocities against Armenians.

Thus, the International Court of Justice has indicated that "statements from high-ranking officials, even former ministers and officials […] are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavorable light".[30] The European Court of Human Rights also applied this same logic in a number of cases.[31]

Also in a case, addressing the "Iran hostage crisis" the International Court of Justice declared that public endorsements provided by State officials for acts undertaken by private individuals may have the result of attribution of the acts of those individuals to the State.[32]

Having these two rationales in mind the incomplete list of public pronouncements, enumerated below, whether explicitly or implicitly accepting facts pertaining to the continuous destruction of the Armenians living on the territory of the Ottoman Empire and continuation of the same policies by the Republic of Turkey, are of unique probative value under international law:

(1) The abolishment of the Ordinance on Armenian Milliyet of 1863 pursuant to the law of 11 August 1916 – by this act the Ottoman Empire acknowledged the existence of an intention to have no Armenian population within the Empire from then on;
(2) The statement of Ahmed Riza, criticizing the laws on deportation of Armenians and expropriation of the "abandoned property" and calling those illegal and immoral;
(3) The Mudros Armistice Convention with Turkey of October 30, 1918 – by signing this international instrument Turkey implicitly acknowledged the fact of violence against Armenians. The Armistice provided for handing over of the "Armenian interned persons" to the Allies (Article 4), as well as for the rights of the Allies to intervene "[i]n case of disorder in the six Armenian vilayets" (Article 24);
(4) The laws adopted by the Ottoman Mejlis from the moment of signing of the Mudros Armistice Convention till the fall of the Ottoman Empire (4 November 1918, 15 December 1918 and 12 January 1920), abolishing the laws on deportation of Armenians and expropriation of their property as well as undertaking to organize the return Armenians to their homes;
(5) The parliamentary hearings in the Ottoman Mejlis and publications of the same period, addressing the crimes, committed against the Ottoman Armenians, as well as calling for the responsibility of the individuals who had organized those crimes;
(6) The 1919-1920 Extraordinary Courts Martial established in the Ottoman Empire to try the individuals responsible for the forced deportations, massacres and looting of the Armenians (probably the primary and most important proof of acceptance of facts by the

[30] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.A.)*, 1986 I.C.J. Reports 14, p. 41, ¶64.
[31] *See e.g. El-Masri v. the Former Yugoslav Republic of Macedonia,* Application no. 39630/09 (13 December 2012), ¶175.
[32] *U.S.A. v. Iran*, *supra* note29, p. 35, ¶74.

Turkish State). During the 28 trials the responsible individuals were tried under the Ottoman Criminal Code and found guilty for, *inter alia*, murder (Article 170), premeditated coercion to destroy or rob supplies or goods (Article 171), abuse of an official position (Article 172) together with aiding and abetting (Article 45) and co-perpetration (Article 55), which crimes they had committed "for the purpose of destroying and annihilating" Armenians (*"ifnâ' veimhâ'siemrinde"*)[33];

(7) The promise given by Turkey to Great Britain in 1921 that the officials deported to Malta would stand trial and be punished for their crimes upon their return;

(8) While addressing the reasons for executing the Young Turk former officials which attempted to kill Mustafa Kemal in 1926 in Izmir, the latter *inter alia*blamed the Young Turks for the massacre of "millions of our Christian subjects";

(9) Certain parts of the Nutuk declaration by Mustafa Kemal;

(10) Statement of presidential candidate Selahattin Demirtaş made in August 2014 and stating that genocide was committed against the Western Armenians;

(11) Statement of the Turkish Green Party made on November 7-9, 2014, accepting that genocide was committed against the Western Armenians;

(12) Dozens of publications printed by Turkish historians and declarations made by Turkish intellectuals and politicians, accepting the fact of massacres and deportations.

[33] ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW (2nd ed., Oxford University Press 2008), p. 103.

7. STANDING AND INTENTION OF THE CONGRESS OF THE WESTERN ARMENIANS TO INITIATE LEGAL ACTION

Being mindful of the undisputed necessity for distribution of roles between the National Congress of Western Armenians and the newly independent Armenian statehood, as declared above, we must highlight that there are certain causes of action for seeking redress for the illegal acts of the Ottoman Empire and its continuation, the Republic of Turkey, that can be pursued on the inter-State level only.

Despite that, however, the National Congress of Western Armenians, as a legal entity and the rightful successor of the national delegation to Paris, created by the encyclical of the Catholicos George V of Tbilisi, as well as the successor of the first and second Congresses of Western Armenians, held in Yerevan, declares its readiness to pursue on its own all means available in order to restore the rights of Western Armenians.

One such path can be the initiation – either directly by the Congress or through coordination of groups of private individuals –of legal actions within the Turkish courts and/or before the European Court of Human Rights (hereinafter also "the ECHR").

As long as procedures before the ECHR are concerned, legal entities (including non-governmental organizations) can take the advantage of two avenues for appearing before that court: acting as claimants on their own or representing the interests of others.

According to Article 34 of the European Convention on Human Rights, the European Court may receive applications from "any person, [as well as] non-governmental organization or group of individuals claiming to be the victim of a violation". The European Court has recognized as nongovernmental organizations, having standing before the Court, not only entities, registered as such under the local laws of member states, but also entities that were not registered, but had personalities distinct from that of the state, like the church and its constituencies[34] or villages within the member states.[35]

The term "victim" denotes the person or persons directly affected by the measure complained of[36] or to whom the violation would cause harm or who would have a valid and personal interest in seeing that measure to be brought to an end.[37]

Such personal interest also lies with individuals, who may, even in the absence of an individual measure of implementation, risk being directly affected by legislation due to being a member of a certain class of people,[38]especially if such legislative provisions apply to them automatically.[39]

That said, it is not only the direct victims of the Armenian Genocide, whose rights have been violated,[40] the rights of their heirs and successors have also been consistently breached by the

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[34]*Holy Monasteries v. Greece*, Application no. 13092/87, 13984/88 (9 December 1994), ¶49.

[35]*MuonioSaami village v. Sweden*, Application no. 28222/95 (9 January 2001).

[36]*Burden v. the United Kingdom*, Application no. 13378/05 (29 April 2008), ¶33.

[37]*Centre for legal resources on behalf of ValentinCampeanu v. Romania*, Application no. 47848/08 (17 July 2014), ¶98.

[38]*Burden*, *supra* note 36,¶33.

[39]*Marckx v. Belgium*, Application no. 6833/74 (13 June 1979),¶27.

Turkish State, through adoption of the "abandoned property" laws, as well as acts forbidding the disclosure of information concerning the title and documents pertaining to the abandoned real estate. These laws and acts have the effect of violating the right to peaceful enjoyment of possession under Article 1 of Protocol 1 of the European Convention on Human Rights.

Notably, the European Convention protects not only existing property, but also assets, including claims, in respect of which an individual may argue that he or she has a "legitimate expectation" of obtaining effective enjoyment of a property right, including the expectation of being recognized as an heir in respect of immovable property.[41]

There are already cases, successfully adjudicated before the ECHR, concerning similar limitations faced by Greek nationals in inheriting property rights in Turkey,[42]including a case won by applicants of an Armenian origin.[43]In all those cases the ECHR has qualified the actions of the Turkish authorities quashing the applicants' property claims as being contrary to the principle of legality and in breach of the right to peaceful enjoyment of possession.

One successful claim filed by ethnic Armenians already exists; hundreds, if not thousands may follow. The heirs of deceased Western Armenians do meet the criteria of a "victim" under the requirements and the standards of the European Convention, and the NCWA can and may at its will act as the body coordinating the complaints of such individuals. The NCWA has the full capacity to appear before the European Court of Human Rights in representing the interests of the heirs of the Western Armenians.

The path described is only one of several viable options available under the law in order to compensate the damages caused, and the 4th National Congress of Western Armenians undertakes to deliberate and to elaborate all of those and to pursue all means available in order to see the irrefutable rights of Western Armenians restored.

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[40]NCWA will not pursue acknowledgement of violation of the right to life of those killed during the Armenian Genocide before the ECHR, nor will it pursue recognition of genocide before that Court, with the understanding that recent findings of the ECHR show that that court cannot be utilized for such endeavors. *See Janowiec and others v. Russia*, Applications nos. 555508/07 and 29520/09 (21 October 2013).
[41]*Fokas v. Turkey*, Application no. 31206/02 (29 September 2009), ¶35.
[42] *See Fokas*, *ibid.*; *Apostolidi and Others v. Turkey*, Application no. 45628/99 (27 March 2007).
[43]*Nacaryan and Deryan v. Turkey*, Applications nos. 19558/02 and 27904/02 (8 January 2008).