LEGAL GROUNDS OF THE PLEA TO THE INTERNATIONAL COURT OF JUSTICE ON THE CASE OF THE ARMENIAN GENOCIDE

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In order to apply to the United Nations International Court of Justice for the case of the Armenian Genocide the Republic of Armenia as a plaintiff should draw up its written plea which must be as concise as possible, in a manner compatible with the full presentation of Armenia's position and. appending to the plea only strictly selected documents[1].

At the beginning of the plea Armenia can ground the jurisdiction of the International Court to investigate the case of the Armenian Genocide with the provisions of Article 9 of the UN Genocide Convention, according to which the disputes between Convention member countries are settled by the International Court[2].

In the course of compiling the plea it is necessary to take into consideration that while assessing submitted evidence 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 the media or is 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)[3]. 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 massacring 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 the Turkish authorities.
2. The indictments of the Young Turks' leaders and other court procedures in the Turkish Military Tribunals from the April 28, 1919 to June 5, shorthand record of

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[1] Practice Directions|International Court of Justice http://www.icj-cij.org/documents/index.php?p1=4&p2=4&p3=0 . http://www.un.org/ru/icj/practice_directions.shtml

[2] Права человека. Сборник международных договоров, т. 1, ч. 2, Нью-Йорк и Женева, 1994, с. 782. Վարդանյան Վ., Հայերի դեմ իրագործած ցեղասպանության համար Թուրքիայի Հանրապետությանը միջազգային իրավական պատասխանատվության հիմքերը, եղանակները, ձևերը և տեսակները, «Նորավանք» գիտակրթական հիմնադրամի տեղեկագիր, 2006, 1, էջ 55-56.

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

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.

3. The Treaty of Sèvres which was signed by the Turkish legal authorities and the victorious countries on August 10, 1920.
4. The Arbitration Decision (The Arbitral Award) of President of the USA Woodrow Wilson (Nov. 22, 1920) demarcating the Armenian-Turkish Boundary.
5. The Treaty of Lausanne on July 24, 1923, on the protection of the rights of the non-Muslim population, particularly the Armenians.
6. The advisory conclusion of the authoritative specialists of international law on the restoration of the rights of the Armenian migrants on August 2, 1929.

The following documents can be submitted as supplementary evidences:

7. The documents of the International Criminal Court.
8. The resolutions recognizing and condemning the Armenian Genocide by the international non-governmental organizations.

The most important component of the plea submitted to the International Court on the case of the Armenian Genocide must be the Declaration simultaneously published in three capitals of the allied countries of the 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. The Declaration clearly defines the attitude of the Turkish government (not only in the way of the "connivance", but also with "direct support") towards the massacre of the Armenians[4]. It is mainly to record the fact that new crimes had been committed. It means that, first, the previous acts of the Armenians' extermination were also the acts of crimes and, second, the connection of the new crimes with the previous ones is underlined. From the point of view of the international law the Declaration is significant by qualifying the Armenian Genocide as a crime against "humanity and civilization" the personal criminal liability of the international crime is put on the 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[5]. According to the Declaration, the official status of the individuals who were guilty of 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.

[4] Международные отношения в эпоху империализма, Документы из архивов Царского и Временного правительства. 1878-1917, Москва-Ленинград, 1931-1940, серия III, т. 7, ч. 2, с. 252.

[5] Геноцид армян в Османской империи. Сборник документов. Под редакцией М. Нерсисяна, Ереван, 1983, с. 280.

It is important to note that the Declaration of the Entente Powers has become a precedent-making document for similar cases in the future from the point of view of their legal and political assessment. During the Second World War on October 30, 1943, the Moscow Declaration was adopted "Concerning Responsibility of Hitlerites for Committed Atrocities"[6]. It almost literately repeated the provisions and formulations of the Declaration of the Entente Powers. In the Moscow Declaration of the anti-Nazi coalition personal liability for mass murder was extended to the German officers and soldiers, as well as the members of the Nazi party who had taken part in those actions[7]. This document laid the foundation for the process that after the end of the Second World War the victorious powers of the anti-Hitlerite coalition could undertake in the International Military Tribunal at Nuremberg during the trial of the Nazi criminals. Unfortunately, the Entente Powers didn't show the same consistency and determination after World War I in order to perform effectively the provisions of Joint Declaration, particularly in the sense of creating an 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 "crimes committed against humanity" given to the massacres of the Armenians in the Joint Declaration of the Entente Powers on May 24, 1915, similar to the crimes which during the Nuremberg trials according to international law were qualified, as inhuman acts, i.e. genocide against their own subjects[8]. As it is known the Nazi criminals were called to account not only for war crimes but also for the crimes committed against humanity, including genocide.

Based on the **res judicata*** principle the materials of the Young Turks' trial should be compared with "Elements of Crimes" of the International Criminal Court (ICC) in the plea on the case of the Armenian Genocide. Under Article 6 of the "Elements of Crimes" are presented the concrete characteristics of five criminal acts of the crime of genocide according to the UN Genocide Convention".

- **No. 1021. CONVENTION1 ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1948**

… Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

[6] http://unterm.un.org/dgaacs/unterm.nsf/0f99a7d734f48ac385256a07005e48fb/d909da1dbe08e8e6852569fa00008e50?OpenDocument

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

[8] 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 principle, according to which special court decision can be regarded as precedent in order to investigate the similar cases and make decisions.

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.[9]

From these five characteristics the following three are general. According to "Elements of Crimes" of the International Criminal Court (ICC)

… Article 6 (a) Genocide by killing. Elements:

1. The perpetrator killed one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b) Genocide by causing serious bodily or mental harm. Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c) Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction. Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction[10].

[9] *United Nations— Treaty Series* 1951, https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf

[10] http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

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

During the whole trial of the Young Turks the defense was led by the "state action" concept (which was rejected by the international law) basing its arguments on the law about the deportation which had been confirmed by the sultan. The defense claimed that the deportation of Armenians during which the mass killings of the Armenians took place wasn't the personal initiative of the Young Turks, but it was an action coming from the Ottoman state. So, the liability of the perpetrated actions had been removed completely to the Turkish state, because according to international law the state bears international legal responsibility for adopting such laws which contradict the general principles of the international law[11]. It means that the "Deportation law" and the "Law on abandoned property" which were adopted by the Young Turks government evidently contradicted the general principles of the international law, and the Turkish state should have taken responsibility for that as Nazi Germany did in the International Military Tribunal for the so called "Nuremberg laws" and the discriminatory laws adopted by Germany; by these laws the privileges of Germans were confirmed, and all the other nations were considered outlaw[12].

The prosecution in 1919-1920 representing the Ottoman authorities was inclined in advance to ascribe all the responsibility to the Young Turks' party. Opposing to the concept of "state action" the prosecution tried to put all the responsibility of the massacres of the Armenians on the individuals, excluding the possibility of the liability of the Turkish state. Whereas in the international law, at least on the theoretical level, the process was taking shape of putting responsibility for international serious crimes both on the state and on the individuals, and also, by putting responsibility for international serious crime on a state which couldn't release the individuals from the responsibility[13].

It is noted in the indictment of the Young Turks that it is wrong to refer to Article 92 of the Ottoman Constitution, as the crime committed as "a result of official service by ministers or a member of the Council of Ministers", concerns to the political crime. Concerning Article 33 of the same Constitution a minister is deprived of privileges of law in the case of being an individual crime committer or a participator of a committed

[11] Левин Д.Б., Ответственность государств в современном международном праве, Москва, 1966, с. 70.

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

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

crime[14]. Thus, the prosecution was inclined to describe the organization of the Armenian massacres as an ordinary crime, whereas in the judicial verdict the crimes committed by the Young Turks were unambiguously qualified as political. So, during the trial the principle issue of which was the extermination of the Armenians, serious grounds occurred for the prosecution to enlarge the field of accusation, and include the accusation for the "government failure" and creation of the fourth branch of authority in all the structures of government[15]. It is an obviously invented formulation, as the "government failure" means takeover of the state authority. But it was not about the creation of the criminal fourth branch of authority inside the government as Ittihad or Special Organization, but it was about the violent occupation and possession of the whole state government. However, by this invented formulation the prosecution tried again not to let the spread of liability on the Young Turks government which was introducing itself as the state government after taking over the authority.

The indictment included such crimes as massacre, seizure of property, burning of houses and its inhabitants, 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 version of the indictment the fact was emphasized clearly the fact that the deportation was not determined by a military necessity or a disciplinary circumstance. It was noted that the deportation was intended and the decision on it was made by the Ittihad Central Committee, so the tragic consequences of that decision were apparent almost in every corner of the Ottoman Empire[16].

The encoded telegrams and the letters which were brought in the first and second indictments gave evidence that the deportations had been intended and organized by the secret order and command of a special center, and besides, it was clearly noted that they had neither been limited nor had local feature. The prosecution underscored that the presence of the intention of crime was beyond suspicion, and it couldn't be justified. 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[17]. It was underlined in the indictment of the chief prosecutor that the deportation of the Armenians was a pretext for massacres, and it was a confirmed fact which was as obvious as two plus two is equal to four[18]. The intent of that plan was confirmed by the testimonies of general Vehib during the court procedure.

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

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

[16] Ibid., p. 43.

[17] Барсегов Ю.Г., Турецкая доктрина международного права на службе политики геноцида, с. 39.

[18] Ibid.

It was also noted in the indictment that in order to cover the plan of the Armenians' extermination the government had realized its decisions by written and oral secret orders and commands which then had been destroyed[19]. In fact, the Turkish judiciary itself accepted the existence of such secret orders, considering them an important circumstance for describing the criminal 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 committed by Talaat Pasha and his accomplices according to the oral and written secret orders received from the government and the party's Central Committee[20]. According to the indictment the crimes were committed on the highest state level[21]. 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 the massacres. But during the judicial procedure necessary and sufficient evidence was presented proving that the massacres had been a result of the policy implemented by all the accused, but, according to the formulation of the court, the defendants had done it not as ministers, but as members of the secret organization.

So, we should state that from the very beginning the accusation had been deliberately formed to confirm the personal guilt of the accused and the guilt of the Young Turks' party and not accusing them as high level government officials who committed the crimes, because this would result in the undesirable liability of the Turkish state; a state from which the Turkish Military Tribunal sought to escape. The chief prosecutor gave a clarification that the crimes enumerated in the indictment had been committed not by the government but in the name of the Central Committee and based on the decisions of its plenary sessions[22]. The court noted that the reference to the action of the state could have been discussed on the condition of there being proofs that the massacres hadn't been intended and had been the inevitable result of the performance of official duties[23]. The court led by the political line of the sultan's government concluded that the massacres had been a part of the policy and decisions that had been implemented by the accused as the members of a secret conspirator organization, and not by the ministers and within the framework of official duties of the whole government[24]. But the prototype of such a system was formed in the Ottoman Empire which later existed in Nazi Germany during the years of the Holocaust.

[19] Ibid.

[20] The Armenian Genocide According to the Documents of the Trial of the Young Turks, pp. 22, 135.

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

[22] The Armenian Genocide According to the Documents of the Trial of the Young Turks, p 16.

[23] Барсегов Ю. Г., Турецкая доктрина международного права на службе политики геноцида, Москва, 2002, с. 40.

[24] Ibid.

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 period of World War I in the diplomatic documents was called "the 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 their identification. Finally, the member of the Young Turks' party and the whole government, regardless of the fact of which organization it joined, represented the Turkish state in the face of that government. Therefore any criminal actions performed by them should be condemned as an action of the representative of the state authority, for which not only the individual is responsible but also the state which that individual represents, in this case the Ottoman Empire. In the Ottoman Empire in conditions of coalescence of the Young Turks party and state government, belonging to the party and being a member of the Secret Organization was an important condition for having high public position.

There was not shown any apparent resistance against the Young Turks' policy in high circles of the Ottoman Empire, and it proves that all the members of the government didn't oppose that political power, thus accepting what was happening. Knowing about the massacres of Armenians, and the fact that the members of the government hadn't taken any steps to prevent it and their indifference, according to the UN Genocide Convention is anyway punishable and for Turkish state, because it can be viewed as complicity in the genocide.

Besides, the court tried to separate from each other the terms "intent" and "performance of the official duties". Whereas the facts directly indicate that the intentional plans of the Young Turks' party and government to eliminate the Armenians coincided with the genocidal state program of the Ottoman Empire, and it was actualized using all the public resources. 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 in conditions of this party's leading role[25]. It is evident that the 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 the massacres and violence was so obvious that it was impossible to show them as an individual crime.

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

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

a) Besides the main verdict the Turkish Military Tribunal made a special decision about the criminals who had escaped, by which it was adopted that the Young Turks' party had taken into its hands the whole power of the state[26]. So, based on this, it can be claimed the state was responsible for the crimes committed by the Young Turks, because the state had allowed them to take into their hands the whole power.

b) The court accused the Young Turks not only of the Armenian massacres, but also for losing some parts of the empire during World War I as a result of their criminal political mistakes[27]. The court accused the Young Turks because they hadn't even discussed the issue of declaring war in the Mejlis (parliament)[28]. It is 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 had a great influence and could have prevent all those cruelties didn't take 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 the party were united together, and any decision of the party was a subject for immediate implementation. Besides he gave evidence that coming out the party meant to renounce Islam[29]. The testimonies of the 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) Talat, Enver, Djemal and Nazim Bey were convicted according to paragraph 1 of 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[30]. 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 the 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.

The following important components of the plea on the case of the Armenian Genocide are the corresponding provisions of the Treaty of Sèvres[31]. Articles 226[32] and

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

[27] Ibid., p. 119.

[28] Ibid., p. 120.

[29] Ibid., p. 119.

[30] Ibid., p. 126.

[31] Treaty of Peace with Turkey. Signed at Sèvres. August 10, London, 1920.
http://treaties.fco.gov.uk/docs/pdf/1920/TS0011.pdf

[32] ARTICLE 226. The Turkish Government recognizes the right of the Allied Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons

228[33] were coming from «The Laws and Customs of war» provisions of the Hague Conventions adopted in 1899, and edited in 1907. These provisions repeated Articles of the Treaty of Versailles (1871), Treaty of Saint-Germain (1919), the Treaty of Neuilly (1919) and the Treaty of Trianon (1920), which were about the punishment of war criminals.

Under Article 230 of the Treaty of Sèvres the Turkish government "to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on August 1, 1914.

The Allied Powers reserve to themselves the right to designate the tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognize such tribunal.

In the event of the League of Nations having created in sufficient time a tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such tribunal, and the Turkish Government undertakes equally to recognize such tribunal. The provisions of Article 228 apply to the cases dealt with in this Article."

It was obvious, that Article 230 was a result of the Declaration of the Allied Powers (May 24, 1915), as the Allied Powers had promised to call to liability those who were the accused of the mass killings of the Armenians. This provision was extremely important because Turkey couldn't avoid handing over the people who were accused of the massacres of the Armenians in the deserts of Mesopotamia only using the justification that they couldn't hand over the those who had committed crimes in the territories that had not belonged to them anymore.

Under the same Article, Allied Powers reserved to themselves the right to designate the tribunal which should try the accused persons, and the Turkish government undertook to recognize such tribunal. Besides, it was mentioned "in the event of the League of Nations" to create an international tribunal "competent to deal with the said massacres". During the history of international relations for the first time was put forward the idea of formation of an international tribunal. Thus, the Treaty of

shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Turkey. or in the territory of her allies.

The Turkish Government shall hand over to the Allied Powers or to such one of them as shall so request all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the Turkish authorities.

[33] ARTICLE 228. The Turkish Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the prosecution of offenders and the just appreciation of responsibility.

Sèvres created a legal ground for the prosecution of the Ottoman Empire for the crimes committed against its subject citizens[34].

In the report of May 28, 1948, the UN War Crimes Commission paid special attention to Article 230 of the Treaty of Sèvres, and interpreted that the victorious powers by this Article 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 was the crimes committed in the Ottoman Empire against the subjects who weren't Turks, particularly against the Armenians and Greeks. That was a precedent for corresponding Articles 6c and 5c of the regulations of the Nuremberg and Tokyo tribunals[35].

Under Article 144 of the Treaty of Sèvres, "the Turkish Government recognizes the injustice of the law of 1915 relating to Abandoned Properties (Emval-i-Metroukeh), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognizes that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title".

The significance of Article 144 is extremely important for the Armenians who were the victims of the genocide. This Article provides legal rights for restoration of the Armenians' properties. Under that Article the concrete mechanisms for the restoration of the property rights were defined[36].

The Ottoman government accepted that in the case of finding 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. Under Article 144, "The Turkish Government agrees that arbitral commissions shall be appointed by the Council of the League of Nations wherever found necessary. These commissions shall each be composed of one

[34] Տերնոն Ի., Անպատժելիություն, վրեժ և ժխտում. հայկական ցեղասպանությունը միջազգային ատյանների առջև, Երևան, 2003, էջ 11:

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

[36] Ibid, p. 679.

representative of the Turkish Government, one representative of the community which claims that it or one of its members has been injured, and a chairman appointed by the Council of the League of Nations. These arbitral commissions shall hear all claims covered by this Article and decide them by summary procedure.

The arbitral commissions will have power to order:

(1) The provision by the Turkish Government of labour for any work of reconstruction or restoration deemed necessary. This labour shall be recruited from the races inhabiting the territory where the arbitral commission considers the execution of the said works to be necessary

(2) The removal of any person who, after enquiry, shall be recognized as having taken an active part in massacres or deportations or as having provoked them; the measures to be taken with regard to such person's possessions will be indicated by the commission;

(3) The disposal of property belonging to members of a community who have died or disappeared since January 1, 1914, without leaving heirs; such property may be handed over to the community instead of to the State.

(4) The cancellation of all acts of sale or any acts creating rights over immovable property concluded after January 1, 1914. The indemnification of the holders will be a charge upon the Turkish Government, but must not serve as a pretext for delaying the restitution. The arbitral commission will, however have the power to impose equitable arrangements between the interested parties, if any sum has been paid by the present holder of such property.

The Turkish Government undertakes to facilitate in the fullest possible measure the work of the commissions and to ensure the execution of their decisions, which will be final. No decision of the Turkish judicial or administrative authorities shall prevail over such decisions".

Actually under this Article rather realistic and effective means and mechanisms were proposed for the restoration of financial and property losses of the Western Armenian population and for overcoming the effects of those losses. All these have not lost their modern relevance, and can be fully practiced on the basis of reparations and restitutions for the Armenian Genocide, with the difference that the Council of the League of Nations will be replaced by the UN Security Council.

Article 144 of the Treaty of Sèvres was amplified with Article 288: "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, or any further Treaty regulating the disposal of territories detached from Turkey, shall be restored to them in their actual condition".

Though the Treaty of Sèvres wasn't ratified and was not used because of the changes in the political life of Turkey and geopolitical processes, it is 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, the legitimate government (represented by the Council of the sultan in Constantinople) of the state voted in favor of signing the Treaty of peace and authorized the Turkish official delegation to sign the Treaty of Sèvres[37]. As it is known even a non-ratified treaty doesn't completely release the countries having signed that treaty from their liabilities, especially taking into consideration the fact that while signing the document the Turkish official delegation didn't exceed its full powers. Under Article 18 of Vienna Convention on the "Law of Treaties" in 1969: "OBLIGATION NOT TO DEFEAT THE OBJECT AND PURPOSE OF A TREATY PRIOR TO ITS ENTRY INTO FORCE

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed"[38]. Contrary to international laws, the new Turkish rulers took consistent steps to neutralize the provisions of the Treaty of Sèvres [39].

It is noteworthy that even in the case of not being ratified, the provisions of the Treaty of Sèvres were used partially to separate the Arab territories from the Ottoman Empire which was provided by the Treaty of Sèvres, and took place before signing the next treaty (Treaty of Lausanne)[40].

The next important component of the plea should be considered US President Woodrow Wilson's Arbitral Award on determination of Armenian-Turkish boundary on November 22, 1920, which was an international judicial act which declared the liability of Turkey, the state guilty of perpetration of the Armenian Genocide.

That arbitration certainly had its historical and legal backgrounds. After WWI the issue of separating Armenia from Turkey was directly connected with the policy of the deportations and massacres of the Armenians, as had been defined in the Memorandum of US President Woodrow Wilson which was handed to the Ottoman Empire's government on August 22, 1919, by Admiral Mark L. Bristol, U.S. High Commissioner in Constantinople[41].

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

[38] Vienna Convention on the Law of Treaties, United Nations – Treaty Series, No. 18232 MULTILATERAL
Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969 Authentic texts: English, French, Chinese, Russian and Spanish. Registered ex officio on 27 January 1980.p. 1980.
https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf

[39] Toriguian Sh., The Armenian Question and International Law, London, 1973, p. 87.

[40] Ibid, p. 132; Reed J., The Treaties of Peace, 1919-1923, Vol. 1, Clark, New Jersey, 2007, p. XXXV.

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

The issue of legal and political grounds of termination of dominance of Turkey towards Armenia became the investigation for the special King-Crane Commission (Inter-Allied Commission on Mandates) created in 1919 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:

1. the proved inability of Turks to govern the others;
2. the repeated "horrible massacres of the Armenians" as an adopted intent policy;
3. the complete absence of compassion for the committed massacres or willingness 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 evidence that these two nations couldn't live peacefully together.
7. the experience of Turkish governing mustn't be repeated;
8. it is more accurate the Armenians and Turks have separate states;
9. elementary justice demands the separation of the territory from Turkey where the Armenians can be centralized without being obliged to live under Turkish rule;
10. nothing except the above-mentioned can give the Armenians sufficient security guarantees[42].

The arguments and the conclusions of the commission had been necessary and sufficient corroborations[43] for the document on the arbitration in the issue of demarcation of the Turkish-Armenian boundary by Woodrow Wilson. This approach was then adopted by the Supreme Council of the 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 the Turkish government towards its nations, and especially coming out from the 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[44].

In response to the Turkish anti-arguments the USA sharply reacted. R. Lansing, the United States Secretary of State noted in the telegram addressed to the American Commission participated in Paris Peace Conference on August 16, 1919, that "The President desires Turkish authorities be warned that should they not take immediate

* It is about Articles 61 and 62 of the Berlin Treaty.

[42] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 6-7.

[43] Nowadays these corroborations are very contemporary. They unmask the Turkish denial policy of the Armenian Genocide.

[44] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 7-8.

and efficacious measures to prevent any massacres or other atrocities being perpetrated by Turks, Kurds or other Muslims against Armenians in the Caucasus, or elsewhere, then all support concerning a secure sovereignty over the Turkish portion of the present Ottoman Empire under Article XII of the peace terms, will be withdrawn, and such withdrawal might result in the absolute dissolution of the Turkish Empire and a complete alteration of the condition of peace"[45].

The suggestion of the Supreme Council of the Allied Powers to Woodrow Wilson to take the role of the arbitrator was made in San Remo conference on April 25, 1920. The next day the Supreme Council of Allied Powers informed the League of Nations about its suggestion to Woodrow Wilson to become an arbiter in the issue of determination of Armenian-Turkish boundaries. On May 11, the terms of peaceful settlement were transferred to the Turkish delegation[46]. On May 17, 1920, Wilson announced his agreement to be an arbiter. An assertion, that Woodrow Wilson's arbitral award' basis was the Treaty of Sèvres which hadn't been ratified, so it does not have legal power, is groundless. That arbitration has connection with the Treaty of Sèvres, as much as under Article 89 ("Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the vilayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarisation of any portion of Turkish territory adjacent to the said frontier"). The principal four countries of the Supreme Council of the Allied Powers - the British Empire, France, Italy and Japan in their request to make the US President an arbiter were joined by 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. So the Treaty of Sèvres was only a supplementary legal ground for the Arbitral Award, in addition to an earlier suggestion to the US President to become an international arbiter, regardless of the fact that the process of arbitration was in progress. Moreover, Article 90 stated: "In the event of the determination of the frontier under Article 89 involving the transfer of the whole or any part of the territory of the said vilayets to Armenia, Turkey hereby renounces as from the date of such decision all rights and title over the territory so transferred. The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory. The proportion and nature of the financial obligations of Turkey which Armenia will have to assume, or of the rights which will pass to her, on account of the transfer of the said territory will be determined in accordance with Articles 241 to 244,

[45] Bears H.P., U.S. Naval Detachments in Turkish Waters, 1919–1924. U.S. Navy Department, June, 1943, p. 17; Барсегов Ю.Г., Турецкая доктрина международного права на службе политики, с. 27.

[46] Барсегов Ю.Г., Арбитражное решение президента США по армяно-турецкой границе, с. 15.

Part VIII (Financial Clauses) of the present Treaty. Subsequent agreements will, if necessary, decide all questions which are not decided by the present Treaty and which may arise in consequence of the transfer of the said territory"). Thus, the contracting states of the Treaty of Sèvres agreed to adopt the award immediately, and Turkey, which was a side of the dispute, additionally reaffirmed renouncing its rights in relation to the territories transferring to Armenia[47].

Thus, the process of arbitration had started before signing the Treaty of Sèvres; therefore it is quite an independent international legal document for Great Britain, France, Italy and Japan as members of the Supreme Council of the Allied Powers on the one hand, and the US President - on the other[48].

The suggestion of arbitration to especially Woodrow Wilson in determining borders of Armenia indeed, had its grounds which were determined 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 the candidacy of the US President was the best option for the role of the arbiter to clarify the boundaries of Armenia and Turkey[49]. Thus, the principle of neutrality and disinterestedness towards parties of the 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 the Hague Convention for the "Pacific Settlement of International Disputes" 1899 and 1907.

As the political substantiation of this arbitration was a response note signed by Alexandre Millerand, Prime Minister of France on July 17, 1920, against the protest of the Turkish delegation, the note particularly read: "The Turkish government hadn't performed its duties to protect their non-Turkish subjects from loot, violence and murder. Moreover, there is much evidence showing that the government had taken the liability to organize and lead the most brutal attacks on the population whom it should have protected. For that reason the Allied Powers couldn't make changes in those provisions which proposed to create an independent Armenia"[50].

Though the initiated and conducted arbitration on demarcating Turkish-Armenian borders had begun on the base of the decision and will of the victorious countries*, nevertheless it didn't contradict and was implemented according to the existing legal norms of that time. Thus, under Article 54 of the Hague Convention for the "Pacific Settlement of International Disputes" and under Article 81 of the same, but already edited (1907) Convention it was stated "if the arbitral award was made according to the

[47] Геноцид армян: ответственность Турции и обязательства мирового сообщества, т. 2, ч. 1, с. 676.

[48] Барсегов Ю.Г., Геноцид армян-преступление по международному праву, с.182.

[49] Ibid., p.181.

[50] Ibid., p. 183.

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

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"[51].

The arbitration of Woodrow Wilson was limited within concrete territories by the Supreme Council of the Allied Powers. Thus, in the course of implementing the demarcation of the Turkish-Armenian borders the arbiter had to be limited within the Van, Bitlis (Baghesh), Erzerum (Karin-Erzrum), and Trabzon (Trapezunt) provinces, and to guarantee creation of conditions for Armenia to get access to the Black Sea. Without it the arbitration would be incomplete. The contracting states took responsibility to take possible measures for the US President to be able to provide access to the sea[52].

On November 22, 1920, Woodrow Wilson signed the final *Report*, titled: "*Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier".* On December 6 it was officially transferred to the Supreme Council of the Allied Powers[53] and was published on December 17, entering into force. The arbiter within his jurisdiction and based on the territorial limitation by the Supreme Council of the Allied Powers while actualizing the demarcation of the Turkish-Armenian boundary confirmed the title and the rights of the Armenians on Van, Baghesh (Bitlis), Erzrum and Trapezunt, this demarcation would have given Armenia also an access to the Black Sea. So, the Armenian territory which should have been returned to the Republic of Armenia would be approximately 103.599 square kilometers. Despite the fact that the Arbitral Award had not been possible to realize 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 the settlement of 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 type of territorial dispute between 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[54].

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 plea on the Armenian Genocide advisory conclusions of specialists given to the issue of the Armenian refugees in 1929.

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

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

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

[54] Краткое изложение решений, консультативных заключений и постановлений Международного суда (1948-1991), Нью-Йорк, 1993, с. 69-71.

The Armenians who survived the genocide and lived in the Diaspora tried to clarify their opportunities to restore their violated rights according to the international law valid at that time. Taking into account that the Armenian Question appeared to be at a deadlock in the League of Nations, also the denialist attitude of Turkey, on June 5, 1929 "The Central Committee for Armenian Refugees" (CCAR) applied to provide advisory conclusion to the four authoritative international law experts of that time: Gilbert Gidel, Albert de Lapradelle, Louis Le Fur and Andre Mandelstam. In their answer they revealed the nature of Turkey's illegal policy[55] towards the Armenians[56]

The next component of the plea are the Articles of the Treaty of Lausanne on the protection of the rights of the non-Muslim population of Turkey. As is known, under Articles 37 and 44 of Lausanne Treaty, Turkey took new liabilities connected with the protection of the rights of its non-Muslim population. Particularly under Article 37: "Turkey undertakes that the stipulations contained in Articles 38[57] to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them"[58]. Moreover, Turkey was obliged to conform its government's legislation concerning the rights of the non-Muslim population to the Articles of the Lausanne Treaty.

Under Article 38: "1. The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

3. Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defense, or for the maintenance of public order". Thus, the Turkish government was obliged to ensure the full and complete protection of life and property of the whole population of

[55] The authoritative international law experts showed that Turkey's discriminatory policy definitely contradicted the norms of the international law of that time (Մարուքյան Ա., Հայոց ցեղասպանության գործով միջազգային դատարան դիմելու հիմքերն ու հնարավորությունները, Երևան, 2014, էջ 135-140).

[56] Барсегов Ю.Г., Геноцид армян – преступление по международному праву, Москва, 2000, с. 207-211.

[57] "1. The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

3. Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defense, or for the maintenance of public order".

[58] http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

Turkey regardless of gender, nationality, language, race or religion[59]. The demand of 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. Article 40 of the Treaty defined that the 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. It was defined by 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 numbers[60].

It is important to mention that under 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[61]. But contrary to all these provisions, Turkey continued the destruction of the Armenian cultural heritage.

Finally, the resolutions of the international and governmental organizations which recognize and condemn the Armenian Genocide can be submitted to the plea as supplementary credible and objective evidence. These resolutions should be accompanied with the letters of the 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 evidence with the help of the above mentioned components and after being evaluated from the legal point of view the pleading must be concluded by the legal requirements expressing the demands of the Armenian people concerning the losses and their consequences[62] after the Armenian Genocide.

On the basis of all the above mentioned Armenia should require the court to compel Turkey to adopt the following as temporary measures:

1. To stop the denial policy of the Armenian Genocide: it is the continuation of the committed genocide and its modern manifestation. This requirement can be

[59] Toriguian Sh., Armenian Question and International Law, p. 186.

[60] Ibid.

[61] Papian A., Legal Bases for the Armenian Claims, p. 38.

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

substantiated with the provisions of Articles 9 and 3 of the UN Genocide Convention[63].

2. To suspend the application of Article 301 of the Turkish Criminal Code, under which are persecuted human rights activists, journalists for their opinions on history or other areas that are different from the official approach. On June 1, 2005, Article 301 replaced Article 159 of former Criminal Code on the basis of which criminal punishment by imprisonment was defined for the “denigration of Turkishness, the Republic or the Grand National Assembly of Turkey”. In 2008 article 301 was “amended”: the word "Turkishness" was replaced by the phrase "the Turkish Nation", etc[64].
3. To recognize the verdicts of the Turkish Military Tribunals as legal and to repeal the decisions of Kemal’s regime to review those verdicts.
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 the 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 the 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[65]. 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 the international community. The latter demands from Turkey to respect the interests and rights of non-Muslim communities.

The following can be submitted as general requirements:

1. To recognize the arbitral award of the 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 basis of the principle of Ex injuria jus non oritur* the action of Turks to enjoy the fruits of the Armenian Genocide, particularly to seize the property of the

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

[64] http://en.wikipedia.org/wiki/Article_301_(Turkish_Penal_Code)#Current_status

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

* Law does not arise from injustice.

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 Article 144 of the Treaty of Sèvres as a legal mechanism for the financial compensation to the heirs of victims or genocide survivors, or their representatives.