

**THE CASE OF THE ARMENIAN GENOCIDE  
IN THE UN INTERNATIONAL COURT OF JUSTICE  
(the trial procedures and the determination of possible options)**

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

Generally the UN International Court considers the case when:

1. The parties of the dispute transfer the dispute to court on a special bilateral agreement and clearly mark on the issues that they have agreed to transfer to court trial.
2. When one of the countries, taking the basis of the specific contract provision, transfers the case against the other country to the International Court's examination on a unilateral announcement. The practice of the International Court's activity shows that 75% of the cases have been transferred to it unilaterally<sup>1</sup>.

The Article 9 of the UN Convention on Genocide gives such opportunity to the other member countries of the convention. As is well known, the Republic of Armenia is a member of Genocide Convention since June 23, 1993, and the Republic of Turkey is a member of this Convention since July 31, 1950. So, according to the Article 9 of this document, Armenia may transfer to the UN International Court's examination the dispute of interpreting, applying or executing of the convention without an agreement with Turkey<sup>2</sup>.

During the USSR period, the examination of the Armenian Genocide case in the UN International Court of Justice was impossible, however, today, there aren't any obstacles against Republic of Armenia exercising its right to bring forth such a request<sup>3</sup>.

In the accompanying document of the letter sent by the Minister of Foreign Affairs of the applying country, the subject of the dispute and the parties involved must be specifically listed. The plaintiff country introduces the application to the Secretariat of the Court, and the Secretary immediately transfers it to the other parties and judges,

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<sup>1</sup> [www.un.org/ru/icj/who\\_sits.shtml](http://www.un.org/ru/icj/who_sits.shtml)

<sup>2</sup> Права человека. Сборник международных договоров, том 1 (часть вторая). Универсальные договоры ООН, НьюЙоркЖенева, 1994., № 782.

<sup>3</sup> Vardanyan V., The Basis, Ways, Modes of the Republic of Turkey's International Legal Responsibility for the Armenian Genocide, Bulletin of Noravank Scientific Educational Foundation, N 1(17), Yerevan, 2006(Arm.), pp. 54-55.

and informs the UN Chief Secretary and all the other States Members which have the right to appeal to court. First, the official name of the case is mentioned the plaintiff country, then the word "against", and at the end the respondent country. In this case the name of the case will be "Armenia against Turkey".

After transferring the case to the court, Armenia must have representatives present in the court: for this position Armenia's ambassador in the Netherlands can be nominated or a representative of the MFA's juridical service who acts on behalf of the Government and can take such obligations<sup>4</sup>.

One of the important specifics of the UN International Court is that the country with a specific case which doesn't have its representative in the delegation can run its ad hoc judge. This means that Armenia besides its delegation, can run its ad hoc judge in the International Court. As a rule, the sides of the dispute in this position, are held from previous members of the International Court, or are the lawyers who have big authorship in the field of international law who can provide great help in the case of protecting the countries' rights as ad hoc judges have the same rights upon these cases together with permanent judges including the voting when making a decision<sup>5</sup>. The presence of ad hoc judges ensures the equality of all sides of the dispute and the opportunity to present their positions clearly.

However, the International Court has brought some limitations to this case. In October 2001, there were applied instructions adopted to complete the court regulation brought by the UN International Court of Justice for those countries applying to court which referred to right organization of the technical side of the judicial procedures and were intended to increase the efficiency of court proceedings providing a quick and impartial trial case. By the VII applied instruction of this document, the court forbade the parties to appoint ad hoc judges for those individuals whose lawyers were proceeding currently or within three years. The parties were also asked to refrain from involving in the judicial process of ad hoc judging<sup>6</sup>.

Though by the judicial charter it is also intended to create a practice to carry out separate instances of the judicial proceeding with accelerated procedure, but it is not profitable in terms of examination of the Armenian Genocide, because then there will

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<sup>4</sup> The representative has right to receive the judicial documents from the Secretary of the Court, present the arguments, and make suits of his country in the court. The Armenian delegation may include a representative and a deputy in the court who is a professional in the subject of international law, and assists the representative in preparing the documents and the oral presentations<sup>4</sup>. This delegation presented to the court is endowed with diplomatic privileges and is intact which is necessary to do its duties. Armenia can hire reputable experts in international law who may be even experienced former members of the International Court and are well aware of the court proceedings.

<sup>5</sup> Международное право. Отв. редакторы Г.В. Игнатенко, О.И. Глунов, М., 2009, с. 426.

<sup>6</sup> By the VIII order, the same prohibition applies on engagement of court judges, ad hoc judges, secretary, his deputy, or any court senior official who were appointed for the positions listed three years before taking a specific case<sup>6</sup>. Armenia should take into account these changes when appointing its ad hoc judge, so that the proposed candidates are not rejected by the court.

not be any opportunity to fully present the evidence based on committed crimes. After receiving the claim, the court reserves the right to hire any individual with given instruction to provide an expert opinion.

Armenia will certainly benefit from open proceedings, but Turkey will try to avoid it as there will also be members of the media, members of the diplomatic corps, lawyers and other specialists interested in this trial present in such proceedings.

The court may examine the case in the absence of one of the parties. In such case the other party may apply to the court with a request to make a decision in his favor; however, prior to that, the court must be ensured that it has the jurisdiction to investigate the case and that the prosecutor's claim is justified<sup>7</sup>.

First, the trial is conducted in writing and later verbally. The parties submit to court the required written documents during the written proceeding. This phase lasts a few months or several years depending on the complexity of the case, the number of documents and filing deadlines. The documents of written procedure are as follows: *memorandum, anti memorandum, response, and response on response*<sup>8</sup>. Plaintiff's memorandum (the application) is in a written format during the written proceeding and the defendant responds to it in a written memorandum. The written phase of the trial ends with presenting of the last written document. Parties are required to briefly summarize their own position in the final section of the presented documents<sup>9</sup>.

The oral phase of the trial which can last from two to six weeks, takes place in the same order as presentation of the written documents. The right of the first speech belongs to the plaintiff, in this case to Armenia, and then both parties have a chance to give two speeches in the same manner. In the VI instruction of the applied instructions document, it is stated that the parties' oral statements should be as short as possible and to the point, refer to the case and not to repeat the arguments and justifications of written documents, presenting only those questions which focus on those which are disaccords or dissolutions between the parties<sup>10</sup>.

Often the countries against whom a claim is submitted to the International Court, present the preliminary objections challenging the jurisdiction of the court on an exact case, or stating that there is no dispute with another country or that it has no legal nature, etc<sup>11</sup>. When the defendant raises this and other types of preliminary objections, the case is terminated and begins a separate stage of investigation, which again includes both written and oral procedures, which eventually end with the court's decision regarding preliminary objections. Court announces its decision on the preliminary objection in an open session. The court may: 1. accept the objection, after which the examination of the case stops; 2. reject the objection, after which the

<sup>7</sup> Международное публичное право. Под редакцией К. А. Бекяшова, М., 1998, с. 143.

<sup>8</sup> Международное право. Отв. редакторы Г.В. Игнатенко, О.И. Глунов, с. 476.

<sup>9</sup> Практические директивы Международного суда ООН. [http://www.un.org/ru/icj/practice\\_directions.shtml](http://www.un.org/ru/icj/practice_directions.shtml)

<sup>10</sup> Ibid.

<sup>11</sup> Международное право, отв. ред. Ф.И. Кожевников, М., 1987, с. 475.

examination of the case restarts from the stage where it was stopped; 3. attach the objection to the case file fully or partially, or declare that the decision to the objection will be made during the examination of the case<sup>12</sup>.

Armenia, based on Article 9 of the Convention of December 9, 1948, will use its right to unilaterally appeal to the International Court. Instant objections of the Turkish side may distract the court from examining the case for some time.

It should be noted that the Turkish attorneys have experimented with the practice of challenging the court's jurisdiction during the trial of Young Turk leaders at the Turkish military tribunal. The defense of the Turkish Military Tribunals referencing to Article 31 of the Turkish Constitution which considers a jurisdiction of the Supreme Court to account the ministers was not competent to judge the Young Turks by the defendants<sup>13</sup>. In their opinion, the Article 33 should not apply to accused. It is noted in Article 92 which states that the case should be handed to the Supreme Court. The advocates believed that even if Article 33 of the Turkish Constitution applied to their defense by which the case was not transferred to the Supreme Court, the case should be examined in a criminal court rather than in a military tribunal<sup>14</sup>. It was clear that the defendants' attorneys were trying to interrupt the proceedings with an excuse to transfer the entire case to another court. However, the Young Turks' military tribunal's jurisdiction failed at all of their attempts.

The court rejected the defense's objections to the jurisdiction of the military tribunal. Considering the fact that military force was put into effect by the Young Turk regime, and continued to remain in force, therefore the Articles 32 and 33 of the Constitution could not be applied according to the court which the defense insisted on<sup>15</sup>. The court pointed Article 113 of the Turkish Constitution relating to the entry into force of the law of war, after which a temporary suspension of civil rights action was planned. The court once again stressed the indictment formulated: "as long as military law exists, civil rights keep silent", and therefore military courts are the only punitive mechanisms of the country. Finally, the court stated, that the imperial edict published by the sultan had a power of law which gave to the court the necessary authority and jurisdiction for the examination of the defendant's guilt and their condemnation<sup>16</sup>.

Turkey has played this trick in the International Court, when made a preliminary objection during the examination of the Greek-Turkish dispute on coastal areas of the Aegean Sea on December 19, 1978, challenging the court's jurisdiction to examine the case. This time, however, the court accepted that it is not competent to investigate the

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<sup>12</sup> Ibid.

<sup>13</sup> The Armenian Genocide According to the Documents of the Trial of the Young Turks, by Avetis H. Papazyan, Yerevan, 1988 (Arm.), p. 16.

<sup>14</sup> Ibid., p.16.

<sup>15</sup> Барсегов Ю., Турецкая доктрина международного права на службе политики геноцида (о концепции члена "комиссии примирения" Гюндюз Актана), М., 2002, с. 40.

<sup>16</sup> Ibid.

case<sup>17</sup>, which puts an end to the investigation of the mentioned case. It is expected that Turkey will try to repeat this in an effort to end any further investigation of the Armenian Genocide's claim.

It is obvious, Armenia and Turkey have clearly expressed opposing views on the case of the Armenian Genocide connected with some contractual issues, arising from the claims of the Genocide Convention, and connected with the performance of obligations. In this case, Armenia, in its response to the court should bring to the court's attention relevant documents/arguments to the case, and the court may reject the preliminary objection of Turkey. The statistics of the International Court indicate that when the defendant attempts to challenge the court's jurisdiction, in 65% of cases, the court considers itself competent to investigate such cases<sup>18</sup>.

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

- a. plaintiff's memorandum (the application) is groundless, as the subject of the dispute is prior to the UN Genocide Convention, that is the known provision of retroactivity of the Genocide Convention will be promoted;
- b. events occurred during the Ottoman Empire, and the Republic of Turkey is not its successor;
- c. the plaintiff is not eligible to submit such claim.

By the V instruction of the application instructions document, the court clarifies the terms of the respondent's answer to examine the preliminary objections faster, limiting them to a maximum of four months from the date of filing of the preliminary objections<sup>19</sup>. Armenia can and should properly answer them in a specified time frame. We shall introduce Armenia's possible answers to the Turkish objections.

#### **a) The Retroactivity Issue of the UN Genocide Convention**

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

We shall immediately note that the UN International Court of Justice has already officially referred and expressed its view on this case when on May 28, 1951 by the request of the General Assembly it issued an advisory opinion connected with making reservations on Convention on the Prevention and Punishment of the Crime of Genocide provisions. In the advisory opinion of the UN International Court of Justice it was particularly noted that the principles underlying the Convention are recognized

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<sup>17</sup> Международные суды и международное право. Сборник обзоров. Сост. сборника Ю.Л. Атливанников, М.Л. Энтин, М., 1986, с. 32.

<sup>18</sup> [www.un.org/ru/icj/who\\_sits.shtml](http://www.un.org/ru/icj/who_sits.shtml)

<sup>19</sup> Практические директивы Международного суда ООН. [http://www.un.org/ru/icj/practice\\_directions.shtml](http://www.un.org/ru/icj/practice_directions.shtml)

as mandatory by all civilized nations even without a contractual booking<sup>20</sup>. Thus, the court emphasizes the fact that even in the absence of this Convention, the provisions are mandatory for civilized countries, so the dates of signing and of the entry into force of the Convention cannot be used for limiting the application of provisions. It means that Turkey's possible reservations or claims about the Convention's retroactivity can't be significant to resolve the issue.

Besides, it is worth to mention, after accepting the UN Convention on Genocide in 1948 and after entering into force in 1951, the international law continued to develop, accepting new international legal documents as a result. 20 years after accepting the Convention on "Prevention and Punishment of the Crime of Genocide", on November 26, 1968, the United Nation adopted "**Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity** (Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 Entry into force: 11 November 1970, in accordance with article VIII). The States Parties to the present Convention have agreed as follows:

**Article I** No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

- (a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;
- (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and **the crime of genocide** as defined in the 1948 **Convention on the Prevention and Punishment of the Crime of Genocide**, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

**Article II** If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.

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<sup>20</sup> Геноцид армян: ответственность Турции и обязательствами мирового сообщества, документы и комментарий. Составитель, ответственный редактор, автор предисловия и комментария Ю. Г. Барсегов, т. 1, М., 2002, док. 15, с. 32.

- Article III** The States Parties to the present Convention undertake to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition, in accordance with international law, of the persons referred to in article II of this Convention.
- Article IV** The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished.
- Article V** This Convention shall, until 31 December 1969, be open for signature by any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
- Article VI** This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- Article VII** This Convention shall be open to accession by any State referred to in article V. Instruments of accession shall be deposited with the Secretary-General of the United Nations.
- Article VIII** 1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.  
2. For each State ratifying this Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its own instrument of ratification or accession.
- Article IX** 1. After the expiry of a period of ten years from the date on which this Convention enters into force, a request for the revision of the Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.  
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.
- Article X** 1. This Convention shall be deposited with the Secretary-General of the UN.  
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article V.  
3. The Secretary-General of the United Nations shall inform all States referred to in article V of the following particulars:  
(a) Signatures of this Convention, and instruments of ratification and accession deposited under articles V, VI and VII;

- (b) The date of entry into force of this Convention in accordance with article VIII;
- (c) Communications received under article IX.

**Article XI** This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 26 November 1968.

In witness whereof the undersigned, being duly authorized for that purpose, have signed this Convention<sup>21</sup>.

We may claim that **Article I** of the Convention refers to Turkey directly and with double basis. The reason is the first Turkish state and the real organizers of the crime avoided the responsibility, and Turkey as the successor of the Ottoman Empire not only freed prisoners convicted of genocide against the Armenians by military tribunals, but also continued to deny the undeniable facts of the crime and claim on statute of limitations of the UN Genocide Convention of 1948. Taking into account the fact that the UN Convention of 1968 explicitly refers to the Convention of 1948, we can simultaneously record that in fact the first is the addition and continuation of the second, and it should be considered that with new convention the UN apparently made an adjustment on the issue of application and retroactivity of UN Genocide Convention of 1948.

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

Finally, we should take into account the fact that the consequences of the Armenian Genocide are still not overcome, and the Armenian people continue to struggle. So, it is a continuing crime. As is known, continuing crimes are the similar criminal acts aimed at a common goal and comprise a total unity. The beginning of the continuing crime is considered as a performance of the first action or inaction of the similar actions which is one among these criminal actions, and which constitute the components of one general crime, and the end is the last criminal action or the inaction<sup>22</sup>. These indications of the continuing crime are fully consistent with the denial policy of the Armenian Genocide by the Republic of Turkey at the state level. In this case, the discussion of the UN Genocide Convention retroactive issue is meaningless.

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

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

After the collapse of the Ottoman Empire and its disappearance as a state, a number of the new countries like Iraq, Syria, Jordan, Israel, Lebanon, Saudi Arabia, etc.

<sup>21</sup><http://www.ohchr.org/EN/ProfessionalInterest/Pages/WarCrimes.aspx>

<sup>22</sup>Кибальник А.Г., Современное международное уголовное право, Спб., 2003, с. 166.

appeared in its former territories. But is Turkey a new country or is it the successor of the Ottoman Empire after its collapse?

Theoretically, clarification related to the succession issue is connected with the fact whether the newly generated state retains the main features of the previous state, its historical connection, main population, ethnicity, language, and continues the management of its titular nation and other characteristics. If the answer is positive, then we do not deal with a newly generated state but with the successor of the previous state<sup>23</sup>.

It becomes evident through these provisions that Turks have dominated during the Ottoman Empire and this has transferred to the possession of modern Turkey. It is noteworthy that 85 percent of public servants and 93 percent of military officers retained their positions in the new republic<sup>24</sup>. It is not accidental, since many of the Young Turks later became leaders of the Kemalist' movement and regardless of the method of management, in the case of the republican rules the power of the Turks continued on this territory like during the Ottoman Empire. Turkey has also kept its historical connection with the Ottoman Empire, and the Turkish people kept its traditions and language. So, it is obvious that in the face of Turkey we deal with the successor of the Ottoman Empire.

Turkey's being the successor of the Ottoman Empire is not limited only by theoretical reasonings. In practice, the question of succession of Turkey appeared after the Lausanne Conference (1923) in 1925 when the issue of the debt of the former Ottoman Empire was discussing. It was to be determined who shall assume the obligation of paying the debt in the non-existence of the state. The Turkish side declared in its usual manner that it has no connection with the Ottoman Empire which doesn't exist anymore. Turks claimed that the repayment of the debt is to be made through paragraph 2<sup>nd</sup> of the Article 5 of the Treaty of Lausanne, according to which Turkey was created after the collapse of the Ottoman Empire along with Syria, Lebanon and Iraq. So if there is a problem with the repayment of debts of the Ottoman Empire, it must be distributed to all newly generated states. The creditor countries absolutely did not agree with this. Finally the issue was transferred to international arbitration. The international arbitrator Bourel decided that according to the international law Turkey was the only successor of the Ottoman Empire, and so it should pay its debt<sup>25</sup>. Although the Ottoman debt issue has led to the identification of Turkey's recognition as the successor of the Ottoman Empire, nevertheless from the legal point of view Ottoman debt repayment factor was not a cause of Turkey's succession, but a consequence. Thus, arbitrator Bourel first recognized Turkey as the only successor of the Ottoman Empire, and logically it had to pay the debts of the former Ottoman Empire. So, in this case it is appropriate to speak of complete succession rather than of partial, since the solution of the issue of Turkey's succession refers to not only the obligation of repayment the Ottoman debt, but also to the international responsibility for "the mistakes by the Empire"<sup>26</sup>.

<sup>23</sup>Toriguian Sh., *The Armenian Question and International Law*, Beirut, 1976.(inArmenian), p. 193.

<sup>24</sup> Дадриян В., Геноцид армян как проблема международного уголовного права. - *The Issues of the History and Historiography of the Armenian Genocide*, N 13, Yerevan, 2006, p. 8.

<sup>25</sup> Toriguian Sh., *The Armenian Question and International Law*, p. 195.

<sup>26</sup>Ibid.

Joe Verhoeven, a professor at the Catholic University of Leuven and international law expert writes on the issue of Turkey's succession: "Whatever the upheavals following the Kemalist revolution in Turkey or the dismemberment of the Ottoman Empire, it has never been doubted that the Turkish state that followed the war is identical to the state that sided with Germany on the eve of the war. This conclusion was expressly affirmed by the arbitrator Borel in the affair of the Ottoman public debt in 1925"<sup>27</sup>.

Based on this decision, Turkey assumed the obligation to pay the debt of the Ottoman Empire, and despite of huge concessions managed to pay the debt only in June 1944<sup>28</sup>. The fact that Turkey paid Ottoman Empire's debt till 1944 finally confirms that Turkey has already accepted it is the successor of the Ottoman Empire. Besides, Turkey by Articles 12 and 17 of the Treaty of Lausanne, also agreed with some provisions signed in documents by Ottoman Empire on alienation of some territories<sup>29</sup>.

Finally, present Turkish top government officials do not hide the connection of Turkey with the Ottoman Empire, and Neo-Ottomanism is declared a landmark in Turkey's foreign policy with all the ensuing consequences. For instance, Istemihan Talay, Turkish Minister of Culture has publicly declared the Republic of Turkey is the continuation of the Ottoman Empire the heritage of which is a part of Turkish history, and according to the minister, feeling shame for that is equal to the denial of one's own existence<sup>30</sup>.

By denying the Armenian Genocide, the republican Turkey automatically confirms its succession of the Ottoman Empire in the sense that in fact it continues its policy and, therefore, assumes the responsibility for the crime<sup>31</sup>.

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

### **b) The Issue of the Legal Identity of the Republic of Armenia on the case of overcoming the consequences of the Armenian Genocide**

To overcome the consequences of the Armenian Genocide, it is also essential to present international legal claims to nowadays Turkey by the Third Republic of Armenia

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<sup>27</sup> Verhoeven J., *The Armenian People and International Law A Crime of Silence: The Armenian Genocide*, Permanent Peoples' Tribunal London, 1985, pp. 206-207.

<sup>28</sup> Dadayan Kh., *The Economic Constitute of the Armenian Genocide, and Financial Compensation Issue*, Conference in Nicosia on the problems of Western Armenians' Claims, April 18-19, 2008, (Collection of Scientific Articles), Moscow, 2008 (Rus.), p. 179.

<sup>29</sup> [http://wwi.lib.byu.edu/index.php/Treaty\\_of\\_Lausanne](http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne)

<sup>30</sup> Dadrian V. N., *The key elements in the Turkish denial of the Armenian Genocide: A case study of distortion and falsification*, Toronto, 1999, p. 5.

<sup>31</sup> Melkonyan A., *The Lessons and the Messages of the Armenian History*, Yerevan, 2013, p. 212.

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

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

The authorization issue has been resolved since 1919, when the Second Congress of the Western Armenians delegated such right to the first Republic of Armenia. On February 12, 1919, according to paragraph 5<sup>th</sup> of the "Political Resolution" adopted by the Assembly, the Executive body of the Western Armenians along with the Government and Parliament of the Republic of Ararat was to take the real steps to declare United and Free Armenia<sup>32</sup>.

With this formulation the authorized and legitimate body of the Western Armenians in fact authorized the first Republic of Armenia to appear on its behalf as a claimant for occupying its homeland in a result of genocide, as the declaration of United and Free Armenia implied the distribution of rights of the first Republic of Armenia on West Armenia. The first Republic of Armenia has assumed the responsibilities in its turn. In pursuance of the decisions of the Second Congress of the Western Armenians which took place in February Alexander Khatisyan, the Prime Minister on May 28<sup>th</sup>, the independence anniversary, adopted the Declaration of Free, Independent, and United Armenia with which the authorities proclaimed themselves as the owners of the West Armenia, also<sup>33</sup>.

As for the current Republic of Armenia being the successor of the Republic of 1918-1920, then on December 2, 1920, under the sovietization of Armenia with Yerevan agreement, the rights and obligations of the first Republic also transferred to Soviet Armenia. In fact the government of the Soviet Armenia undertook the succession of the First Republic of Armenia<sup>34</sup>. Then the Soviet Armenia first became part of the Transcaucasian Socialist Federative Soviet Republic and then part of the Soviet

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<sup>32</sup> Melikyan V., *The National Congresses of the Western Armenians, and the Stages of the Armenian Question in 1917-1923*, Yerevan, 2007, p. 10.

<sup>33</sup> Melkonyan A., *The Issues of the History and Demography of Armenia*, Yerevan, 2011, p. 387.

<sup>34</sup> Torquian Sh., *The Armenian Question and International Law*, p. 200.

Union, transferring its succession to the USSR<sup>35</sup>. The striking example, perhaps, is that after the end of the Second World War on July 22, 1945, during the sixth meeting of the Big Three leaders of Allied Powers at the Potsdam Conference, the Soviet Union on behalf of the Soviet Armenia raised territorial claims to Turkey, demanding the return of Kars and Ardahan<sup>36</sup>. This fact also clearly shows that the USSR has inherited the succession of the Soviet Armenia; otherwise, Turkey or Allied Powers would discuss the USSR right to act on behalf of the Soviet Armenia. After the collapse of the USSR the present Republic inherited the succession of the Soviet Armenia. This fact is enshrined in the Declaration of Independence of RA, in the preface of which it is indicated that the Republic of Armenia is developing the democratic traditions of RA created on May 28, 1918<sup>37</sup>. So, the present Republic of Armenia, as the successor of the First Republic has inherited the right transferred to the First Republic by the authorized and legitimate body of the Western Armenians who were victims of the genocide. Thus, it has the right to present as a representative of the present Armenian Diaspora's interests in the international court.

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

The acceptance of preliminary objections or counterclaim of Turkey by the court is not beneficial to Armenia, because in that case the actual examination of the case may end in that phase. Therefore, Armenia should actively participate in related examinations and neutralize Turkey's arguments (i.e. falsifications).

Separate from the main case, an examination may start in the case of demanding temporary measures. The court may impose temporary measures on the request of one of the parties, either on its own initiative, if it knows that the rights which form the subject of decision being made in future are under immediate threat<sup>38</sup>. The aim of temporary measures is kind of temporary judicial prohibition which actually freezes the situation till the final decision of the court.

If the court makes an appropriate decision, but Turkey decides not to implement, Armenia should not wait till the final decision on the actual case and immediately can

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<sup>35</sup> Ibid.

<sup>36</sup> The Berlin (Potsdam) conference of the Big Three Leaders of the Allied Powers: USSR, USA, and Great Britain (July 17, 1945 – August 2), Yerevan, 1989, p. 168.

<sup>37</sup> Armenian Declaration of Independence, August 23, 1990.

<sup>38</sup> Международное публичное право, с. 143.

submit to the UN Security Council. Moreover, according to paragraph 2<sup>nd</sup> of Article 41 of the court charter immediately informs about its temporary measures to the parties as well as the Security Council<sup>39</sup>.

An adjacent examination can also start when a third country applies to the court with request to let it take part in the examination of the case, as it also has a juridical interest in that case<sup>40</sup>. That is possible, for instance, in the case of the countries of the Entente in May 24, 1915, when Russia, France and Great Britain had already given the legal and political rating to the Armenian Genocide during its execution time, or in the case of the United States which president Woodrow Wilson made the arbitral decision on the Turkish-Armenian boundary on November 22, 1920, allocating a territory of 103.000 square kilometers to Armenia, and thus, calling Turkey, as a genocidal state for the political responsibility.

The basis for adjacent examination is also the union of cases, if the court finds that the parties of the different trials are promoting the same arguments and justifications to the same respondent on the same question<sup>41</sup>. That is possible, if for instance, one of the countries which signed the Treaty of Lausanne, for example, Greece applies to the International Court against Turkey for breaking and not taking the obligation of protecting the rights of the non-Muslims Armenians and Greeks. That right is given to the countries of the Treaty of Lausanne by paragraph 4<sup>th</sup> of Article 44 of the document, according to which by the demand of any of the countries of the Treaty of Lausanne the case can be transmitted to the Permanent Court of International Justice whose verdict was to be final<sup>42</sup>. Practically each of the countries of the Treaty of Lausanne can even today apply to the Permanent Court of International Justice with issues of violating the rights of the non-Muslim population.

In such situation RA can apply to unite that case or cases, and also the case against Turkey. If the court decides to unite the cases, then the parties with previous cases will be permitted to have only one ad hoc judge, and starting from that time they have to present united documents and oral arguments.

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

After the hearings the court starts the examination of its decision which passes in closed session. At first the judges share their thoughts, and then the president of the court separates those questions which need court's discussion and decision. Then each of the judges prepares his/her written initial decision which spheres among the other judges, thus giving an opportunity to have an idea about the opinion of the majority.

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<sup>39</sup> Международное публичное право, с. 144.

<sup>40</sup> [www.un.org/ru/icj/who\\_sits.shtml](http://www.un.org/ru/icj/who_sits.shtml)

<sup>41</sup> Ibid.

<sup>42</sup> Treaty of Lausanne [http://wwi.lib.byu.edu/index.php/Treaty\\_of\\_Lausanne](http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne)

Although the discussions are held in closed sessions, the final verdict is announced in an open one. In a few weeks the second discussion takes place. After it ends based on the opinions of judges, the court creates a committee which includes two judges and the court's president presenting the majority opinion, and has to prepare the project. This project in its turn is spread among the judges to do the last corrections, then considering this, the committee presents to the judges the final project. During the second reading speech the project passes with open voting. The judges have to vote "favor" or "against", and can't refrain. In case of equal voice-allocation, the president's vote is determinant. Judges can attach their special opinion to the resolution by which they explain their approaches<sup>43</sup>.

As a rule, the final resolution is made in 3-6 months related to the complexity of the case. The average duration of the trial proceeding examination is four years. Such a long time frame of the procedure is due to the fact that the procedures used during the trial make it possible to make decisions at the highest professional level. Besides, it should not be forgotten that 15 judges and more participate in the trial, and the parties are not individuals but countries, so the judicial error is to be excluded. The trial consists of presenting multiple and various documents and of their detailed study. Also, the technical questions may appear connected with translations, finance charges and coping with other difficulties which are also take time. The sides of dispute also play their role in the procedural delays: they may try to artificially extend the trial and win time. Such actions are particularly beneficial for the Turkish side.

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

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

- a) Introduction, where the judges and the representatives of the parties are indicated, and where is given a brief background to the trial, as well as the documents submitted by the parties;
- b) The grounds for the decision which summarizes the essential facts and indicates the underlying arguments;
- c) The judgment itself, stating how the judges voted and the final verdict was made based on all that.

The court judgment is final and is not a subject to appeal. It is indispensable for the parties of dispute<sup>44</sup>. This is also stated in the paragraph 2<sup>nd</sup> of Article 94 of CHAPTER XIV THE INTERNATIONAL COURT OF JUSTICE of **CHARTER OF THE UNITED**

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<sup>43</sup> Международное публичное право, с. 143.

<sup>44</sup> Международное право, с. 477.

**NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE:**“If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment”<sup>45</sup>.

After investigation of the case of **the Armenian Genocide** a just solution making by The UN International Court will be in the spirit of **the 1948 Convention on the Prevention and Punishment of the Crime of Genocide**.

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<sup>45</sup> <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> Turkey is not a nuclear country and is not a permanent member of the UN Security Council, so it cannot use veto power.