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KEYS FOR A LEGAL ASSESSMENT OF GENOCIDE RECOGNITION DEMANDS AND REPARATION CLAIMS OF ARMENIANS*

(ERMENİLER TARAFINDAN ORTAYA ATILAN SOYKIRIM İDDİALARININ TANINMASI VE TAZMİNAT TALEPLERİNİN HUKUKİ DEĞERLENDİRMESİNE İLİŞKİN ESASLAR)

Pulat TACAR**

Abstract: *This paper intends to assess the legal aspects of the Armenian genocide claims and the compensation and/or reparation demands attached to it. This paper will not cover the historical, moral, or humanitarian aspects of the Armenian claims.*

Keywords: *Turkey, 1915 Events, 1948 Genocide Convention, recognition, reparations*

Öz: *Bu makale Ermeni soykırım iddialarının hukuki yönlerini ve iddialar çerçevesinde ortaya konan telafi ve tazminat taleplerini değerlendirmeyi amaçlamaktadır. Makale; Ermeni iddialarının tarihi, ahlaki veya insanı boyutlarına değinmeyecektir.*

Anahtar Kelimeler: *Türkiye, 1915 Olayları, 1948 Soykırım Sözleşmesi, tanıma, tazminat*

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1) Accusations of Genocide

The diaspora Armenians and the Republic of Armenia persistently accuse the Republic of Turkey of pursuing a "policy of denialism" with regard "the act of genocide committed during 1915–1916," and demand that "Turkey assumes responsibility for the internationally wrongful acts it has committed against Armenians and other Christian minorities."

Those who maintain the genocide thesis argue the following; "State succession prevails and continuing responsibility has been inherited by the Republic of Turkey from the Ottoman State; consequently Turkey must assume full responsibility and should compensate the injury caused by the Ottoman Empire during the tragic events of 1915-1916 and following years."[1]

2) Financial Compensation Claims

Armenian financial compensation claims are listed in a document entitled "Resolution with Justice Reparations of the Armenian Genocide - The Report of the Armenian Genocide Reparations Study Group". The amount of claimed financial compensation varies from 70,030,167,080 to 104,544,260,400 (70-105 billion) US dollars.

The legal arguments for such claims have been laid out in several publications;[2] some of them have been presented at a conference organized by the Armenian Catholicosate of Cilicia in Antelias, Lebanon, from 23 to 25 February 2012. The papers submitted there have been subsequently published by the International Criminal Law Review in 2014.

3) The Supposed Legal Basis for the Demands

The arguments put forward by the authors who maintain the genocide thesis are often confusing and muddled. The proponents of Armenian reparation claims use present-day legal concepts and rules, and attempt to qualify events that have occurred more than a century ago as genocide, without inquiring

1 Vahagn Avedian, "State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian Genocide," *European Journal of International Law* 23, no. 3 (2012) ; Alfred de Zayas, *The Genocide Against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention* (Beirut: Haigazian University, February 2011).

2 "Resolution with Justice: Reparations for the Armenian Genocide - The Report of the Armenian Genocide Reparations Study Group," *Armenian Genocide Reparations Study Group*, March 2015, http://www.armeniangenocidereparations.info/wp-content/uploads/2015/03/20150331-ArmenianGencoideReparations-CompleteBooklet-FINAL.pdf ; Armenian Genocide Centenary Commemoration Committee (AGCCC, the UK), *The Armenian Genocide: A Plea for Justice (April 1915)* ; de Zayas, *The Genocide against the Armenians 1915-1923…*

whether these concepts and rules existed at the time; furthermore they fail to identify and ignore the legal obligations which were binding on the Ottoman State in 1915.

The arguments presented by Armenia, the Armenian nationalist and militant groups and their supporters do not rely on the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (thereafter: Genocide Convention). They instead try to anchor their demands on non-binding soft-law instruments or draft treaties such as:

- the Draft Treaty of Sèvres, which has never been ratified, nor has it entered into force.

- the "Draft Declaration on Population Transfer and the Implantation of Settlers" drawn up in 1997 by Mr. Al-Khasawneh, Special Rapporteur on Human Rights and Population Transfer - a Sub-Commission of the Commission of Human Rights of the UN. This Draft Declaration has never been adopted and as such not binding for any State.

- the "Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." This is another non-binding soft-law instrument. The "Guideline" in question does not entail new and sanctionable international or domestic legal obligations.

- "Draft Articles codifying the Responsibility of States for Internationally Wrongful Acts". These have been drafted by the International Law Commission (ILC) in August 2001 and adopted by the UN General Assembly under Resolution 56/83. This Resolution brought the document in question to the attention of Governments without prejudice to their future adoption or other appropriate action. In other words, this resolution is not a binding legal instrument for State parties. Some Armenian jurists continue to refer to this document as the legal basis of their reparation claims.

4) The Absence Of "Special Intent"

The Turkish government and the great majority of Turks do not deny that Ottoman Armenians as well as other Ottoman citizens were subjects of a great tragedy during the years of 1915–1916. The criminality associated with the tragic events (called *Metz Yeghern* by the Armenians) related to the forced migration of some Ottoman Armenians in 1915–1916 into the southern provinces of the Ottoman State was addressed by the Ottoman judiciary.

Individuals or members of the groups who attacked the displaced Armenians and/or officials who exploited the Armenian plight and neglected their duties or abused their powers were court-martialed and punished. In 1915, more than 20 Ottoman subjects were sentenced to death and executed for having committed such crimes. They were judged according the Ottoman Penal Law in force at that time.[3]

According a report by Talat Pasha, the Minister of Interior, the Ottoman government created three commissions to investigate the complaints of Armenians. As a result, in March–April 1916, a total of 1673 Muslim Ottoman citizens -including captains, first and second lieutenants, commanders of gendarmery squads, police superintendents, and mayors- were arrested and brought before courts martial. Sixty-seven of them were sentenced to death, 524 Ottoman citizens were sentenced to serve jail terms, and 68 received other punishments such as forced-labor, imprisonment in forts and/or exile. It is not unimportant to notice that several criminals were sentenced to death for committing plunder, and that other death sentences were justified not only by murders, but also by robberies.[4] Authors who maintain the Armenian genocide thesis try to avoid all mentions to these trials and condemnations, probably because the genocide thesis fails to make any sense in light of these trials and condemnations.

The Armenians regard themselves as the only victims of the tragedy which occurred more than hundred years ago in Anatolia. They claim that the Ottoman State pursued a policy of genocide against its Armenian population.[5] This argument is rejected by Turkey, because the Ottoman State had no "special intent" to destroy the Ottoman Armenians "as such"; other non-Armenian Ottoman citizens also suffered as well; both Ottoman Armenians and the Muslims were the victims of the great tragedy. The result of the inter-ethnic killings between the Armenian armed rebels and the Ottoman Turks and the Kurds was an unprecedented horror. History records few examples of mortality as great as that suffered in Van Province.[6]

3 Pulat Tacar, "2015'te Türkiye'nin Başına Ermeni Tsunamisi Çökecekmiş," *Yeni Türkiye*, Ermeni Meselesi Özel Sayısı V, Yıl 20, Sayı 64 (Eylül-Aralık 2014) ; Pulat Tacar, "The Legal Avenues That Could Be Resorted to Against Armenian Genocide Claims," *Review of Armenian Studies*, No. 13-14 (2007).

4 Tacar, "2015'te Türkiye'nin Başına Ermeni Tsunamisi Çökecekmiş" ; Tacar, "The Legal Avenues That Could Be Resorted to…"

5 Pulat Tacar, "An Invitation to Truth, Transparency and Accountability: Towards 'Responsible Dialogue' on the Armenian Issue," *Review of Armenian Studies*, no. 22 (2010): 135.

6 Justin McCarthy, Ömer Turan, Cemalettin Taşkıran ve Esat Arslan, *1915 Van'da Ermeni İsyanı* (Tarih & Kuram Yayınları, 2015).

5) Why Turkey And The Great Majority Of The Turks Do Not Define The Tragic Events Of 1915–1916 As Genocide?

The Turkish government and overwhelming majority of Turks, as well as some other governments[7] and many scholars or experts, reject the qualification of the tragic events of 1915 as "genocide", because the *sine-qua-non* legal conditions laid down by the 1948 Genocide Convention do not exist.

Some Turkish experts share the opinion that the tragic events of 1915 may be labelled criminal acts as cited in the Ottoman Penal Code; others qualify these events as "mutual inter-ethnic killings".

The term "genocide" is a legal term. "Genocide is a legal characterization of an event. Genocide is not an event itself. It is an epithet."[8]

6) What Are The Characteristics Of Genocide?

6.1) Protected Groups

The protected groups by the Convention are national, ethnical, racial, or religious groups. Other groups, such political groups or cultural groups or sexual groups are not protected by the Genocide Convention. Furthermore, "Victims of a response to a rebellion are not qualified as victims of genocide, no matter what."[9]

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7 The United Kingdom (UK-British) government on many occasions officially declared its position on the matter. On 14 April 1999, the Foreign Office spokesperson Baroness Ramsay of Cartvale stated that "the British government has not recognized the events of 1915 as indications of genocide" ; on 7 February 2001, acting on behalf of the British government, Baroness Scotland of Asthal declared: "The government, in line with the previous British governments, have judged the evidence not to be sufficiently unequivocal to persuade us that these events should be categorized as genocide as defined by the 1948 United Nations on genocide. ... The interpretation of events in Eastern Anatolia in 1915–1916 is still the subject of genuine debate among historians. The UK government did not accept the 1915 events as qualifying as genocide."

The Israeli government refused to accept the parallelism between the Holocaust and the tragic events of 1915. The Ambassador of Israel, Rivka Kohen, in Yerevan declared on 7 February 2002 during a press conference that; "the 1915 events couldn't be considered genocide because the main killings in these events were not planned and the Ottoman government had no intention to destroy a nation or a group of people as such. As a well-known fact many people from the Armenian and Muslim groups had lost their lives in these events. The Holocaust is unique. At this stage nothing should be compared with the Holocaust." On 10 April 2001, the Nobel Prize-winning Israeli Foreign Minister Shimon Perez said that "the fate of Armenians in Anatolia was a tragedy, not genocide." He added, "Armenian allegations are meaningless. We reject attempts to create a similarity between the Holocaust and the Armenian allegation. If we have to determine a position on the Armenian issue it should be done with great care not to distort the historical realities."

8 "The Address Delivered By Mr. Tal Buenos At The Luncheon Hosted By NSW Parliamentary Friends Of Turkey - New South Wales Parliament, 24 November 2014," *Center for Eurasian Studies (AVİM)*, Blog No: 2014/32, December 8, 2014, https://avim.org.tr/Blog/THE-ADDRESS-DELIVERED-BY-TAL-BUENOS-NSW-PARLIAMENT

9 ""The Address Delivered By Mr. Tal Buenos Turkey…"

6.2) What are the guilty acts (*actus reus)* foreseen by the Genocide Convention?

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

Some authors maintaining the genocide thesis and their supporters disregard the wording of the Genocide Convention and include the seizure of property in the genocidal acts; "Seizure of property" is not included among the guilty genocidal acts listed by the Convention.

6.3) *Dolus specialis* – Special Intent

The most important characteristic of the Genocide Convention is that, for the crime of genocide to exist, acts must have been committed with the intent to destroy the protected groups as such. The sole existence of a guilty act is not sufficient to qualify the crime as "genocide". As such, "special intent" is the main defining criteria established by the Convention. The International Court of Justice - ICJ (in its verdict on Croatia/Serbia case) clearly underlined that the existence of one or more guilty acts enumerated in Article II of the Convention are not sufficient to qualify the events as "genocide".[10] The existence of special intent would have to be proven. This is why the key words "intent to destroy as such" has been added to Article II of the Genocide Convention.

7) The Main Disagreement Between Turkey And Armenia On The Issue Of Genocide

The legal aspect of the genocide allegation is the main point of disagreement and reason of conflict between Turkey and Armenia (as well as between overwhelming majority of Turks and the Armenians and their supporters). For the Armenians, "Turkey's refusal to recognize and accept the reality of Armenian genocide" amounts to "denial of historical truth". For them, the mere existence of one or more of the acts listed in Article II of the Convention equals

10 Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide (Croatia V. Serbia) (International Court of Justice (ICJ), Judgement of February 3, 2015).

genocide. What the Armenians do not want to acknowledge and accept, is that from a legal point of view, the existence of the *actus reus* is not enough to call an event as genocide. This aspect was clearly and definitely underlined by the ICJ by its Croatia-Serbia verdict.

Furthermore, the Armenians do not want to acknowledge the mutual killings between the Ottoman Armenian and Muslim population**;** as mentioned above**,** the result of the inter-ethnic killings were unprecedented horror. Also, "...the Armenian narrative does not dwell much on the experiences of the Muslims of the Balkans and the Caucasus who likewise underwent the same process as did the Armenians and others in 1915."[11]

For an event to be accepted as "historical truth" in the context of the legal term "genocide", it should be certified by the decision of a competent court. For example, the Holocaust is regarded and accepted by the judiciary as historical truth because of the existence of the 1946 verdicts of the International Military Tribunal at Nuremberg.

8) Political Use And Abuse Of The Term Of Genocide

Some historians, sociologists, politicians, and even political scientists who deal with these issues tend to describe almost any incident which involves a significant number of loss of life as genocide. As such, they purposely mislead those who are not familiar with the law.

The 1948 Genocide Convention does not allow for convictions on the grounds of genocide by legislatures, scholars, pamphleteers, politicians, or others. Qualifying the events of 1915 as genocide equals to detaching genocide from its legal definition and using it for political and/or moral purposes. Whether it is sound to keep hammering on a legal term based on non-legal considerations is doubtful and could lead to a devaluation of the norm itself.

9) Legal Evaluation Of The Armenian Genocide Accusation

9.1) Retroactivity of the Genocide Convention

Some authors argue that the 1948 Genocide Convention can be applied retroactively to the "1915 Armenian Genocide" because most provisions of the Convention are declarative of pre-existing international law.[12]

11 Nareg Seferian, "The Clash Of Turkish And Armenian Narratives. The Imperative For A Comprehensive And Nuanced Public Memory," *Istanbul Policy Center-Sabancı University Publication* (May 2017): 5.

12 de Zayas, "The Genocide Against the Armenians 1915-1923…"

This is not a valid legal argument. Neither those provisions are declarative of pre-existing international law, nor relevant State practice and *opinio juris* support it.

The Convention does not apply retroactively. The Convention entered into force on 12 January 1951 for Turkey and Turkey is only bound with regard to events subsequent of 12 January 1951.[13]

9.2) Statute of Limitation

Authors maintaining the genocide thesis argue that the statute of limitation does not apply to genocide and crimes against humanity. They claim that the Republic of Turkey is responsible and should pay compensations to the Armenians. This argument is based on the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. But the said Convention deals with individual criminal responsibility, not with State responsibility, and as such, is not applicable to reparation claims against any State.

In fact, the principle of extinctive prescription is widely accepted as a general principle of international law in the sense of Article 38.1.c. of the Statute of the ICJ.

9.3) *Nulla poena sine lege*

This is one of the principles governing international criminal law and means no person shall be convicted by a court may be punished without a law foreseeing such punishment.[14] Authors maintaining the genocide thesis tend to ignore this principle.

13 Other governments share the non-retroactivity of the Genocide Convention. For example, in response to the call for the UK to recognize the events of 1915-1916 as genocide, the British government stated in 2006 that "… it was not possible at the time of the events to label the massacres as genocide within the term of the Convention."

14 1998 Rome Statute of the International Criminal Court (ICC) - Article 23: Nulla poena sine lege: "A person convicted by the Court may be punished only in accordance with this Statute."

9.4) *Nullum crimen sine lege*

Similarly, a person shall not be criminally responsible "...unless his or her conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court."[15]

9.5) Duality Of Responsibility In International Law

Some authors maintaining the genocide thesis persistently use arguments and examples of individual criminal responsibility and try to apply them to the question of state responsibility, neglecting the duality of responsibility in international law. The question of individual responsibility is in principle distinct from the question of state responsibility.

The Genocide Convention confirms individual criminal responsibility for an international crime; the Convention does not create international obligations of a state vis-a-vis its own citizens.[16]

On this issue, the ICJ ruled in Bosnia-Herzegovina "genocide case" the following:

> "The feature of the duality of international responsibility is reflected in Article 25 para. 4 of the Rome Statute for International Criminal Court: No provision in this Statute relating to individual responsibility shall affect the responsibility of States under international law."[17]

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15 1998 Rome Statute of the International Criminal Court (ICC) – Article 22: Nullum crimen sine lege:

"1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute."

16 Unpublished legal opinion by Professor Dr. Stefan Talmon (Director of the Institute for Public International Law, University of Bonn, Germany; legal adviser of the Turkish Government during the Perinçek vs. Switzerland case in ECtHR).

17 1998 Rome Statute of the International Criminal Court (ICC) – Article 25: Individual criminal responsibility:

"1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

9.6) *Ne bis in idem*

This principle means that no person shall be tried with respect to conduct which formed the basis of crimes for which the person has already been convicted or acquitted by a competent court.[18]

9.7) Crimes Against Humanity[19]

Some scholars recommended that the Armenians drop their accusation of genocide and embrace the qualification of crimes against humanity with regard to the tragic events of 1915-1916, because the proof of a special intent (*dolus specialis*) is not required for the crimes against humanity.

The *sine qua non* exigence of special intent for the crime of genocide and the impossibility to prove it after hundred years (none of the suspects are alive) brought the concept of "crimes against humanity" to the agenda of some scholars and politicians who embrace the "Armenian Genocide" thesis. They argue that the concept of crimes against humanity was tabled already in 1915

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

18 1998 Rome Statute of the International Criminal Court (ICC) – Article 20: Ne bis in idem:

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice."

19 1998 Rome Statute of the International Criminal Court (ICC) - Article 7: Crimes Against Humanity

in a Joint Statement issued on 24 May 1915 by the Ambassadors of France, the UK, and Russia to the Ottoman Porte. This is often referred to as evidence in support of the claim of a violation of international law giving rise to reparation claims. This statement claims that;

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

This statement has no legal basis; it is politically motivated. The legal concept of crimes against humanity did not exist in 1915 and was only codified by the Rome Statute which entered into force on 1 July 2002 that created the International Criminal Court (ICC).[20]

The International Criminal Court in its ruling for the Former Yugoslavia in the Tadic Case held that "crimes against humanity were a new category of crime created by the Nuremberg Charter."

The Rome Statute is not retroactive. In 1915, the Ottoman State's treatment of its citizens was considered an internal affair of the state which was beyond the reach of international law.

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20 The differences between "genocide" and "crimes against humanity":

a) The proof of special intent (dolus specialis) is not required to establish a crime against humanity;

b) The list of protected groups is enlarged to embrace political, cultural groups;

c) *Actus reus* (guilty acts) list of the crimes against humanity is much longer.

For the establishment of a crime against humanity a "widespread or systematic attack directed against any civilian population with knowledge of the attack" is required.

The list of guilty acts with regard to crimes against humanity is as follows:

a) Murder;

b) Extermination;

c) Enslavement;

d) Deportation or forcible transfer of population;

e) Imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law;

f) Torture;

g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

i) Enforced disappearance of persons;

j) The crime of apartheid;

k) Other inhuman acts of a similar character intentional causing of great suffering or serious injury to the mental or physical health.

9.8) The Competent Tribunal

The crime of genocide -as any other crime- can be legally determined only by the judges of a competent tribunal on the basis of prescribed legal criteria and after a fair and impartial trial.

Article VI of the 1948 Genocide Convention with regard the competent tribunal reads as follows:

> "Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

The issue of a competent tribunal had been extensively debated by the International Preparatory Conference of the 1948 Genocide Convention. The question of determining the competent tribunal was resolved after lengthy discussions, and the above-mentioned text was approved. During the discussions, a proposal for "universal repression" was rejected. Universal repression allows the judging of the suspects by any tribunal of any state.

9.9) Customary Prohibition Of Genocide

Authors who maintain the genocide thesis and their supporters argue that "the Genocide Convention merely confirm existing international law" and "there is no valid argument in international law that would allow the exclusion of Armenians from the application of the Convention."[21]

This argument has no legal basis. The 1948 Genocide Convention does not codify pre-existing customary international law obligation of states in 1915, as the crime of genocide did not exist even as a concept. "Genocide" found its juridical consecration only after 1948.

At the time of the First World War, individual criminal responsibility in international law was unknown.

9.10) Right To Property

Some scholars maintaining the genocide thesis claim that Armenians' right to property was violated by the Ottoman State through expropriation measures, and this act *per se* is a genocidal crime.

21 de Zayas, "The Genocide Against the Armenians 1915-1923…"

This view is not shared by the judiciary; it is widely accepted that taking of property by a state from its own nationals does not violate international law.

The European Court of Human Rights (ECtHR) held with regard to acts of expropriation taken place in 1940's that "… expropriations were carried out in respect of state's own nationals and are therefore not governed by international law".[22]

Finally, as we mentioned above, loss of property or expropriation is not cited as *actus reus* by the Article II of the 1948 Genocide Convention and therefore cannot be qualified as "genocide".

Concerning right to property claims presented under International Covenant of Civil and Political Rights (ICCPR); the right to property is not protected by the ICCPR. Allegations concerning a violation of the right of property are not admissible *ratione materiae* under Article 3 of the Optional Protocol of the ICCPR.

The confiscation or expropriation of property is considered an instantaneous act without continuing effects. Court decisions that confirm past confiscations based on laws adopted prior to the entry into force of the Optional Protocol of the ICCPR do not in themselves constitute a continuing violation of the Covenant.

Similarly, a state's failure to compensate the claimant for the confiscation of his/her property after the entry into force of the Optional Protocol of the ICCPR does not qualify as a continuing effect as such.

Articles 2(3) and 9 (5) of the ICCPR are accessory in nature and do not provide for an independent free-standing right to a remedy or compensation.

If the events constituting violations of the Covenant had occurred before the entry into force of it, the request for compensation will be considered inadmissible *ratione temporis*.

The confiscation of Armenian property during the beginning of 20th century is not subject to Human Rights Committee's jurisdiction, neither *ratione materiae* nor *ratione temporis*.

With regard to complaints presented to the ECtHR, with regard the right to protection of property; this right is covered by Article 1 of the First Protocol to the European Convention of Human Rights (ECHR). In general terms,

22 Unpublished legal opinion by Professor Dr. Stefan Talmon.

ECHR can receive communications and can order restitution. It can also order compensation and other forms of just satisfaction instead of restitution.

However, this right cannot be interpreted as imposing any general obligation on the Contracting States to return or restore property which was transferred to them before they ratified the Convention.

Turkey has no obligation under Article 1 of Protocol No.1 to enact laws providing for rehabilitation, restitution of confiscated property or compensation for property lost by Ottoman citizens.

Considering that Ottoman Armenians and their legal successors have been unable to exercise any owner's right in respect of the properties in question, not just for decades but for over a century and that the transfer of Ottoman Armenian property is considered legally valid in Turkey, any application claiming a violation of the right to the protection of property in Article 1 No. to the ECHR will have to be dismissed as being incompatible *ratione materiae.*

9.11) Claims And Allegations Of Human Rights Violations As The Basis For Reparation, Restitution Of Property, Compensation Claims And/Or Demands For Formal Apology

Complaints and communications of human rights violations may comprise the right to existence; the right to protection of life, health, liberty and property; the right of practicing any religion; the right of immigration and the like.

The Committees established under various United Nations human rights treaties lack jurisdiction *ratione personae* to consider any inter-state communication brought by Armenia against Turkey. In 1915, as far as international law is concerned, apart from morality, there was no restriction whatsoever, upon a state to abstain from "abusing the rights" of its own citizens. Because the individual was not recognized as a subject of international law, it did not hold rights under international law that could be violated. The international law of human rights developed only after the Second World War.[23]

Both the substantive provisions of UN human rights treaties and the provisions providing for the competence of the committee cannot be applied retroactively.

23 Unpublished legal opinion by Professor Dr. Stefan Talmon.

9.12) Allegations Of Destruction Of Armenian Cultural Property By The Republic of Turkey

Some Armenians and their supporters argue that Turkey has engaged in continuation of the crime of genocide against the Armenians through "deliberate destruction of Armenian properties in its territories, the destruction of Armenian memory, negation of historical truth and rehabilitation of murderers".[24] None of these acts meet the definition of "genocide". The list of genocidal acts defined in Article II of the 1948 Genocide Convention is an exhaustive one. Proposals to introduce the concept of "cultural genocide" during the Preparatory Conferences of the Convention in 1948 were voted down. In the Bosnian Genocide trial, the ICJ concluded that the destruction of historical, religious, and cultural heritage cannot be considered to be a genocidal act.[25]

9.13) Forced Migrations

Regarding claims concerning forced migrations (often referred to as "deportations"[26]), the UN Human Rights Committee recently considered claims on the subject and other acts of political repression in the 1940's to be

24 According to Vakhan Avedian, who has written an essay published by the *European Journal of International Law*: "The Republic of Turkey continued practicing the same internationally wrongful acts, even expanding the massacres beyond its own borders into the Caucasus and the territories of the independent Republic of Armenia..." One can assume that Avedian intended to refer to the 1920 Turco-Armenian war. Much has been written about that tragic period. One of the accurate evaluations of that period was made by the then Prime Minister of Armenia, Hovannes Kachaznuni, who wrote: "Despite these hypotheses there remains an irrefutable fact. That we had not done all that was necessary for us to have done to evade war. We ought to have used peaceful language with the Turks whether we succeeded or not, and we did not do it. … With the carelessness of inexperienced and ignorant men we did not know what forces Turkey had mustered on our frontiers. When the skirmishes had started the Turks proposed that we meet and confer. We did not do so and defied them." Those who are interested in the realities of that time should read this essential testimony. This may help refresh memories. Furthermore, we should add that the Russian, US, British, and Turkish archives are full of documents which prove the atrocities committed by Armenian forces in Eastern Anatolia during that period, a fact which some Armenian leaders and politicians proudly speak about and do not deny (although they portray these acts in the context of struggle for Armenian liberation and independence). After the end of the Turco-Armenian War, the Treaty of Kars was signed on 13 October 1921 by the delegates of Armenia, Azerbaijan, Georgia, Russia, and Turkey. The intervention of the then Minister of Foreign Affairs of Armenia, Mr. Muravian, who attended the Kars Peace Treaty Conference on 22 September 1921, is also worth mentioning to reflect on Armenia's official position. He said; "We have not come here with antagonistic feelings and we have no intentions of presenting here the controversial issues we have inherited from the former nationalist governments. We are only admirers of the brave struggle which the preserving people of Turkey engaged in. We carry a sincere wish, and we are absolutely convinced that a nation which defends its country will be victorious and the enemy will be defeated."

25 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (International Court of Justice (ICJ), Judgment of February 26, 2007).

26 Mehmet Oğuzhan Tulun, "The Events of 1915 and the Word 'Deportation'," *Center for Eurasian Studies* (AVİM), ANALYSIS No: 2015/2, February 8, 2019, https://avim.org.tr/en/Analiz/THE-EVENTS-OF-1915-AND-THE-WORD-DEPORTATION

inadmissible *ratione temporis*. The death and disappearance of a person during the events of 1915 is outside the jurisdiction *ratione temporis* of Human Rights Committee.

9.14) Responsibility Of Turkey For Wrongful Acts Perpetrated In The Past

Armenians and some of their followers request that draft Articles codifying the Responsibility of States for Internationally Wrongful Acts should be applied with regard to the genocide claims and Turkey should pay compensation to them.

The Draft Articles in question were drafted by the International Law Commission (ILC) in August 2001 and adopted by the UN General Assembly under Resolution 56/83. This Resolution brought the draft articles to the attention of governments without prejudice to their future adoption or other appropriate action. In other words, this resolution is not a binding legal instrument for state parties.

Some Armenian jurists continue to refer to this document as the legal basis of their reparation claims. Mr. Vaghan Avedian, in an article published by the *European Journal of International Law*, asserts that there is a succession and continuation of responsibility from the Ottoman State to the Republic of Turkey and that Turkey must assume full responsibility for and should repair the injury caused by the Ottoman State.

The legal situation is as follows:

After the First World War and the War of Liberation, Turkey concluded international agreements to put an end to the wars and insurgencies which had disrupted peace in the country as well as in the region since 1914.

Some of these agreements contained amnesty clauses. The amnesties aimed at covering the humanitarian dimensions of the tragic past.

On that matter, *pacta sunt servanda* and *lex specialis* principles are governing the liabilities and legal responsibilities of the Republic of Turkey.

10) Bilateral and Multilateral Treaties and Agreements to which Turkey is a Party

Let us here briefly examine the Lausanne, Kars, and Ankara Treaties, as well as the Agreement between the US and Turkey on compensation demands with regard the legal responsibilities of Turkey. These international agreements are

qualified *lex specialis* (special rules) as foreseen in Article 55 of the ILC Draft treaty, which clearly recognizes that the responsibility of a state with regard the existence on an internationally recognized wrongful act (if any) is governed by special rules of international law if such special rules are provided for by bilateral or multilateral treaties or other arrangements.

10.1) The Treaty of Lausanne

The Treaty of Lausanne, signed on 24 July 1923, includes a "declaration of amnesty" covering all Turkish nationals, and reciprocally the nationals of other signatory powers of the Treaty of Lausanne, who were arrested, prosecuted, or sentenced prior to 20 November 1922.

In addition, the Treaty of Lausanne, ending the state of war between Turkey and other powers, decreed that former Ottoman citizens (including Armenians) who resided in countries that were separated from Turkey by Article 31 of the Treaty and who had gained citizenship of those countries by means of Article 30, would have the right within two years to choose Turkish citizenship. All the Armenians who were outside the borders of Turkey as of 24 July 1923 and who chose to retain Turkish citizenship obtained the right to return to Turkey if they so wished. Article 6 of the Amnesty Declaration attached to the Treaty states the following:

> "The Turkish Government which shares the desire for general peace with all the Powers, announces that it will not object to the measures implemented between 20 October 1918 and 20 November 1922, under the protection of the Allies, with the intention of bringing together again the families which were separated because of the war, and of returning possessions to their rightful owners."

It is apparent that this Article concerned the individuals who were forced to immigrate and who returned to their homes during the period of armistice and occupation. At that time, Turkey announced that the implementation of the measures proclaimed under the occupation powers would be maintained without modification. According to US archives, 644,900 Armenians returned and settled in Anatolia after the war, even before the Treaty of Sèvres was signed. The Treaty of Sèvres was not ratified and did not enter into force. By returning to Ottoman territories in 1918–1919, many Armenians reacquired some of the property that they had left behind during 1915 transfer of population. For instance, the number of properties returned by 30 April 1919 was recorded as 241,000. This number included approximately 98 per cent of the immovable property. Records also state that some problems and injustices occurred during the application of the regulations.[27] Challenging such acts is

judicially possible. Two recent decisions of the Turkish local courts in Adana and in Istanbul (Sarıyer district) which returned properties to one Lebanese and one Turkish citizen of Armenian origin prove that those who possess appropriate documents may present their cases to a competent Turkish court, and if unsatisfied (with the outcome), they may as well take the file to the European Court of Human Rights.

10.1.1) Liquidation Of Ottoman Debts And Other Economic Clauses Of The Treaty Of Lausanne

Articles 46–63 of the Treaty of Lausanne regulate the liquidation of the debts of the Ottoman State. The Republic of Turkey paid all the debts of the Ottoman State.

According to Article 58 of the Treaty, the parties to the treaty reciprocally renounced all claims for the loss and damage suffered between 1 August 1914 and 6 June 1924 as a result of acts of war or measures of requisition, sequestration, disposal, or confiscation.

Articles 65–72 of the Treaty incorporate economic clauses which protect the rights and legal interests of those Ottoman citizens who were subjected to relocation. Article 74 of the Treaty contains special provisions regarding insurance policies. The following take into account those provisions.

10.2) Treaties of Moscow and Kars

The Moscow Treaty of 16 March 1921 was signed between Turkey and Russia. Thereafter, the Treaty of Kars was concluded between Turkey, Armenia, Azerbaijan, and Georgia on 13 October 1921. The Treaty of Kars, which was signed before the Treaty of Lausanne, settled the conflict between Turkey and Armenia, as well as other Caucasian republics. That Treaty stated in Article 15 that "each of the Contracting Parties agrees to promulgate complete amnesty to citizens of the other Party for crimes and offenses committed during the course of the war on the Caucasian front".

The "murders and atrocities" that occurred were by no means limited to actions of the Turks and other Muslims against Armenians. The investigation by Captain Emory H. Niles and Arthur E. Sutherland in eastern Anatolia in 1919 led them to conclude that; "Armenians massacred Moslems with many refinements of cruelty, and that Armenians are responsible for most of the destruction done to towns and villages".

27 Tacar, "*Türkiye'nin Başına Ermeni Tsunamisi Çökecekmiş*" ; Pulat Tacar, "Soykırımı Siyasal veya Tarihsel Değil, Hukuksal Bir Kavramdır" (Sevk ve İskanın Yüzüncü Yılında Ermeni Meselesi ve 1915 Olayları Uluslararası Sempozyumu, İstanbul, 2015), 35–69.

10.3) The Treaty of Ankara Concluded with France

Some of the tragic events took place in Ottoman territories occupied by France, where Armenian groups cooperating with France massacred the Muslim population. The Ottoman Muslims retaliated. The Ankara Treaty signed on 20 October 1921 between France and Turkey had foreseen the parties promulgating total amnesty for the crimes committed in those occupied territories. Article 5 of the Treaty reads as follows: "both sides will announce a general amnesty in the evacuated area, following the occupation of this area".

Once again, the amnesty was far from covering only Turks. French courts martial sentenced many Armenians for banditry, robbery, rape, and assassinations against Turkish civilians, and more generally the large scale of atrocities and destruction -by arson in particular- have been confirmed by numerous French, British, and American sources, in addition to Turkish records.

Finally, with regard to the international responsibilities of Turkey, the above-mentioned treaties of Kars, Ankara, and Lausanne constitute *lex specialis* in legal terms.

10.4) Settlement of Claims Agreement with the United States of America

Turkey settled also the issue of the Ottoman debts to citizens of the US and paid 899,840 US dollars to the Government of the United States for distribution to its citizens on the basis of the Agreement of 24 December 1923 and Supplemental Agreements concluded and implemented between the US and Turkey. The Supplemental Agreement of 25 October 1934 concluded between the two governments provided for the settlement of the outstanding claims of the nationals of each country against the other.

Article II of the agreement is as follows:

> "The two Governments agree that the Republic of Turkey will be released from liability with respect that, by the payment of the aforesaid sum [$1,300,000], the Government to all of the above-mentioned claims formulated against it and further agree that every claim embraced by the Agreement of December 24, 1923, shall be considered and treated as finally settled."[28]

28 The dossiers of the claims had to contain the documents establishing the nature, origin, and justification of each claim. The claims had to be submitted by 15 February 1934. The US government had the right to submit other documents in support of claims up to 15 August 1934. According to a report of Mr. Nielsen, Representative of the US Government; "the provisions of the Agreement between Turkey and the US on the matter are in harmony with international practice. In relation to US and Turkey, they are

11) Can The Armenian Side Bring The Genocide Accusation To The International Court Of Justice?

Some politicians and experts hired by the Government of Armenia, Armenian diaspora or the Armenian Apostolic Church have suggested to bring the "Armenian Genocide" accusation before the International Court of Justice with the hope that the Court may prosecute the application and award reparation and compensation for material and non-material injury.

On this issue it should be underlined,

a) Only states may be parties in cases presented to the International Court for Justice. As such, the Armenian Apostolic Church cannot seek reparation through proceedings before the ICJ.

b) The right to jurisdiction by the Court depends upon the mutual consent of the parties.

It is unlikely that Turkey and Armenia will be able to conclude an agreement to bring Armenian reparation claims before the ICJ.

12) Can Armenia Use The Possibility Offered By The Article IX Of The 1948 Genocide Convention?

The Article IX of the 1948 Genocide Convention reads as follows:

> "Disputes between Contracting Parties relating to the interpretation and application of fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any other acts enumerated in Article III shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

For decades, the Republic of Armenia has had the opportunity to bring such a claim before the ICJ; but it did not. Why? Because Armenian authorities knew well that, if put forward, such a claim will be rejected by the Court. The Armenian Government is well aware that the non-retroactivity clause codified

engaged to consider the result of the proceedings of the (claims settlement) commission as a full, perfect and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred or laid before the said commission." The last US report in 1937 finally estimated that the principal and interest amounted to 899,840.56 US dollars. It is remarkable that not a single claimant with an Armenian name was considered by the American civil servants to have made a credible case of seizure and/or destruction of property.

in Article 28 of the Vienna Convention of the Law of Treaties applies to the Genocide Convention of 1948.

Any claim concerning events in the territory of the former Ottoman State in 1915 and the following years will automatically raise the temporal scope of the ICJ jurisdiction under the compromising provision of Article IX of the Genocide Convention. This is called *ratione temporis*.

The Convention does not give rise to individual criminal or state responsibility for events which occurred during the early 20th century, or at any time prior the date of entry into force of the Convention.[29]

Furthermore, on its judgement of 3 February 2015 in the Croatian Genocide case, the ICJ addressed at great length the question of its jurisdiction *ratione temporis* under Article IX of the Convention. The Court stated that Article IX was not a general provision for the settlement of disputes; accordingly, the temporal scope of Article IX is necessarily linked to the temporal scope of the substantive provisions of the Convention. The Court held that not only the obligations to prevent and punish genocide, but also the responsibility of a state under the Convention for the commission of acts of genocide is not retroactive. The ICJ stated: "to hold otherwise would be to disregard the rule expressed in Article 28 of the Vienna Convention or in its negotiating history."[30]

13) Can The Armenian Reparation Claim Before The International Criminal Court Be Pursued Through The "Advisory Opinion" Proceedings?

A request for such an advisory opinion could be made by the UN Security Council or the General Assembly.

Under present circumstances, it seems highly unlikely that a majority of 9 members of the Security Council will take the risk of opening "the Pandora's Box", because such step would possibly trigger an unprecedented avalanche of other political moves (for example: the Soviet possibly genocidal acts in

29 When US President Harry S. Truman submitted the Genocide Convention to the US Senate for advice and consent on 16 June 1949, he pointed out that Article IX of the Convention, which speaks of the responsibility of a state for Genocide, shall not be understood as meaning that the state can be held liable for damages for injuries inflicted by it on its own nationals. See: Nehemiah Robinson, *The Genocide Convention. A Commentary* (New York: Institute of Jewish Affairs, World Jewish Congress, 1960), 102-103.

30 1969 Vienna Convention of the Law of Treaties – Article 28: Non-Retroactivity of Treaties: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

Eastern Europe; German actions in Luxemburg, Alsace-Lorraine, or Slovenia etc.)[31]

The act of bringing the 1915 events before the International Court of Justice a century after the tragic events, by way of an advisory opinion, would set a precedent for other historical events. That is why it seems highly unlikely that Armenia could master the necessary majority in the General Assembly for submitting such request to the ICJ. That is the reason why until now, the Government of Armenia has not taken the risk of bringing the matter to the UN.

14) What Are The Chances Of Success Of Any Armenian Reparation Claims Before The International Court Of Justice, The United Nations Treaty Bodies Or The European Court Of Human Rights?

The chances of success of any Armenian reparation claims before the International Court Of Justice, the UN Treaty bodies, or the European Court of Human Rights are almost non-existent under existing international law.[32]

There are insurmountable procedural obstacles for such claims. Even if those obstacles could be surmounted, Turkey could not be held responsible for any material or moral injury resulting from the 1915 events and the following years, as the conduct of the Ottoman State did not violate any obligations under the rules of customary international law applicable at the time[33]

With regards to cases that may be brought before the US (or other country) courts, even if some lower level tribunals in the US assume jurisdiction under the Foreign Sovereign Immunities Act over Armenian property claims, such jurisdiction would not be in conformity with current customary international law on Immunity of the State and would expected to be invalidated by the higher US courts (for the details, see my previous articles on the subject [34] and the recent article written by Aslan Yavuz Şir[35]).

31 Anton Weiss-Wendt, "Hostage of Politics: Raphael Lemkin on 'Soviet Genocide'," *Journal on Genocide Research* 7, no. 4 (December 2005): 551-559. See also: Tal Buenos, "The Many Genocides Of Raphael Lemkin," *Daily Sabah*, September 11, 2014, https://www.dailysabah.com/opinion/2014/09/11/the-many-genocides-of-raphael-lemkin ; Tal Buenos, "The Lemkin Hole in the Swiss Case," *Daily Sabah*, August 1, 2014, https://www.dailysabah.com/opinion/2014/08/01/the-lemkin-hole-in-the-swiss-case

32 Pulat Tacar, "Ermenistan Birleşmiş Milletler Genel Kuruluna Başvursun ve Uluslararası Adalet Divanı'nda Türkiye Aleyhine Dava Açsın," *Ermeni Araştırmaları*, No. 36 (2010).

33 Unpublished legal opinion by Professor Dr. Stefan Talmon.

34 Pulat Tacar, "Türkiye'ye Karşı Hukuk Savaşı: Ermeni Asıllı ABD Vatandaşlarının ABD Mahkemelerinde Türkiye Cumhuriyeti'ne, Türkiye Cumhuriyeti Merkez Bankası'na ve Ziraat Bankası'na Açtığı Davalar," *Ermeni Araştırmaları*, 10. Yıl Özel Sayısı, no. 37-38 (2010-2011).

35 Aslan Yavuz Şir, "Armenian Legal Attempts Are Futile," *Center for Eurasian Studies (AVİM)*, Commentary No: 2017/18, https://avim.org.tr/en/Yorum/ARMENIAN-LEGAL-ATTEMPTS-ARE-FUTILE-1

Any substantial ruling on such claims would be flawed because substantive claims on the legality of an expropriation under international law would have to be addressed not according to present day international law, but according to international law in force at the time the expropriation had occurred. International law did not in 1915 and does not even today regulate the confiscation of property by states of their own citizens

15) Attempts To Condemn Persons Rejecting The Armenian Genocide Accusation

Recently, we witnessed legal and juridical attempts to condemn persons who publicly reject the Armenian genocide allegations. The most known is the Dr. Doğu Perinçek vs. Switzerland case. The Swiss courts condemned Perinçek because he openly rejected the allegation of "Armenian Genocide" and called it "an international lie". The European Court of Human Rights Grand Chamber annulled the decision of the Swiss courts and condemned the Swiss government.

On this occasion, the European Union's Framework Decision of 28 November 2008 on Combatting Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Laws should also be mentioned. This Framework Decision foresees to "condemn denying or grossly trivialising crimes of genocide, crimes against humanity of war crimes". The conditions attached to such condemnation are that the denial must be publicly carried out in a manner likely to incite violence or hatred against the groups or a member of the group defined by reference to race, colour, religion, descent or national or ethnic origin. Other forms of denial or rejection are not condemned and are protected as a freedom of opinion; for example, "to call the Armenian genocide allegation an international lie" is covered and protected by the European Human Rights Convention.

Equally, it must be added that to qualify the tragic events of 1915 "a genocidal act" is also covered and protected under the same umbrella of freedom of expression.

France has tried to amend its legislation enabling French courts to condemn those who reject the accusations of "Armenian Genocide". The French Constitutional Council has annulled twice the laws in question enacted by the French Parliament.[36]

36 Maxime Gauin, "Stopping the Censors: The Final Defeat of Armenian Nationalism at the French Constitutional Council in January 2017," *Review of Armenian Studies,* no. 36 (2017).

16) Conclusions

The "Armenian Genocide" allegations will never be recognized by Turkey and by the great majority of the Turks. Historical and socio-political considerations must be added to legal justifications attached to this rejection.

On the other hand, the Turkish Government and the NGOs as well as the academia should try to better explain the reasons for their rejection to their partners.

I do not expect Armenians and or third parties who support Armenians' genocide thesis to withdraw or retreat from the accusations of genocide; such accusations have become a dogma for them and retracting the accusations has become a taboo subject.[37]

Some other governments, senates, parliaments or local assemblies that embrace the "Armenian Genocide" accusations (and here I am referring to the decision of the German Parliament or the position of the French Governments, as well as the action of the Swiss Government on the Perinçek-Switzerland case), although they must be well aware of the legal arguments surrounding the legal aspects of the crime of genocide. They qualify their recognition as a political act. They may have different political motives, influenced by either historical reasons or current interests - other than being somehow attached to the Armenian-Turkish controversy on this topic.

To their address, I want to quote the last sentence of an article we have written together with Maxime Gauin and published by the *European Journal of International Law*:[38]

> " .... We are of the opinion that those who complain of an internationally wrongful act for which the Turkish Republic is responsible may be well advised to take their complaints to the relevant international institutions, like the UN, the ICJ, the Council of Europe or any other similar establishment, instead of making very questionable accusations."

The above-mentioned final decisions of the European Court of Human Rights on the Perinçek vs. Switzerland case and the verdict of the International Court

37 For example, the Armenian Minister of Foreign Affairs Edward Nalbandian stated on 5 February 2018 that "the Armenian genocide is irreversible… It is obvious that the century-long denialist policy has failed… However, Turkey continues to stick to the stereotypes. Ankara does not shy away to distort not just the historic facts but the current realities, including by misrepresenting the rulings of the European Court of Human Rights."

38 Pulat Tacar and Maxime Gauin, "State Identity, Continuity, and Responsibility: The Ottoman Empire, the Republic of Turkey and the Armenian Genocide: A Reply to Vahagn Avedian," *European Journal of International Law* 23, no. 3 (2012): 821-835 ; For further writing on this point, also see; Tacar,"An Invitation to Truth, Transparency and Accountability…," 135.

of Justice on Serbia/Croatia trial must be regarded as serious setbacks for the supporters of "Armenians Genocide" allegations. With regard to the political aspects of the issue, we are facing an "intractable conflict"[39] and this seems doomed to be a never-ending one.

39 On intractable conflicts see: Ebru Çoban Öztürk, "1915 Events, New Issues and Reconciliation Within the Framework of Persistence of Conflict and the Concept of Intractable Conflict," *Review of Armenian Studies*, no. 36 (2017) ; Daniel Bar-Tal, "Sociopsychological Foundations of Intractable Conflicts," *American Behavioral Scientists* 50, no. 11 (July 2007).

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