American University of Armenia

Master's Paper

"Claims for Reparations: Identification of Legal Precedents Applicable to the Armenian Context."

Student: Lusine Babayan

LLM 2nd year student

Supervisor: Armen Mazmanian

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INTRODUCTION

Reparation - payment for an injury or damage, redress for a wrong done.

Payment made by one country to another for damages during war.

(Black's Law dictionary)[1]

History of the World contains innumerable records of violence committed by humans against humans. Examples of the twentieths century include the Holocaust of World War II, repression and torture under Pinochet's Chile[2], Argentina's 'dirty war'[3], the forced removal of Serbians, Croatians and Bulgarians from their historical territories in Balkans, invasion of Turks in Cyprus in 1975, widespread and systematic persecution under the South African apartheid regime and of course Genocide of the Armenians of 1915. The nations responsible for various processes and procedures sought to respond to these human rights abuses in order to move on from their pasts.

From the early times people were eager to get compensation for their defraudations or deprivations, which we can find in Laws of Twelve Tables of Roman Empire, particularly in section VIII Torts[4]. Reparations have different types in different spheres and brunches of Law. The right to reparations for wrongful acts has long been recognized as a fundamental principle of law essential to the functioning of legal systems. In 1961, Justice Guha Roy of India wrote:

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[1] "*Black's Law dictionary" Abridged 6-th edition,. St Paul Minn, West Publication Co, p. 900*

[2] Regime in Chile in 1970-s. Pinochet was a Chilean army general who was head of state as self-appointed president, and president of Government Junta of Chile. The political structure established to rule Chile following the overthrow of President Salvador Allende in the Chilean coup of 1973; http://ru.wikipedia.org/wiki/%D0%9F%D0%B8%D0%BD%D0%BE%D1%87%D0%B5%D1%82,_%D0%90%D1%83%D0%B3%D1%83%D1%81%D1%82%D0%BE

3 The Dirty War, from 1976-1983, was a seven-year campaign by the Argentine government against suspected dissidents and subversives; http://en.wikipedia.org/wiki/Dirty_War

[4] http://archiv.jura.uni-saarland.de/Rechtsgeschichte/Ius.Romanum/english.html

"That a wrong done to an individual must be redressed by the offender himself or by someone else against whom the sanction of the community may be directed is one of those timeless axioms of justice without which social life is unthinkable." [5]

The obligation to provide reparations for human right abuses, especially gross violations of human rights, has more recently been recognized under international treaty and customary law, decisions of international bodies such as the United Nations Human Rights Committee [6]and Inter-American Court of Human Rights[7], national law and practices and municipal courts and tribunals. Repartition is the basic term which describes the various methods available to a state for discharging or releasing itself from such responsibility.

The basic principals governing reparation were established by the Permanent Court of International Justice [8]as follows:

"...reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear: the award, if need be, of damages for loss sustained which not be covered by restitution in kind or payment in place of it - such are the principals which should serve to determine the amount of compensation due for an act contrary to international law... " [9]

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[5] Justice Guha Roy one of the co-authors of "Land reforms and distributive justice". Printed in India ay New Gian Offset Press, Felhi-110035,1991 by S.N. Mishra.

6 The Office of the High Commissioner for Human Rights (OHCHR) works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system : UN Charter-based body. http://www2.ohchr.org/russian/index.htm

[7]The Inter-American Court of Human Rights is an autonomous judicial institution based in the city of San Jose, Costa Rica. Together with the Inter-American Commission on Human rights, it makes up the human rights protection system of the Organization of American States (OAS), which serves to uphold and promote basic rights and freedoms in the Americans. http://en.wikipedia.org/wiki/Inter-American_Court_of_Human_Rights

[8] Permanent Court of International Justice (PCIJ), the predecessor of the International Court of Justice, was provided for in the Covenant of the League of Nations. It held its inaugural sitting in 1922 and was dissolved in 1946.

[9] From Statute of Permanent Court of International Justice, *International Law, 6-th edition*, Malcolm N. Show QC, *Cambridge university Press, p. 410*

As it is seen from above citation there are different kinds of reparations, each of which has its definition and application. This work will expose these forms and definitions and show their application based on examples of International experience.

Another phenomenon of modern history is the forced removal of millions of humans from their places, removal of indigenous population from their native territories. Forced removal of people from their homes bears different nature: political, economical, racial, religious, or cultural reasons. While removing people from their homes by force did not begin suddenly in the nineteenth or twentieth century, the combination of the development of a global economy, of modern race-thinking, of world wars, of the success of popular and national sovereignty, and of new technological means of physically resettling and transporting peoples has given this phenomenon a new character.

Removal has been a global phenomenon, and therefore this work treats it within the frame of world history and international comparison, in particular the comparison of several cases of International Court of Justice.

This work will be put a main stress to group rights, which are closely connected with the principals of equality and non-discrimination, based on principals of international law and reparations as a redress of violations of their rights. Principals of International law are universally accepted today as essential elements of modern democracy and of the rule of law. [10] Although between the two World Wars it was recognized the existence of group rights and the rule of non-discrimination, it was after the establishment of the Unaided Nations (UN), the successor of the League of Nations, that started the creation of international legislation form the new prospective, like treaties, declarations, resolutions, one aims of which were directed to protect the minorities rights and provide them equitable remedy. The prohibition of discrimination, already become *jus cogens*, [11] namely a peremptory norm of international law from which no derogation is

[10] International law Cases and Materials, *4-th edition,* Lori Fisler Damrosch, *West Group, St. Paul, Minn., 2001*
[11] International Law Reparations, Author:Philip Marshall Brown. Source: The American Journal of International Law,Vol.28,No.2 (Apr.,1934),*pp.330-334*
Published by American Society of International Law

permitted.[12] There is coherence between subject such as group and collective rights, protection of racial discrimination and instigation, protection of collective identity, apartheid, the rights of indigenous peoples and tribes and other issues related to the position of intermediate groups or communities within a society. The listed issues are different from other aspects of international law, where the state or the individual are the main central actor. We will look from the prospective of an autonomous branch of international law and the law of human rights, which means that we should give special approach to it to identify the role to reparations and its possibility, especially to the Armenian context.

Many of the issues are razing from weakening of peoples' relation, group frictions, discrimination against minorities or disregard of the collective objectives and needs of ethnic or cultural groups, in addition to the violation of the rights of their individuals within the state.

Genocide, which has periodic character in several parts of the world, despite the 1948 Convention[13], racism, ethnic cleansing, apartheid are all the terms bearing terrible association, related to some of the greatest tragedies of our time. Other problems such as forced assimilation or removal, cultural or linguistic restrictions, discrimination are also a source of suffering, conflict, and threaten the external and internal peace of national in all parts of the world.

1. **What are the types of reparations and whether there are examples of their implementation in the world history?**

There are some interesting facts of how the reparations enforced. What are their forms in practice? Do they find their implementations when there is an occurrence of interstate conflict?

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http://www.jstor.org/stable/2190934

[12] Akehurst's, *Modern Introduction to International Law*, 7-th edition, Peter. Malanezuk, *London New-York, 1997, p. 130-140.*

[13] *Convention on the Prevention and Punishment of the Crime of Genocide*. Adopted by Resolution 260 (III) A of the *United Nations General Assembly* on 9 December 1948.

What are the instances where victims can bring their claims? What are the main Treaties and legal acts, which regulate the reparations?

To answer these questions one should start from the definition of the term of "reparation", to later set examples of their implementation in the world practice.

One of definitions of Reparation, which is given in International Law Encyclopedia, is the following *"Payment in money or materials by a nation defeated in war".*[14]Black's Law Dictionary provides the following *"Several states have adopted the Uniform Victims Reparation Act, e.g. persons suffering losses because of violations may seek reparations under acts against violator"*[15] These dictionaries stressed the monetary compensations; rather it can be non-monetary, moral compensation or satisfaction. But all of them are directed to restitutions of rights against violators.

Any persons and groups, who have suffered from crimes against humanity, including World War I and II, have attempted to sue governments or companies to obtain reparations. In contrast to the extensive international law and practice on state reparations, there is very little in law or practice on obtaining reparations from individual perpetrators in international proceedings. Before the Rome Statute of the International Criminal Court (ICC), no international criminal tribunal was expressly authorized to award victims reparations other than restitution. It is worthy to mentioned that the jurisdiction of the Court extends as it is envisaged in the statute "only with respect to crimes committed after the entry into force of this Statute".[16] The Court is dealt with international violations of rights which are the permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crimes of aggression (although it cannot currently exercise jurisdiction over the crime of aggression). [17]

The ICC can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the court by the United Nations Security Council.

[14] Encyclopedia BRITANICA, eb.com
[15] 7. USCA 818, Black's Law Dic., 1991
[16] Rome Statute , *Articles 11, 12 "Jurisdiction ratione temporis"*
[17] Statute of ICC, Article 5 (2)

The Security Council resolution establishing the *ad hoc* International Criminal Tribunal for Rwanda (ICTR) promised to ensure that violations would be "effectively redressed," [18]but the statute of the ICTR limits redress to restitution as a punishment additional to, but not as a substitute for, imprisonment. Neither it nor the statute for the *ad hoc* Tribunal for the Former Yugoslavia (TFY)[19]empowers the courts to award compensation or measures of rehabilitation to victims of the crimes being prosecuted, but both statutes foresee the possibility of compensation to victims by national courts in national proceedings.

In contrast to the limited mandates of the *ad hoc* tribunals, the statute of the ICC expressly includes the possibility for victims to obtain reparations from convicted criminals (Rome Statute, *Article 75*). The court has discretion to order the perpetrator to provide the victim "restitution, compensation, rehabilitation and other forms of remedy." [20] Non-monetary awards such as an apology also could be provided. Recognizing that many of those convicted of international crimes may be poor or without any assets, *Article 79* of the Rome Statute establishes a trust fund "for the benefit of the victims of crimes within the jurisdiction of the Court" and "of the families of such victims."

Apart from international criminal courts, international tribunals for the protection of human rights may hear cases, judge violations, and afford reparations[21]. Such human rights cases cannot be brought against individuals, but only against the state responsible for the violations.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which went into effect on September 3, 1953, was the first to create an international court for the protection of human rights and a procedure for individual denunciations of human rights violations. The European Court of Human Rights renders judgments in which it may afford "just

[18] *Dunoff*, International Law; Norms, Actors, Process Problem-oriented Approach, *second edition, Aspen publishers*
[19] *Dunoff*, International Law, *pp111-130, 133-147*
[20] Rome Statute , *Article 75* "Reparations to victims"

[21] http://en.wikipedia.org/wiki/Category:International_courts_and_tribunals

satisfaction" [22]to the injured party, including compensation for both monetary losses and non-monetary (moral) damages. In the European Court of Justice of the European Union, individual claimants may plead for an award of damages or other remedies for the violation of fundamental rights. In the Western Hemisphere, the American Convention on Human Rights [23]adopted by the Organization of American States establishes an Inter-American Court of Human Rights that has broad power to order reparations on behalf of victims of human rights violations.

One more international instance is the (ICJ) International Court of Justice, which deals with state to state claims. Below it will be provided more detailed activity of the Court based on its cases.

International law provided sanctions when there is an existence of violation of rights related to ethnic groups, they can be different. When we are considering those international sanctions for the violation of rights in respect to states, which committed the abuse, it becomes obvious that the violations could be more or less abusive. Accordingly, the norms of international law stipulate corresponding sanctions to the particular violation, providing adequate remedies. Sanctions could bear a nature of restitutions and prevention. An example of restitution can be provided when a state concerned claims its rights on restoration and demands to restore them as it was before the violation "restitution in integrum". [24]Prevention provides the sanction in the form of fines or penalties. Aggrieved party or a state may direct its protest to the violator state in a written form in order to afford to that action legal bases and demand reparations in the future. The aggrieved state in its complaint to the respondent state may emphasize a particular sanction (s) or types of reparation, which are the subject to reinstatement in order to establish the previous statues quo between the states.[25] These examples of International Judicial instances are provided to support a

[22] Lectures on European Convention of Human Rights , *Underling Conventional Principals, p. 341-348*
[23] Review of Article of *Dinah Shelton "Righting Wrongs..."*, The American Journal of International Law,*Vol.102,No.4 (Oct.,2008),pp.917-918*
Published by *American Society of International Law*:http://www.jstor.org/stable/20456708
[24] Black's Law dictionary
[25] *Собакин В.К.* Коллективная безопасность — гарантия мирного сосуществования. М., *1962., p. 233.*

possible legal claim for the Armenian issue. As the field is not sufficiently explored it is hard to identify correct legal instance to file the claim in respect to Armenian issue.

Types of Reparation:

A basic purpose of international reparations essentially mirrors that of the law of remedies generally: to make good the injury caused to persons or property by a wrongful act.
Arbitral tribunals frequently restate the theory that reparation "must wipe out all the consequences" of the illegal act. In the *Lusitania* cases the arbiter Parker stated that the "remedy must be commensurate with the injury received… The compensation must be adequate and balance as near as may be the injury suffered". [26]

Very often, reparation is wrongly employed as being synonymous with "financial compensation". Although compensation is a very common form of reparation, it is not the only form. Other types of reparation include:[27]

- restitution, such as restoration of liberty, legal rights, social status, family life and citizenship;
- physical and psychological rehabilitation, and legal and social services;
- satisfaction, which comprises verification of the facts and revelation of the truth, acknowledgment of the suffering, public apology, judicial and administrative sanctions against the perpetrator, commemoration and tributes to the victims;
- guarantees of non-repetition, to prevent recurrence of similar crimes (such as measures to control the military, strengthen the independence of the judiciary, and reform human rights laws; and

[26] *Lusitania was American ocean line, which was attacked by Germany in 1915. this sinking turned public opinion against Germany and bringing the US into WWI. America claimed compensation. Lusitania cases* - Inquiry into German's governmental and economic stability, with a view to determine its relative capacity to pay reparations demanded of it, made by the Mixed Claims Commission of the US and UN. At these cases Parker was served as an arbitrator. *Reports of International Arbitral Awards http://untreaty.un.org/cod/riaa/cases/vol_VII/32-44.pdf*
[27] *International Law, 6-th edition*, Malcolm N. Show QC, *Cambridge university Press, p. 800-815*

- compensation, which includes any monetary award calculated on the basis of the estimated damage resulting from the crime, including physical and mental pain and loss of opportunities, such as education.

Cultural differences and diversity of backgrounds and experiences can impact on perceptions of reparations. In some cultures, active participation in criminal proceedings may be essential whereas in others, the admission of guilt by the wrongdoer will be most important.

According to the American Casebook of International Law there are three forms of reparations [28]

1. Restitution:

Which is the kind that designed to re-establish the situation, which would have existed if the wrongful act or omission had not taken place, by performance of the obligation which state failed to discharge; revocation of the unlawful act, return of a property and other. The Permanent Court of International Justice implied that restitution is the normal form of reparation and insurance that could not take its place if restitution in kind "is not possible".[29]

2. Indemnity:

This is the most usual form of reparation since "money is the common measure of valuable things". Monetary compensation must "wipe out all the consequences of illegal act", [30]let it be war, crime, deportation or forced removal. Losses of profits are included and the value of a confiscated property must be determined at the time of payment and not at that of confiscation. The US cited a decision of the Governing Council of the U.N. Compensation Commission, Award of Interests, where the Commission held that "*interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award*" [31]

[28] International law Cases and Materials, *4-th edition,* Lori Fisler Damrosch, *West Group, St. Paul, Minn., 2001*
[29] International law Cases and Materials, *2001, pp. 800-805*
[30] International law Cases and Materials, *2001, pp. 800-805*
[31] Compensation for Expropriation: The Case Law Author; M.H.Mendelson *The American Journal of International Law*,Vol.*79,No.2 (Apr.,1985),pp.414-420* Published by American Society of International Law. :http://www.jstor.org/stable/2201711

3. Satisfaction:

This form is appropriate for non-material damages or moral injury to the dignity or personality of the state.

In contemporary law and practice this form of reparation must be considered as limited to the presentation of official regrets and apologies.

In 2001the International Law Commission [32]at its fifty-third session has adopted the Text of "*Draft Articles on Responsibility of States for Internationally Wrongful Acts*" [33]and submitted to the General Assembly as a part of the Commission's report covering the work of that session.

Chapter II [34]of the "Draft" provides the forms of reparation for injury and establishes more clearly the relations between the different forms of reparation - restitution, compensation and satisfaction, as well as the role of interest and the question of taking into account any contribution to the injury which may have been made by the victim. These forms can be taken either singly or in combination, in accordance with the provision of the "Draft".

Article 34[35], chapter II of the "Draft" provides the forms of reparation which separately or in combination will discharge the obligation to make full reparation for the injury caused by internationally wrongful act. It is important when we will consider the possible implementation of one of the forms of compensation in hypothetical case applicable to Armenia.

When the injury was material and the Permanent Court dealt only with 2 forms of reparation - restitution and compensation was the case "*The Factory at Chorzow*" [36]

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[32] *Compensation for Expropriation: The Case Law Author; M.H.Mendelson*
ILC established in *1948*, which mandate is the progressive development and codification of international law.

[33] Righting Wrongs:Reparations in the Articles on State Responsibility , Dinah Shelton Source:The American Journal of International Law,Vol.96,No.4 (Oct.,2002),pp.833-856 Published by:American Society of International Law
http://www.jstor.org/stable/3070681

[34] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856

[35] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856

[36] The case "*The Factory at Chorzow*" where the ICJ has indicated that the basic principal of reparation is articulated, applying to reparation for injury to individuals, even when a specific jurisdictional provision on reparation is contained in the statute of tribunal. *Application for review of Judgment No. 158 of UN Administrative tribunal, Advisory opinion, 1973 ICJ Rep.166,197-98 (July12)*

"It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application".[37]

In this passage, which has been cited and applied on many occasions, the Court was using the term "reparation" in its most general sense. It was rejecting a Polish argument that jurisdiction to interpret and apply a treaty did not entail jurisdiction to deal with disputes over the form and amount of reparation to be made. By that stage of the dispute, Germany was no longer seeking for the return of the factory in question or of the property seized with it.

The obligation placed on the responsible State by Article 31 [38]of the "Draft" is to make "full reparation" in the *Factory at Chorzów* sense. In other words, the responsible State must make an attempt to wipe out all the consequences of the illegal act and re-establish the situation which would have existed if that act had not been committed through the provision of one or more of the forms of reparation provided in Chapter II [39]of the "Draft". But in certain cases, satisfaction may be called for as an additional form of reparation. Thus full reparation may take the form of restitution, compensation and satisfaction, as required by the circumstances.

Article 34 [40]of the "Draft" also makes it clear that full reparation may only be achieved in particular cases by the combination of different forms of reparation.

Talking about the forms of reparation it is worthy to present an example of World War I. After the War, reparations to the Allied Powers were required of Germany by the *Treaty of Versailles*[41]. The original amount of $33 billion was later reduced by the *Dawes Plan* [42]and the

[37] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856
[38] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856
[39] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856
[40] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856
[41] *Treaty of Versailles* The Treaty of Versailles was one of the peace treaties at the end of WW I. It ended the state of war between Germany and the *Allied Powers(the UK, France , Russia)*. It was signed on 28 June 1919, exactly five years after the assassination of Archduke Franz Ferdinand

Young Plan [43]and was canceled after 1933. In the 1920s German dislike over reparations was used by ultranationalists to increase political conflict.

The *Treaty of Versailles* was the agreement negotiated during the Paris *Peace Conference of 1919*[44] that ended World War I and imposed disarmament, reparations, and territorial changes on the defeated Germany. The treaty also established the *League of Nations*, an international organization dedicated to resolving world conflicts peacefully. The treaty has been criticized for its harsh treatment of Germany, which many historians believe contributed to the rise of Nazism in the 1930s.

Article 231 of the *Treaty of Versailles* assigned blame for the war to Germany; much of the rest of the Treaty set out the reparations that Germany would pay to the Allies. The total sum of war reparations demanded from Germany-around 226 billion Reichsmarks- were decided by an Inter-Allied Reparations Commission. It could be seen that the Versailles reparation impositions were partly a reply to the reparations placed upon France by Germany through the 1871 [45]*Treaty of Frankfurt* [46]signed after the Franco-Prussian war; critics of the Treaty argued that France had been able to pay the reparations (5,000,000,000 francs) within 3 years while the *Young Plan* of 1929 estimated German reparations to be paid until 1988.

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[42] *Dawes Plan* The Dawes Plan (as proposed by the Dawes Committee, chaired by Charles G. Dawes) was an attempt following WW I for the *Triple Entente (the UK, French Third Republic, Russia)* to collect war reparations debt from Germany. When after five years the plan proved to be unsuccessful, the Young Plan was adopted in 1929 to replace it. http://en.wikipedia.org/wiki/ Dawes_ Plan

[43]*Young Plan* The Young Plan was a program for settlement of German reparations debts after WW I written in 1929 and formally adopted in 1930. It was presented by the committee headed (1929-30) by American Owen D. Young. After the Dawes Plan was put into operation (1924), it became apparent that Germany could not meet the huge annual payments, especially over an indefinite period of time. http://en.wikipedia.org/wiki/ Young_ Plan

[44] *Peace Conference of 1919*- The Paris Peace Conference was the meeting of the Allied victors following the end of WW I to set the peace terms for Germany and other defeated nations, The Paris Peace Conference and the Treaty of Versailles. In January 1919, diplomats gathered at the château of Versailles near Paris to negotiate a peace treaty to end the Great War. By the time work began, it was clear that the pre-war world map required drastic revision. The high cost of the war, in terms of both human life and money, made negotiations difficult, and it is not surprising that the resulting treaties have long since been the subject of contentious analysis, opinion and debate.

[45] The Reparations Problem after London , *Jean Parmentier,* Foreign Affairs,*Vol.3,No.2 (Dec.15,1924),pp.244-252 Published by Council on Foreign Relations*:http://www.jstor.org/stable/20028368

[46] *Frankfurt treaty* was a peace treaty signed in 1871, at the end of Franco-Russian war. BRITANICA Ency. *http://www.britannica.com/EBchecked/topic/217250/Treaty-of-Frankfurt*

The Versailles Reparations came in a variety of forms, including coal, steel, intellectual property (for instance the trademark for *Aspirin*) [47]and agricultural products, in no small part because currency reparations of that order of magnitude would lead to hyperinflation, as actually occurred in postwar Germany. In 1920, because of the compensation that Germany paid to the European Allies[48], it faced great inflation, thus decreasing the benefits to France and the United Kingdom.

The main role in the course of reparations plays the designations of boundaries between the countries as the aftermath of the conflict.

After *Versailles Treaty* the boundaries of Germany and other parts of Europe were changed. Germany was required to return the territories of Alsace and Lorraine to France and to place the Saarland under the supervision of the League of Nations until 1935.[49] Several territories were given to Belgium and Holland, and the nation of Poland was created from portions of German Silesia and Prussia. The Austro-Hungarian Empire was taken to pieces, and the countries of Austria, Hungary, Czechoslovakia, Bulgaria, and Romania were recognized. All German overseas colonies in China, the Pacific, and Africa were taken over by Great Britain, France, Japan, and other Allied nations.[50]

In the above mentioned cases there were applied restitutions and compensations, but this showed that how a legal act, in this case as *Versailles Treaty*, made an impact on the political, and economical spheres of the world, in some cases with very dangerous consequences, like rise of Nazi regime in Germany. The forms of reparations are different and it could be provided full and partial reparation that depends on the provided legal grounds in an appropriate way.

The prosecution of those committing international crimes is a form of reparation. The obligation on states to prosecute or extradite those accused of genocide, crimes against humanity, and war crimes exists in several international agreements, including the Genocide Convention, the

[47] The Reparations Problem after London , *Jean Parmentier*
[48] European countries: France, Hungary, the UK, Italy, Spain
[49] The Reparations Problem after London , *Jean Parmentier*
[50] The Reparations Problem after London , *Jean Parmentier*

Geneva Conventions of 1949, and the 1977 Protocol I to the Geneva Conventions. These agreements require states to cooperate with each other in the investigation, prosecution, and adjudication of those charged with the crimes covered under the agreements and the punishment of those convicted.

2. What are the legal relevant claims of ethnic groups according the issue of reparations?

The issue of reparations for genocide and crimes against humanity is complex because the acts usually involve simultaneous breaches of national and international law by individuals and states. Reparations may be owed by both the state and the individuals responsible, and claims may be made by survivors at either the national or international levels. Taking together the traditional law of state responsibility, human rights law, and international criminal law, claims for reparations can be presented in one of following ways: [51]

- The state of nationality of the victims could bring a claim on their behalf against the state responsible for the wrong;
- the victims may be able to bring a claim against the responsible state in an international human rights tribunal;
- victims may bring claims against the responsible state in national judicial or administrative bodies;
- victims may present their claims against the individual perpetrators in an international criminal court; and
- the victims may make a claim against the individual perpetrators in a national civil or criminal proceeding.

[51] If a Tree Falls in the Wilderness:Reparations,Academic Silences,and Social Justice, *Rodney D.Coate, Social Forces,Vol.83,No.2 (Dec.,2004),pp.841-864, Published by University of North Carolina Press* http://www.jstor.org/stable/3598350 and *Собакин В.К.* Коллективная безопасность — гарантия мирного сосуществования. М., *1962.*

As it was said above, at the international level, reparations may be sought either by one state bringing a claim against another or by individuals filing a petition against the state committing the wrong. There are presently no international courts in which an individual can sue another individual for reparations, although it may be possible for victims of abuse to seek reparations from perpetrators convicted by the International Criminal Court.

Interstate claims for reparations on behalf of their nationals have a long tradition, especially at the conclusion of a war. Most of the experience with reparations in international law concerns postwar agreements to settle claims, whereby one state may pay large amounts of compensation to another state. The recipient then should use the funds to redress the injuries to its nationals.

The International Court of Justice is the main judicial body that deals with State to State claims. It appears in 1945 and was a substantially a continuation of the earlier body - the Permanent Court of Justice. The Article 93 of UN Charter provides that the Court is "the principal judicial organ of the United Nations', and all members of the latter are *ipso facto* parties to the Statute of he Court". The Trial in Nuremberg in 1945-1946 of major war criminals among the Axis Powers[52], dominantly Nazi party leaders and military officials, gave the "nascent human rights movement a powerful impulse". [53]

To support the international practice on reparations here below are provided examples of contemporary case, which are related to forced removal of native population and its consequences.

The case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* [54] In its order the Court recalls that on 20 March 1993 Bosnia and Herzegovina instituted proceedings against Yugoslavia in respect of the dispute concerning alleged violations by Yugoslavia of the *"Genocide Convention"*. [55] In the Application Bosnia and Herzegovina, denoting the jurisdiction of the Court on Article IX of the *Genocide Convention*", Adopted by the General Assembly of the

[52] Axis Powers (Germany, Italy and Japan) during the World War II
[53] International Human Rights in Context; Law, Politics, Morals, *3-rd edition*, *Henry J. Steiner, Oxford University press, pp.*
[54] Summaries of Judgments, Advisory opinions and Orders of the Int. Court of Justice, *Order of April 8 1993*
[55] "Convention on the Prevention and Punishment of the Crime of Genocide", *1948*

UN on 9 December 1948, recounts a series of events in Bosnia and Herzegovina from April 1992 up to the present day which, in its dispute, amount to acts of genocide within to definition given in the "*Genocide Convention"* and claims that the acts complained of have been committed by former members of the Yugoslavia Peoples' Army (YPA) and by Serb military forces under the direction of Yugoslavia, and therefore Yugoslavia is fully responsible under international law for their activities. The Court refers: [56]

a) That Serbia and Montenegro has breached and is continuing to breach its legal obligations towards the people and State of Bosnia and Herzegovina under articles I, II, III, IV, V of the "*Genocide Convention*"

b) That Bosnia and Herzegovina under article 51 of the UN Charter and customary international law has the right to request immediate assistance of any State to come to its defense, including by military means and under the same article Bosnia and Herzegovina has right to self-defense.

c) That Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as *parens partiae* for its citizens, reparations for damages to persons and property as well as to the Bosnia economy and environment caused by the foregoing violation of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia.

Also the Court refers that Yugoslavia must "cease and desist" any type of violation on the territory of Bosnia and Herzegovina. And refers to the recommendation by Yugoslavia the application of the provisional measures; to direct the authorities under the control of A. Izetbecovic [57]to respect the *Geneva Convention* for the Protection of Victims of War of 1949 and 1977 Additional Protocol thereof, since the genocide of Serbs living in the "Republic of Bosnia and

[56] Summaries of Judgments, Advisory opinions and Orders of the Int. Court of Justice, *Order of April 8 1993*
[57] A. Izetbecovic- Head of the Government in Bosnia in 1992. Yugoslavia: 1989-1996 by *Warren Zimmermann*

Herzegovina" is being carried out by the commission of the very serious war crimes which are in violation of the obligation not to infringe upon the essential human rights. [58]

On 10 April 2008 in Hague the International Court of Justice (ICJ), held public hearings in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide *(Croatia v. Serbia and Montenegro)* [59]

In its Application, Croatia contended *inter alia* that, "by directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of . . .Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia", Serbia and Montenegro was liable for "ethnic cleansing" committed against Croatian citizens, "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction". [60]

Accordingly, Croatia requested the Court to adjudge and declare that Serbia and Montenegro "has breached its legal obligations" to Croatia under the Genocide Convention and that it "has an obligation to pay to Croatia, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment . . . in a sum to be determined by the Court".

The hearings concerned solely the preliminary objections to jurisdiction and admissibility raised by Serbia and Montenegro.

And On 18 November 2008, the ICJ found it has jurisdiction to entertain Croatia's Application and will proceed to hear the case on the merits.

One of the arguments put forward by Serbia is that it could not be regarded as party to the *"Genocide Convention"* at the time when the application was filed. Since Article IX [61] of this Convention formed the basis of Croatia's assertion that the Court has jurisdiction, the question

[58] Summaries of Judgments, Advisory opinions and Orders of the Int. Court of Justice, *Order of April 8 1993*
[59] The Hague Justice Portal, Application of the "*Convention of Genocide" Croatia v. Serbia,* Preliminary objections, Judgment of *18 November 2008,* www.haguejusticeportal.net
[60] Yugoslavia: 1989-1996 by *Warren Zimmermann. Croatia v. Serbia,* Preliminary objections, Judgment of *18 November 2008, www.haguejusticeportal.net*
[61] *Croatia v. Serbia,* Preliminary objections, Judgment of *18 November 2008, www.haguejusticeportal.net*

whether Serbia could be regarded as a party was crucial to the case. Serbia's claim was based, *inter alia*, on the dispute that the *"Genocide Convention"* is only open for signature for UN Members and for States that have been invited to sign the Convention. The Court was not convinced by the Serbian arguments. It acknowledged that it had previously determined that the Federal Republic of Yugoslavia (FRY), and thus Serbia, was not a member of the UN at the time when Croatia filed its application. Formally speaking, the Court should not be open to Serbia therefore. However, the Court argued that it is also necessary to show "realism and flexibility"[62]. Moreover, it held that Serbia was bound by the Genocide Convention after all. The Court reiterated the 1992 declaration in which the FRY claimed to be the sole continuing State of the Socialist Federal Republic of Yugoslavia (SFRY) and, respecting the continuity of the international personality of the SFRY, accepted the rights conferred to and the obligations assumed by that State. The same the Court gave in the case *Bosnia Herzegovina v. Serbia Montenegro.*[63]

Comparing both these case it is obvious that the ICJ now can shed light on yet another part of the breakdown of Yugoslavia and has the opportunity to further develop and apply the concept of genocide. The way in which this outcome has been achieved, however, raises fundamental questions, not only regarding the judgment itself, but also regarding international law's capacity to determine the identity of its primary subjects.

Identifying these fundamental subjects is necessary for the future development of law in the international sphere in order to avoid international conflicts and its harmful consequences and establish routs to peaceful solutions of those disputes.

One more question, which has magnitude in the issue of right of ethnic groups, is their forced removal or deportation. As forcible removal or deportation is the act of violence of human rights the norms of international law provide the remedy for this abuse. Rome Statute of ICC, Article 7 (d) "Crimes against humanity" provides "*Deportation or forcible transfer of population means*

[62] *Croatia v. Serbia,* Preliminary objections, Judgment of *18 November 2008, www.haguejusticeportal.net*
[63] Summaries of Judgments, Advisory opinions and Orders of the Int. Court of Justice, *Order of April 8 1993*

forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law" [64]

Whether forced removal has close connection of group rights? What are the consequences of forced removal? Measures directed against forced removal? Reparations as a redress for forced removal?

Removal has been a global phenomenon, and to answer to the above issues it should be treated within the frame of world history and international comparison. Examples discussed range from the United States in the 1830s to the removal of settlers from Algeria in the 1960s. In the 19th century, the federal government of the US, during the administration of President A. Jackson deported numerous Native American tribes (Indians). [65]The most infamous of these deportations became known as the Tail of Tears. [66]These include the use of modern authorities of administration, communication, and coercion, as well as warfare based on modern technology and organization. When it became possible to remove human beings on a massive scale, people may have started to consider to get remedies and especially so in crises connected to war, colonization, or decolonization.

The forcible removal of indigenous population from their native territories is in breach of international human rights obligations to prevent systematic racial discrimination and genocide. Forcible removal is equal to deportation and is racially discriminatory because it is carried out pursuant to legislation which either denied the indigenous population of common law rights on the basis of race or because the legislation, although not discriminatory in form, had the substantive effect of discriminating against natives through the exercise and use of procedures and standards.

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[64] Rome Statute of ICC, Article 7 (d)

[65] In re Pinochet.Spanish National Court,Criminal Division (Plenary Session)Case 19/97, November 4,1998;Case 1/98,November 5,1998, Authors:Maria del Carmen Marquez Carrasco and Joaquin Alcaide Fernandez
Source:The American Journal of International Law,*Vol.93,No.3 (Jul.,1999),pp.690-696,* Published by:American Society of International Law:http://www.jstor.org/stable/2555268

[66] Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations, *Kim Forde-Mazrui,* California Law Review,*Vol.92,No.3 (May,2004),pp.683-753 Published by California Law Review, Inc.* http://www.jstor.org/stable/3481453

Deportation can also happen within a state, when an individual or a group of people is forcibly resettled to different parts of the country. If ethnic groups are affected by this, it may also be referred as to population transfer. The rational is often that these groups might assist the enemy in wars or rebellions. As an example it should be noted the Penichet's Regime in Chile[67], "Dirty war" in Argentina[68] and of course the position of Armenians in the Ottoman Empire. Both the Chilean and Argentine case studies focus attention on the issue of impunity. Punishment for acts constituting violations of human rights is an obligation owed by States Parties under several major international instruments[69].

During World War II there were massive deportations in the former Soviet Union. Volga Germans, Chechens, Crimean Tatars and other were deported at that time by Joseph Stalin. Many Japanese and Japanese Americans in the west coast, as well as other Italian and German Americans were forcibly resettled in the interment camps inside the US by President F. Roosevelt. The European Parliament in 2004 recognized this as an act of genocide. [70]

Removal of minorities by the minorities in the current questing of the modern world, especially the 20th century. This kind of forced removal occurred in south east Europe and, in particular, in Balkans. [71]

The Bulgaria - Turkey boundary like that between Turkey and Greece centers on control of the key landbridge connecting Europe and Asia known as the Straits.[72] The boundary region's has a strategic importance recognized and since ancient times have not only involved interests of all countries in the neighborhood but also the rival interests of the Great Powers.

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[67] In re Pinochet.Spanish National Court,Criminal Division,*Vol.93,No.3 (Jul.,1999),pp.690-696,*
[68] In re Pinochet.Spanish National Court,Criminal Division,*Vol.93,No.3 (Jul.,1999),pp.690-696,*
[69] In re Pinochet.Spanish National Court,Criminal Division,*Vol.93,No.3 (Jul.,1999),pp.690-696,*
[70] International Boundary study *No. 49, May 15, 1965 (BU-TU)The Geographer Office of the Geographer Bureau of Intelligence and Research*
[71] Paradigms of Genocide:The Holocaust,the Armenian Genocide,and Contemporary Mass Destructions, *Robert Melson,* Annals of the American Academy of Political and Social Science,*Vol.548,The Holocaust:Remembering for the Future (Nov.,1996),pp.156-168,Published by:Sage Publications,Inc.in association with the American Academy of Political and Social Science*
Stable URL:http://www.jstor.org/stable/1048550
[72] International Boundary study *No. 49, May 15, 1965 (BU-TU)*

The Burgers have arrived in the Balkans area at the same time as the Slavs gradually merged with Slavic people approximately by 670 AD. Until the Turks conquest of the Balkans in the 14th century. A secret treaty with Serbia, followed by similar agreements with Greece and Montenegro committed the Balkan Allies to drive Turkey out of the Balkans. Arrangements were made while Turkey was at war with Italy (1911 - 1912) which ended with Turkey enfeebled.[73]

However, the success of the Balkan Allies countries exposed their separate ambitions. Territorial changes as a result of the Second Balkan War moved the Turkish - Bulgarian boundary westward to the Maritsa. Bulgaria lost Adrianople.

Currently Bulgaria brought a political claim against Turkey on reparation of that depravation.

News reports [74]have said Bulgaria planned to ask Turkey for a 10 billion USD compensation for the properties that Bulgarian nationals left behind in 1913 in Turkey. A Bulgarian government member has signaled that his country would block Turkey's accession to the European Union unless Turkey agreed to pay the compensation. On response to this allegation Bulgaria's Prime Minister has threatened to sack one of his ministers in an attempt to make good in a dispute over Turkey's EU accession." I have warned Bojidar Dimitrov [75]that the next time something like this happens; we will have to let him go. You don't come out and make such declarations without their having been discussed by the Prime Minister, the cabinet, or the parliament".[76]

New wars and armed conflicts also brought the phenomenon of expulsions back to Europe. The removal took place on the background of the most recent wave of nation-state, which dissolved the last of the large European multinational empires, like Soviet Union, which until then had held together by means of the authoritarian system of rule. Smaller multi-ethnic states such as Czechoslovakia and Yugoslavia split up into smaller states.

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[73] International Boundary study *No. 49, May 15, 1965 (BU-TU)*

[74] Sofia News Agency. http://www.novinite.com/search_news.php?do_search=no&thequery=Bojidar+Dimitrov+&x=15&y=13, "Turkey FM denies Bulgaria compensation claims", *January 5, 2010*

[75] Prof. of Bulgarian Museum of History and Minister of Culture of Bulgaria */www.flickr.com/photos/rossitza/3754406943/*

[76] Sofia News Agency. http://www.novinite.com/search_news.php?do_search=no&thequery=Bojidar+Dimitrov+&x=15&y=13

The conflicts in Georgia, Armenia, Azerbaijan, and Chechnya resulted in the flight of hundreds of thousands of people. During the civil wars which raged in the former Yugoslavia (Croatia, Bosnia-Herzegovina, and Kosovo) between 1992 and 1999, mass flight, expulsions, and massacres took place right on the European Union's "doorstep". [77]The cynical term "ethnic cleansing", which, however, precisely conveys the concept behind the phenomenon, was widely used in mass media.. Depending on the military situation, Croats, Serbs and others were affected - with the latter; their religion was used as a means to determine their "ethnic identity", the only characteristic which distinguished them from the Catholic Croats and the Orthodox Serbs. According to estimates, more than two million people were affected.

The civil wars, expulsions and particularly the prospect of having to accommodate more refugees led to military NATO intervention in Bosnia and Kosovo. In this context, it should be noted that, on the one hand, such interventions are problematic and controversial under international law, but on the other hand forced migrations are not considered a means to conflict solving which are promoted or even tolerated any longer, but meet with repudiation and resistance, at least in Europe.

Consequences of forced removal, deportation or forced resettlement are harsh and severe. It is the direct abuse of human rights. The policy of forcible removal adversely affected indigenous population across the world. Forcible removal discriminated against them either in law or in fact. According to some articles and provisions the forcible removal resulted in: [78]

- deprivation of liberty by detaining people and confining them in institutions;
- abolition of their rights by taking assuming custody , control and resettlement;
- abuses of power in the removal process; and
- breach of guardianship obligations on the part the state, that undertake the deportation.

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[77] Yugoslavia: 1989-1996 by *Warren Zimmermann*

[78] *International Law, 6-th edition*, Malcolm N. Show QC, *Cambridge university Press.* "If a Tree Falls in the Wilderness:Reparations,Academic Silences,and Social Justice",
Rodney D.Coate, Social Forces,Vol.83,No.2 (Dec.,2004)

The legally significant consequences of forcible removal were that indigenous population were denied the common law rights which others enjoyed, suffered violations of their human rights, and were often subjected to other forms of discrimination. The practice of forcible removal is still continues today in the different parts of the world.

These three cases, are the foundation for the claims of reparations, restoration of violated rights of ethnic groups that are closely related with forced removal of the latter's from their native territories. The consequences are various and have different character; economic, social legal and political. Economic - reconstruction of the destroyed territories after wars or other destruction and, of course, payment of respondent state a lump-sum of monetary compensation that influences the already damaged economy . Social - resettlement of ethnic groups, their forced removal to foreign territories, i.e. migration, which consequences are poverty, unemployment, homeless, uneducated generation. Legal and political- violation of fundamental rights, depravation of rights, removal of boundaries of involved countries, vulnerability of legal norms and governmental bodies, raise of corruption and fraudulent, chaos in leading authorities. Given cases are directly relate with issue of reparation and both of them were reached the ICJ, as they passed through the admissibility criteria and had sufficient legal bases. The third one (*Bulgaria v. Turkey*) is yet hypothetical; as the claim is based on allegations of some political leaders, unless it acquires legal grounds or standing it cannot get the judicial instances. Now it is appropriate to identify any possible claims to the Armenia context

3. Whether a relevant claim will be possible to the Armenian context?

As it was mentioned above the 19th century faced massive forced removal of ethnic groups. The first phase was in the late part of the 19th century. The second one was at the beginning of the 20th and raised its focal point became after the World War I and Armenian "Mets Eghern" of 1915, as noted President B. Obama in his speech at the US Congress in 2008.

One of the crimes in relation to ethnic groups is genocide, which is found on the basis of the laws and policies promoting the removal of Indigenous population for the purpose of destroying the affected group as a racial group or their "Indigenous culture". Under international law, these violations are attributable to the International law and Humanitarian law. Such breaches under international law amounted to "gross violation of human rights" and in the article of Prof. of Law D. Shelton[79], it is recommended that a system of reparations should be in conformity with provisions of *"Draft Articles on Responsibility of States for Internationally Wrongful Acts"*, submitted by the International Law Commission at its fifty-third session to the General Assembly of the UN.

Ethnic harmonization of the state was also the goal stated by the new Turkish nationalists who ruled the Ottoman Empire from 1908 onwards and who preceded with the deportation of the Armenian minority from 1909. Hundreds of thousands of Armenians fell victim to violence, pogroms, and hunger. [80]

The time of World War II was marked by the deportation and mass murder of Jews in particular, living under German rule. There were huge migratory movements in Europe after the end of the war many surviving Jews left Europe altogether and resettled in the newly founded state of Israel. Some victims of genocide and crimes against humanity committed during wars have received restitution or compensation negotiated between states. Germany created a system of compensation for Nazi genocide and crimes against humanity. From 1939 onward, those who had escaped from countries overrun by the Germans demanded compensation for property and monetary compensation taken from them. Some argued that in addition to individual compensation, a collective claim must be presented for reparations to the Jewish people for the

[79] Righting Wrongs, Dinah Shelton, Vol.96,No.4 (Oct.,2002),pp.833-856

[80] John Kirakosian "West Armenia in the period of World War I" *www.armenianhouse.org/index*; Paradigms of Genocide:The Holocaust,the Armenian Genocide,and Contemporary Mass Destructions,*Robert Melson*, Annals of the American Academy of Political and Social Science,*Vol.548*,The Holocaust:Remembering for the Future *(Nov.,1996),pp.156-168, Published by Sage Publications Inc.www.jstor.org*

property whose owners were unknown or dead, for institutions and communities that had been destroyed or had vanished, and for damage done to the Jewish people's existence.[81]

On September 29, 1945, Chaim Weizmann presented the four Allied powers (France, Great Britain, United States, USSR) with the first postwar Jewish claims, which later became the basis of the claim for the state of Israel (of which Weizmann served as its first president): 1) restitution of property; 2) restoration of heirless property to representatives of the Jewish people to finance the rehabilitation of victims of Nazi persecution; 3) transfer of a percentage of all reparation to be paid by Germany for rehabilitation and resettlement in Palestine; and 4) inclusion of all assets of Germans formerly residing in Palestine as part of the reparations.[82]

The first Allied statement on restitution and reparation (January 5, 1943) announced that the governments reserved all their rights to declare invalid any transfers of property or title of property in territory under German or Italian control, whether the transfers were affected by force or by semi-legal means. The Paris Reparations Conference (November 9–December 21, 1945) accepted the principle that individual and group compensation should be paid to the victims of Nazi persecution in need of rehabilitation and not in a position to secure assistance from governments in receipt of reparations from Germany. Restitution would apply to identifiable property that had been seized during the period of conquest with or without payment. Indemnification was to be paid for objects of an artistic, educational, or religious value that had been seized by the Germans, but that could no longer be restored to their rightful owners.

The Paris Reparations Conference [83]agreed on several points concerning individual claims, including priority to claims of the elderly and indemnification for damage to "vocational and

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[81] Precatory Executive Statements and Permissible Judicial Responses in the Context of Holocaust-Claims Litigation, *Graham O'Donoghue* , Columbia Law Review,*Vol.106,No.5 (Jun.,2006),pp.1119-1164*
Published by Columbia Law Review Association, Inc.
:http://www.jstor.org/stable/4099455

[82] Precatory Executive Statements and Permissible Judicial Responses in the Context of Holocaust-Claims Litigation, *Graham O'Donoghue*

[83] Precatory Executive Statements and Permissible Judicial Responses in the Context of Holocaust-Claims Litigation, *Graham O'Donoghue*

professional training". The conference set a cap of 25,000 deutsche marks for damage that occurred before June 1, 1945.[84]

Subsequent German compensation laws and agreements were enacted and concluded between 1948 and 1965, including a 1952 treaty between the Federal Republic of Germany (FRG) and Israel. The preamble to the 1952 agreement noted that "unspeakable criminal acts were perpetrated against the Jewish people" and that Germany agreed "within the limits of their capacity to make good the material damage caused by these acts." It also mentioned that Israel had assumed the burden of resettling many destitute Jewish refugees. Article I of the agreement stated that "the Federal Republic of Germany shall, in view of the considerations herein before recited, pay to the State of Israel the sum of 3,000 million Deutsche Marks."[85]

The purpose of these long arguments and experience of the Jewish reparations is to suggest a "hypothetical legal claim" in the case of Armenian issue.

In what form this issue to be filed? To what Court the claim should be filed? What instance will the claim be filed, ether the state or an individual? May be Armenians should follow Jewish experience? Here are few question related to the Armenian context. The history of Armenia in the period of Russian-Turkish war of 1877-1878 was very decisive. In 1878, with the support of Russian Army, after concluding San- Stefano agreement[86], it was for the first time when Armenians got an opportunity to join the both Western and Eastern parts of Armenia. It guarantied sufficient reforms in the life of Christian population of Western Armenia. But when the Russian Army was close to Constantinople, countries of Western Europe (UK, Austro-Hungary, France) started to support Turkey. Those Powers were concerned of the raising rebellion and unstable situation in Russia. (By the way at that period under Prime Minister Disraeli the UK occupied

[84] Precatory Executive Statements and Permissible Judicial Responses in the Context of Holocaust-Claims Litigation, *Graham O'Donoghue*
[85]Precatory Executive Statements and Permissible Judicial Responses in the Context of Holocaust-Claims Litigation, *Graham O'Donoghue*
[86] *John Kirakosian* "West Armenia in the period of World War I" *www.armenianhouse.org/index*; *Maccoll M*. The Constantinopol Massacre and its Lessons *pp. 750-760*

Cyprus). The *San -Stefano Treaty* [87]was harmful for Armenia, as the Great Powers, especially the UK sued it in their interests. The interest of the UK was to establish its position on the Black Sea and combat against Russia. The 61st Article of Berlin Treaty [88]shifts the Armenia issue into intrastate question of the Ottoman Empire. "This decision was crucial for western Armenians and resulted in their massacre "as said Russian historian V.M. Khvostov [89]

In the period of deportation of the Armenians the Turkish government claimed that it was reluctant to remove them, explaining its actions with war time and that the government did not trust the Armenians as they showed resistance and implied that they could take the part of the Russians. Following that policy the Armenians were deported to the eastern part of Armenia and another Middle Eastern country as well. Taking into account that the deportation was connected with the war time and the government of Turkey was forced, it implies that the deported population should be returned to their territory aftermaths, but that never happened.

There are different forms of deportation, which are deportation out of native territory or forced removal, and also forced resettlement, which is as a rule occurred within the territory. But as a result all of them are illegal and cause violation of human rights if the initial state does not fulfill its obligations provided by domestic or international law and international treaties. There are also different types of reparations, which the respondent sate must pay for injuries.

According to Robert Melson, a professor of political science and chair of the Jewish Studies program at Purdue University, there are similarities and differences in Armenian Genocide of 1915 and Holocaust "in both instances, a deliberate attempt was made by a government to destroy in part or in whole an ethnoreligious community of ancient provenance that had existed as a segment of the government's own society. In both instances, genocide was perpetrated after the fall of an old regime and during the reign of a revolutionary movement that was motivated by an ideology of

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[87] The *Preliminary Treaty of San Stefano* was a treaty between Russia and the Ottoman Empire signed at the end of the Russo-Turkish War, 1877–78. http://en.wikipedia.org/wiki/Treaty_of_San_Stefano
John Kirakosian "West Armenia in the period of World War I" *www.armenianhouse.org/index*
[88] *John Kirakosian* "West Armenia in the period of World War I"; *Maccoll M*. The Constantinopol Massacre and its Lessons *pp. 750-760*
[89] *John Kirakosian* "West Armenia in the period of World War I" *p. 25*

social, political, and cultural transformation. These may be said to account for some of the basic similarities between the two genocides, but there were significant differences as well." [90]

The perpetrators of the Armenian Genocide were motivated by nationalist ideology. The victims were a territorial ethnic group that had sought autonomy, and the methods of destruction included" massacre, forced deportations, and starvation"[91]. In contrast, the perpetrators of the Holocaust were motivated by ideologies of anti-Semitism. The victims were not a territorial group, and for the most part they had sought integration and assimilation instead of autonomy. "The death camp was the characteristic method of destruction." [92]Though in some ways the Armenian Genocide and the Holocaust resemble each other, events that occurred in Nigeria in 1966-70 [93]and are occurring in the former Yugoslavia today have more in common with the Armenian Genocide than they do with the Holocaust. However, in both cases, Jewish and Armenia, genocides occurred in the midst of world wars. So Armenia could follow the precedent of Jewish claim and reparations to obtain their reparations. It is worthy to remind that in Jewish case there were provided satisfaction and compensation to the victims.

The European Convention of Human Rights provide in Article 2 (1) "to protect everyone right to life has been interpreted as creating a positive duty to safeguard lifes " [94]. In compliance with state positive obligations under Art 2 of ECHR requires "that the domestic legal system must demonstrate its capability to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim's racial or ethnic origin" [95]As it was said above, the purpose or provision of these statements of ECHR is to identify one more possible claim to the Armenia issue, because a possible claim can be individual, directed to restoration of the rights abused against the country committed the act of Genocide.

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[90] Paradigms of Genocide:The Holocaust,the Armenian Genocide,and Contemporary Mass Destructions, *Robert Melson. p. 157*
http://www.jstor.org/stable/1048550
[91] Paradigms of Genocide:The Holocaust... *p. 158* http://www.jstor.org/stable/1048550
[92] Paradigms of Genocide:The Holocaust... *p. 158* http://www.jstor.org/stable/1048550
[93] Paradigms of Genocide:The Holocaust... *p. 159* http://www.jstor.org/stable/1048550
[94] Lectures on ECHR , *p 166*
[95] Lectures on ECHR , *p 166*

According to the views of some lawyers and historians, attorney of State Bar of California Karen Ketendjian, Dr. of history of Yerevan Institute of Archeology Mickael Zardaryan, Deputy of Minister of Justice of RA Dr. Emil Babayan , one possible and may be effective claim to the Armenian context for reparation could be individual or as a group of individuals claim against the Turkish instances (e.g. to banks) , as it did Jewish individuals. Also they noted that state to state action will be impossible based on a range of circumstances: a great deal of Armenian are the citizens of different states of the world, Armenia shall have sufficient legal documents to file a claims in order to pass the criteria of admissibility and etc.

Nowadays several Armenians got compensation on their claims (*New York Life Insurance*) [96]of their insurances, which they made in the time of their forced removals in 1914-1916, but it is the meager part of possible reparations that Armenian people can get for their long sufferings.[97]

Also greater role was ascribed to Woodrow Wilson's Arbitral Award, called "Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier", which was officially entitled in (November 22, 1920), and had an involvement in the fate of the first Republic of Armenia (1918-1920). But the *Sevres Treaty* [98]was not ratified. Nevertheless Ara Papyan, ambassador Extraordinary and Plenipotentiary of the Republic of Armenia to Canada (2001-2006), is trying to prove the validity of the "Award…". He is offering to return to Armenia under the *Sevres Treat*" the Eastern territories of today Turkey without resettlement of the current settlers. The purpose behind that is that Armenia could impose rental fees on the provinces (Kars, Erzerum, Bitlis) and it will be successful step to enhance Armenian economy and of course the outlet to the Black Sea coast.

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[96] www. geragos.com

[97] www.centerQR.org; www.yaplc.com; www. geragos.com

[98] (Aug. 10, 1920), post-World War I pact between the victorious Allied powers and representatives of the government of Ottoman Turkey. The treaty abolished the Ottoman Empire and obliged Turkey to renounce all rights over Arab Asia and North Africa. The pact also provided for an independent Armenia. Treaty of Sèvres was solemnly signed by a dozen countries, including Great Britain, France, Italy, Greece, Japan, Armenia and Turkey. With great expectations, the parties commissioned US President Woodrow Wilson to draw a new map that would secure national self-determination and regional peace. He did so, but the map and treaty were not honored, at least as regards the Armenians. Despite these good intentions, Armenians lost most of their ancestral homeland to their neighbors, who continue to enjoy the fruits of their genocidal labors. http://www.knn.u-net.com/severt~1.htm, http://www.arak29.am/PDF_PPT/7-History/The_%20Hard_%20Lessons.htm.

Information concerning Armenian reparations one can find on the web site *www.regionalkinetics.com/documentary.html*, where lawyer David Davidian [99]provides information and "six frequently asked question" on "what is the claim of the Armenians" . The web site provides in written in six languages, a rationale for Armenian land claims against the Republic of Turkey. "Reparations from the Turkish state to the Armenian people for the crime of genocide must include a land transfer for Armenia to exist as a self-sustaining state. Sovereign access to the Black Sea is the requisite element for its survival." [100]

Today the issue of recognition of Armenian Genocide of 1915 is ongoing; it is even on the agenda of the US Congress and the Swedish Parliament. Nevertheless the main question is not possible monetary reparation after possible full recognition of Genocide including the culpable participator-country, but rehabilitation, i.e. future prevention of crime of genocide.

As it is noted in the book of American publicist Theodore Peterson, only in the 19th century with respect to the ethnic groups the act of massacre were committed by Turks as follows: 101

in 1822 — massacre of 50000 Greeks

1850 — massacre of 10000 Armenians in Mosoul

1860 — massacre of 11000 Syrians in Lebanon

1876 — massacre of 14000Bulgarians

1877 — massacre of 20400 Armenians in Bazaride

1879 — massacre of 10100 Armenians in Alashkert

1892 — massacre of 2000 Ezdy in Mosoul

1894 — massacre of 20000 Armenians in Sasun

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[99] See Annex

[100] http://www.regionalkinetics.com/index.html, http://www.armenianweekly.com/2009/06/29/land-reparation-statics-and-dynamics/

[101] John Kirakosian "West Armenia..." *p. 41*

Here is only a meager part of the genocidal statistics, this crime is continuing in modern world. In all, there were millions Armenian refugees escaping from the Ottoman Empire which were now the government's responsibility?

CONCLUSION

Taking into account the above provided cases and views it could be considered that Armenia has a possible, hypothetical basis for claiming reparations. It is not so unreal and unachievable as it could appear at the first glance. Armenia may claim full or partial reparation, it all depends how Armenian individuals joined with attorneys and politicians that will be able to present their legal claim with sufficient standings. I believe that the most possible alternative for Armenia is to present a claim by individuals as it was done by Jewish individuals and organizations after the World War II, meaning that after the war they have received either restitution or compensation leading negotiations between states and between international banks and other entities.

As it has been already said the crimes against humanity have continuing character now they acquire different forms mostly “minorities against minorities”, like it occurred in Bosnia against the Bosnians by the Serbians, in Kosovo against the Serbians by the Bosnians, in Rwanda between two local tribes and etc. Consequences that come aftermaths sometimes are very hard to restore. They could be various: political, social, territorial, legal, economic. Very often the consequences are unexpected, as raise of incurable diseases like AIDS today, prevalence of assassinations and manslaughter.

The purposes of international relations and international law must be directed to develop the legal field to provide the victims with sufficient reparations and to prevent this kind of violence in the future.

We should point out that satisfaction and guarantees of non-repetition are the most problematic forms of reparations in the context of international crimes and individual responsibility, although some types of satisfaction are inherent in the criminal process and disclosure of the truth should occur during the trial.

In the course of the work I tried to identify several legal international claims and suggest approaches of possible claims on the international scope to any international legal instance, but more questions still remained open for me.

What powers are behind the crimes against humanity? How facilitated those crimes today? How to prevent the crime of Genocide and forced removal? What measures to be found to avoid this kind of abuse? What legal entities are responsible to provide adequate remedies for the crime, which committed approximatively an age ago or just a couple years ago?

The crimes against humanity do not have time limitation.

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ANNEX

Land Reparation – Statics and Dynamics
July 1, 2009
by David Davidian

Many individuals conclude that geopolitical change cannot occur without resorting to violence, power, or force. This leads many to mentally and politically disengage from actively entertaining involvement in the political or democratic process. After all, what can an individual or group expect to accomplish?
This viewpoint assumes a constant static geopolitical stage.
In reality, when one looks at a map of the world from only a century ago, we find profound changes, some made through force, and others through negotiation. Many of these changes, such as frontier modifications and the creation of new states, occurred during times of dynamic geopolitics, be they wars or other destabilizing events such as the disintegration of the Soviet Union. The extermination of the European Jews and Armenians could only have taken place during times of dramatic dynamic change. The fight for Nagorno-Karabakh could only have taken place during the chaos of the late 1980s and early 1990s – not today. The creation of Israel would never happen today, but could when it did and was a culmination of a long process of forethought and demands.
While this may seem obvious to some, what is not so obvious is the effort expended in preparing (or even exacerbating conditions) for times of dynamic change. Too often characteristics of dynamic change are mistakenly imposed upon a static situation and a stalemate is concluded. This latter condition leads to political complacency.
A generation ago when the ever-present subject of reparations for the Turkish genocide of the Armenians was discussed within Armenians circles or in academic settings, dynamics such as what constitute historic borders or discussing the applicability the Treaty of Sevres were common.
The Severs Treaty was negotiated between the Ottoman Empire and Allies at the end of World War I. It eventually granted Armenia about 110,000 sq km of land (versus today's Republic of Armenia: about 30,000 sq km) based on demarcations by US President Woodrow Wilson. However, this treaty was never adopted and was superseded by the less favorable Treaty of Lausanne.
While the Sevres document is a strong reference in any land reparations settlement, to base reparation efforts today on this document would involve re-negotiating the end of WWI between: "The British Empire, France, Italy and Japan, These Powers being described in the present Treaty as the Principal Allied Powers; Armenia, Belgium, Greece, The Hedjaz, Poland, Portugal, Romania, the Serb-Croat-Slovene State and Czecho-Slovakia, These Powers constituting, with the Principal Powers mentioned above, the Allied Powers, of the one part; and Turkey, of the other part;" (see: wwi.lib.byu.edu/index.php/Peace_Treaty_of_Sèvres
Therefore, the chances of re-legitimizing this treaty is effectively zero, despite the fact that is was a just resolution to many issues that continue to haunt us today including the war in Iraq.
A generation ago we might have heard Armenians say, "I don't want my grandmother's house in Kharpert!", or "How are we going to force the Turks to give reparations?" These responses are not surprising considering they are based on the fallacy of imposing a dynamic upon a static geopolitical environment and making conclusions.
It is not one's family home in Kharpert that is the issue. It is the ability of Armenians to prosper on Armenian land that was taken away from the Armenians by genocide and the expropriation of their land and property. The ability of Armenia to live, prosper and determine their own future is what Armenians demand.
Today's Armenia is not the culmination of a natural evolutionary process, but is the geopolitical

repository for the survivors of that genocide. This is today's condition. Today's conditions can only be addressed by today's realities. Gone are the assumption that another 80,000 sq km will be awarded to Armenians simply by having a just case. There are no shortages of just cases.

Land reparations, as part of a comprehensive agreement between Turkey and Armenia would include land between Armenia and the Black Sea placed under Armenian sovereignty. Armenia could then build an economy not subject to the whims and blackmail of its neighbors. Any land awarded Armenia would also rightfully include its inhabitants. This indigenous population would be offered Armenian citizenship. For Armenians, the concept of multi-ethnic Armenian citizens must be reconciled with before any land reparations can even go forward.

Movement on such a demand will only take place when it is in the greater interest of the Turkish state to provide reparations rather than to deny genocide. Clearly it is in the immediate interest of Turkey for Armenian demands to degenerate into a nondescript apology. In addition, Armenia is not going to war with Turkey for land reparations. This is the static condition.

However, any positive outcome of a developing dynamic geopolitical situation is at least predicated on a reasonable Armenian demand. That is, a clear demand be stated. Without a demand the chance of failure is virtually guaranteed. For a reasonable demand, see: www.regionalkinetics.com It is beyond the scope of this article to describe dynamic scenarios, however consider the following simplistic dynamic: Iraq disintegrates into a Sunni, Shia administrative regions and a Kurdistan. Any Kurdistan will be taken as an existential threat to the Turkish State (it should be noted that a static condition rarely slips into a dynamic one without external interests modulating events). Turkey engages in heavy repression of its Kurdish population. Israel, having strategic interests in the emerging Kurdistan finds itself at odds with Turkey and decides Kurdistan is more important than a wavering Turkey and uses its influence against Turkish interests. Syria is at odds with Turkey because its Kurdish population becomes radicalized. Syria subsequently demands the return of Alexendretta province (given to Turkey by the French in 1938 as a bribe not to enter WWII on the side of Germany – another event that could not happen today) and an Israeli quid pro quo supports this as Syria gives up its demand for Golan. Azerbaijan uses this regional instability and starts making claims against Iran's northern Azerbaijani-populated regions, but still refrains against attacking Nagorno-Karabakh because Russia is attempting to influence events in Georgia as centrifugal forces try to dismember Georgia. Armenians have already made clear demands on a swath of land between itself and the Black Sea. Russia supports Armenian demands using them to further strangle Georgia. Iran sees this as a trade route to the Black Sea, as does Kurdistan. Turkey is petrified that it may lose all its eastern regions and determines that it is better to concede to Armenia land reparation demands and have any border with Armenia than to have an entire Kurdistan to its east. While this is a simplistic scenario, who in 1910 would have thought that starting in less than 5 years half of the world's Armenian population would be murdered and survivors would be left a starving mass. Who in 1985 would have thought that in less than 10 years the aggressive Azerbaijani treatment of Armenians in Nagorno-Karabakh would come to an end?

There will be no benefit from change without participation in its process.

David Davidian manages the US office of Regional Kinetics. In 2005 he produced a documentary on the genocide which is available at: www.regionalkinetics.com/documentary.html