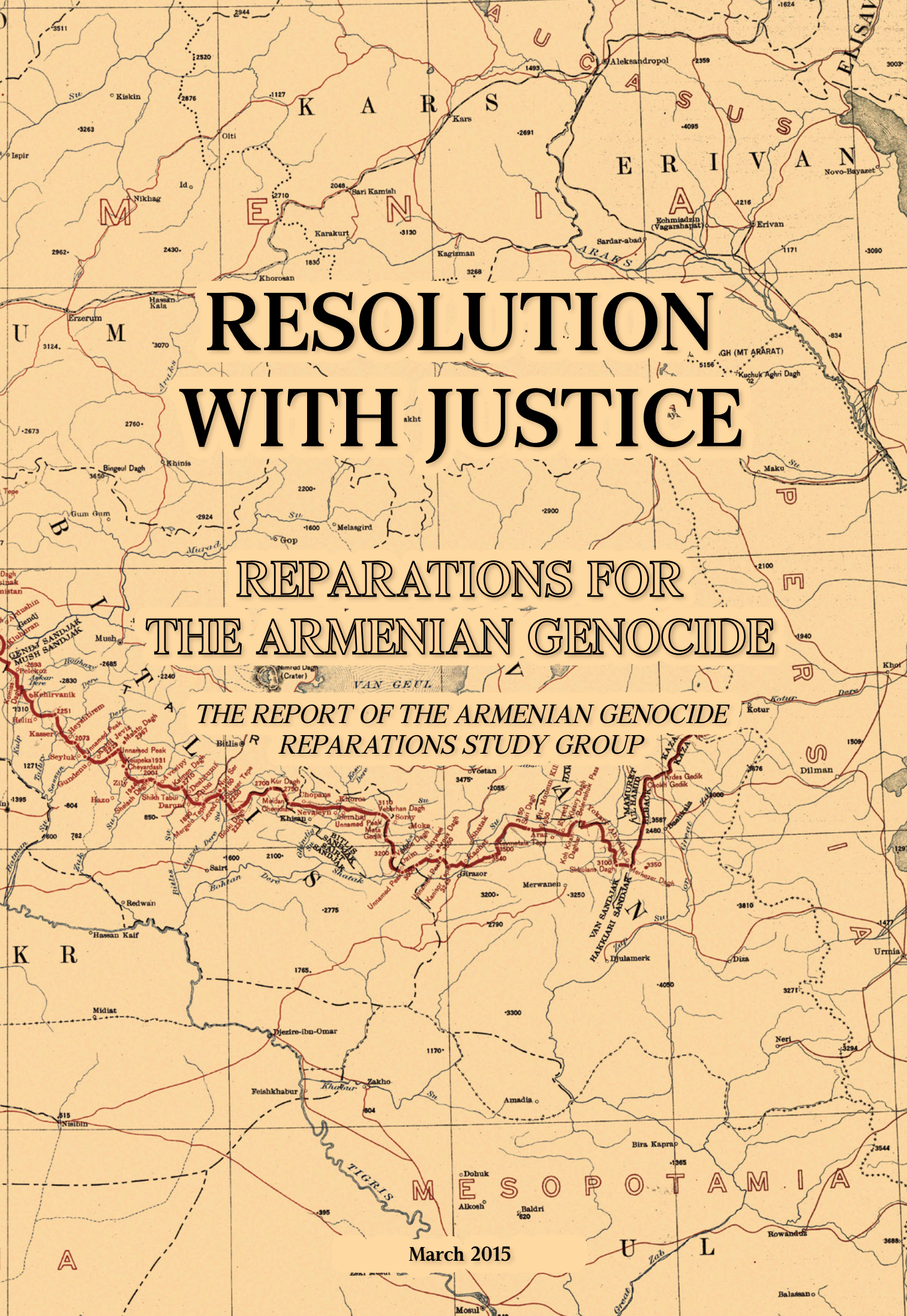

RESOLUTION WITH JUSTICE

REPARATIONS FOR THE ARMENIAN GENOCIDE

THE REPORT OF THE ARMENIAN GENOCIDE REPARATIONS STUDY GROUP

March 2015

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Armenian Genocide Reparations Study Group:

Chair: **Henry C. Theriault**

Members: **Alfred de Zayas**
Jermaine O. McCalpin
Ara Papian

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EXECUTIVE SUMMARY

This is the final report of the Armenian Genocide Reparations Study Group (AGRSG). The report offers an unprecedented comprehensive analysis of the legal, historical, political, and ethical dimensions of the question of reparations for the Armenian Genocide of 1915-1923, including specific recommendations for the components of a complete reparations package.

The present time is optimal for the release of the report. The 100th anniversary of the beginning of the Genocide—2015—will see greatly heightened international political, academic, media, artistic, and public interest in the Genocide. In addition, in the past few years, reparations for the Genocide have gone from a marginal concern to a central focus in popular and academic circles. Much of that focus has been on piecemeal individual reparation legal cases. This report represents a decisive step toward a much broader and all-embracing process of repair that is adequate to resolve the extensive outstanding damages of the Genocide. Furthermore, genuine, non-denialist engagement with the legacy of the Genocide is growing in Turkey. Finally, in the past decade, a global reparations movement has emerged, involving numerous victim groups across an array of mass human rights violations. The Armenian case has a place within that movement.

The AGRSG recognizes that Assyrians and Greeks were also subjected to mass violence and property expropriation in the same overarching genocidal process that targeted Armenians. Because AGRSG members' expertise and scholarly or policy-making histories have been focused on the Armenian Genocide, they have not presumed to analyze or make recommendations regarding the other cases; scholars and policy analysts with expertise on the vast specifics of the Assyrian and Greek cases are far better situated for such work.

The case for reparations is complicated by many practical obstacles. For instance, the possession by the perpetrator group of expropriated property over time has become the normalized status quo, such that return of property and compensation appear unwarranted. In addition, the sacrosanct principle of "territorial integrity" of existing states is a particularly significant obstacle to land reparations. This principle, which is taken as basic to the global political order, makes nearly impossible the international border changes the AGRSG sees as central to a comprehensive and effective reparations package.

The AGRSG also recognizes there are those who would object to this report not on the grounds that its analysis is wrong or inadequate, but that the quest for reparations for the Armenian Genocide, especially a return of land, is very unlikely to succeed and is thus impractical. At the same time, history offers many examples of those seeking fundamental social and political change who were similarly dismissed as impractical and as having no chance of success, such as leaders of the U.S. civil rights movement; yet, in time, the naysayers were proven wrong, and dramatic change did occur. The AGRSG operates with the view that, where law and ethics support change, however far-reaching, change is possible.

PART 1: HISTORICAL BACKGROUND

In the main phase of the Armenian Genocide (1915-1918), the Committee of Union and Progress (CUP; also referred to as Young Turk regime), which had seized power in the Ottoman Empire, planned and directed the murder of up to 1.5 million of its Armenian citizens and dispersed nearly all of the remaining million into a worldwide refugee diaspora. The genocidal process entailed infliction of great suffering, including extensive rape, as well as the expropriation of virtually all Armenian material resources, from

money, jewelry, and land, to kitchen pots and pans and clothes. In the second phase (1919-1923), Turkish nationalist military forces invaded the Armenian Republic, established in 1918 as a haven for Armenian reconstitution, and took much of its territory for the emerging Turkish Republic while forcing the rump Republic into the Soviet Union. Nationalist forces and supporters also prevented return of Armenians to their former lands after the end of World War I.

PART 2: THE HARMS INFLICTED THROUGH THE ARMENIAN GENOCIDE

The Genocide devastated every aspect of Ottoman-Armenian existence and later profoundly harmed Russian Armenians as well. Damages can be broken into two categories: "permanent" and "material." Permanent damages cannot ever be rectified fully or directly. These include the killing, torture, and rape of Armenians, the destruction of families and community structures, and the consequent psychological trauma. For instance, there is no way to bring the dead back to life or to bring into existence the people who would have been their descendants living today, nor can the suffering of rape be erased once experienced. Indirect partial reparation for permanent harms is possible, through for instance, compensation that helps support the demographic increase of Armenians. Material harms include the expropriation of movable and immovable property, including businesses. These can be returned or compensated for through a cash equivalent, plus appreciation and inflation adjustments and compensation for lost use (usufructus). There are also hybrid harms, such as enslavement, some part of which (labor) can be compensated and some part of which cannot fully be (psychological harm).

PART 3: THE FIVE COMPONENTS OF REPARATIONS FOR GENOCIDE

A comprehensive reparations package for any genocidal complex comprises the following components:

(1) Trials of all accused major perpetrators and assessment of the responsibility of other perpetrators.

(2) Return of all available expropriated property; payment of death insurance benefits; and compensation for the death and suffering of persons, destroyed or unavailable property, and loss of cultural, religious, and educational institutions and opportunities.

(3) Recognition and apology.

(4) Measures designed to support the reconstitution and long-term viability of the victim group.

(5) Rehabilitation of the perpetrator society.

PART 4: REPARATIONS IN INTERNATIONAL LAW AND THE ARMENIAN CASE

International law and human rights law require a reduction of the impact of harm through a combination of affirmative measures, including an investigation of the events, recognition of the crime, expression of

regret for the crimes, punishment of the guilty, restitution of properties, compensation schemes, and rehabilitation of the victims and their descendants.

Pursuant to the general principle of law prohibiting "unjust enrichment," it is necessary to deprive the perpetrators of the crime and the persons inheriting their rights of the fruits of genocide. The general principle that reparations are appropriate and required in cases of gross human rights violations such as genocide has been affirmed by the United Nations (U.N.) General Assembly, in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The legal obligation to provide material reparations for the Armenian Genocide does not depend on the case being genocide. The general principle of law *ubi jus ibi remedium* ("where there is a right, there is a remedy") already indicates that a crime must be repaired, whether it is a crime under common law, a war crime, or a crime against humanity. This is a fundamental legal basis for reparation. Moreover, international law is clear that illegitimate expropriation of movable and immovable property through or as a consequence or part of human rights abuse, whether genocide or not, is not acceptable. The Permanent Court of International Justice enunciated this principle in the *Chorzow Factory case* as follows: "It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation." This requirement to repair depends on the violation of an obligation of the perpetrator state. The Ottoman Empire had assumed such an obligation to Armenians prior to the Genocide, by accepting agreements starting in the mid- to late-19th century that required it to end its widespread human rights violations against Armenians. This obligation was confirmed by (1) the Empire's trials of some of the major perpetrators of the Genocide for violating the laws of the Empire in destroying the Armenians, and (2) an Ottoman deputy's November 1918 statement in support of the trials that what was done to Armenians was a violation of the "rules of law and humanity," to which Turkey and every other state is bound. Importantly, other states also have an obligation not to recognize illegal property seizures as those in the Armenian case: Article 41 (2) of the Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts stipulates that "no State shall recognize as lawful a situation created by a serious breach" of an obligation arising under a peremptory norm of general international law (*jus cogens*).

The U.N. Genocide Convention is a second legal basis that justifies reparation. Beyond restitution and compensation for the discriminatory confiscation of private and community property, there is an obligation to make amends for the death and suffering caused by grave crimes committed against the Armenian population of the Ottoman Empire. Although the Armenian Genocide occurred before entry into force of the Convention and the coining of the term "genocide" in 1944, the Convention is declaratory of pre-existing international law that made the Genocide clearly illegal when it occurred. The doctrine of state responsibility for genocide and crimes against humanity already existed at the time of the Ottoman massacres against Armenians. Such state responsibility entailed both an obligation to provide restitution and/or compensation and the personal criminal liability of the perpetrators.

State responsibility does not lapse with time; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity makes clear that there is no prescription on the prosecution of the crime of genocide, regardless of when the genocide occurred, and that the obligation of the responsible state to make restitution or pay compensation for properties obtained in relation to a genocide does not lapse with time.

An important objection to the current Turkish Republic's responsibility for reparations is the argument that it represents a different state from that which perpetrated the Genocide. Even setting aside the fact that Mustafa Kemal Ataturk's forces perpetrated the second phase of the Genocide, as described above, this objection still fails. The report of the independent expert on the right to restitution, compensation, and rehabilitation for victims of grave violations of human rights, Professor M. Cherif Bassiouni, reiterates a basic principle of succession:

> In international law, the doctrine of legal continuity and principles of State responsibility make a successor Government liable in respect of claims arising from a former government's violations.

Nor do the deaths of survivors entail an end to this obligation. The standing of genocide survivors to advance claims of restitution, both individually and collectively, extends to their descendants, as made clear in the 1997 U.N. Basic Principles and Guidelines on the Right to Reparation for Victims of [Gross Violations] of Human Rights and International Humanitarian Law, which provide in part:

> Reparation may be claimed individually and where appropriate collectively, by the direct victims of violations of human rights and international humanitarian law, the immediate family, dependents or other persons or groups of persons closely connected with the direct victims.

Options for the pursuit of reparations suits not only include international legal bodies, such as an ad hoc tribunal, the U.N. Compensation Commission, or the International Court of Justice (ICJ), but also extend to domestic courts as well, based both on existing laws allowing such a use and on the possibility of passage of "enabling legislation" granting the decisions of international courts and tribunals status in the domestic legal order, which would in turn translate the principles underlying the decisions into domestic legal norms.

PART 5: HISTORICAL OBLIGATIONS AND REPARATIONS

The first Armenian Republic, which included lands previously in both the Ottoman Empire and Russian Empire, was established in 1918. On April 26, 1920, the Allied Powers of World War I submitted a compromis (application) to U.S. President Woodrow Wilson asking him to determine the border between the Armenian Republic and Turkey. On May 17, 1920, the U.S. Secretary of State informed the American Ambassador in France that the President had agreed to act as arbitrator. Article 89 of the August 20, 1920, Treaty of Sèvres confirmed the referral to the arbitration of President Wilson. The resulting Wilsonian Arbitral Award fixed the border between Turkey and Armenia in the *vilayets* (provinces) of Erzerum, Trebizond, Van, and Bitlis, which required transfer of territory in these areas to Armenia, and provided Armenia access to the sea.

While the treaty itself required ratification by signatories to go into full effect, under international arbitration law, once an arbitration application is made and accepted, the arbitration decision becomes binding on referring parties, regardless of whether other related instruments, such as a treaty, go into effect, provided that the arbitration process meets the four criteria for a valid, legally binding arbitral award. The Wilsonian Arbitral Award process did.

(1) **The arbitrator(s) must not have been subjected to any undue external influence such as coercion, bribery, or corruption.** There can be no question of U.S. President Wilson's freedom from coercion, bribery, and corruption.

(2) **The production of proofs must have been free from fraud and the proofs produced must not have contained any essential errors.** A brief examination of the committee and its operation confirms this criterion to have been met. The U.S. President convened a committee of experts, the Committee upon the Arbitration of the Boundary between Turkey and Armenia. The committee's chair was William Linn Westermann, then Professor at the University of Wisconsin and soon after Professor at Columbia University until 1948. He was a specialist in the history and politics of the Near and Middle East and, in 1919, had been the chief of the Western Asia Division of the American Commission to Negotiate Peace in Paris. The principal collaborators and contributors were Major (and Professor) Lawrence Martin of the Army General Staff, who had participated as the geographer of the Harbord Mission, and Harrison G. Dwight of the Near Eastern Division of the Department of State. Each committee member was a knowledgeable, experienced, and impartial expert. What is more, their work continues to stand out and be highly regarded by international lawyers as a model for such processes. They used a wealth of valuable information provided from a range of reliable sources and took account of

> the need for a "natural frontier" [and] "geographical and economic unity for the new state," [while] ethnic and religious factors of the population were taken account of so far as compatible[, and] security, and the problem of access to the sea, were other important conditions.

(3) **The compromis must have been valid.** This is confirmed by the fact that all relevant parties, including the governments of Armenia and Turkey, consented to the arbitration. The Turkish government, in fact, had a formal opportunity to object to the arbitration as part of its review of the Sèvres Treaty, but did not object. The compromis itself was signed by the authorized representatives of the lawful government of the Ottoman Empire.

(4) **The arbitrators must not have exceeded their powers.** The compromis asked the arbitrator to (a) fix the frontier between Turkey and Armenia in the *vilayets* of Erzerum, Trebizond, Van, and Bitlis, (b) provide access for Armenia to the sea, and (c) prescribe stipulations for the demilitarization of Turkish territory adjacent to the Turkish-Armenian frontier. The Arbitral Award did exactly these things and did not address any other territorial concerns.

Thus, the Wilsonian Arbitral Award of territory to the Armenian Republic was binding at the time, regardless of the fact that the Treaty of Sèvres was never ratified.

It follows that Turkey's current occupation of "Wilsonian Armenia" constitutes a breach of an international obligation and is legally actionable, for instance, by referral to the ICJ, under Article 36 (2) of the ICJ Statute, which allows it to decide "the nature and claim of the reparation to be made for a breach of an international obligation." Consequently, in spite of Turkey's long-standing occupation of the land in the Arbitral Award, it does not possess legal title to that territory; its de facto sovereignty is merely administrative control by force of arms. Belligerent occupation does not yield lawful rule over a territory. Continuous occupation since 1920, demographic changes (forced or otherwise) in the territory

in question, and elimination of the outward cultural signs and designations of the territory have no effect on the legality of Turkish control of the territory.

The July 24, 1923, Treaty of Lausanne is often considered to be the replacement for the unratified Treaty of Sèvres. This is not the case, however. The former was not a treaty among the Sèvres signatories but a different set, while a treaty can only be amended by the agreement of all its signatories. What is more, the Treaty of Lausanne was and is not binding for any Armenian entity, because no Armenian entity was a party to it, despite the continued existence of the Armenian delegation that signed the Sèvres Treaty. Finally, the scope, objectives, and context of the two treaties were quite different: the Sèvres Treaty was meant to end that part of World War I that concerned Turkey and to establish peace, while the Lausanne Treaty concerned only the Greek-Turkish conflict of 1919-1922.

The Wilsonian Arbitral Award has special importance for Armenian Genocide reparations. The original award can be seen as the central component of a reparations scheme worked out by relevant representatives of the international community in the aftermath of the first phase of the Armenian Genocide. The goal was to provide Armenians a territory adequate for their post-genocide reconstitution and future viability as a people. If reparations for the Armenian Genocide are justified, then it is reasonable to see the previously determined reparations scheme that includes the Arbitral Award as still valid. Second, the present enforcement of the award can be viewed as repair for the damage done by Turkish nationalist forces that blocked its full implementation and violently seized the awarded territory, including that part already under Armenian political sovereignty. In this sense, enforcement of the award is reparation for Turkey's violation of a binding obligation, a violation that was part of the second phase of the Armenian Genocide pursued by nationalist forces through 1923.

PART 6: ETHICAL DIMENSIONS OF THE REPARATIONS QUESTION

Reparations must be not only legally right, but also consistent with the political context in which claims are made. Typically there is strong resistance to reparations within the geopolitical realm, where "realism" based on the interests of powerful states dominates. Short of substantial shifts in the power hierarchy or interests of political players, ethical commitments are the key mechanism of change. Indeed, ethics-based movements have in some cases succeeded in driving profound positive changes despite the resistance of powerful interests. The successes of the Indian independence movement for freedom from British rule, the U.S. civil rights movement, and the anti-Apartheid movement are examples. Law/politics and morality are not opposed forces; on the contrary, ethical commitments can be crucial to implementation of human rights-respecting laws, legal decisions, and political orders. Ethical imperatives are the key to changing attitudes within a perpetrator group. An understanding of why Armenian Genocide reparations are morally right can foster broad and effective support for the legal and political decisions that are necessary to implement them. The AGRSG thus includes consideration of the ethical dimensions of the Armenian Genocide reparations issue in this report, as a complement to legal and political considerations.

The major traditions of Western philosophical ethics—Aristotelian, Kantian, Utilitarian, and Rights-based—all generally support reparative justice. Ethical theories focused specifically on oppression often go further, to include repair of damage done through human rights abuse as a priority issue. At the same time, modern Western philosophical thought, particularly in its liberal forms, tends to deemphasize or

reject a key aspect of repair: the repair of groups. But genocide is aimed at the destruction of groups as groups, more than simply aggregates of individuals. Thus, a comprehensive and effective reparations package should focus on repair of the victim group (for instance, reconstitution of the economic and political life and the identity of the group) rather than on individual reparations. While the latter can have a role in an overarching process of repair, only through group reparations are the harms of genocide addressed directly and adequately.

Despite general ethical support for reparations, alternatives exist and complexities arise when detailed ethical analyses are developed, especially when general principles are applied to specific cases. This report addresses 10 such complexities and alternatives relevant to the Armenian case.

(1) **Does the passage of time eventually nullify reparations claims?** This is the case only when the relevant groups are no longer identifiable and the damage done originally has no traceable impacts on the present. Armenians and Turks as peoples with associated political entities quite clearly exist today, with lineages directly back to the Genocide period. The injuries done by the Genocide continue to have significant impacts on Armenians; for example, the widespread poverty of Armenians in the Armenian Republic; the political, military, and economic weakness and precariousness of the Republic; the continuing loss of Armenian identity and community cohesion in the global Armenian Diaspora; the physical insecurity and vulnerability of various Diasporan communities around the globe; and the small size of the Armenian population relative to groups such as Turks.

(2) **Restoration of the pre-Genocide state of affairs is impossible and undesirable**. This is true because, for instance, (a) nothing at the present time can bring back those killed in the Genocide or their descendants who would be alive today and (b) it is highly unlikely that any Armenian today would wish to live under the same conditions in which Armenians lived before the 1915 Genocide, or even the earlier 1894-1896 Hamidian Massacres of Armenians. But the push for reparations is not a call for a complete reversal of harms or the impossible and undesirable return to the pre-harm state. It calls for present-day measures that can mitigate the continuing impact of the harms done in the Genocide, in a manner that will support the reconstitution of Armenians as a group, as well as their identity and political viability into the future.

(3) **A full accounting of what reparations are due Armenians is impossible.** This might be true, because of incomplete records of deaths, suffering, and property expropriations; however, it is possible to determine—directly and by extrapolation—much that is due based on extensive existing records. Where records are unclear, conservative estimates can be used. That not every loss or injury can be addressed does not mean none should be.

(4) **Will material reparations be unacceptably disruptive, harm innocent Turks today, and benefit underserving Armenians?** Clearly, Turks today are not to blame for the Genocide. But, many families, individuals, and businesses still benefit greatly from property expropriated in the Genocide, while the large amount of property going to the state—as well as other gains made through the genocide, such as increased military power, political consolidation and geopolitical importance, and identity solidity, that might correlate to harms done to Armenians that are also subject to repair—still significantly benefits Turks in general today. Contemporary Turks are responsible for reparations to the extent that their state and society and particular individuals still benefit from the Genocide. What is more, the vast majority of Turks today identify with the same national group that committed the Genocide. If they are willing to

accept and celebrate the positive aspects of that identity, they must accept responsibility for the negative aspects of that identity, including its history of Genocide.

Group reparations to Armenians are not meant to profit particular Armenians in personal terms, but rather to support reconstitution and the future viability of Armenians as a group, which Armenians deserve in the face of the legacy of the Genocide that continues to undermine and degrade Armenian group existence.

(5) **Is the notion of pre-Genocide "Armenian territory" untenable?** Although the six traditionally Armenian provinces within the Ottoman Empire had mixed populations, they were long identified and associated with Armenians, and many areas had Armenian majorities. What is more, their Armenian populations had been reduced through deliberate policies. Armenians also had a substantial demographic presence in other areas of the Ottoman Empire, including the Cilicia region and many urban areas. The determination of lands to be included in a final reparations package could offset pre-Genocide demographic interspersion on the land to be given with the fact that Armenian lands in other areas would remain in Turkey. Resistance to the identification of lands as Armenian is not the result of an objective analysis of the facts, but instead of the persistence of the genocidal ideology that excluded Armenians even conceptually from the Ottoman Empire and the subsequent Turkish Republic, and saw the Turkification of Armenian land as justified.

(6) **Do recognition and/or apology adequately address the legacy of the Genocide?** While both are essential components of a comprehensive reparations package, alone they are (a) inadequate to address the full extent of the continuing impact of the Genocide, especially its material elements, and (b) inherently unstable unless connected to material forms of repair, as they are merely rhetorical and can be withdrawn at a later date.

(7) **Is Armenian-Turkish dialogue toward reconciliation a better path than reparations?** While dialogue can be positive and the AGRSG considers use of a truth commission as an avenue for dialogue to be an essential mechanism of the reparative process, dialogue alone cannot address the outstanding legacy of the Genocide. There is a deep power asymmetry between the groups that is the legacy of the Genocide and can only be mitigated by material measures. Dialogue will not only leave the power asymmetry intact but will likely exacerbate it, to the detriment of Armenians. While dialogue might result in improved relations, these will be at the cost of Armenians giving up material and even symbolic reparations claims and accepting their subservient position relative to the Turkish state and society.

(8) **Democratization of Turkey would be a positive development.** But, while it might change attitudes toward minority groups in Turkey, including Armenians, and even promote recognition of the Armenian role in Turkish history, it would not in itself repair the bulk of Genocide injuries. Only an explicit reparations process can do that. What is more, as a multitude of historical examples show, democratic political institutions and practices are perfectly consistent with bad treatment of minority and external groups; mere democratization of Turkey does not entail a change in attitudes toward and treatment of Armenians within or outside Turkish borders.

(9-10) **Will granting or calling for reparations produce a backlash among Turks? And, do land reparations represent an unacceptable existential assault on Turkish statehood and identity?** If the answer is "yes" to either question, the reason for this is not because Armenians are exercising a right

to repair or are being aggressive in any way; it is because the post-Genocide political and property status quo and subjugation of Armenians have become so entrenched in the culture and institutions of the Turkish state and society that a call for just repair is misperceived as an unfair victimization of Turks, or as an aggressive threat to Turks.

PART 7: THE REPARATIONS PROCESS AND THE PROCESS AS REPARATION

The AGRSG proposes a novel approach to the reparations process—the use of an Armenian Genocide Truth and Rectification Commission (AGTRC). A truth commission would increase the likelihood of reparations being made, and of those reparations being genuine and sincere, as well as encouraging the rehabilitation of the Turkish state and society, which is not a concern in the legal or treaty analyses and just touched on in the discussion of ethical issues. It therefore offers a path toward repair that includes the benefits of recognition and apology, dialogue, and democratization of Turkey, without sacrifice of material and other reparations components. The AGTRC would engage Turkish individuals and institutions to be active participants in the reparative process, thus allowing the freedom of ethical decision-making to come into relation with the legal and ethical requirement for repair. Instead of reparative measures being imposed on the Turkish population from outside, reparations would flow out of the truth commission experience. The AGTRC would offer a unique opportunity to invest material reparations with the meaning they should have but which is often excluded from legal and political processes. Next, not only will the truth commission process foster the awareness and reflection necessary to bring about the rehabilitative transformation of the Turkish state and society away from the legacy of genocide, but the process itself would also be rehabilitative. A truth commission is the best mechanism for bringing about the rehabilitation of the Turkish state and society.

The AGTRC is not meant to open legitimate discourse on the events starting in 1915 to denial and obfuscation. On the contrary, the AGTRC is predicated on the veracity of the Armenian Genocide. It is not a mechanism for determining whether the Genocide happened—the historical evidence that it did is incontrovertible—but rather (1) for consolidating the historical record as to the details of what happened and the impacts of what happened going forward, (2) for helping contemporary Turkey and Turks to come to terms with the accurate history of the Genocide, and (3) for engaging Armenians and Turks in a deliberative process regarding repair of the damage done. It is a mechanism for dealing with the legacy of the Genocide, not a means for questioning whether the Genocide occurred. It is thus quite different from what the unofficial "Turkish-Armenian Reconciliation Commission" (TARC) that operated from 2001-2004 was, and what many fear the historical sub-commission called for in the 2009 diplomatic protocols between Armenia and Turkey could become, despite assurances to the contrary. As a broad-based, public process, the AGTRC offers Turkish society its first opportunity to engage the history of the Genocide—and thus its own history—in an open, forthright, and comprehensive manner freed from the pressure of denial and legally enforced adherence to an inaccurate and damaging state narrative of the past. It is thus a mechanism for the "deeply divided" Turkish society, with continuing ethnic fractures and hierarchies, to develop a new understanding of itself that can help it overcome the divisions. In this sense, the AGTRC could be a highly effective engine of democratization for Turkey, accomplishing what methods that sidestep the legacy of the Genocide would fail to do.

The corrective impulse of long-term solutions is necessary but often misguided in connection to truth commissions. The resolution of the Armenian Genocide, as with many other mass killings and atrocities,

must focus primarily on justice based on truth, and not simple conciliation. The goal of resolution efforts must place energy in revelation and reparation. It is not that conciliation is unimportant, but that meaningful conciliation cannot be achieved until the parties have moved beyond the contestation of the Genocide toward justice for it. Conciliation by acceptance of an unjust status quo is not a productive resolution of the Genocide, but instead consolidates its harms and further weakens and marginalizes the victims. Proper conciliation is a by-product, not a focus or ultimate goal, nor a necessary outcome of the AGTRC. If the AGTRC achieves justice for the Armenian Genocide but does not result in Armenian-Turkish conciliation, it will have been successful, and at the very least will have opened up the possibility of a future conciliation.

The practical implementation of the AGTRC will be complex. The politicized and idiosyncratic nature of the TARC membership offers an important caution. The logistics of how members of the AGTRC would be selected will always be controversial. Armenians, Turks, and persons not directly connected to either group ought to serve on the commission. Just as importantly, its members should represent a wide cross-section of interests and not be dominated by political brokers on either side. Given the origination point of the AGTRC—recognition of the fact of the Armenian Genocide and the need to engage its legacy—deniers have no role on the AGTRC.

The AGTRC's powers and limitations must be decided on, clearly stated, and fully supported by Turks and Armenians. In general, truth commissions are not judicial bodies and therefore do not have the powers of subpoena or prosecution. They often make recommendations based on their findings but are normally limited in their ability beyond that. Additionally, all truth commissions must answer the question as to who will be held liable by its findings and who will be charged to implement its recommendations.

A crucial consideration of the AGTRC will be who will provide resources for reparation. This issue is likely to be controversial within the Turkish state and society and will require deliberations among Turks. The AGTRC offers an open process for these deliberations.

PART 8: RECOMMENDATIONS FOR A COMPREHENSIVE REPARATIONS PACKAGE

The AGRSG makes the following recommendations for reparations for the Armenian Genocide, based on the five elements of a comprehensive reparations package:

(1) *Punishment*

Punishment of direct perpetrators of a genocide is an important measure for establishing the dignity and worth of the victims by officially marking the injustice of what was done to them. In the case of the Armenian Genocide, however, no direct perpetrators are alive for prosecution, and so this aspect of repair is not applicable.

(2) *Recognition, Apology, Education, and Commemoration*

The Turkish government and complicit non-governmental entities should officially recognize and apologize for the Genocide. These acts should contain precise details of the Genocide, including accounts of who committed what acts and who was victimized. They should explicitly identify the nature of the connection of contemporary Turkey to the Genocide and explain its responsibilities to Armenians today.

Extensive educational initiatives, including making the Genocide a major component of public education curricula in Turkey, should be pursued by Turkey domestically and internationally at all levels. Finally, Turkey should create multiple museums and fund commemorative events on the Genocide across Turkey, and support such initiatives in other areas, including the Republic of Armenia. Historically Armenian place names should be restored in areas not to be given as territorial reparations to Armenians.

(3) *Support for Armenians and Armenia*

The Turkish state should provide political and other support for the long-term viability of the Armenian state and Armenian identity globally. Beyond material reparations and cessation of additional harmful activities, such as the two-decade blockade of the present Turkish-Armenian border, Turkey should take positive steps, including providing diplomatic advocacy for the Armenian Republic and protection of the Republic against external security threats.

(4) *Rehabilitation of Turkey*

Beyond an end to all denial activities and promotion of respect for Armenians and all non-Turkish groups in Turkey, the Turkish state and society should extirpate from all institutions, cultural elements, etc., vestiges of the attitudes and practices connected to the genocidal ideology and process of genocide against Armenians, such as Article 301 of the Turkish Penal Code.

(5) *Return of Property and Compensation for Property, Death, and Suffering*

Land, buildings, businesses, and other currently available immovable and movable property expropriated through the Genocide should be returned. Property destroyed or otherwise legitimately unavailable should be compensated for. For returned and compensated property, there should also be usufructus compensation for lost use and benefits during the period the property was held. As discussed below, individual and group land reparations should be adjusted to allow political transfer of contiguous lands to Armenians. Compensation for the deaths and suffering of victims of the Genocide should also be made. All expropriated Armenian Apostolic Church, Armenian Protestant Church, and Armenian Catholic Church property, regardless of location, should be returned.

With the exception of property now held by direct heirs of those who seized it in the Genocide, the Turkish government is responsible for paying compensation and developing a program for property return, which should include compensation to Turkish citizens whose land is given in repair. The costs of this process should be distributed across Turkish society in a fair manner, which might be determined through the AGTRC process.

With the exception of Armenians with complete documentation of specific expropriated property, property return and compensation as well as all compensation for death and suffering should be given to Armenians as a group. Assignments of these resources to the Armenian government, global and local Armenian institutions and organizations, and individuals across the global Armenian population must be made through a fair process that prioritizes immediate and long-term group viability and the needs of individual Armenians. Armenians from all locations and statuses should have full voices in the process, and special care should be taken to prevent powerful elites from hijacking the process.

Multiple approaches can be used to determine the territory designated for political transfer. The AGRSG views the Wilsonian Arbitral Award to be optimal for determining the territory to be politically transferred. The determination of this territory took into account precisely the factors related to the

future viability of an Armenian state, which is the key concern of this report. What is more, comprising parts of four of the six traditional Armenian provinces that were contained in the Ottoman Empire, it represents a reasonable reduction of a full award of the six provinces plus Cilicia, in order to account for mixed pre-Genocide populations in the provinces. While a complete political transfer of land to the Armenian Republic is optimal, the AGRSG recognizes the alternative of demilitarizing the Wilsonian zone and allowing for free Armenian economic activity and residential status in it.

Financial compensation for property unavailable for return and related usufructus could be estimated based on extrapolations from (a) documented property losses and (b) historical records of general levels of pre-Genocide material possessions of Armenians in various locations. Because of the extensive analysis necessary for this calculation and the need for an analysis of records that are just now emerging and being studied, the AGRSG cannot provide a figure at this point for this compensation. As for compensation for death and suffering, either of two methods related to the *Marootian et al.* v. *New York Life Insurance Company* case could be used, yielding US$33,358,953,125 and US$10,450,000,000, respectively. The former figure might be adjusted using the U.S. Bureau of Labor Statistics Dollar Inflation Calculator in place of that in the New York Life case, yielding a final figure of US$70,030,167,080.

As an alternative, it is possible to use the calculations of property losses and compensation for deaths and suffering determined by the Paris Peace Conference in 1919. Using the New York Life method, the adjusted 2014 figure is approximately US$41,500,000,000; the U.S. Bureau of Labor Statistics Dollar Inflation Calculator would yield US$87,120,217,000. If these figures are further adjusted by adding 20 percent to account for losses and deaths and suffering for the second phase of the Genocide from 1919 to 1923, the totals would be US$49,800,000,000 and US$104,544,260,400, respectively.

In addition to the New York Life and U.S. Bureau of Labor Statistics methods, other methods for calculating losses and death and suffering compensation at the time of the Genocide as well as forward valuation are possible. The actual reparations figure would have to be selected from what is given in this report or through another method, as decided in the legal decision, political agreement, or AGTRC recommendation used to determine the final reparations package.