

A MORE ACTIONABLE ROAD MAP...

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FOR JUSTICE TO THE ARMENIAN GENOCIDE

By Shahe Yeni-Komshian, M.D. November 18, 2012

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Overall this is a piece of synthesis, bringing together different but viable strands of thought and approach, aiming to generate larger coherence in our political thinking.

There is a definite effort to prioritize our challenges; there is emphasis on the necessity to focus on the judicial angle in our fight, and some attempt to identify action plans.

My aim is to initiate public discussion about the topic and also bring these ideas to the widest possible audience. It may hopefully spark and initiate a discussion by thoughtful minds to possibly start a new, serious effort to develop and pursue a realistic road map for the ultimate realization of our National goals.

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INTRODUCTION

Most Armenians in the Republic of Armenia and the Diaspora have a reasonable understanding of the political landscape that our nation is facing today and are cognizant of the realities that are challenges to our national interests.

Unlike in the past, almost all Armenians expect realistic solutions to those challenges.

The inherently acknowledged national aspiration is to achieve Long Term Viability for the Armenian Nation, with the following OBJECTIVES:

A. Healthier and Stronger Republic of Armenia

- Protect the national interests and security of the homeland
- Create a healthier civil society in order to strengthen the Republic
- Protect the institutionalization of democracy and rule of law
- Secure the people's economic well-being and establish social justice

B. Solutions to the Unresolved Injustices: The Armenian Rights or HAY TAHD

- Just Resolution of the ARMENIAN GENOCIDE
- Free and secure ARTSAKH
- Safe and sustainable JAVAKHK

C. A Healthy Armenian Diaspora

- Build and better organize Diasporan communities
- Protect and enrich the Armenian identity
- Influence and guide the governments' policies on matters of interest to the Armenian Nation

The above objectives represent aspirations and not necessarily strategies. Do Armenians have a common understanding of how to set the agenda to undertake solutions to our aspiration? Do we have an ARMENIAN NATIONAL RIGHTS' ADVOCACY GUIDE, a sense of what challenge has the greatest urgency and significance to the nation? Do we have a ROAD MAP in how to achieve our goals?

The answers to the above questions are beginning to take shape.

PAN-ARMENIAN COMMON AGENDA

The agenda for the Armenian nation is simple yet complex at the same time. It is simple, because it seeks the viability of the entire Armenian nation.

Complex, because the Armenian nation and its population are comprised of two different and yet complementary entities; the Republic of Armenia which represents the state and the Diaspora which comprises people settled far from their ancestral homelands, each with different immediate priorities.

For a while this duality created confusion which led to a non-coherent and non-homogeneous political course. In the past we did not have a vision of how to organically, practically and strategically link them together. Our efforts to rectify the above challenges remained static for a long

time; the inertia hurt our cause.

The good news is that in the past 3 years a louder quest for justice has evolved on all levels, thereby in some cases transforming our demands from a vague and unclear strategy into a more distinct one.

We now realize that:

- All three objectives for the Armenian nation's viability, i.e. strong and healthy Armenian state, solutions to the unresolved injustices (Genocide, Karabagh and Javakhk), and strengthening the viability of an organized Armenian Diaspora, are intuitive links to the same chain and are intertwined with the ultimate fate of the Armenian nation. There is now conviction about the need to create a coordinated policy between the three.
- The anchor of a viable Armenian Nation is the first aspiration - namely a healthier/stronger state i.e. Republic of Armenia. There is now ample realization by all, that the socioeconomic deterioration of current day Armenia, the present day injustice, is a national security threat, and is rapidly becoming a dire challenge hence requiring imminent short term as well as long term strategic prioritization. There is also an undisputed realization by leaders, scholars and the public at large, that on the geopolitical level the claim to the Karabagh (NKR) liberated territories, the territories referred to by some as the "security zone", and the case for de jure recognition are an imminent national political priority.

Strengthening of the Armenian state is hence the most important Armenian agenda and that is why today's pan-Armenian political view is clear about the fact that the viability of the Republic of Armenia is the core priority of our national challenges. Issues of the political inertia, the vast emigration and the emptying out of villages nearby the borders and the socio-economic injustices are big challenges for a modern country to survive, and yet have not been fully appreciated. Hopefully the social and economic injustices within the Republic of Armenia, the necessary changes in the foreign policy of the state of Armenia and its strategic approach to the Nagorno-Karabakh conflict would take a more actionable priority soon. This must be addressed in a separate paper.

Prioritizing the core component is not of course the same as excluding the others.

Because of the centennial, the national injustice of the Genocide has become a parallel political priority and a succinct transformation is occurring with the quest for Genocide justice. A realization has emerged that although the universe of the Armenian nation contains more than genocide recognition, this historic injustice cannot be irrelevant and not only does it have a very strong psychological component for more than half of the Armenian nation, but the restitution of this historic injustice may have important contemporary dimensions as it relates to state to state Armeno-Turkish relations.

This paper makes an attempt to explain the current status and, at the end, offers some actionable suggestions.

DEMAND FOR JUSTICE FOR THE GENOCIDE AND ARMENIAN RIGHTS

The next three years preceding the Centennial of the Armenian Genocide are going to be the time for the Armenian nation to redouble its efforts toward the pursuit of justice for the Armenian Genocide. Until recently most of our efforts for the Genocide Resolution have had a psychological basis, with an emotional and subjective focus. We have had commemorative programs, requiem services and speeches every year on the day of April 24th all throughout the globe. We have organized demonstrations. We have received repetitive proclamations from state Governments in favor of the Armenian Genocide recognition and all that made us feel better. During the last decade more concrete efforts were taken in our quest to obtain Recognition. Lately there has been some rhetoric and discussion about Reparations, without much clarification of action plans. And sadly, the geopolitics of Anatolia and the Middle East has prevented the Armenian side from creating common interests between the needs of any superpower and the Right for Justice to the Armenians.

More specifically, until 2010 our approach to pressuring Turkey into accepting culpability of the Genocide followed a rather narrow strategy:

First, the focus on the injustice has been solely that of Recognition;

Second, the efforts to pressure Turkey have been indirect, namely by creating international awareness of the committed injustice with the hope that the World's acknowledgement of the Genocide would inevitably lead to Turkey's acceptance.

In reality, the Armenian Genocide Right and the quest for the Injustice is an elaborate process. Its components can be summarized as follows :

1. Fight against Turkey's denial and obstruction of justice
2. Recognition: To obtain a formal apology
3. Reparations: property restitution and financial compensation
4. Territorial issues: Delineation of frontiers and borders
5. Right to return to ancestral lands

We should emphasize that the customary 'sequential' approach – recognition, then reparations, then restitution – is a fairy tale approach. It is not suitable for current-day politics. The above compartmentalization is simply for explaining the complexity of our quest.

The solution to the injustice may be achieved by a proactive attack on all levels, simultaneously if necessary. The point is that recognition is no longer viewed as the end goal . There are certain strategic configurations, whereby reparations activities, by appearing even more radical, could actually enhance the drive for genocide recognition. This issue potentially may become a true diplomatic setback for Turkey.

Also, we need to highlight that territorial issues and the Right to return are processes much more

convoluted than Recognition and Reparation. Although primarily linked to the act of Genocide, solutions to territorial issues are more complex on the legal front. This is because of international legalities created from the Treaty of Kars, the land given to Turkey that included the ancient city of Ani and Mount Ararat, and the present political reality of the independent Republic of Armenia as a sovereign state. From the perspective of international law, Armenians have many valid rights but the territorial component of the injustice may need a different legal strategy, albeit complementary to that of Genocide recognition/reparation.

The quest for Reparation, or the journey towards that goal, is in itself multidimensional:

- Restitution of property, national and personal: Given the Deportation and Liquidation legislation passed by the Turkish Government (see below), Armenians have been robbed from their assets. The assets lost comprise Church and national properties/that of the Millet, as well as personal properties.
- Financial or monetary compensation that have not been adequately appraised yet.
- The effect of the Genocide on our cultural heritage and the continuous threat to our viability as a nation, in view of our dispersion in western countries, with ongoing risk to our language, culture and identity. This is what we call the "White Genocide".

Given the current legal status of Armenian properties in Turkey, Armenians realize that the issue of reparation is a tall task. Legislation in 1929 gave the right to title and deed to the new Turkish possessors of any vacant land such as fields, orchards, and farmland held for 15 years since 1914, and any buildings or other real estate held for 10 years since 1919, thereby legally Turkifying all seized Armenian assets and properties linked to the Genocide. But that is exactly the focus our legal fight.

The Armenian side also well understands the legal difference between Armenian properties seized after 1937 from those linked to the Genocide, because several more Armenian properties, many of them belonging to Armenian Charitable Foundations the patriarchate included, were "nationalized" by the Turkish government in later years. The legal status of the latter is therefore different.

Road Map towards a More Comprehensive Approach

The quest for Reparations for a positive conclusion of the Genocide Injustice can be fought on the International level as well as in Turkey. The strategy has 3 different vehicles: Awareness building, political pressure, and legal action. Since the 1970's we have gradually built up the first two vehicles of our fight. We are now building a cohesive strategy for the third vehicle, that of legal action.

Awareness Building: The target has been Armenian constituencies in the Diaspora and to a lesser extent in the Republic of Armenia. We continue to work in mobilizing the media, civil society and more and more the NGOs of international communities.

Political Pressure: Political pressure and lobbying is essential to our success, but we should assert

and emphasize that all countries base their decisions upon their own national interests and not Armenian interests. We should be careful with their motives. Yet, the political will of governments and geopolitical changes in and around Turkey is pivotal for our success. The US House Resolution 306 and the French Genocide Bill are some examples of political pressure (mostly lobbying) in 2011, by which Armenians capitalized and managed to score partial successes. As for Turkey's involvement in the rapidly evolving Syrian crisis, it is an example of a geopolitical change that may potentially be a stalemate for Turkey, to which we Armenians should be well prepared and take advantage.

Judicial Demands: This is the cornerstone of the new strategy. The roadmap to resolving the injustice via the judicial route is based on a 2 pronged approach: International pressure on Turkey and exploitation of Turkey's internal political vulnerabilities.

International pressure on Turkey:

The ultimate outcome of political awareness and political pressure will be in the form of a judicial claim, bringing a lawsuit against the Government of Turkey. In order to bring a lawsuit, the following clarifications are being made:

- Clear characterization of the Injustice. Does the Injustice have a legal principle? The historic and moral validity is not even a question.
- Clarification of the Judicial Forum: International vs. Turkish forum? Is it the International Court of Justice (UN) or the International Criminal Court? European Court of Human Rights or UN General Assembly (for an advisory opinion)? Turkish courts or Turkish domestic legislation? Note that Individual claims may be brought to the European Court of Human Rights, whereas claims of land between states are ultimately settled between states through the International Court of Justice.
- Who is the plaintiff? A Diasporan Committee, the Istanbul Patriarchate, the Catholicosate of Cilicia? The Republic of Armenia? Also note that simultaneously, different plaintiffs may present different complaints.
- Is there adequate engagement of the political will of the Governments (superpowers included), and is there mobilization of civil society?
- Does the lawsuit require mediation, and if so by whom?

Taking into consideration the present political landscape and geopolitical interests, this is not an easy task. In designing the roadmap towards a resolution, it is essential that the Armenian side coordinates the actions of its different stakeholders, groups that can present a legal claim for the injustice and reclaim assets. The following entities have historic rights to their assets:

- The Patriarchate of Istanbul assets
- The Catholicosate of Cilicia assets

- The Catholicosate of Echmiadzin assets
- A Diaspora Body representing the collective asset demands (Group Reparation) for lost personal assets.
- And of course the Government of Armenia and its demands

It is to be stressed again that when it comes to international law, the strategy to demand Armenian properties lost due to the Genocide is different from that of comprehensive land and borders' discussion between Turkey and present-day Republic of Armenia.

There is also the realization that there are 2 types of lawsuits and two judicial approaches: Group Reparation approach and Individual compensation approach.

Here are examples of some current and potential lawsuits through plaintiffs representing the Rights of the Armenian Nation against the Republic of Turkey.

- Examples of Individual Compensation Lawsuit: Genocide Related Insurance Claims class action suit: The CA 9th Circuit case Movsesian v. Versicherung AG. Also, many individual Armenians have cadastral copies of their old properties and some are making individual requests to the Government of Turkey.
- Examples of Group Reparation Lawsuits: Lawsuits by the Patriarchate of Constantinople related to Genocide confiscated properties; Potential lawsuit by the Catholicosate of Cilicia related to the return of Armenian assets seized in 1915; Potential Legal Demands from the Republic of Armenia

The following should be emphasized: Individual reparations through lawsuits do not satisfy our national quest for justice for the Genocide. Only Group reparation lawsuits would be considered to include a reparative dimension.

None of the above lawsuits have been filed within a comprehensive Genocide Resolution context. The Armenian side realizes well that in the larger picture, Turkey may utilize minor concessions to individuals to the detriment of the larger Armenian Right.

Alternative but Complementary Strategic Approach- More Focus on Turkish Politics and Society:

It is also necessary to exploit the internal vulnerabilities from which Turkey suffers today and such strategies are also being analyzed:

- EU and Turkey: Some European Union politicians who are politically sensitive to the Armenian Genocide issue have pressed Turkey into formally recognizing the Armenian Genocide as a precondition for joining the EU, mainly for their own national interests.
- Hrant Dink strategy: The essence of his strategy was in the transformation of the Turkish society from within, and the focus and target of his strategy is the Turkish citizen. Dink was instrumental in getting Turks to discuss the Armenian Genocide; nonetheless, Dink also reserved some criticism for the Armenian diaspora, for its insistence on enforcing a claim of

genocide without engaging the modern Turkish people. Working to further those changes presently going on inside Turkey and to capitalize on them deserves greater strategic attention.

- Turkish Domestic Legislation strategy: There are at least some 100,000 Muslim Armenians in the body of the Hamshen, close to a million Armenians who were forcibly converted to Islam to save their necks, some 20 million Kurds, and many of the disenchanting in Turkey, who present a political peril to the Turkish government. Exploiting the internal vulnerabilities from which Turkey continues to suffer today is essential and deserves full consideration. We should aim to create a sentiment in Turkey positive enough to engage the Turkish Parliament to pass pro-Armenian Turkish laws. A tall order indeed, but in due time, perhaps better relations are needed with the Hamshen and Muslim Armenians within Turkey, as well as the Kurds and the Alevites.

Turkey's involvement in Syria may perhaps open a door.

We should emphasize again how important is for us to reshape our political thinking, and realize that for us Armenians, Turkey's internal challenges and contradictions have to become much more actively sought strategies.

SUMMARY: PAN ARMENIAN RIGHTS' ADVOCACY and its REVIVED ACTIONABLE STRATEGY

The most appropriate Armenian Rights Advocacy roadmap for the next 10 years is a multipronged approach with strategic prioritization:

A. There is consensus to view the long term viability of the Armenian nation from a pan-Armenian angle, whereby there is a coordinated policy between the emphasis to resolve the immediate needs of today's Republic of Armenia, the injustices of the past, and the future viability needs of both the Diaspora and the homeland, realizing well of the strategic necessity of a strong Republic of Armenia. The establishment of modern reshaped governance in the Republic of Armenia with less feudal tendencies and the enhancement of socio-economic benefits to assist all sectors of Armenian society would be a most natural positive requirement. Most Armenians also believe that change in the Armenian state's foreign policy and strategic approach to the Nagorno-Karabakh conflict beyond the "Madrid Principles" and the OSCE Minsk Group would create a new basis toward a lasting settlement of the Nagorno Karabakh Republic's status and security.

B. As for the Genocide, the 100th anniversary is a one-time opportunity that cannot and will not become a replay of what has gone on countless times before, i.e. be limited to demonstrations and solidarity declarations for its recognition. The Genocide injustice is multifaceted and the quest for its solution is complex and multidimensional. It needs a sophisticated approach:

1. These past few years there has been some commotion in our political discourse, and reparations are now being proposed as a course to run in coordination with the usual focus on genocide recognition. We argue that Genocide recognition is no longer viewed as the end

goal, that reparations activities could actually enhance the drive for genocide recognition and that this historic injustice has important contemporary dimensions for state-to-state Armeno-Turkish relations. Notwithstanding the complex issue of borders, how would Armeno-Turkish relations (state-to-state) be affected if Turkey were no longer an unrepentant aggressor but actually 'on the hook' for genocide?

2. The Genocide has two outstanding issues, two different levels of injustices, namely the fight for the injustice of the Genocide and that of the lost Armenian lands. Although complementary, the objectives and the strategy to address the two issues are different.
3. The first of the outstanding issues remains the Turkish state's obstruction of the truth. It consists of the Armenian nation's fight for Recognition of the Armenian Genocide and the fight for Reparations for the Armenian institutional properties as well as to the descendants of Armenians who lost their lives and properties during the 1915-1923 Armenian Genocide. In this regard, the judicial front should take a much more imminent strategic relevance.
4. The second issue is the satisfactory legal resolution with regard to the lost Armenian lands from the Genocide and also from the Treaty of Kars, in other words the delineation of Turkish-Armenian borders. The latter is a more complex process and the preparation of its legal basis will take longer. We have historic rights but the success of this step is inherently linked to a politically strong Republic of Armenia. This reemphasizes and validates our aforementioned theory that all 3 objectives for the Armenian nation's viability are intuitively linked to the same chain, and yet the most important of those is clearly the sustainability of a strong Armenian state.
5. The judicial agenda of the Genocide resolution has begun. The Patriarchate of Istanbul and the Catholicosate of Cilicia have already initiated this process.
6. Alternative and complementary strategic approaches that seek to exploit the internal vulnerabilities, from which Turkey suffers today, have come to be appreciated as part of our political discourse. They should be pursued with more effort and conviction.
7. We have also realized that in addition to the resources and manpower of Diasporan organizations, we must engage the expertise of Armenian and non-Armenian professional experts in the field, who can assist in formulating as well as implementing the initiatives necessary to achieve our objectives.

The preparation of a relevant cadre of Armenians in public policy and international law has begun, but there is further need for such committed Armenians, citizens of a variety of nations, to get engaged in public policy matters and others to become experts in international law.

THE AGENDA FOR THE IMMEDIATE FUTURE

Since the 1970s much progress has been achieved by the Armenian nation, but Turkey's denialist Genocide efforts and its aggressive diplomatic influence are a formidable challenge for us. We need to be more focused and creative in our quest to resolve our injustice.

In order to have a potentially successful agenda, two preconditions must be met:

1. The Armenian government's critical role and involvement in the pursuit of our National Goals' agenda: In our efforts to create a more actionable roadmap, it is critical for the leadership of the Armenian government to take an ownership role of the aforementioned National Armenian goals, far beyond symbolic measures. This once again emphasizes how important is the viability and sustainability of the Republic, something that is a challenge today. A clear position about the Genocide and the Armenian nation's Rights and a new strategy that is in sync with its foreign policy is soon to be expected from the government of the Republic of Armenia. Closer coordination between more engaging strategies of the government of Armenia and those of the Diaspora is a necessity. The creation of a Genocide Centennial Committee does not satisfy such a requirement.
2. Clarification of the legitimate body representing the interests of the Diaspora and that of the Armenian Nation: The idea is not new, but is politically and strategically essential. To obtain Reparations, the Armenian Nation has to either negotiate with the Republic of Turkey or submit a claim(s) to an International or Turkish court. In either case, the Armenian side has to have clear and explicit negotiation positions, strategy, and a legitimate representative body. In order to begin the implementation phase of the road map, we need to develop a pan-Armenian structure in the Diaspora that represents the aspirations of all Armenians with one voice. We also need to develop the human and financial resources necessary to pursue the realization of the stated goals of the road map. As a starter, a revised, open mindset is necessary from all political, religious and other national institutions, and it is the imminent task of our leadership to make such a structure a reality. This Diasporan structure will be later followed by the formation of a legitimate body representing the entire Armenian nation (Diaspora and the Republic).

The above two preconditions will immensely help the implementation of a more legally oriented actionable road map. In this regard, the following points need to be emphasized:

1. The entire judicial portfolio of the Armenian Genocide, if it is to be presented in front of international judicial courts, requires professional preparation. What is important is to do our homework, and before officially presenting our case, to first assess the internationally acceptable legal validity of the Genocide claim. In parallel, a separate analysis about the legality of the current Turkish-Armenian borders is to be addressed. These legal consulting opinions have to be presented to the representatives of the Armenian nation by a group of respectable international law jurists and top of the line, reputable expert lawyers, who would be commissioned by the Armenian nation specifically for this task. Most of the jurists' team is presumed to be non-Armenian, but some have to be Armenian and some should be representatives of the Republic of Armenia.
2. The next priority is the selection of the international court that is considered most advantageous to rule in favor of our claim. Consultation with the above team of jurists and

lawyers is essential to select the most proper international court of justice, and begin the process of requesting a legal opinion in the matter of our Genocide.

3. The mere addition of Reparations as part of the Genocide injustice is not a game changer. Detailed chronicling of seized Armenian properties and a solid appraisal of all Genocide losses is a necessity. To properly compensate the victims of the Genocide (or their heirs) it is essential to have solid documentation and actuarial analysis. Scholars have begun this work and in fact Professor Kevorkian has initiated the task of developing detailed and meticulous records of the genocidal process. However, International Human Rights and Humanitarian Law experts have to be consulted and retained for this purpose. With respect to right to financial compensation, legal professional accounting input, beyond and above scholarly research, is essential.
4. Prioritization of funding: In order to achieve the desired outcome, our funding priorities and efforts, as the Armenian nation and people, are to be directed towards judicial priorities of the Genocide. This effort should be pan-Armenian and must begin soon.
5. Ongoing Political Pressure: Legal opinions alone, even from international courts, are not enough for Turkey to abide by them. A positive verdict is necessary but insufficient for implementation; and judicial laws should be accepted and ratified by legislative powers. That is why political pressure on Turkey is essential not only by Armenians but also by superpower nations. In such key countries, continuous efforts to create a national interest and a foreign policy that is synchronous to those of Armenian national interests should go hand in hand with our judicial agenda.

