RESTITUTION, NOT RETRIBUTION

Posted on March 29, 2010 by Keghart

Category: Opinions

Team Keghart Editorial, 29 March 2010

"We should take care not to be overconfident of this 'last' part of Phase I and not to cut any resources presently used ... to provide for Phase II." - Arpiar Petrossian -

Mr. Petrossian, an Iranian-Armenian, was commenting on our recent editorial-- -- where we averred that since Armenians have, to a large measure, won international recognition for the Genocide it's time to prepare for the second half of the battle--for restitution, financial compensation, and for the return of Armenian lands now illegally occupied by Turkey.

"Bracing for Part II of the Struggle" did not intimate that we should halt our campaign to gain further recognition for the Genocide and concentrate 100% of our efforts on demanding that Turkey make amends. Recognition by whichever jurisdiction or institution (parliament, congress, national assembly, religious group, politician, media, etc.) further strengthens our hand. However, we should not dissipate our efforts by investing time and energy in impossible dreams or lost causes (obtain German and British recognition for the Genocide, for example), especially when the time is ripe to define the plaintiff in a manner acceptable to international entities such as the International Court of Justice in The Hague and proceed to sue Turkey.In that same editorial we listed the huge hurdles we face in taking Turkey to court. However, the obstacles are not the last word on the issue. We have copious informed opinion and data which assert that international law does allow us the right to take Turkey to court.

To cite just two of the arrows in our quiver: A monograph titled "Executive Summary: The Armenian Genocide in the light of the Genocide Convention" by Dr. Alfred de Zayas, and the verdict in 1984 of the Permanent Peoples' Tribunal, the successor to the Russell Tribunal. Among the many relevant points Dr. de Zayas makes the following:

- Since genocide is a *jus cogens* crime, its crime and punishment are subject to universal jurisdiction.
- Genocide entails civil and penal consequences giving rise to personal penal liability and State responsibility for reparation to the victims and other descendants.
- Since genocide falls within the category of *delicta juris gentium* and crime against humanity…State responsibility and individual penal liability for genocide are not subject to prescription or to any statute of limitation.
- According to *ordre public* of international law, the consequences of *ergo omnes* crimes cannot be recognized or otherwise legitimized. Thus, the international community must refrain from recognizing the consequences of genocide, in particular the wrongful acquisition of the property of the murdered victims.
- The Genocide Convention of 1948 can be applied retroactively, because it is declarative of pre-existing international law.

The Permanent Peoples' Tribunal is an international opinion tribunal independent of State authorities. It examines and provides judgments related to violations of human rights and rights of peoples. It was founded in June 1979 by Senator Lelio Basso of Italy to make up for "the moral and political shortcomings of states as an instrument for the achievement of justice". With respect to the Genocide of the Armenians the Tribunal affirmed:
"There is no doubt regarding the reality of the physical acts constituting the genocide. The facts are clearly proven by the full and unequivocal evidence submitted to the Tribunal that the Young Turk government was guilty of this crime not subject to statutory limitations and that 'The Armenian genocide is also an 'international crime' for which the Turkish state must assume full responsibility, without using the pretext of any discontinuity in the existence of the state to elude that responsibility.""This responsibility implies first and foremost the obligation to recognize officially the reality of the genocide and the consequent damages suffered by the Armenian people; the United Nations Organization and each of its members have the right to demand this recognition and to assist the Armenian people to that end."

We are cognizant that marshalling our finances, manpower, and expertise in various specialties is a herculean task. But we believe that we have the expertise, the documentation and the commitment to take Turkey to The Hague. We also believe we can raise the finances for the undertaking. We have numerous Armenian and non-Armenian lawyers, historians, and scholars who would be eager to come forth to join the sacred and existential mission--once we have presented a clearly delineated strategy and campaign.This is where the Western Armenian National Congress (WAN-Congress) should step up to the plate and **create** a forum for these experts who do not necessarily have to be members of the organization but would be eager to invest their experience, knowledge, and time to bring our cause to the International Court of Justice.

It took almost five decades to put international recognition on a reasonably strong footing. With the knowledge we have gained in the past fifty years it's highly unlikely that it would take as long to take Turkey to court. The international scholarly work devoted to the Genocide of the Armenians will, of course, buttress our case, so will the global public's familiarity with our case—something that was not the case fifty years ago.

We envisage that our main difficulty would be defining who the plaintiff is and what exhibits need to be compiled and presented. Framing our demands is another challenge. But already having a legal team under the guidance of the proposed WAN-Congress in Geneva is a good start.

A Chinese proverb maintains: "A journey of thousands miles begins with one small step." Our journey towards Turkish restitution is a thousand-mile long, but we have no intention to begin the venture with one small step.