

Ankara, April 16, 2010

His Excellency
Barack Obama
President of the United States of America
Washington D.C.
USA

Dear Mr. President,

It wouldn't be an exaggerated statement if I say that your exceptionally impressive speech to the Turkish Grand National Assembly on April 6, 2009, captured the hearts and the minds of the Turkish people. This speech and the other statements you made during your visit left a deep imprint on the Turkish public opinion conveying the belief that you look at the world and Turkey with good will and without adverse prejudices.

Unfortunately, the subsequent statement that you made on April 24th regarding the events of 1915 in Eastern Anatolia seriously disappointed the Turkish people and cast a shadow on the positive impression formed during your visit for the following reason: Although your statement omitted the highly charged word "genocide", you twice employed the expression "metz yeghern" which is the exact translation of "genocide" in the Armenian language. Furthermore, the statement said, "Each year, we pause to remember the 1.5 million Armenians who were subsequently massacred or marched to death in the final days of the Ottoman Empire", and thereby, in effect, reprised the expression "Armenian genocide" that you used frequently during your election campaign.

Mr. President,

In addition to being a world statesman of the first rank, you are also justifiably regarded as a distinguished scholar of law, having graduated from the world renown Harvard Law School and having instructed law as a senior lecturer at a prominent university. In light of these qualifications, we are particularly perplexed by your characterizations of historically controversial events that took place 95 years ago in terms that are incompatible with the universal principles of law as well as provisions of the U.S. Constitution and U.S. national law.

“Genocide” is an international crime codified in an international legal instrument, the “Convention for the Prevention and Punishment of the Crime of Genocide”. This was adopted by unanimity by the United Nations General Assembly in 1948 and subsequently became the supreme law of the U.S., as stipulated by Article VI of the Constitution pursuant to its ratification by the U.S. Senate. Article II of the Genocide Convention delineates the crime of “genocide” and prescribes the objective/material and subjective/mental elements which should be proven for the existence of the crime. To incriminate a person with the crime of “genocide” or for state responsibility to arise, together with the existence of these two elements of the crime, the fact that the crime has been committed with specific intent must be proven and a competent court must ascertain that the crime has been perpetrated. The Convention’s Article VI specifies that the competent judicial authority is the competent court of the state in the territory of which the alleged act was committed, or an international penal tribunal, the jurisdiction of which has been accepted by the parties. Article IX of the Convention provides that the states can take disputes on matters relating to “genocide” which arise between them to the International Court of Justice.

Mr. President,

Consequently, unless the existence of the material and mental elements of the crime as well as its execution with the specific intent have been proven, and unless the perpetration of the crime has been determined by a competent court, a charge of “genocide” leveled against a person or a state has no legal value and only constitutes a defamation.

Until today no accused has ever been incriminated with the crime of “genocide” or with the “crime against humanity”, which is a crime as odious as “genocide”, without a decision of a competent international criminal court. Indeed, the Nuremberg International Penal Military Tribunal, after a long trial process, found guilty the leaders of the German Nazis accused of “crimes against humanity” and sentenced 22 of them to death. Furthermore, those incriminated of “genocide” for the events which occurred during the Rwanda and Yugoslavia conflicts have been tried and convicted by the Rwanda and Yugoslavia international penal tribunals. As is known, both tribunals are *ad hoc* courts which had been set up by decisions of the UN Security Council. Saddam Hussein, who was charged with crimes against humanity, was tried and convicted in an Iraqi Special Court which was established in line with the principle of due process of law. Recently, the legal action brought by Bosnia-Herzegovina against Serbia was heard by the International Court of Justice. In its decision in February 2007 the Court has reaffirmed that at Srebrenica genocide was committed, but has not convicted the state of Serbia of having committed genocide.

Mr. President,

I am certain that you hold dear the concept of the presumption of innocence whose roots go back to *Magna Carta*. Article 11 of the Universal Declaration of Human Rights which was adopted in 1948 by the United Nations General Assembly by unanimity, describes the principle of presumption of innocence as follows:

“(1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

“(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

This principle is set forth in the European Human Rights Convention, Article 6 paragraph 2:

“Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.”

The principle of presumption of innocence is also guaranteed by the Fifth Amendment of the U.S. Constitution which prescribes that “No person shall be held to answer for a capital, or otherwise infamous crime” unless tried fairly and indicted by a court.

Therefore, Mr. President, wouldn't it be a gross injustice and a grave violation of the principle of the presumption of innocence to heap accusations on Turkey for disputed events of the past?

Mr. President,

As you would agree, the principle of legality, which is as old as the concept of law itself, is a basic concept in both international and national justice. According to this principle, an act is not recognized as a crime unless it is legally defined before the act was committed. “Genocide”, as a word, as a concept, and as a codified international crime, did not exist in 1915. After being defined for the first time by the U.N. General Assembly document 96 (I) on 11 December 1946, it was codified by the U.N. Genocide Convention on December 9, 1948.

Consequently Mr. President, by leveling accusations of the crime of “genocide” (directly during your campaign speeches and indirectly in your 2009 remembrance day statement) haven't you contravened the two dimensions of this principle expressed by the maxims: *nullum crimen sine lege, and nulla poena sine lege* - there is no crime without a law, and no punishment without a law?

Mr. President,

The judgments made in your statement appear to us to violate the spirit of the U.S. Constitution which espouses the principle of legality in its Article I, Section 9 by forbidding the passage of *ex post facto* criminal laws and bans retrospective criminal sanction. We also must note that President Thomas Jefferson, in his August 13, 1821, letter to Isaac McPherson, asserted that “ex post facto laws are against natural right”. This shows that an abhorrence of retroactive application of laws in criminal justice has a deep-rooted legal history in the U.S.

Moreover, the principle of legality is equally prescribed by Article 28 of the 1969 Vienna Convention of the Law of Treaties under the heading, “Non Retroactivity of the Treaties”.

Mr. President,

In light of the foregoing irrefutable points, certain concerns and questions inescapably arise.

What are we to infer from the statement you might make this year regarding the disputed events of 1915, if this statement includes the word “genocide” or, echoing your 2009 statement, employs the word’s exact Armenian translation “metz yeghern” and alleges the massacre of the 1.5 million Armenians?

Wouldn’t such a statement flagrantly violate and flout universal principles of law, international law and the U.S. Constitution? And, to what possible worthy end?

Wouldn’t it constitute for the Turkish people and their forebears a judgment without trial?

Wouldn’t the Turkish people consider this gross injustice inflicted on them as the outcome of narrow domestic political calculus, heedless of basic fairness and shared U.S. – Turkish interests ?

Wouldn’t the imputation of historical guilt upon the people of Turkey and upon their forebears, who themselves suffered enormous losses and were exposed to unbearable pains during those tragic times, be at utter odds with your stated proposal before our Parliament to build a model partnership between the United States and Turkey?

Mr. President,

Historian Arthur Ponsonby penetratingly discusses the terrible and enduring effects of war propaganda that persist for generations in “*Falsehood in Wartime*”:

“The injection of the poison of hatred into men’s minds by means of falsehood is a greater evil in wartime than the actual loss of life. The defilement of the human soul is worse than the destruction of the human body.”

I think that Arthur Ponsonby’s cogent words are valid now and will remain valid in the future. What we need today, more than ever, is an international environment that we can hand over to our children and future generations - a world where peace, security, tolerance, friendship and good will reign, instead of prejudices, hatred and passions for revenge.

For this reason, Mr. President, I must urge you to avoid being influenced by superficial stereotypes regarding the events of 1915 that are rooted in large part in the deliberate wartime propaganda efforts of the World War I Allies. I ask that you foster impartiality and avoid contributing to a deepening of the wounds suffered by the Turkish and Armenian nations in this enormous human tragedy.

In this context, the best course for the U.S. should be, in line with an ethical and evenhanded approach, to encourage the parties to bring to light and to clarify the obscure and ambiguous aspects of the conflict between the Ottoman State and the Armenians. This would best be accomplished by employing a common, scientifically disciplined research effort by Turks and Armenians regarding their mutual history and by completely opening their archives to examination.

I am submitting these views to your consideration trusting that you will examine them with objectivity and fairness.

With my deepest respect,

Dr. Şükrü M. Elekdağ

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