

Genocide Reparations: A Matter of International Urgency in 2016

If the horrors of 2015 and 2016 have taught us nothing else, it is that genocide reparations in 2016 are more pressing than a century ago – and not primarily for the Armenian victims and their descendants, but for international peace and security. The consequences of impunity for the Armenian Genocide have compounded for a century and now once again threaten the security of the community of nations. As the past year's public statements and centennial events made amply clear, the Armenian Genocide has been recognized, over and over again, even by those countries and leaders that from time to time stammer at uttering the word. Paradoxically, this has multiplied the hazard of impunity. Commemoration without atonement teaches the wrong lesson. So long as impunity is the de facto norm of international law, the entire community is imperiled. This is a man-made disaster, manufactured largely in the corridors of power by leaders who are addicted to gambling their children's security and the lives of other nations for their short-term material gain or the latest geopolitical model that has captivated their imaginations.

Genocide is a crime against humanity. Like all criminal acts, condemnation and punishment is the right and duty of the community, here, the community of nations, and especially its leaders. Reparations are compensation of harm. Reparations are an inalienable right of the injured party, founded on independent factual and legal grounds, and it is the duty of the community to demand such compensation on behalf of the victims. Genocide recognition and reparations, criminal and civil claims, can and should be pursued separately, in parallel.

Neither recognition nor reparations are bilateral disputes between Armenians and Turks, or Armenia and Turkey – denial and delay have been caused by multiple parties and their proper resolution will require the involvement of all parties in interest. Reparations involves not only the perpetrators, Turkey and its WWI Allies Germany and Austro-Hungary, but also Armenia's WWI allies and other countries that have obstructed, denied or delayed reparations.

Under international law, Turkey is not a successor state, but a continuation of the Ottoman Empire. A state's rights and responsibilities are not terminated by a change in government, constitution, or border adjustments. It is important to take law, precedent, and practice into account. In the case of Turkey, international courts have found it not to be a new state but the continuation of the Ottoman Empire, and its course of dealing in international bodies and agreements is consistent with continuity.

Turkey is in an untenable position: half condemned with no process for atoning and finding closure. Turkey has been put in this untenable position by the US, UK, Israel and others who hold out the mirage of impunity for this crime.

Nor is this a bilateral issue between Armenians and Turks or Armenia and Turkey. Perpetrators and victims cannot agree to make a crime disappear. The disposition of criminal matters is the right and duty of the community. A crime cannot be erased. It can only be atoned for.

This untenable situation is nothing less than a nightmare that humanity has been paying for ever since the world community failed to deal with the Armenian Genocide in a proper and timely manner in 1919.

At the time and since, a good portion of the international community has condemned the Armenian Genocide, including the US, which has not retracted or repudiated its 1951 submission to the International Court of Justice (nor will it), and it seems unlikely that President Truman and Secretary of State Dean Acheson approved a false submission to the International Court on behalf of the US. *“The practice of genocide has occurred throughout human history. The Roman persecution of the Christians, the Turkish massacres of Armenians, the extermination of millions of Jews and Poles by the Nazis are outstanding examples of the crime of genocide.”*

So where do we go from here in 2016?

The Turks need to be able to put this behind them. An apology is not enough. The apology must be accompanied by redemption – settling the legal and moral debt. Condemnation or admission followed by punishment and atonement are the path to closure. Instead, lots of people are busy exploiting this issue at the expense of both Armenians and Turks in a continuation of the 19th-century game that fueled the Armenian Genocide in the first place.

A way forward is to pursue the standard measure of compensation in such circumstances: Reversible harm should be reversed. Irreversible harm should be compensated. This is what the Armenian delegation proposed at the 1919 Paris Peace Conference and it still may be the clearest path.

The goal of reparations is not to punish the perpetrator (which the role of criminal law), but to make the injured party whole. In other words, put the victims in the position they would have been but for the harm. To do so reversible harm should be reversed, and irreversible harm should be compensated, typically through monetary or other equivalent means.

Reversible harm includes property which can be returned or restored, fully or partially, to its rightful owners (e.g., church property). Irreversible harm includes lost lives, lost generations, lost culture, deprivation of homeland. Alternative compensation includes land, rights (including indigenous peoples' and minority religious or cultural freedoms and security, access to the sea, use, access and preservation of cultural heritage, priority rights or privileges with respect to the natural resources of the homeland, demilitarized zone for security). Much of Armenians' lost natural patrimony is compensable from future cash streams in which there are as yet no vested interests, facilitating allocation as compensation.

The Armenian Delegation's 1919 Claim was partial, just for human and property loss, submitted on the assumption that Armenia's victorious allies would restore the Armenian homeland. That claim was 19 bn. Francs, which in today's terms, by some estimates, would exceed \$500 bn. just for human and property loss. The Armenian Delegation's 1919 Claim was not given a fair or full hearing at the Paris Peace Conference, but was summarily dismissed by the special Commission headed by US Brig. Gen. Charles McKinstry, without objection from Armenia's allies, who were fully aware of the devastation suffered by the Armenians.

There are solid grounds for reversible harm in the form of alternative compensation: land, property and other rights. As a matter of international law, the Wilsonian Arbitral Award was valid upon delivery and, though overtaken by events, has never been found to be procedurally or substantively flawed. Moreover, the Kemalists' post-genocide land grab cannot be legitimated, even if facilitated by Great Britain and acquiesced in by Bolshevik Russia. Criminals are not entitled to stolen property, even under *sharia* law. Turkey's claims to Ararat, Ani and adjacent Armenian lands are no more defensible than Stalin's misappropriation of Armenian Nakhichevan and Karabagh, another legacy of British policy in the region.

The international standard for compensation is "prompt, adequate and effective." Parties denied timely compensation are entitled to delay damages. Turkey and its WWI Allies Germany and Austro-Hungary are primarily responsible for the harm. Parties that obstruct, deny and delay compensation are also liable for their role in denying or delaying compensation, e.g., United States, Russia, Great Britain, France, Italy, Israel. All have profited and continue to profit from denial and delay in reparations; thus, all should pay.

The costs of failing to deal with the Armenian Genocide at the time have been enormous. All humanity continues to pay dearly for it to this day. The course of history would have been altered had the leaders of the world community done their duty at the time. The costs incurred by the Armenian nation alone due to the Genocide and delayed remedy have been

calculated to be over USD 3 trillion. Yet this pales in comparison the costs imposed on the rest of humanity, which continues to mount to this day. Great powers continue to reap the benefits of genocide denial in their dealings with unrepentant Turkey, for example, indifferent to the collateral costs this imposes on other peoples and nations. The victims bear the brunt of this indifference, but they are no longer alone in bearing the externalized costs.

Yes, these are big numbers, but the enormity of the injury was by most accounts unprecedented at the time and has since compounded. Peace demands full justice. Unresolved issues sow the seeds of future disputes. Advocates should not be afraid to state the real extent of the harm and should advise the fullest compensation supported by the law and facts. At this stage, all potential claims that have a basis in law or justice should be fully considered. Claims should not be discounted on grounds of improbability, tactics or strategy.

If after WWI, instead of pursuing their petty rivalries and short-sighted greed, the Great Powers had acted responsibly and pursued their own and humanity's welfare, we all might have been spared a lot of horror in the 20th and 21st centuries. While it is still not too late, we can only hope that current tragedies may yet jolt world leaders out of their myopic indifference.

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