

Sen. Edward John Markey

255 Dirksen Senate
Office Building
Washington, DC 20510

Richard Neal

372 Cannon House Office Building
Washington, DC 20515

Jim McGovern

370 Cannon House Office Building
Washington, DC 20515

Lori Trahan

2439 Rayburn HOB
Washington, DC 20515

Jake Auchincloss

1524 Longworth House Office Building
Washington, DC 20515

Katherine Clark

2448 Rayburn House Office Building
Washington, DC 20515

Seth Moulton

1127 Longworth
House Office Building
Washington, DC 20515

Ayanna Pressley

1108 Longworth HOB
Washington, DC 20515

Stephen Lynch

2109 Rayburn HOB
Washington, DC 20515

Bill Keating

2351 Rayburn HOB
Washington, DC 20515

April 23, 2021

Honorable Elizabeth Warren
United States Senate
Hart Senate Office Building, Room 309
Washington, D.C. 20510

Re: Armenian genocide allegations

Dear Senator Warren:

We readily acknowledge your sparkling academic credentials and impressive achievements. We respect your viewpoints.

We were profoundly disappointed, however, by your response on April 23, 2021 to President Joe Biden's non-judicial endorsement of Armenian genocide allegations. Among other things, you stated: "I commend President Biden's decision to formally recognize the Armenian Genocide. Calling this atrocity what it was—genocide—is long overdue."

No judicial tribunal has ever found any person, official, or nation guilty of an Armenian genocide. That fact was acknowledged by the European Court of Human Rights in *Perincek v. Switzerland* (1915). The European Court added that academics invariably dispute the characterization of historical events, like the Armenian genocide allegations. Such disputes do not lend themselves to definitive resolution:

"[H]istorical research is by definition subject to controversy and dispute and does not readily lend itself to definitive conclusions or assertions of objective and absolute truths."

It is unsurprising that renowned and credentialed historians such as Bernard Lewis of Princeton, Stanford Shaw of UCLA, Guenter Lewy of the University of Massachusetts, and Justin McCarthy of the University of Louisville firmly dispute the Armenian genocide narrative.

In any event, the proper forum for adjudicating the genocide charge is before the International Court of Justice (ICJ) either under Article IX of the Genocide Convention or as a question of customary international law. The ICJ has previously adjudicated genocide claims in *Croatia v. Serbia* (2015) and *Bosnia and Herzegovina v. Serbia and Montenegro* (2007). The United Nations Office on Genocide Prevention and the Responsibility to Protect advises:

"According to Article IX of the Genocide Convention, disputes related to its interpretation, application, and fulfillment, including State responsibility, should be addressed to the ICJ."

A spokesperson for United Nations Secretary General Antonio Guterres echoed that view only hours before President Biden's Armenian genocide statement:

"[T]his is a question that has come up a number of times over the last few years or more that I've been here under different administrations. I have no comment, as a general rule, on events that took place before the founding of the UN, and genocide as... and as we've

said this in different occasions for different circumstances, *genocide needs to be determined by an appropriate judicial body, as far as the UN is concerned.*

A judicial resolution of the Armenian genocide allegations is vastly superior to political pronouncements regarding the alleged crime of crime for multiple reasons:

1. Impartiality. ICJ judges are impartial. They serve nine (9) year terms. They do not receive campaign contributions or political favors from the parties before them. They are trained in international law, including the law of genocide.

In contrast, legislators and the President of the United States receive handsome donations and things of political value from interested parties. They would be disqualified under the Constitution's due process clause from participating as judges to adjudicate Armenian genocide allegations because of bias. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). We suspect that you have received substantial political support from the Armenian American community. In addition, legislators and the President are generally amateurs and clueless about the law of genocide and customary international law.

2. Reliability. The reliability of judicial verdicts is safeguarded by procedural due process. Both parties receive notice and an opportunity to appear and submit evidence. Unreliable hearsay is excluded. Admissible evidence must be authenticated. Testimony is subject to cross-examination, the greatest engine ever invented for the discovery of truth. The accused enjoys a presumption of innocence. Trials are public. No ex parte contacts with judges are permitted. And written opinions explain the verdicts.

In contrast, legislators and the President are not obligated to hear both sides or to consider any evidence at all. They may have ex parte contacts with one side. They may rely on hearsay, speculation, rumor, bogus documents, political favors, or campaign contributions. They need not explain their votes in writing or otherwise. Indeed, non-judicial pronouncements that Turkey is guilty of an Armenian genocide smack of unconstitutional bills of attainder.

The United States Supreme Court elaborated in *United States v. Brown*, 381 U.S. 437 (1965):

“[T]he Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature...

[T]he Bill of Attainder Clause...also reflected the Framers' belief that the Legislative Branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons.”

The Court quoted the following from Cooley, Constitutional Limitations, with approval:

"Everyone must concede that a legislative body, from its numbers and organization, and from the very intimate dependence of its members upon the people, which renders them liable to be peculiarly susceptible to popular clamor, is not properly constituted to try with coolness, caution, and impartiality a criminal charge, especially in those cases in which the popular feeling is strongly excited -- the very class of cases most likely to be prosecuted by this mode."

The Genocide Convention entered into force more than seventy (70) years ago. During those years, Armenia has stubbornly refused to submit their genocide allegations to the ICJ, a tacit acknowledgment that their legal case is dubious. That conclusion is reinforced by Armenia's refusal to open its relevant archives, in contrast to Turkey, Germany, France, Russia, the U.K., and the United States. What is Armenia hiding?

Instead of a judicial verdict from the ICJ to resolve the genocide issue once and for all, Armenians have brandished their political and financial power to prompt legislators and presidents to endorse the Armenian genocide narrative for ulterior electoral motives. We regret that Armenian Americans were able to manipulate you.

We strongly suggest that you consider sponsoring a Joint Resolution encouraging Armenia to submit its genocide allegations to the ICJ, adorned with the trappings of due process, for a final judgment on the merits. Who can oppose due process of law?

We are grateful for your service to Massachusetts and the country. This letter means no disrespect. We agree with Benjamin Franklin: "We must all hang together, or we shall all hang separately"

We would welcome a response at your earliest convenience.

Sincerely,

/s/Ugur Kara

Ugur Kara

President

/s/Bruce Fein

Bruce Fein

General counsel for Turkish Anti-Defamation Alliance