TURKISH AMERICAN LEGAL DEFENSE FUND

STATEMENT OF THE TURKISH AMERICAN LEGAL DEFENSE FUND

REGARDING: AB 961

"PROHIBITION ON CONTRACTS WITH
COMPANIES THAT AIDED
GENOCIDAL REGIMES"

BEFORE THE CALIFORNIA STATE ASSEMBLY
COMMITTEE ON BUSINESS AND PROFESSIONS
AND
COMMITTEE ON THE JUDICIARY

APRIL 2009

TURKISH AMERICAN LEGAL DEFENSE FUND
1025 Connecticut Avenue, N.W., Suite 1000
Washington, D.C. 20036

Dear Honorable Chair and Members of the Committee:

Article VI of the United States Constitution provides, "Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution…." Fulfilling your oath requires that you oppose AB 961, a bill plainly unconstitutional on its face in several respects. Looking through the bill's clumsy and cryptic language, its entire purpose is constitutionally illicit: namely, for the State of California to convict the Republic of Turkey and others of the crime of genocide by legislative decree and to impose sanctions accordingly.

The United States as a whole maintains a single foreign policy as authorized by the Constitution. The individual states may not intrude upon or compromise this policy. The framers of the Constitution recognized that the peoples of the several states must sink or swim together, and that in the long run security and national interests are made by the union and not in a foreign policy Tower of Babel.

The intent of AB 961 to create a foreign policy for California makes it unconstitutional. Alexander Hamilton, in *Federalist 80*, explained, "[T]he peace of the WHOLE ought not to be left at the disposal of a PART." James Madison added in *Federalist 42*: "If we are to be one nation in any respect, it clearly ought to be in respect of other nations." The United States Supreme Court emphasized in *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) that, "[o]ur system of government is such that the interest of cities, counties, and states, no less than the interest of the people of

the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference."

AB 961 purports to regulate public contracting. But its ulterior motive is to establish a foreign policy for the State of California, one that is decidedly anti-Turkish. Other supposedly genocidal regimes are thrown into the bill naively to disguise its Armenian American genesis and goal of stigmatizing and ostracizing Turkey and those who may do business with its people or government. Turkey is the world's 15th largest economy according to the IMF and a $12 billion per annum trading partner with the United States. These are not trivial sums. Turkey also is a NATO member, a pivotal contributor to ISAF in Afghanistan, a major supporter of the United States forces in Iraq, and a broker in Middle East negotiations between Israel and Syria and otherwise. Turkey is also a partner in the development and production of the F-35 Joint Strike Fighter, large portions of which are manufactured in Palmdale, California,.

I. AB 961's Problematic Definition of Genocide

Genocide is a crime with a specific definition provided in the U.N. Genocide Convention of 1948, which the United States has ratified as a treaty, and under the United States criminal code, 18 U.S.C. § 1091. AB 961 invents a new definition for the crime, one that is at odds with the treaty and federal criminal code. It defines "genocide" for purposes of California as any of five specifically enumerated "events."

The TALDF is familiar with the many resolutions, proclamations and even laws in California that use the term, "Armenian genocide" for memorial or pedagogical purposes. AB 961, in contrast, is much more aggressive. It defines genocide with genuine consequences to international businesses, to California employers, and others. Its list of events that comprise the definition of genocide begins with: "The atrocities committed by the Ottoman and Turkish governments against Armenians from 1915 to 1923, inclusive, which constituted the Armenian Genocide, and the massacres of Armenians committed by the Ottoman Empire from 1894-1909, inclusive."[1] To our knowledge, the inclusion of the Republic of Turkey, whose birth was in1923, as allegedly guilty of genocide is unprecedented. No proposed federal resolution or proclamation has ever made such an accusation. Nor has Turkey or any of its leaders or citizens ever been accused of the crime of genocide by the International Criminal Court or the International Court of Justice relative to the plight of the Ottoman Armenians.

Further, in contrast to the ad hoc definition of genocide in AB 961, the federal government's much narrower definition is drawn directly from the U.N. Genocide

[1] Support for the genocide thesis is not unanimous. Respected scholars and historians dispute the Armenian genocide thesis, including famed Middle East expert Bernard Lewis of Princeton University, Canadian historian Gwynne Dyer, the late Stanford Shaw of U.C.L.A., Justin McCarthy of the University of Louisville, Guenter Lewy of the University of Massachusetts, Brian G. Williams of the University of Massachusetts, David Fromkin of Boston University, Avigdor Levy of Brandeis University, Michael M. Gunter of Tennessee Tech, Pierre Oberling of Hunter College, the late Roderic Davison of George Washington University, Michael Radu of Foreign Policy Research Institute, and military historian Edward J. Erickson. In Europe yet more scholars have endorsed a contra-genocide analysis of the history of the Ottoman Armenians, among them Gilles Veinstein of the College de France, Augusto Sinagra of the University of Roma-Sapienza, Norman Stone of Bilkent University, and the historian Andrew Mango of the University of London. The United Nations, as well as the British and Swedish governments have specifically repudiated in recent years Armenian initiatives to elicit endorsements of their genocide views despite intense lobbying.

Convention of 1948. It describes genocide as certain types of acts committed with the specific intent of physically destroying a racial, ethnic, religious, or national group in whole or in substantial part.

No impartial and independent body authorized to try cases alleging the crime of genocide has ever characterized the tragic events of the late Ottoman Empire as genocide. It is undisputed that no individual has ever been tried or convicted of the crime of genocide stemming from the Armenian Revolt and the Ottoman military response. Nonetheless, the history books do record that approximately 1,400 Ottoman citizens were tired for war crimes against Armenians with 26 death sentences issued by the Ottoman government. After the war concluded, the British government sought evidence of higher crimes, but chose not to prosecute for lack of evidence. In contrast to the Ottoman rulers who made at least a modest effort to account for war crimes, neither the Russian nor Armenian combatants in World War I initiated any effort to hold their cohorts responsible for the war crimes perpetrated against Ottoman Muslim civilians, which the history books also record.

Perhaps the California Assembly is unaware, but the Turkish government has agreed to accept the findings of an international commission of experts with access to all relevant archives who would study every shard of historical evidence pertaining to the Ottoman Armenian experience, but Armenia and the Armenian Diaspora have rejected the idea. They apparently would prefer to reserve what is a question of history and law as a question of political clout. One can only surmise

that the drive to avoid further study of all the evidence exposes a lack of confidence that the evidence fully supports the Armenian thesis.

II. Vague and Overbroad Terms

A. The Ad Hoc "Events"

In addition to the Ottoman Armenian controversy, AB 961 also defines as a genocidal "event" the following: "The Holocaust committed by Nazi Germany against Jews from 1938-1945, inclusive, and the persecution and massacre of Roman, Slavic, Polish, Soviet, disabled people, homosexuals, and political and religious dissidents by the Nazi regime." As elaborated hereafter, the vagueness of key definitional terms, for instance, "persecution," "massacre," "disabled persons," or "political and religious dissidents," is exceptionally troubling. Some of these terms are absent from the U.N. Genocide Convention definition of the crime.

Later in AB 961, so-called "scrutinized companies" are required to know every "victim" of the defined genocidal events on pain of civil penalties or loss of state contracts. But how could a company know of every "disabled person" or "dissident" that was a victim of Nazi persecution or massacre more than 60 years ago when no formal findings have been made or tentative lists even prepared? The cost of acquiring that information would be staggering, if it could be done at all. Further, "victim" is nowhere defined. Does it include a spouse, a parent, a child, an uncle, a

close business partner, a significant other etc., of a directly injured party? The same problems would attend to the Ottoman and Turkish example, though worse because the time frame extends back to 1894.

AB 961 additionally ordains as a genocidal event, "The oppression, forced labor, and murder of the Cambodian people by the Khmer Rouge regime from 1975 to 1979, inclusive." The characterization seems bizarre because none of the five Khmer Rouge defendants currently undergoing trial for mass killings and torture from 1975-1979 before a mixed foreign-Cambodian tribunal, styled the "Extraordinary Chambers in the Court of Cambodia," have been charged with genocide. In contrast, AB 961 potentially renders every Cambodian alive during that four-year Khmer Rouge interval a genocide "victim."

AB 961 further decrees as a genocidal event, "The aggression and ethnic cleansing committed by the Rwandan Hutu majority against Minority Tutsis that constituted the Rwandan genocide of 1994." The decree is misplaced because although the International Criminal Tribunal for Rwanda has convicted Hutus of genocide, the bill's definition is much broader, reaching every Tutsi victim of Hutu aggression without any definition of "victim" or "aggression."

AB 961's fifth and final genocidal event is, "The aggression and ethnic cleansing committed by elements of the Bosnian Serb army against the people of Bosnia and Herzegovina from 1992 to 1995, inclusive." However, the International Court of Justice (ICJ) specifically ruled in the case of *Bosnia and Herzegovina v. Serbia and Montenegro* (February 26, 2007) that while the Srebrenica massacre was an

instance of genocide, Serbia & Montenegro was not guilty of that crime or other crimes committed during that war. Moreover, the court was careful to distinguish ethnic cleansing from genocide. According to the ICJ, ethnic cleansing does not constitute genocide. Neither does aggression. And the definition of aggression in the Bosnian War context is exceptionally problematic because Bosnian Serbs, Croats, and Muslims were engaged in a raging civil conflict.

B. "Scrutinized Companies"

AB 961 defines a "scrutinized company" as a "company, and any affiliates of that company, that was engaged in business with the perpetrators of genocide and that still holds looted or deposited assets of a victim." There are multiple problems with the definition. "Affiliate" is nowhere defined. Must it be a wholly owned subsidiary, majority owned subsidiary, a company with common members on the board of directors, a 10% common stock ownership of the affiliate? The subsection is silent on who are the perpetrators of genocide who are to be blacklisted.

For example, how would a company know whether it had done business with "elements" of the Bosnian Serb army that had committed "ethnic cleansing" or "aggression" against the entire population of Bosnia and Herzegovina from 1992-1995? There is no public or private listing of the "elements." To date, only Radoslav Krstic has been convicted of the crime of genocide for these events according the U.N. standard. The U.N. – affiliated tribunal that convicted Krstic has even

reversed the genocide convictions of two Bosnian Serbs, reducing the charges against one to war crimes and crimes against humanity. Are companies who did business with them presumed excused from AB 961's strictures? Meanwhile, German courts and Bosnian courts, applying a standard that differs from the U.N.'s have convicted a total of 10 other Bosnia Serbs for genocide. How does AB 961 guide a company in such complex historical and legal circumstances?

Similarly, how would a company know if it had done business with any Rwandan Hutu involved in ethnic cleansing or aggression against Rwandan Tutsis? The bill's definition of a genocide perpetrator is not confined to Hutus either formally charged or convicted of genocide against Tutsis by the International Criminal Tribunal for Rwanda.

III. Due Process Concerns

The bill disqualifies a "scrutinized company" from bidding for a contract with a state agency to provide goods or services. The California Director of General Services may waive the disqualification. If a company has done business anywhere in the world during the previous three years, for example, in Iceland, then the company must certify that it is not a "scrutinized company." Without notice or an opportunity to be heard, the Director may terminate the contract and disqualify the company for three years from state contracts if the Director believes a certification was false. The Attorney General is authorized to bring a strict liability civil penalty

action for $250,000 or twice the amount of the contract for which a bid was submitted if a certification proves to be false, even if the company made it in good faith.

The Director is authorized to pronounce a guilty verdict without notice or an opportunity for an adversely affected company to be heard. But a state contract for goods or services, and even the opportunity to bid on such, is a property right protected by the Fourteenth Amendment. AB 961's authorization of the Director to take both property interests without notice or hearing flagrantly violates the due process clause of the Fourteenth Amendment. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 539 (1985); *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 778n.21 (1980); *Board of Regents v. Roth*, 404 U.S. 564 (1972).

The Supreme Court has explained the constitutional obligation that laws be reasonably comprehensible to enable compliance as follows: "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Construction Company,* 269 U.S. 385 (1926). Several key provisions of A.B. 961 are void for unconstitutional vagueness under that standard.

Eligibility to bid on a California contract requires the bidder to know, inter alia, all of the "victims" of various asserted "massacres," "atrocities," "persecutions," "oppression," "forced labor," "aggression," and "ethnic cleansing." Some of the alleged evils are as ancient as 1894. "Victim," however, is not defined in AB 961. It

might reasonably be interpreted to include children, stepchildren, adopted children, spouses, parents, grandparents, uncles, cousins, business partners, or significant others to a person who was killed, injured, or otherwise harmed by the alleged wrongdoing identified in the bill. Further, a would-be bidder on a California state contract must compile a list of every "victim" covered by AB 961 to determine whether it holds tainted assets or deposits. But that task is impossible without knowing the universe of individuals that the law defines as "victims." The impossibility is compounded by AB 961's failure to clarify what is a meant with any clarity by covered massacres, atrocities, persecutions, oppression, forced labor, aggressions, or ethnic cleansings. Among other things, AB 961 requires an enumeration of all the alleged "atrocities" against Armenians committed by the Ottoman and Turkish governments from 1894 to 1923. But who is to decide whether certain wrongdoing constituted an "atrocity"? What are the earmarks of an "atrocity," a term found nowhere in the criminal law? How is proof to be made? There are no living witnesses. Is hearsay admissible 94 years after the fact? How will contrary evidence be gathered? Must proof be beyond a reasonable doubt?

Just to focus in on one word, the problem with defining "victim" has been noted above. But identifying victims is pivotal to, from a company's standpoint, complying with AB 961 and, from the state's standpoint, implementing it because scrutinized companies must review their balance sheets to determine whether any of their deposits had been made by victims or whether any of their assets had been looted from a victim. Unless the California Assembly is prepared to construct

authoritative lists of victims, it must reject AB 961 as impossible to comply with and enforce.

These elaborations of unconstitutional vagueness in A.B. 961 could be multiplied. The bill imposes strict liability on a company. There are no good faith defenses. If some belated evidence emerges from an archive showing that a company holds assets of a victim, AB 961's sanctions are triggered. Strict liability makes the constitutional requirement of specificity more exacting.

AB 961 would at least be comprehensible and administrable if it aimed to target companies who have done business with individuals or governments previously convicted of the crime of genocide either by a U.S. court applying U.S. law or by a United Nations authorized tribunal applying the definition of genocide and abiding by the procedures of the U.N. Genocide Convention. Even this, however, would not cure the bill's blatant constitutional defects. The shoddy draftsmanship of the bill, we believe, is evidence of its ulterior motive, i.e., to stigmatize Turkey in order to gain the favore of Armenian American constituents of California state legislators.

Stripped of its convoluted and misleading terminology, AB 961 is little more than an arbitrary and counter-factual decree by the State of California that the Ottoman and Turkish governments committed genocide twice against Armenians beginning more than a century ago. Among other flaws, that condemnation amounts to an unconstitutional bill of attainder in violation of Article I, section 9, clause 3 of the Constitution, as incorporated in the due process clause of the Fourteenth Amendment. The bill convicts a theoretically identifiable group of

Ottoman and Turkish rulers (and potentially other Bosnian Serbs, Rwandan Hutus, and Cambodians) of genocide by a legislative decree. See *United States v. Brown*, 381 U.S. 437 (1965) (legislative sanction against members of the Communist Party held unconstitutional): *Ex parte Garland*, 71 U.S. 333 (1866) (an exclusion from practicing law in federal courts fastened on persons who sided with the Confederate States of America held unconstitutional).

IV. Federal Preemption

A. Contradictory Definitions

The bill's definition of genocide is preempted because it contradicts the narrower and more precise definition in the 1948 U.N. Genocide Convention, ratified by the United States Senate on February 19, 1986, and the implementing federal statute, 18 U.S.C. § 1091. Article 5 of the Genocide Convention directs signatory nations to enact implementing legislation: "The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide…." Pursuant to Article 5, Congress has made genocide a crime under United States law, modeled on the treaty definition.

A.B. 961 defines genocide to include conduct that is excluded by the federal statute and treaty. It includes "massacres," "persecution of the disabled, homosexuals, or dissidents," "ethnic cleansing," or "forced labor" in the circumstances described by the bill. None of these terms satisfies the genocide threshold of the U.N. treaty and its implementing statute in the federal criminal code. The federal statute does not define genocide as a list of discrete events, as does AB 961; rather, it refers to certain intentional acts that must be proven in a trial providing the accused due process. A state law that conflicts with the terms of a treaty or implementing federal statute is unconstitutional. See *United States v. Pink*, 315 U.S. 203, 230-231 (1942) ("[S]tate law must yield when it is inconsistent with, or impairs…the superior Federal policy evidenced by treaty or international compact or agreement"). Federal law thus preempts AB 961's genocide definition. Without its definitional clauses, AB 961 ceases to have any meaning at all.

B. Intrusion on Federal Responsibility for Foreign Policy

The bill is also preempted because of the exclusive federal responsibility for foreign policy, which includes the maintenance of United States relations with Turkey and Armenia. The Supreme Court has explained that States are constitutionally forbidden from taking a position on a matter of foreign policy where it has no serious claim to be addressing a traditional state responsibility. See *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) ("The Federal Government, representing as it

does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties." "For local interests the several States of the Union exist, but, for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power." "Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference"). See also Crosby *v. National Foreign Trade Council,* 530 U.S. 363 (2000); Zschering *v. Miller*, 389 U.S. 429 (1968).

It has never been a traditional state responsibility to pronounce conduct that occurred in foreign countries and whose victims are not citizens of the state amounts to genocide or other crimes. Indeed, a state is constitutionally powerless to make its laws apply extraterritorially. See *Home Insurance Company v. Dick*, 281 U.S. 397 (1930). AB 961 establishes a hostile California foreign policy towards Turkey for its own sake, not to advance any legitimate public contracting purpose. Indeed, the bill sacrifices California's interest in public procurement efficiency by making ineligible companies that might submit the lowest reliable bid. A state law does not escape preemption simply because it is an exercise of the State's spending as opposed to regulatory power. See *Crosby, supra,* at 373.

AB 961 seeks to alienate Turkey from the United States in at least two respects. It stigmatizes the now dead Ottoman Empire and its successor the Republic of Turkey by generically denouncing both as guilty of genocide. Turkey is a young

democratic republic that did not even exist in World War I. The inflammatory stigma of a genocide accusation alone renders the bill unconstitutional. In *Zschering, supra,* a state law delegated to Oregon courts the right to declare foreign countries Communist and thereby impact the property rights of Oregonians. The Supreme Court held such state degradations of foreign governments unconstitutionally interfered with the federal government's responsibility for dealing with what was then the Communist world.

Moreover, the shared history of Armenians and Turks is a non-trivial element in United States relations with both Turkey and Armenia. President Barack Obama recently made this matter an important part of his speech to the Turkish Grand National Assembly on April 6, urging that, "this is really about how the Turkish and Armenian people deal with the past. And the best way forward for the Turkish and Armenian people is a process that works through the past in a way that is honest, open and constructive, adding that, "the United States strongly supports the full normalization of relations between Turkey and Armenia."

Armenian genocide resolutions are introduced nearly annually in Congress, and Armenian Americans strenuously lobby for congressional passage. They make contributions and offer endorsements based on a candidate's position on the Armenian thesis. This year, Armen Rustamian, head of the Standing Committee on Foreign Affairs in the Armenian National Assembly sent a letter lobbying his U.S. counterpart, Congressman Howard Berman, for passage of a federal resolution that endorses the Armenian thesis. The resolutions are opposed by Turkey, which favors

a non-political and neutral determination by an international commission of experts. Thus, the genocide charge is a hotly contested issue among Turkey, Armenia and the United States.

AB 961 throws a spanner into federal consultations with Turkey over the Armenian thesis by backing solely the Armenian side and possibly sparking an adverse reaction by Turkey. That interference with federal actions is unconstitutional. See *American Insurance Association v. Garamendi,* 539 U.S. 396 (2003); *Crosby v. National Foreign Trade Council,* 530 U.S. 363 (2000); Zschering *v. Miller*, 389 U.S. 429 (1968).

The Supreme Court elaborated in *Zschering* on the need to prevent States from irritating or complicating the nation's foreign policy: "The practice of state courts in withholding remittances to legatees residing in Communist countries or in preventing them from assigning them is notorious. The several States, of course, have traditionally regulated the descent and distribution of estates. But those regulations must give way if they impair the effective exercise of the Nation's foreign policy. Where those laws conflict with a treaty, they must bow to the superior federal policy. Yet, even in absence of a treaty, a State's policy may disturb foreign relations. As we stated in *Hines v. Davidowitz*, supra, at 64: 'Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government.'"[citations and footnote omitted].

C. Intrusion on Federal Responsibility for Foreign Commerce Regulation

AB 961 imposes a potentially burdensome paperwork requirement on the many thousands of companies that engage in foreign commerce. At a minimum, AB 961 requires a company that has engaged in foreign trade in the last 3 years to prove a negative, that it is not a "scrutinized company" under the law if it wants to contract with the California government. Given the vagueness and overbreadth of the definition of terms in the bill, one has difficulty imagining what would meet even this threshold paperwork requirement.

More pointedly, AB 961 also seeks to induce a boycott of the Republic of Turkey by making it difficult if not impossible for companies to bid on California state contracts if they also do business with the Republic of Turkey. That intended and foreseeable effect on foreign commerce is constitutionally illicit. The federal government is exclusively responsible for foreign commerce under the Foreign Commerce Clause of the Constitution. See *Japan Line, Ltd. v. County of Los Angeles,* 441 U.S. 434, 449 (1979).

AB 961 therefore flagrantly and unconstitutionally interferes with the exclusive foreign affairs and foreign commerce responsibilities of the federal government as well as its implementation of the Genocide Convention.

V. Ethnic Hostility

The bill creates an anti-Turkey foreign policy for the State of California. It addresses events that occurred entirely outside California in the Ottoman Empire and Turkey more than a century ago. The bill also seeks to induce companies to boycott Turkey in order to avoid the costly hassles and irritations of being a "scrutinized company" in bidding on California state contracts. The transparent purpose is to hijack the domestic legislative function of the California legislature to appease the anti-Turkish foreign policy clamors of Armenian American voters in California. The inclusion of the Nazis, Khmer Rouge, Rwandan Hutus, and Bosnian Serbs as stigmatized entities were thrown in, we believe, to conceal the anti-Turkish objective of AB 961. As the United States Supreme Court explained in *Lane v. Wilson*, 307 U.S. 268 (1939), both "sophisticated" and "simple-minded" violations of the Constitution are forbidden.

VI. Re-Opening A Matter Closed by the Federal Government

AB 961 is further unconstitutional because it augments the economic consequences of Turkey's earlier alleged conduct beyond a final monetary settlement negotiated between the United States and Turkey. On December 24, 1923, the Claims Agreement Between the United States of America and Turkey (the "Ankara Agreement") was signed. Turkey agreed to pay the United States a lump

sum of $1,300,000 "in full settlement of the claims of American citizens." The U.S.' representative to the associated Turkish-American Claims Commission considered this payment the full and final settlement of all claims to that date. See *Deirmenjian v. Deutsche Bank A.G.*, 526 F. Supp. 2d 1068 (C.D. Cal. Dec. 14, 2007). AB 961 seeks to saddle Turkey with an additional financial burden for the same acts by encouraging companies to boycott the Turkish government. That augmentation is unconstitutional. See *American Insurance Association v. Garamendi,* 539 U.S. 396 (2003); *Crosby v. National Foreign Trade Council,* 530 U.S. 363 (2000).

VII. WTO Problems

AB 961's eligibility requirements for bidding on California state procurement contracts also conflict with the obligations of the United States under the World Trade Organization, thus adding to the bill's unconstitutionality. Article VIII (b) of the WTO Agreement on Government Procurement stipulates that, "any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfill the contract in question." AB 961, in contrast, adds eligibility requirements for California procurement contracts that are irrelevant to contact performance. It thus offends the Agreement on Government Procurement and is preempted by federal law. See *Crosby, supra.*

VIII. AB 961 Targets More Than Just Insurance Companies and Banks

Contrary to what some California legislators have been told, AB 961 is not a bill to insure the proper disposition of insurance proceeds of Armenians who died during the World War I years. The proposed legislation catches in its huge net all companies who have engaged in foreign trade in the last 3 years, and burdens them with proving a negative. Earlier California legislation specifically addressed insurance claims and several class action lawsuits relying upon it were filed and settled. Notably, prior to settling, the defendants in each of those cases challenged the constitutionality of the enabling legislation. The law on which that legislation was based, California's effort to supersede the federal government's initiatives to address the comparable problem of insurance proceeds of Holocaust victims, was held unconstitutional in *American Insurance Association, supra*, making it likely that the Armenian-related statute would also fall were a case challenging it not to settle before trial.

Additionally, the case of *Deirmenjian v. Deutsche Bank A.G.*, mentioned above, involves allegedly deposited or looted assets. However, there the court dismissed the entire class of plaintiffs whose allegations relied upon proving that there were looted assets of Ottoman Armenians in the hands of German banks. AB 961, then, to the extent it concerns such banks is a brazen attempt to achieve through legislation what could not be achieved through litigation.

IX. Conclusion

The TALDF considers it a fine goal not to reward criminals or those who trade with them. But this is not what AB 961 achieves. First one must establish who the criminals are and by a cogent process. Fortunately, we have criminal statutes for that, and in particular a federal statute based on a widely ratified international treaty covers the very crimes that AB 961 attempts to speak on. Given the bill's complete divergence from the federal criminal statute and revocation of constitutionally guaranteed due process, we would find it disgraceful for any Member of the California Assembly to vote in favor of AB 961. We would further recommend that without undertaking exhaustive research on the historical bases of the events the bill defines as genocide, one could not in conscience support it. For if one does the research, then surely one will be convinced that the bill carelessly attempts to shoehorn complex histories into a too-simple concept. The bill is a reminder of H.L. Mencken's adage that there are simple answers to every complex question, but they are wrong.

President Obama has declared that Turkey and Armenia should resolve their discrepant views over their shared history in bilateral negotiations with the assistance, but not interference of the United States. AB 961 does precisely what the President has said should not be done, i.e., inject California into an issue that should be negotiated between Turkey and Armenia, and with the participation of the United States to the extent the two countries invite it.

For the reasons explained above, any California legislator who votes in favor of AB 961 will be violating his or her oath or affirmation required under Article VI to support the United States Constitution. And if passed, AB 961 will represent a subservience of the interests of the United States to a narrow interest lobby whose supporters are predominantly to be found in California.

Respectfully Submitted,

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