ARA PAPIAN

HAYRENATIRUTYUN

– RECLAIMING THE HOMELAND –

LEGAL BASES FOR THE ARMENIAN CLAIMS AND RELATED ISSUES

COLLECTED ARTICLES

YEREVAN 2014

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DEDICATED TO THE 100TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

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In Memory of Smpat Ajemian
Hamidian Genocide Survivor, Avenger under Lawrence of Arabia and Beloved and Missed Grandpa
Robert C. Ajemian

P170 Papian A.: Hayrenatirutyun – Reclaiming the Homeland – Legal Bases for the Armenian Claims and Related Issues. Collected Articles – Yerevan: Asoghik, 2014. – 288p.

The book comprises a foreword, three parts, a conclusion and a brief biography of the author. It contains 88 articles written in the period from 2007 to 2013. This collection is a kind of guide for various specialists engaged in the Armenian Cause (turkologists, orientalists, diplomats, international affairs experts, historians, political scientists, and others), as well as for the public interested in the same question.

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***HAYRENATIRUTYUN* ~ Reclaiming the Homeland ~ Legal Bases for the Armenian claims and Related Issues**

ՀԱՅՐԵՆԱՏԻՐՈՒԹՅՈՒՆ. Հայոց պահանջատիրության իրավական հիմունքները և հարակից հարցեր [անգլ.]

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CONTEMPORARY *DE JURE* BOUNDARY BETWEEN ARMENIA AND TURKEY

ACCORDING TO THE ARBITRAL AWARD OF THE UNITED STATES PRESIDENT WOODROW WILSON

22 November 1920

FOREWORD

Every now and then, a book comes along that recaps the issues that have dominated national discourse for decades and breaks new ground in the process. This is one of those books. It turns the plight of the Armenian nation into a series of comprehensible, well-researched problems, and sets them up to be issues on the foreign policy agenda of the Armenian state and nation.

By moving from political rhetoric to legal and evidentiary research, the articles in this book equip decisionmakers and citizens to make informed choices on what can be done with respect to range of issues that have consumed much of Armenians' energy and attention over the past century: Genocide Recognition and Reparations, the Wilsonian Arbitral Award, Artsakh Self-Determination. Where others have engaged in outcome-determined presentations, based on what they deemed possible or acceptable, Mr. Papian analyzes and argues based on the archival record, treaties, precedent, *opinio juris* and *lex specialis*, seeking what Armenians are reasonably entitled to.

Armenian problems are not yet issues in closed-end processes that compel resolution. They are mired in *ad hoc* diplomatic efforts, caught up in institutional machinations, and muddled in the court of public opinion: the twilight zone between international law and politics, where rhetoric, expedience and might make right. On this field of battle, well-organized factual records and well-crafted arguments are a basic means of making a claim and mounting a defence. These tools need to be mastered and kept sharp. International decisionmakers have shown legendary indifference to the consequences of their half-baked, expedient resolutions. Even when well-intentioned, international decisionmakers are too often self-interested, distracted, ill-informed and impatient with the "petty" problems of small peoples. These sound-bite size, clear and easily digestible issue papers may compel their attention to details they would rather ignore. This compendium may also provide a shield against the kind of emergency fixes that have cost Armenians so much over the past 150 years.

One of the virtues of this volume is that it points out some of the most egregious ways that international decisionmakers have solved their own problems or pursued their economic and geopolitical interests at the expense of the Armenian nation, unintentionally (perhaps) sowing the seeds of protracted discord in the bargains. Armenians certainly have a right to

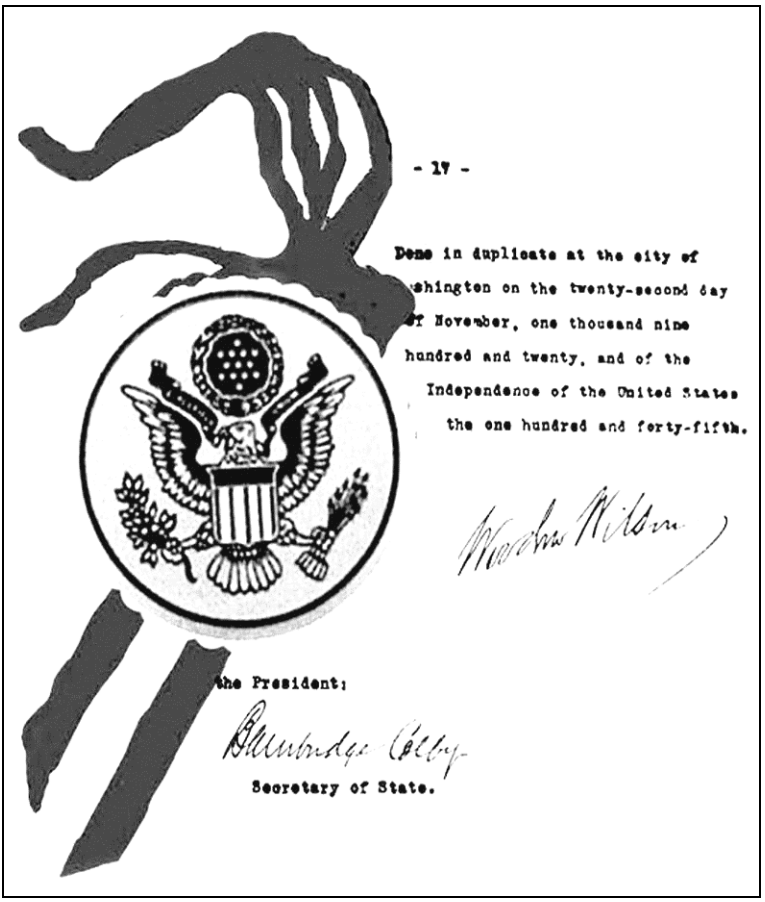
live on their ancestral lands, to be free and secure. Thus, it is unconscionable that certain nations self-righteously insist, with the support of powerful allies, that it is acceptable and justifiable to live at the expense of others' deprivation and hardship.

Having an arsenal of issue papers is essential for designing strategy, defusing threats, avoiding missteps, dodging ill-advised "compromises," and staying on target. These topics need to be well understood not only by Armenians but also by international decisionmakers and those who influence such decisionmakers: sometimes the media and public, but more often, faceless bureaucrats and institutional elites. Papian's efforts may seem like a longshot to some, but it may be the only shot. Wars maybe won on the ground only to be lost at the negotiating table. Armenians, the "little ally" of the winning side in WWI, learned this the hard way when the "winners" acquiesced in, perhaps even fueled, the land grab by the "losers" at the Armenians' expense. However, history has shown that ideas do have consequences. Well honed, well deployed, they can be stumbling blocks for the high and mighty's attempt to get away with murder with a little help from their friends. Ideas may still prevail, even in the uneven fields of international law and geopolitics. This volume reinforces that hope.

Thomas Samuelian, J.D., Ph.D.
Dean, Law Department,
American University of Armenia
Yerevan, 2011

PART I

LEGAL BASES FOR THE ARMENIAN CLAIMS



- 17 -

Done in duplicate at the city of
shington on the twenty-second day
f November, one thousand nine
hundred and twenty, and of the
Independence of the United States
the one hundred and forty-fifth.

Woodrow Wilson

he President:

Bainbridge Colby

Secretary of State.

1. The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson

Jus est ars boni et aequi *(lat.)*
The law is the art of the good and the just.

No other single issue has aroused so much passion and controversy and occupied the attention of the present Armenian public and political life as the relationship with Turkey. The lawful claims of Armenians for moral satisfaction, financial indemnification and territorial readjustment, remain the longest, most intractable, and potentially one of the most dangerous unsolved problems of international relations and world community of the modern times.

The emergence of the Armenian state – the Republic of Armenia (RA), and its presence on the world political stage as the successor of the first Armenian Republic (1918-1920), adds a critical dimension to the matter. The importance of the new dimension is based on the fact that, as a subject of international law, the RA is in full power and has all legal rights to pursue the implementation of the legal instruments and to insist on the fulfilment of international obligations assumed by the Turkish states – the Republic of Turkey (RT) or the Ottoman Empire, as a legal predecessor of the Turkish Republic.

It is therefore imperative to analyze all relevant legal instruments, *i.e.* bilateral and multilateral treaties, Woodrow Wilson's Arbitral Award (22 November 1920), diplomatic documents and international papers, resolutions of international organizations, recommendations of special missions, decisions of law-determining agencies (particularly of the International Court of Justice), the opinions of authoritative institutions, etc. to clarify the legal status of Armenian-Turkish confrontation and determinate the legal aspects of the Armenian claims regarding Turkey.

Due to final and binding character of the arbitral awards it seems the most appropriate to begin the elaboration of the legal instruments with the arbitral award of the President of the USA Woodrow Wilson (22 November 1920): *"Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier."*

1. Arbitration as a procedure for peaceful settlement of disputes between the States

Arbitration exists under both domestic and international law, and it can be carried out between private individuals, between states, or between states and private individuals. Arbitration, in the law, is a legal

alternative to the courts whereby the parties to a dispute agree to submit their respective positions (through agreement or hearing) to a neutral third party – the arbitrator(s) for resolution.

International Public Arbitration (hereafter – Arbitration) is an effective legal procedure for dispute settlement between the states.[1] According to 1953 report of the International Law Commission[2] arbitration is a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntary accepted.[3] The essential elements of Arbitration consist in – (1) An agreement on the part of States having a matter, or several matters, in dispute, to refer the decision of them to a tribunal, believed to be impartial, and constituted in such a way as the terms of the agreement specify, and to abide by its judgment; and in – (2) Consent on the part of the person, persons, or states, nominated for the tribunal, to conduct the inquiry and to deliver judgment.[4]

Arbitration has been practiced already in antiquity and in the middle ages. The history of modern arbitration is usually considered to begin with the treaty of arbitration between Great Britain and the US of 1794,[5] (Jay's Treaty – *Treaty of Amity, Commerce and Navigation, between His Britannic Majesty and the United States of America, by their President, Signed on 19 November 1794, ratified on June 24, 1795)*. The rules of arbitration were codified by *The Hague Convention for the Pacific Settlement of International Disputes*, concluded on 29 July 29 1899 and very slightly amended in the Convention of the same name concluded 18 October 1907 (entered into force 26 January 1910). The Hague Convention (Article 15 of 1899 and article 37 of 1907) defines the international arbitration as *"the settlement of disputes between States by judges of their own choice and on the basis of respect of law."*[6]

The *Covenant* of the League of Nations (Article 13) provides arbitration and judicial settlement as one of two major procedures of peaceful settlements:[7]

> *The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy they will submit the whole subject-matter to arbitration.*

The Charter of the UN (Article 33, §1) expresses its preference for a dispute settlement through arbitration:

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[1] Sohn L.B. *The Role of Arbitration in Recent International Multinational Treaties*. Virginia J Intern Law 1983;23:171-2.
[2] International Law Commission Yearbook. Doc. A/2436, 1953, II p. 202.
[3] Rosenne S. *The Law and Practice of the International Court, 1920-1996*. 3rd ed., vol. I, (The Court and the United Nations), The Hague-Boston-London, 1997, p. 11; Seide K. *A Dictionary of Arbitration and its Terms*. New York, 1970, p. 126.
[4] Amos S. *Political and Legal Remedies for War*. London-Paris-New York, 1880, p. 164-5.
[5] Sorensen M. *Manual of Public International Law*. New York, 1968, p. 584.
[6] Scott J.B. *The Hague Court Reports*. New York, 1916, p. lvi-lvii.
[7] Manual of Public International Law, *op.cit.,* p. 717.

"The parties in any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

2. The Historical Background of Wilson's Arbitration

On 19 January 1920, the Supreme Council of the Principal Allied and Associated Powers in Paris (Prime Ministers of Great Britain, France and Italy; respectively – Mr. Lloyd George, Mr. Clemenceau and Mr. Nitti)[8] agreed to recognize the government of the Armenian State as a *de facto* government on the condition that the recognition should not prejudge the question of the eventual frontier.[9] The US recognized the *de facto* government of the RA on 23 April 1920,[10] on the condition that the territorial frontiers should be left for later determination.[11]

On 26 April 1920, the Supreme Council (including this time the Japanese Ambassador to Paris Mr. Matsui as well) meeting at San Remo requested: a) The US assume a mandate over Armenia; b) The US President to make an Arbitral Decision to fix the boundaries of Armenia with Turkey:[12] *"The Supreme Council hopes that, however the American Government may reply to the wider matter of the Mandate, the President will undertake this honourable duty not only for the sake of the country chiefly concerned but for that of the peace of the Near East".*[13]

On 17 May 1920, the Secretary of State informed the American Ambassador in France that the President had agreed to act as arbitrator.[14] In mid-July the State Department began to assemble a team of experts for the assignment – "*The Committee upon the Arbitration of the Boundary between Turkey and Armenia".* The boundary committee was headed by Prof. William Westermann; his key associates were Lawrence Martin and Harrison G. Dwight. As the Treaty of Sèvres was signed on 10 August 1920, the boundary committee began its deliberations.

The guidelines adopted by the committee were to draw the southern and western boundaries of Armenia on the basis of a combination of ethnic, religious, economic, geographic, and military factors. The committee had at its disposal all the papers of the American peace delegation and the Harbord mission, the files of the Department of State, War, and Interior, and the cartological services

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[8] Toynbee A.J. *Survey of International Affairs 1920-1923*. London, 1925, p. 9
[9] Hackworth G.H. *Digest of International Law, Turkish-Armenian Boundary Question*. v. I, Chapters I-V, Washington, 1940, p. 715.
[10] The US recognized the independence of Armenia, but refused to recognize that of Georgia and Azerbaijan. (Lauterpacht H. *Recognition in International Law*. Cambridge, 1947, p. 11; Papers Relating to Foreign Relations of the United States, 1920, v. III, Washington, 1936. p. 778.) [hereinafter – FRUS].
[11] Hackworth, *op.cit.,* p. 715.
[12] The Treaties of Peace, 1919-1923, (Preface by Lt.-Col. Lawrence Martin). vol. I, New York, 1924, p. xxxii.
[13] FRUS, 1920, III, Washington, 1936. p. 780.
[14] *Ibid.,* p. 783.

of the US Geological Survey. Aside from the advice of experts in government service and direct consultations with General Harbord, the committee sought the input of missionaries and others with field experience who could give detailed information about the ethnic makeup of particular villages near the border would probably pass, the roads and markets connecting certain villages, towns, and cities, and specific physical landmarks.

The *"Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia"* was submitted to the Department of State on 28 September 1920, five months after the Allied Supreme Council's invitation to President Wilson.[15] The report defined the area submitted for arbitration, the sources available to and used by the committee, the principles and bases on which the work had proceeded, the need for the inclusion of Trebizond to guarantee unimpeded access to the sea, the desirability of demilitarization frontier line, the character of the resulting Armenian state, the immediate financial outlook of Armenia, and the existing political situation in the Near East. The seven appendices of the report included the documents relative to the arbitration, the maps used in drawing the boundaries, issue of Kharput, the question of Trebizond, the status of the boundary between Turkey and Persia, the military situation in relation to Armenia, and the financial position of those parts of the four vilayets assigned to Armenia.

Insofar as the 4 provinces in question were concerned, the key factors were geography, economy, and ethnography. Historic and ethical considerations were passed over. The committee tried to draw boundaries in which the Armenian element, when combined with the inhabitants of the exiting state in Russian Armenia, would constitute almost half of total population and within few years from an absolute majority in nearly all districts. Such calculations took into account the wartime deportations and massacres of the Armenians, Muslim losses during the war, as well as, the probability that some part of the remaining Muslim population would take advantage of the provisions of the peace treaty regarding voluntary relocation to territories that were to be left to Turkey or to an autonomous Kurdistan.

The Territory that was being allocated to Armenia by arbitration (40 000sq.miles = 103 599sq.km) was less than half of the territory (108 000sq.miles = 279 718sq.km), which in Ottoman, as well as in all non-ottoman, sources and maps throughout centauries vastly had been identified as *Ermenistan* ("Armenia") [the historical title][16] and since 1878 was the holder of the legal title *"Armenia" or "The Six Armenian vilayets*" (provinces),[17] as was defined in the Article 24 of

[15] For the Full Report with relative materials, see: US Archives, General Records of the Department of State (Decimal file, 1910-1920), RG 59, RG 59, 760J.6715/65.

[16] The notion of a historic title is well known in international law. Historic title is a title that has been so long established by common repute that this common knowledge is itself a sufficient title.

[17] See: Article 16, Treaty of San Stefano, March 3, 1878. See also: Gustave Rolin-Jaequemyns, Armenia and Armenians in the Treaties, London 1891.

the Moudros Armistice.[18] It should be underlined that the territory was referred just as *"The six Armenian vilayets" not "The six Armenian vilayets of the Ottoman Empire."*

The drastic cutback of the territory for Armenians was due to far-reaching reduction of native Armenian population because of the Turkish policy of annihilation of Armenians: *"The Armenian provisions of the Sèvres Treaty were agreed upon by the Powers after due consideration of the facts that Turkish Armenia was empted of its Armenian inhabitants."*[19]

The committee made calculations, based on pre-war statistics, that the population of the territories to be included in the new Armenian state had been 3 570 000, of whom Muslims (Turks, Kurds, "Tartar" Azerbaijanis, and others) had formed 49%, Armenians 40%, Lazes 5%, Greeks 4%, and other groups 1%. It was anticipated that large numbers of Armenian refugees and exiles would return to an independent Armenia. Hence, after the first year of repatriation and readjustment, the population of the Armenian Republic would be about 3 million, of whom Armenians would make up 50%, Muslims 40%, Lazes 6%, Greeks 3%, and other groups 1%. The rise in the absolute number and proportion of Armenians was expected to increase steadily and rapidly in subsequent years.[20]

Even though Westermann's boundary committee submitted its findings to the Department of State on 28 September 1920, two more months were to pass before President Wilson relayed his arbitration decision to the Allied governments. The State Department 1) sent the committee's report to the War Department for its observations and 2) requested through Ambassador Hugh Wallace in Paris formal notification from the Allied Supreme Council about the signing of the Treaty of Sèvres and an authenticated copy of the document.[21] It was only on November 12 that the committee's report was finally delivered to the White House.

Ten days later, on 22 November 1920,[22] Woodrow Wilson signed the final report, entitled: *"Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier."*[23]

The *Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia* [*The Report* – 89 pages, and *Appendices to the Report* – 152 pages.] consists of ten chapters:

1. ***Chapter I:*** *The Request for the Arbitral Decision of President Wilson, p. 1-3.* – An overview of the Pre-Arbitration Process.

[18] Hurewitz J. *Diplomacy in the Near and Middle East, 1914-1956.* vol. II, New Jersey, 1956, p. 37.
[19] Cardashian V. *Armenian Independence*. New York Times, 30 March 1922, p. 93.
[20] Hovannisian R. The Republic of Armenia. v. IV, Berkeley, 1996. p. 37.
[21] *Ibid.,* p. 40.
[22] Cukwurah A.O. *The Settlement of Boundary Disputes in International Law*. Manchester, 1967, p. 165-6.
[23] *Ibid.,* p. 31; Hackworth, *op.cit.,* p. 715.

2. ***Chapter II:*** *Strict Limitations of the Area Submitted to the Arbitration of President Wilson, p. 4-6.* – Definition of the area submitted for arbitration.
3. ***Chapter III:*** *Sources of Information Available to the Committee Formulating this Report, p. 7-9.* – The sources available to and used by the committee.
4. ***Chapter IV:*** *Factors Used as the Basis of the Boundary Decision, p. 10-15.* – The principles and bases on which the work had proceeded.
5. ***Chapter V:*** *The Necessity of Supplying an Unimpeded Sea Terminal in Trebizond Sandjak, p. 16-23.* – The need for the inclusion of Trebizond in the new Armenian state.
6. ***Chapter VI:*** *Provisions for Demilitarization of Adjacent Turkish Territory, p. 24-36.* – The desirability of demilitarization frontier line.
7. ***Chapter VII:*** *Covering Letter of the President Wilson to the Supreme Council and the Arbitral Decision of President Wilson, p. 38-65.* – The Arbitral Award of the President with attached letter.
8. ***Chapter VIII:*** *Area, Population and Economic Character of the New State of Armenia, p. 66-73.* – The character of the resulting Armenian state.
9. ***Chapter IX:*** *The Present Political Situation in the Near East, p. 74-83.* – The existing political state of affairs in the Near East.
10. ***Chapter X:*** *Immediate Financial Outlook of the Republic of Armenia, p. 84-86.* – The financial prospect of Armenia.

Maps: Boundary between Turkey and Armenia as determined by Woodrow Wilson President, President of the United States of America, 22 November 1920:
Scale – 1: 1 000 000
Scale – 1: 200 000 (19 sheets)

The seven appendices of the report included:

1) ***Appendix I:*** *Documents upon the Request for the Arbitral Decision.*
No. 1. Allied Recognition of Armenia, 19 January 1920.
No. 2. Report of London Technical Commission, 24 February 1920.
No. 3. Note from the French Ambassador at Washington, 12 March 1920.
No. 4. Mr. Colby's reply to the above, 24 March 1920.
No. 5. American Recognition of Armenia, 23 April 1920.
No. 6 to 10. Telegrams from San Remo, 24-27 April 1920.
No. 11. The President's Acceptance of the Invitation to Arbitrate, 17 May 1920.

2) ***Appendix III:*** *Maps Used in Determining the Actual Boundaries of the Four Vilayets and in Drawing the frontier of Armenia.*

3) ***Appendix IV:*** *The Question of Kharput. Discussion of the Possibility of Including Kharput in the Boundary Decision.*

4) ***Appendix V:*** *The Necessity of supplying an Unimpeded Sea Terminal in Trebizond Sandjak.*

No. 1. Economic Position of Ports in the Trebizond Vilayet.
No. 2. Railroad Project for Turkish Armenia before the War (Karshut Valley).
No. 3. M. Venizelos' Statement on Trebizond before the Council of Ten (4 February 1919).
No. 4. M. Venizelos' Statement on Trebizond before the Greek Parliament (13 May 1920).
No. 5. The Petition of the Pontic Greeks (10 July 1920)
No. 6. The Greeks of Pontus (Population Estimates for Trebizond Vilayet).
No. 7. General Discussion of Armenia's Access to the Sea.
No. 8. Text of the Armenian Minorities Treaty.
No. 9. The Petition to President Wilson from the Armenian Delegation.

5) ***Appendix VII:*** *Status of the Old Boundary between Turkey and Persia, at the Point where the Boundary between Turkey (Autonomous Area of Kurdistan) and Armenia Joins it.*

6) ***Appendix IX:*** *Military Situation with Relation to Armenia. Estimate for August, 1920.*

7) ***Appendix X:*** *Financial Position of the Portion of the Four Vilayets Assigned to the New State of Armenia.*

M A P S

1: *Boundaries of Armenia, as proposed by the London Inter-Allied Commission of February 1920 (See Appendix I, No. 2).*

2: *Armenian Claims (See Appendix IV).*
Original Claim of the Armenian National Delegation at the Peace Conference;
Reduced Claim of the two Armenian Delegations, since January 1920;
Boundary established by President Wilson's Decision.

3: *Claims of the Pontic Greeks (See Appendix V, Nos. 3, 4, 5).*
Original Claim at Peace Conference; Reduced Claim, 1920;
Greek Territory in Thrace and in Smyrna District Boundary established by President Wilson's Decision.

4: *Armenia's Routes of Access to the Sea (See App. V, Nos. 2, 4, 9).*
Trebizond-Erzerum Caravan Route;
Trebizond-Erzerum Railway Project;
Western frontier Essential to Armenia.

5: *Armenia in Relation to the new Turkish Empire (See App. IX).*
Frontiers of Turkey as established by the Treaty of Sèvres and by President Wilson's Decision;
Areas of Especial Interest as established by the Tripartite Convention of 10 August 1920, between Great Britain, France and Italy;
Existing Railways.

In the cover letter to the Supreme Council, Wilson wrote:

"With full consciousness of the responsibility placed upon me by the request, I have approached this difficult task with eagerness to serve the best interests of the Armenian people as well as the remaining inhabitants, of whatever race or religious belief they may be, in this stricken country, attempting to exercise also the strictest possible justice toward the populations, whether Turkish, Kurdish, Greek or Armenian, living in the adjacent areas."[24]

The text of the arbitration decision, reasonably not the Full Report, was cabled to Ambassador Wallace in Paris on 24 November 1920, with instructions that it should be handed to the secretary-general of the peace conference for submission to the Allied Supreme Council.[25] Wallace responded on 7 December 1920, that he had delivered the documents that morning. Wallace's attached note was dated 6 December 1920.

So under the arbitral award of 22 November 1920, the boundary between Armenia and Turkey was settled conclusively and Turkish-Armenian international boundary was subsequently delimited,[26] as clearly states The Hague Convention[27] (article 54 of the 1899; article 81 of the 1907):[28] *"The award, duly pronounced and notified to the agents of the parties, settles [puts an end to] the dispute definitively and without appeal."*[29]

3. The Validity of the Arbitral Award

For the arbitral award to be valid it must meet certain criteria:

1) The arbitrators must not have been subjected to any undue external influence such as coercion, bribery or corruption;
2) The production of proofs must have been free from fraud and the proofs produced must not have contained any essential errors;
3) The compromis must have been valid;
4) The arbitrators must not have exceeded their powers.[30]

Criterion 1 – The arbitrators must not have been subjected to any undue external influence such as coercion, bribery or corruption.

In Armenian-Turkish boundary case the arbitrator, as was agreed in the compromis, (*i.e.* Article 89, the Treaty of Sèvres), was *"the President of the United States"*, namely Woodrow Wilson. President Wilson often was challenged for his policy and had various disagreements with other politicians and political bodies. Nevertheless, nobody and never has

[24] For the full text of Wilson's letter see: FRUS, v. III, p. 790-795.
[25] *Ibid.*, p. 789-90.
[26] Cukwurah A.O., *op.cit.,* p. 31. Hackworth, *op.cit.,* p. 715.
[27] The 1899 Convention was ratified by Turkey on July 12, 1907. (The Hague Court Reports, *op.cit.,* p. cii).
[28] This notion was comprised in article #54 of the 1899 Convention with slightly deferent wording: *"The award, duly pronounced and notified to the agents of the parties [at variance, puts an end to] the dispute definitively and without appeal."*(The Hague Court Reports, *op.cit.,* p. lxxxix).
[29] *Ibid.*
[30] Manual of the Terminology of Public International Law, *op.cit.,* § 508, p. 588-90.

questioned his political or personal integrity and he never was blamed to act under external influence.

Conclusion: **It is apparent and doubtless that the arbitrator *"have not been subjected to any undue external influence – to coercion, bribery or corruption."***

Criterion 2 – The production of proofs must have been free from fraud and the proofs produced must not have contained any essential errors.

As it was mentioned above, for the accomplishment of the assignment the State Department mid-July 1920 organized a special task group, which was officially entitled: "*Committee upon the Arbitration of the Boundary between Turkey and Armenia."*

The head of the committee was William Linn Westermann, professor of the University of Wisconsin, soon after Professor of Columbia University (1923-48), specialist in the history and politics of the Near and Middle East. In 1919 he had been the chief of the Western Asia division of the American Commission to Negotiate Peace in Paris.[31] The principal collaborators and contributors in the committee were Major (Prof.) Lawrence Martin of the Army General Staff, who had participated as the geographer of the Harbord mission, and Harrison G. Dwight of the Near Eastern division of the Department of State.[32]

It is obvious that all experts in the task group were knowledgeable, experienced and impartial professionals. After over two months of intensive and thorough work, at the end of September 1920, the task group produced a *"Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia."*

The report was sent to the War Department for its observations on 28 September 1920. After seven weeks of comprehensive and scrupulous observations, the committee's report was finally delivered to the White House on 12 November 1920. Ten days later, on 22 November 1920, Woodrow Wilson signed the final report, and officially delivered the award through the US Embassy in Paris on 6 December 1920.

President Wilson's award, thanks to its comprehensive character, legal justification and logical arguments, is highly regarded by international lawyers at present:

> *"President Wilson's arbitral decision was not implemented. Nevertheless, this award must be regarded as one of the most significant analyses of the various factors that have to be taken into account in the determination of international boundaries and of the relationship among them."*[33]
>
> *"President Wilson's determination of the territorial frontiers of the newly established Armenian State particularly interesting because*

[31] Hovannisian R. *op.cit.,* vol. IV, p. 30.
[32] *Ibid.*
[33] Blum Y.Z. *Secure Boundaries and Middle East Peace, In Light of International Law and Practice*. Jerusalem, 1971, p. 26.

its includes an explanation of the reasons motivating it: the need for a "natural frontier"; "geographical and economic unity for the new state"; ethic and religious factors of the population were taken account of so far as compatible; security, and the problem of access to the sea, were other important conditions."[34]

Conclusion: **The Arbitral Award was drawn by respectful and well-informed experts, and, in addition, passed through the United States Government's two relevant department's scrutiny and inspection. It is obvious that the State Department and the Department of War were capable to exclude any *"fraud"* or to notice any *"essential error"* in *"the production of proofs."* Finally the award was signed by the US President, who would never abide a mistake or tolerate any misconduct.**

Criterion 3 – The compromis must have been valid.

There are several factors that prove the validity of the compromis.

Factor a) – The compromis was duly incorporated in the treaty.

The consent of States to submit a dispute to arbitration may be expressed in different ways: a) by a special arbitration treaty or compromis; b) by the inclusion in any treaty of a special arbitration clause providing for arbitration of any dispute between the parties which might arise in connection with the application of that treaty; c) by a general treaty of arbitration according to which the parties undertake to submit to arbitration all, or certain kinds, of disputes between them which might arise in the future.[35]

The consent of Armenia and Turkey, as well as of other High Contracting Parties, *"to submit to the arbitration of the President of the United States the determination the question of frontier to be fixed between Turkey and Armenia"* and to be bound by the award *"to accept his decision thereupon"* was done by the inclusion of a special arbitration clause in the Treaty of Sèvres (10 August 1920).[36]

Article 89: *"Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarization of any portion of Turkish territory adjacent to the said frontier."*

Factor b) – The compromis was duly negotiated.

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[34] Munkman A.L.W. *Adjudication and Adjustment – International Judical Decision and the Settlement of Territorial and Boundary Disputes*, p. 139; n. 4 [In: Title to Territory, (ed. Malcolm N. Show), Dartmouth, 2005.]

[35] Manual of the Terminology of Public International Law, *op.cit.,* § 506, p. 586.

[36] The official full text of the Treaty of Sevres was published – British and Foreign State Papers, 1920. vol. CXIII, Printed and Published by His Majesty's Stationary Office, London, 1923, p. 652-776, [hereinafter – British Papers] and separately, as Command Paper 964 – Treaty Series No. 11 (1920), Treaty of Peace with Turkey, signed at Sevres, August 10, 1920, HMSO, London, 1920, 100 pages.

In a joint note, on April 20, 1920, the Allied High Commissioners in Istanbul summoned the Turkish authorities to send a Peace Delegation to receive the draft peace treaty. The Ottoman delegation, headed by Senator Tevfik Pasha (Bey) [former Grand Vezier] left for Paris in May 1.[37] Ten days later on May 11, it was formally given the draft peace treaty. Turkish Government was accorded one month to submit in writing any observations or objections it might have relative to the treaty.[38] Tevfik Bey officially acknowledged the receipt of the treaty and pronounced that the document would be given the earnest and immediate attention of his government.[39] At the end of May, Damad Ferid, the Grand Vezier of Turkey, applied to the Supreme Council for 1-month extension in presenting the Turkish observations on the settlement. The Supreme Council compromised by granting a two-week extension until 25 June 1920.[40]

The first set of Turkish observations, bearing the signature of Damad Ferid Pasha, was submitted on 25 June 1920. On July 7 second Turkish memorandum was received. In adopting a reply Supreme Council authorized the drafting committee to make minor revisions on the wording of the treaty without altering the substance.[41] Regarding the future of Armenia and the arbitration of the boundaries Supreme Council stated: *"they can make no change in the provisions which provide for the creation of a free Armenia within boundaries which the President of the United States will determine as fair and just."*[42] The certitude that Armenians will not be safe and will not be treated fairly by Turkish authorities was based on lifelong understanding that:

> *"During the past twenty years Armenians have been massacred under conditions of unexampled barbarity, and during the war the record of the Turkish Government in massacre, in deportation and in maltreatment of prisoners of war immeasurably exceeded even its own previous record (…) Not only has the Turkish government failed to protect its subjects of other races from pillage, outrage and murder, but there is abundant evidence that it has been responsible for directing and organizing savagery against people to whom it owed protection."*[43]

The Allied response was delivered to the Turkish delegation on 17 July 1920.

Factor c) – The compromis was signed by authorized representatives of a lawful government.

In 1918-1922 Sultan-Caliph Mehmed VI (Vahydud-Din Efendi // Vahideddin) was the head of the Ottoman Empire, politically recogni-

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[37] Hovannisian R. *op.cit.,* v. III, p.106.
[38] Gibbons H.A. *An Introduction to World Politics*. The Century Co., New York, 1922, p. 430; Helmreich P.C. *From Paris to Sevres*. Ohio, 1974, p. 309.
[39] British Papers, *op.cit.,* v. XIII, p. 70.
[40] *Ibid*. p. 79.
[41] *Ibid.* VIII, p. 553-556.
[42] *Ibid.*
[43] *Ibid.*

zed legitimate ruler.[44] Sultan represents the de jure Government.[45] Pursuant to article 3 of the Ottoman constitution [23 December 1876; 23 July 1908] *"The Ottoman sovereignty (…) belongs to the eldest Prince of the House of Ottomans"*. Treaty making power was vested in the Sultan. The Sultan had the sole power to legislate.[46] Among the sovereign rights of the Sultan (The Ottoman Constitution, article 7) among others is the conclusion of the treaties.

On 22 July 1920, Sultan Mehmed VI, the constitutional head of the state, convened a *Suray-i Saltanat* (Crown Council), at the Yildiz Palace. The argument for signature was based on the *"necessities of the situation"*. The Council, which was attended by fifty prominent Turkish political and military figures, including former ministers, senators and generals, as well as by Prime Minister Damad Ferid Pasha, recommended in favor of signing the treaty. The Sultan rounded up the proceedings by asking those in favor of signature to stand up. Everybody but one stood up. The Treaty was accepted.[47] The final treaty, including the arbitral clause [Article 89] was signed by Turkish plenipotentiaries [General Haadi Pasha, Senator; Riza Tevfik Bey, Senator; Rechad Haliss Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne] sent by the Sultan's Government at Constantinople under the leadership of Damad Ferid Pasha.[48]

Conclusion: **The compromis was valid.**

Criterion 4 – The arbitrators must not have exceeded their powers.

The compromis [Article 89 of the Sèvres Treaty] asked the arbitrator: 1) to fix the frontier between Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis; 2) to provide access for Armenia to sea; 3) to prescribe stipulations for the demilitarization of Turkish territory adjacent to the Turkish-Armenian frontier.

President Woodrow Wilson strictly remained within the assignment, which has been prescribed by compromis. Even there was a strong pressure on him by missionary groups to include town of Karpurt and vicinities in the future Republic of Armenia, Wilson did not exceed his powers.

The official title of his decision clearly shows that he accurately fulfilled his duty: *"Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier."*

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[44] Toynbee A.J., Kirkwood K.P. *Turkey*. New York, 1927, p. 151.
[45] Armstrong H. *Turkey in Travail, The Birth of a New Nation*. London, 1925, p. 113.
[46] Eversley [Lord]. *The Turkish Empire, From 1288 to 1914, and From 1914 to 1924* [by Sir Chirol V.], (Abridged), Lahore, 1958, p. 295.
[47] Sonyel S.R. *Turkish Diplomacy 1918-1923, Mustafa Kemal and the Turkish National Movement*. London, 1975, p. 82.
[48] Toynbee A.J., Kirkwood K.P. *op.cit.,* p. 76. Smith E.D. *Origins of the Kemalist Movement and the Government of the Grand National Assembly (1919-1923)*. The American University Washington D.C., (Ph.D. in International Relations and Organization), June 1959, p. 133.

4. Legal Features and the Current Status of the Award

a) Though the arbitration mainly is done out of courts but it is a legal procedure. The arbitration is based either upon contract law or, in the case of international arbitration, the law of treaties, and the agreement between the parties to submit their dispute to arbitration is a legally binding contract. Thus the indispensable feature of arbitration award is that it produces an award that is final and binding – *"The arbitral award is the final and binding decision by an arbitrator in the full settlement of a dispute."*[49] By agreeing to submit the dispute to arbitration – *compromis*[50] – the parties in advance agree to accept the decision.[51]

b) Pursuant to article 89 of the Treaty of Sèvres, the arbitral clause was endorsed by *"the other High Contracting Parties",* so issue of determination of the boundary was submitted to the arbitration on behalf of all state-signatories of the Treaty of Sèvres as well. As the Treaty of Sèvres was signed by lawful representatives (*"having communicated their full powers, found in good and due form"*) of the 18 countries [The British Empire [separately] – 1) United Kingdom, 2) Canada, 3) Australia, 4) New Zealand, 5) Union of South Africa, 6) India,[52] 7) France, 8) Italy and 9) Japan [as Principal Allied Powers], as well as by 10) Armenia, 11) Belgium, 12) Greece, 13) Poland, 14) Portugal, 15) Romania, 16) Kingdom of Serbs-Croats-Slovenes,[53] and 17) Czecho-Slovak Republic[54] on the one part and 18) Turkey on the other part], and they pledged *"to accept the decision thereupon",* thus it is definitely compulsory arbitration and is obligatory for all of them.

c) Once arbitration has been properly executed it becomes irrevocable. It employs the legal doctrine of *Res Judicata (finality of judgments)*, which holds that once a legal claim has come to final conclusion it can never again be litigated.[55] The doctrine of *res judicata* is considered applicable to all arbitral awards, whether the special agreement or general treaty of arbitration contains such a provision or not.

d) The arbitral awards and court judgments are similar in their nature, as both are based on law.[56] They both are legal decisions. Therefore, the Doctrine of Collateral Estoppel, which affirms that an issue, which has already been legally duly determined, cannot be reopened or litigated again in a subsequent proceeding, applies in arbitration cases as well.[57]

e) If a party to an arbitration by an action conforms the award or, by lack of any action in a reasonable period, never confront the award, which

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[49] A Dictionary of Arbitration and its Terms, *op.cit.,* p. 32.
[50] *The compromis is the arbitration agreement between sovereign States, which empowers them to arbitrate an existing dispute*. (A Dictionary of Arbitration and its Terms, *op.cit.,* p. 54)
[51] *Ibid.*, p. 27.
[52] At present – India, Pakistan and Bangladesh.
[53] At present – Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia and Montenegro.
[54] At present – Czech Republic and Slovak Republic.
[55] *Ibid.,* p. 198.
[56] Manual of Public International Law, *op.cit.,* p. 584.
[57] A Dictionary of Arbitration and its Terms, *op.cit.,* p. 49.

believed to be a tacit agreement, the award considered be valid and biding. It is thereafter precluded from going back on that recognition and challenging the validity of the award [Arbitral Award by the King of Spain (1960) International Court of Justice, Rep. 213].[58]

Turkey never has challenged the validity of President Wilson's arbitral award, never started any action for cancellation of the award, and by lack of any action gave its "tacit agreement", therefore the award is absolutely and definitely "valid and binding".

f) The arbitration decisions engage the parties for an unlimited period.[59] The validity of the arbitration is not dependent upon its subsequent implementation.

h) The President is the representative authority in the US, *"his voice is the voice of the nation"*.[60] The President's representative character also implies that all official utterances of the President are of international cognizance and are presumed to be authoritative.[61] Foreign nations must accept the assertion of the President as final.[62] By virtue of the arbitrator's position the award is binding for the US as well.

i) Annulment (nullification of the legality) of an arbitral award occurs only when there is some authoritative public or judicial confirmation of the ground for such an annulment. This confirmation might come from an international agency such as the International Court of Justice (ICJ). Confirmation of the ground of an annulment might also be based on international public opinion deriving from general principals of law common to all nations.[63] Refusal by the losing party to comply with the award is not in itself equivalent to a lawful annulment. The plea of nullity is not admissible at all and this view is based upon Article 81 of The Hague Convention I of 1907, and the absence of any international machinery to declare an award null and void.[64]

Final Conclusions

Territorial disputes, even when they are of law intensity, continue to represent a significant threat to the international peace and security. It is particularly true of those conflicts that remain unresolved for a long time, allowing the rational bases of settlement to be layered by painful emotions. For example, Ararat is not a mere mountain for Armenians. It is not a number of million tones of stone, soil and snow. It's the core of the Armenian national and Biblical-Christian identity. Thus the Turkish *"captivity"* of Ararat and the world ignorance of the fact have grown into a very considerable psychological factor, which is impossible to ignore.

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[58] Manual of Public International Law, *op.cit.,* p. 694.
[59] Wildhaber L. *Treaty Making Power and Constitution*. Basel and Stuttgart, 1971, p. 98.
[60] Wright Q. *The Control of American Foreign Relations*. New York, 1922, p. 36.
[61] *Ibid, p. 37.*
[62] *Ibid., p 38.*
[63] A Dictionary of Arbitration and its Terms, *op.cit.,* p. 15.
[64] Manual of Public International Law, *op.cit.,* p. 693-94.

After the arbitrary award of the President of the USA, [signed on 22 November 1920, and duly notified on 6 December 1920] the presence and all acts taken by the Turkish Republic in the "Wilsonian Armenia" are illegal and invalid. Consequently, in spite of the long-standing occupation, Turkey does not possess any legal title to the territory and its *de facto* sovereignty is not more than an administrative control by force of arms. Belligerent occupation does not yield lawful rule over a territory. A single act of control is not enough to establish a transfer of title as Turkey might hope. Not even continuous occupation since 1920, forced changed demography of the territories and practices aiming at altering the heritage and the character of the country would help Turkey get the title.

The arbitral award of the President of the US never was revoked and it can't be done. There is not a single legal instrument that conceded *"Wilsonian Armenia"* to Turkey. Furthermore, the boundary between Armenia and Turkey, as determined by President of the US, was reconfirmed by the RT by virtue Article 16 of the Treaty of Lausanne (24 July 1924). By the Treaty of Lausanne, which is considered *"birth certificate of the Republic of Turkey",* Turkey and other High Contracting Parties recognized the Turkish title only over the territories situated inside the frontiers *"laid down"* in the Treaty of Lausanne. No frontier was laid down between Armenia and Turkey, thus "*Wilsonian Armenia"* defiantly and evidently was not included in RT. By renouncing all *"rights and title"* over territories *"situated outside the frontiers laid down"* in the Treaty of Lausanne, the RT renounced its title *"whatsoever"* over *"Wilsonian Armenia"* and by virtue of international treaty reconfirmed the legal effects of the arbitral award of the President of the US:

> *Article 16. Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of those territories and islands being settled or to be settled by the parties concerned.*

It is true that Armenia possesses the legal validity to the *"Wilsonian Armenia",* but it is also true that legal validity by itself will not lead to a solution. Indeed Armenia is the *de jure* holder of the title and Turkey grips the control, and none would relinquish its claims, based on Armenian side on the legal validity and on Turkish side on the military power.

It is true that international law by itself will not be able to bring about a solution for the Armenian-Turkish confrontation. Nonetheless, there is no doubt that international law is the only way to bring about a just and peaceful resolution, thus a durable and permanent solution.

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2. The US Constitution, Armenian Cause and Woodrow Wilson's Arbitral Award

Recently the Armenian and international mass media have extensively illustrated the issue of the recognition of the Armenian Genocide by the US Congress. Turkey as ever, is trying to argue the right of foreign states to interfere its history and inner affairs.

In this state of things, a rather important thing has slipped away from our attention – USA's Constitutional right of interfering international affairs, judging international law violations and punishing the guilty side. Article 1, Section 8, §10 of the US Constitution says: *"The Congress shall have power … to define and punish … offenses against the law of nations."* This *a fortiori* refers to the cases, in which the US supreme official – the President Woodrow Wilson has participated in decision-making based on the international law.

Therefore, each member of the Congress may raise such a question: *"Is not Turkey's refusal to fulfil the Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson (22 November 1920) a violation of international law? If so, which kind of measures attempts the USA to bring the lawbreaker to responsibility?"*

The Congress has to affirm the fact of violation of international law by Turkey for two main reasons.

- **First, the principle of precedents, adopted by the Senate.**

Already in 1927, the Senate expressed a firm and certain position on Wilson's Arbitral Award. Thus on January 18 the Senate refused to endorse the American-Turkish agreement (signed in Lausanne, August 6, 1923) and to accept the present Turkish republic.[65] Therefore, the USA-Turkey relations remain uncertain by now.[66] Three reasons of declining the agreement were brought by the Senate, of which the first was the following: *"(Turkey) failed to provide for the fulfillment of the Wilson award to Armenia"*.[67] The agreement remained pending at the Senate until 1934, when called back to the President's cabinet

[65] *Unperfected Treaties of the United States of America (1776-1976)* (ed. and ann. Wiktor C.L.), 1919-1925, NY, 1984, v. 6, p. 421; Gordon L.J. *Turkish-American Political Relations*. Am Polit Sci Rev 1928;22(3):721.
[66] Trask R.R. *The United States Response to Turkish Nationalism and Reform 1914-1939*. Minneapolis, 1971, p. 36.
[67] *Lausanne Treaty is Defeated*. Davenport Democrat, 19 Jan 1927, p. 1.

by the request of Franklin Roosevelt.[68] Turkey also never completed the process of endorsement of that agreement.[69]

- **Second, the terms of the Democrat Party Platform.**

1924-28 party platform stated the necessity of *"Fulfillment of President Wilson's arbitral award respecting Armenia"*. The 1928-32 platform said: *"We favor the most earnest efforts on the part of the United States to secure the fulfillment of the promises and engagements made during and following the World War by the United States and the allied powers to Armenia and her people"*.[70]

Taking into consideration that in the both chambers of the US Congress the majority at present belongs to Democrats, it seems quite possible that the Senate, according to the US Constitution will define Turkey's offences against the law of nations, neglecting the US President's arbitral award and urge the executive branch to take measures of punishment.

First published in AZG daily
28 February 2007, p. 5

[68] Trask R.R. *Ibid,* p. 48.
[69] *Unperfected Treaties... Ibid,* p. 421.
[70] *National Party Platforms (1840-1968)* (compl. by Porter K., Johnson D.), Urbana-Chicago-London, 1972, p. 277.

3. An examination of the Russo-Turkish Treaty of Moscow (16 March 1921) According to International Law

Then, on March 16, 1921, the Bolsheviks entered into a treaty with Kemal, whereby they ceded to Turkey a part of the Armenian Republic, two other parts to Azerbaijan and the remained labeled "Soviet Armenia", then annexed to Russia.
James Gerard, *US Ambassador to Germany (1913-1917)*[71]

The 16th of March marks yet another anniversary for the Russo-Turkish so-called treaty of Moscow (16 March 1921). It is truly an anniversary, as it was from that treaty that the treaty of Kars (13 October 1921) was derived, by which, according to the poor understanding of some, the border between Armenia and Turkey was decided.

Dozens of books and hundreds of articles have been written on the Treaty of Moscow. However, as strange as it may sound, an examination of the document has never been carried out from an international law perspective, in order to decide upon its valid or invalid status.

According to an official UN guide and manual, "***International treaties*** *are agreements between* ***subjects of International Law*** *– creating, amending or terminating their mutual rights and obligations*".[72] This is also codified by the *Vienna Convention on the Law of Treaties* (1969). Article 2.1.a of the convention describes a treaty as "*an international agreement concluded between States in written form and governed by international law*". That is, correspondence to international law bears strongly on the legality of a treaty. Accordingly, it is necessary that each party to the treaty be authorised representatives of the legitimate governments of internationally recognised states.

As noted in the preamble to the treaty of Moscow, the document was signed between "*the government of the Russian Socialist Federative Soviet Republic and the government of the Grand National Assembly of Turkey*". As the status of any treaty is derived from the legal status of the parties signatory to it, it is therefore necessary to, first of all, determine each party's legal status as of the 16th of March, 1921.

I. The status of the Russian Socialist Federative Soviet Republic in 1921

At the time of signing, there was no recognised state known as the "*Russian Socialist Federative Soviet Republic*" and, consequently, there was no such subject of international law. Naturally, its government did not have any authority to sign any international treaty. The RSFSR, under the

[71] Report [Pursuant to H. Res. 346 and H. Res. 438], *Communist Takeover and Occupation of Armenia*, 83rd Congress 2nd Session, House of Representatives, Rept. 2684, Part 8, 31 December 1954, p. 14.
[72] *Manual of Public International Law*, (ed. by Max Sorensen), New York, 1968, p. 38.

guise of the USSR, eventually received legitimate international recognition, but only in 1924, with its acceptance by Great Britain (1 February 1924).[73] All the "recognitions" until that time did not bring about any legal consequences, because they were, for their part, in the name of not-recognised countries or self-proclaimed governments. For a recognition to be considered legal, it must be carried out in turn by a legally-recognised subject of international law.[74] For example, the Soviet government recognised the Baltic States in 1920, but such a recognition was not accepted by the Allied Powers based on the fact that the Soviet government was not itself legally[75] recognised.[76] This approach was confirmed with a judicial ruling. In the case of *RSFSR vs. Cibrario* (1923), a US court declined the appeal of the Soviet government, since it was not recognised.[77] A similar ruling on the same basis was made by the Supreme Court of Sweden in the case of *Soviet Government vs. Ericsson* (1921).[78]

The aforementioned and dozens of other court rulings and formal decisions by governments serve to reconfirm the principle of international law that, without recognition, governments do not legally exist. Consequently, no legal activities (such as signing treaties, granting or revoking citizenship, participating in a judicial proceeding, etc.) may be carried out by such.[79]

II. The status of the Grand National Assembly of Turkey in 1921

What is written above on the Soviet authorities and government is, in essence, entirely applicable to the so-called government of the "*Grand National Assembly of Turkey*", on whose behalf the Turkish side signed the treaty of Moscow. It is noteworthy that even the Kemalists had no aspiration to declare themselves authorised representatives of Turkey in the presence of legitimate governments. They did not sign treaties as "Turkey" or "the government of Turkey", but as the "*government*" of a body known as "*the Grand National Assembly of Turkey*". The Turkish Grand National Assembly had the status of an NGO in modern parlance, consisting of former parliamentarians, military personnel, and bureaucrats who had all lost their offices. Such organisations have existed and still do exist in many countries of the world, including in Armenia. The group headed by Musta-

[73] *Survey of International Affairs 1924*, (Comp. by Arnold J. Toynbee), London, 1926, p. 491.
[74] Moore J.B., *Digest of International Law*, Washington, 1906, v. I, p. 73.
[75] The so-called "recognitions" until 1 Feb 1924, did not bring about any legal consequences, because they were by not-recognised countries or authorities – Estonia (2 Feb 1920), Lithuania (30 Jun 1920), Latvia (11 Aug 1920), Poland (12 Oct 1920), Finland (14 Oct 1920), Persia (26 Feb 1921), Afghanistan (28 Feb 1921), Turkey (16 Mar 1921), Mongolia (5 Nov 1921). [Frederick Lewis Schuman, *American Policy toward Russia since 1917: A Study of Diplomatic History, International Law and Public Opinion*, London, 1928, p. 351.]
[76] *Papers Relating to the Foreign Relations of the United States*, 1920, v. III, p. 462. (The Secretary of State (Colby) to the Ambassador in Great Britain (Davis), August 2, 1920, p. 461-3).
[77] Hudson M.O., *Annual Digest of Public International Law*, Cambridge, 1931-1932, Case No. 28.
[78] *Ibid.,* Case No. 30.
[79] Ti-Chiang Chen, *The International Law of Recognition*, London, 1951, p. 138.

fa Kemal had no legal basis in international law to represent the Turkish state. There is no doubt that, at least until November 1922, until the departure of Sultan Mehmed VI from Turkey, it was the government of the sultan which reserved the right to carry out acts as per international law on behalf of Turkey, and only the sultan had the power to authorise anyone to act in the name of the country, according to Article 7 of the constitution of the Ottoman Empire.[80]

The Kemalist movement generally arose and proceeded out of violating the Ottoman constitution as well as international law, namely, the rebellion against the state's legitimate authority the Sultan-Caliph and also going against the Armistice of Moudros (30 October 1918). In 1921, Mustafa Kemal was simply a criminal on the run. For that very reason, the highest clergyman of the empire, the Sheikh-ul-Islam, proclaimed a *fatwa* condemning Mustafa Kemal to death on 11 April 1920. The Turkish military court also sentenced him to death on 11 May that same year. The sultan confirmed the sentence on 24 May 1920. The criminal proceedings against Kemal and the Kemalists were closed only on 24 July 1923, with a corresponding proclamation.[81]

What is more, the clauses on Armenia in the treaty of Moscow consist of yet another violation of international law, as "*treaties can only pertain to the parties to the treaty and cannot create any obligations or rights for any third parties not party to the treaty without the agreement of the third party*".[82] This principle is also codified in Article 34 of the Vienna Convention on Treaty Law: "*A treaty does not create either obligations or rights for a third State without its consent*".

Therefore, in accordance with the aforementioned, **the treaty of Moscow:**

a) is **illegal and invalid**,

b) could not **comprise any obligations for the Republic of Armenia**, much less determine the border of Armenia and Turkey (article 1 in treaty) or hand over Nakhijevan to Azerbaijan as a protectorate (article 3 of the treaty), as the treaty of Moscow was signed in clear violations of centuries-old mandatory and inalienable peremptory norms (*jus cogens*). And, as codified by Article 53 of the Vienna Convention on Treaty Law, "*A treaty is void, if at the time of its conclusion, it conflicts with a peremptory norm (*jus cogens*) of general international law*".

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16 March 2007, p. 4

[80] O'Connell D.P., *State Succession in Municipal Law and International Law*, v. I, Cambridge, 1967, p. 211.
[81] *Amnesty Declaration and Protocol*, signed 24 July 1923.
[82] Branimir M. Jankovic, *Public International law*, New York, 1984, p. 302.

4. The Blockade by Turkey on the Republic of Armenia: an Utter Violation of International Law and Borne Obligations

Since July 1993, the RT has undertaken a ***war measure***[83] with regards to Armenia, as international law considers a ***blockade*** to be as such. To this day, Armenia's desire to lift the blockade on its western and southern border has been in vain. As long as our just demand is not supported by international law, that is to say, as long as leverage of a certain kind is not applied, our lamenting cries to Turkey to open this so-called "Armenia-Turkey border" will continue to be dismissed or have absolutely unacceptable conditions imposed upon them. All this, while the leverage as per international law is ours for the taking. Consider the following:

1. By the very first international document adopted by the RT – the Treaty of Lausanne (24 July 1923) – the country gave assurances that it would abide by free and non-discriminatory transit as per the Convention, Statute and supplementary Protocol of the Conference of Barcelona, April 1921.

Article 101 of the Treaty of Lausanne states that, "*Turkey undertakes to adhere to the Convention and to the Statute respecting the Freedom of Transit adopted by the Conference of Barcelona on the 14th April 1921, as well as to the Convention and the Statute respecting the regime for waterways of international interest adopted by the said Conference on the 19th April 1921, and to the supplementary Protocol.*"

Article 2 of the Barcelona Statute on Freedom of Transit alluded to in the aforementioned clause, states outright that the parties, "*across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.*"

By another section of the Treaty of Lausanne, Article 104, Turkey is obliged "*to adhere to the recommendations of the Conference of Barcelona, dated the 20th April 1921, respecting international railways.*"

Turkey reaffirmed its obligation to abide by the Barcelona Convention and Statute on Freedom of Transit on the 27th of July 1933 by directly acceding to it.

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[83] Plano J.C., Oltan R. The International Relations Dictionary. Santa Barbara, 1988, p. 194.

2. During the 656th plenary session of the UN General Assembly (on the 20th of February 1957), by Resolution 1028(XI), the issue of land-locked countries,[84] and the expansion of international trade was brought up for the first time. The resolution, recognising the necessity to provide corresponding transit possibilities to land-locked countries for the development of international commerce, "*invites the Governments of Member States to give full recognition to the land-locked Member states in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard*."

3. On 25 May 1969, the RT acceded to the Convention on Transit Trade of Land-locked States (New York, 8 July 1965).

This convention's first principle recognises that, "*the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development*."

The third principle of the convention recognises the right to free access to the sea for land-locked countries, stating, "*In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea*."

Moreover, the fourth principle of this convention decidedly states that, "*Goods in transit should not be subject to any customs duty,*" and that, "*Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country*."

As an aside, Georgia has acceded to the Convention on Transit Trade of Land-locked States as well (2 June 1999). Thus, in charging Armenian goods in transit more than Georgian ones, the Georgian authorities are unquestionably disregarding the international obligations, which they bear.

The aforementioned principles are codified in articles 2 and 3 of the convention. The first clause of Article 2 states that, "*Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. (…) Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used*."

Article 3 takes up customs and transit dues, stating, "*Traffic in transit shall not be subjected by any authority within the transit State to customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit*."

[84] There were five such countries at the time. Currently, there are 32.

The Republic of Armenia has not yet acceded to the Convention on Transit Trade of Land-locked States. In order that the RA may fully be in a position to defend its rights when it comes to free transit of goods, it ought to, first of all, accede to this convention.

And so, whereas the RT, in exercising a blockade on the RA, has utterly violated:

- ✓ Articles 101 and 104 of the Treaty of Lausanne (24 July 1923);
- ✓ Article 2 of the Barcelona Statute on Freedom of Transit (20 April 1921);
- ✓ UN General Assembly Resolution 1028(XI) (20 February 1957);
- ✓ Principles I, III and IV, as well as articles 2 and 3 of the Convention on Transit Trade of Land-locked States (8 July 1965);

And considering that,

- ✓ Article 55.(b) of the UN Charter calls on the UN to "*promote solutions of international economic, social, health, and related problems; and international cultural and educational cooperation*";
- ✓ the 1st paragraph under heading X of the Helsinki Final Act declares that states party to the document, "*will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles & rules of international law & those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties*";

Thus, the RA is able and is obliged to defend its rights based on international law, to carry out goal-oriented and consistent steps towards lifting the blockade on Armenia.

As a member of the UN, the RA has absolute right to, "*bring any dispute, or any situation of the nature referred to in Article 34 [of the UN Charter], to the attention of the Security Council or of the General Assembly*," as per the first clause of Article 35 of the UN Charter.

Article 34 of the UN Charter states that, "*The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security*."

With the initiative of the RA, drawing the Security Council's attention to the consistent non-compliance of international obligations and consequent clear, absolute, multiple and ill-intentioned violations of international law by Turkey would offer serious support in the political process of lifting the blockade on the RA.

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5. Material Losses of Armenian People during the Genocide of Armenians

"The crime against the Armenian people still awaits a response from Turkey. The Genocide should be recognized and the damages repaired. These are not utopian aims. As the successor of the Ottoman Empire, the Turkish state has international juridical obligations. Responsibility for crimes under international law falls upon the state that commits them as well as its successor according to the principle of continuity and responsibility of states."

Federico Andreu-Guzmán, Senior Legal Advisor
International Commission of Jurists (Geneva)[85]

Human life is the highest and unique value. It is priceless. Of course, speaking about the Armenian Genocide, we primarily and almost exclusively emphasize the human toll of the Armenian people. However, during the Genocide the Armenian people sustained also huge material losses. There is no doubt that one of the derivative purposes of the genocide was the assignment of personal and collective ownership of the Armenian people. International law declares: *Ex injuria non oritur jus* (Lat.),[86] *i.e.*, the criminal shall not enjoy the fruits of his crime. In other words, the consequences of the *erga omnes* crime[87] can not be recognized or institutionalized.[88]

In this sense, it is important to clarify the total losses of the Armenian people during the Armenian Genocide (1915-1923). We will consider some official documents that have recorded material losses of the Armenian people and affirmed our right to receive compensation.

The truce finally terminating WWI hostilities officially entered into force on November 11, 1918. Two months later (January 18, 1919), the Paris Peace Conference began its work in Paris, the purpose of which was the comprehensive review of all matters relating to the war and the preparation of peace treaties. One of the most important issues was reparations of material losses by the countries responsible for

[85] Andreu-Guzmán F. Senior Legal Advisor, International Commission of Jurists (Geneva), Preface, p. 9. In: Alfred de Zayas. The Genocide against the Armenians 1915-1923 and the Relevance of the 1948 Genocide Convention. Brussels-Geneva, 2005.
[86] Brownlie I. Principles of Public International Law. Oxford, 5th ed., 2001, Glossary.
[87] In international law, *erga omnes* crimes (crimes against the whole international community) are considered to be the crimes violating *jus cogens* (peremptory principles оф international law). Definitely, the genocide is a *jus cogens* defying crime, therefore Turkey is responsible not only for the Armenian people, but also the entire international community.
[88] Alfred de Zayas, *Ibid,* p. 11.

warmongering. Accordingly, a special Commission on the issue of reparations *(The Commission on Reparations of Damage /Valuation of Damage/)* was part of the Paris Conference. After almost 2 months of work, it became clear that not only the countries directly involved in the war sustained the material losses. Therefore, on March 7, 1919, the said commission formed a separate body – *the Special Committee,*[89] whose purpose was to summarize the material losses of countries and nations that are not represented on the Commission, and give an official course to their compensation. The Special Committee had the following composition: *members:* General McKinstry (USA), Colonel Peel (Great Britain), Mr. Jouasset (France); *secretaries:* H. James (USA), Mr. P. Laure (France). The very next day of its formation (March 8, 1919), the Committee addressed the delegations of Bolivia, Brazil, China, Ecuador, Guatemala, Haiti, Hejaz (now Saudi Arabia), Liberia, Panama, Peru, Siam (now Thailand) and the Republic of Armenia (*Delegation of the Armenian Republic of the Conference of Peace*), requesting information about the material losses incurred. Within one month of the Special Committee summarized the documents submitted by delegations, as well as obtained from other sources, and presented a preliminary report on April 14, 1919. Although calculations for Western and Eastern Armenians were carried out separately, however the losses were represented by a single final digit. In accordance with this, the losses of the Armenian nation in 1914-1919, on the whole, amounted to 19,130,982,000 French[90] francs or 3,693,239,768 US dollars[91] (as per 1919 prices). According to the report, the Armenian claims were listed as follows:

1. Western Armenia (or, as stated in the document, Turkish Armenia):

a)	personal material losses of the rural population	4 601 610 000
b)	personal material losses of the urban population	3 235 550 000
c)	collective material losses	6 761 350 000
	Total:	*14 598 510 000 francs*

[89] The details of the Special Committee see: Burett P. M. Reparation at the Paris Peace Conference, From the Standpoint of the American Delegation. NY, v. II, 1965, p. 583-9.
[90] Burett P.M. *Ibid,* p. 585.
[91] As of April 14, 1919, 5.18 French francs were equal to $1 USD (19.130.982.000 FFR × 5,18 = $3.693.239.768 USD).

2. The Republic of Armenia and other Armenian-populated territories in the Caucasus:

a)	population losses of those settlements, whose population has been completely expelled	1 831 872 000
b)	population losses of those settlements, whose population has not been expelled	1 293 600 000
c)	other material losses	1 407 000 000
	Total:	*4 532 472 000 francs*

Total claims: <u>19 130 982 000 FFR</u>

It must be stressed that this figure does not include material losses of Armenians in 1920, 1921 and 1922 (respectively – Eastern Armenia, Cilicia, Smyrna, etc.). If you also take into account the losses of this time period, the above figure should increase by at least 15-20%.

It must be said that the Republic of Armenia has never refused her reparation. Even after the loss of statehood, when it was conquered by foreign military forces (11th Russian + 3rd Turkish armies), the legal representatives of the Republic of Armenia continued to defend the rights of the Armenian people, in particular, their right for financial compensation. Thus, immediately after the signing of the Treaty of Lausanne (July 24, 1923), Avedis Aharonian – the head of the delegation of the Republic of Armenia at the Paris conference – sent an official letter (August 8, 1923)[92] to the Foreign Ministers of the Supreme Allied Powers and confirmed faithfulness to the rights of Armenians.

One important circumstance should be emphasized in the matter of reparations: the time factor is not a basis for avoidance of material obligations. For example, Finland performed its material obligations remaining after the WWI toward the United States only in 1969, and toward the UK – only in 1965.[93] Today's Russia still has problems in terms of the obligations of tsarist Russia. The Turkish Republic itself, despite the enormous concessions, was able to pay off the debt of the Ottoman Empire only by June 1944.[94] "New York Life" insurance company (NYLIC) has announced the mandatory payments to the descendants of its depositors of 1875-1915 only in January 2004, and after lengthy court proceedings.

[92] Armenia Denounces Lausanne Treaty, Note to the Powers Formally Reserves All Grants under the Treaty of Sevres. The New York Times, 12.09.1923, p. 30.
[93] Gilbert M. A History of the Twentieth Century, 1900-1933. Toronto, 1997, v. I, p. 551.
[94] Ottoman debt. Diplomatic Dictionary. Moscow, Vol. 2, 1950, p. 295.

Although this proceeding[95] does not directly relate to the reparation of our common material losses during the Armenian Genocide, however, it is extremely important. This judgment has fixed the settlement rate for similar cases: 1 French franc of WWI-period is equivalent to 2.17 US dollars.[96] That is, using judicial precedent, we can calculate the amount of material losses as a result of the Genocide of Armenians: 19.130.982.000 FRF × 2,17 = $ 41.514.230.940.

Thus, the obligation of the Turkish Republic as the successor of the Ottoman Empire in reparation for the current Republic of Armenia as the successor of the First Republic of Armenia comprises, **at the very least, 41 billion 514 million 230 thousands 940 US dollars**.

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[95] Marootian et al. vs. New York Life Insurance Company. Case No. C99-12073 CAS (MCx), United States District Court, Central District of California (Los Angeles).
[96] "The Settlement Agreement requires that each claim be paid in the amount of the death benefit under the policy, converted to current U.S. dollars at the rate of $2.17 U.S. Dollars per French Franc or $24.96 U.S. Dollars per British Pound." (See: The Statement of Armenian Insurance Settlement Fund Board, 9 Sep 9, 2005, p. 3.)

6. The Legal Interrelation between the Treaty of Sèvres and the Treaty of Lausanne

1. Legal interrelation of the treaties

Regardless of the widely shared perception the treaty of Lausanne did not *"replace, supersede, surpass, take over"* etc. the treaty of Sèvres. Legally speaking a treaty may be or *"amended and modified" or "invalidated, terminated and suspended."*[97] Treaty status or provisions may be altered by agreement of the parties in accordance with the procedure set out in the treaty itself or pursuant to customary international law, as codified by the Vienna Convention on the Law of Treaties (1969) [hereinafter – Vienna Convention, 1969].[98] Despite the no retroactivity of the Vienna Convention (Article 4) the rules of the Convention, which reflect customary international law, apply (but as customary law) to the treaties concluded before the entry into force of the Convention.[99]

2.a. Amendment and Modification of the Treaties

A treaty can be amended by the consent of parties to a treaty: *"A treaty may be amended by agreement between the parties."* [Vienna Convention 1969, Article 39]. Any multilateral treaty can be amended by the consent of all parties to a treaty: *"Any proposal to amend a multilateral treaty as between all the parties must be notified to all contracting States, each one of which shall have the right to take part in: (a) the decision as to the action to be taken in regard to such proposal; (b) the negotiation and conclusion of any agreement for the amendment of the treaty. [Vienna convention, 1969, Article 40.2]*

It is apparent that during the Lausanne conference there was no intention to amend or modify the treaty of Sèvres, but to negotiate a new treaty. Otherwise, a proposal (an official notification) for an amendment should be communicated to all states-parties to the treaty of Sèvres. Although the treaty of Sèvres did not enter into force, the text of the treaty was established as authentic and definitive by virtue of participation of its drawing and signatures of the plenipotentiaries of the states-parties to the treaty. The treaty of Sèvres was negotiated by 14 parties and signed by 13 of them (12+1);[100] the treaty of Lausanne was negotiated by 8 parties and signed only by 7 of them (6+1).[101]

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[97] For the generic definition, we will employ a broad term *"alteration"* (of the status or of the text of a treaty).
[98] Final Clauses of Multilateral Treaties, Handbook, United Nations, 2003, p. 95.
[99] Anthony Aust, Modern Treaty Law and Practice, Cambridge, 2000, p. 8.
[100] The name of the Hedjaz (Saudi Arabia) appears in the preamble of the Treaty of Sevres the representative of the country eventually did not sign the treaty.
[101] The name of the Serb-Croat-Slovene State (later Yugoslavia) appears in the preamble of the Treaty of Lausanne the representative of the country eventually did not sign the treaty.

2.b. Invalidity, Termination and Suspension of the Operation of Treaties

Termination of a treaty or the withdrawal of a party from a treaty may take place only by consent of all the parties [Vienna Convention, 1969, Article 54]. This means that Turkey cannot unilaterally free herself from the obligations imposed by the Treaty of Sèvres without Armenian consent. It must be underlined, that there are undeniable obligations imposed on a state by international law independently of a treaty. It is undisputable, that the invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation or of the provisions of the treaty *"shall not in any way impair the duty of any State to fulfill any obligation embodied in the treaty to which it would be subject under international law independently of the treaty". [Vienna Convention, Article 43].* This means that the compromis (application for the arbitration) which creates obligation under international law and is embodied in the Treaty of Sèvres as Article 89 cannot be impaired even by invalidation, termination or suspension of the Treaty of Sèvres. (Which actually never happened).

Treaty of Sèvres never entered into force. According to international law, it is an *"unperfected treaty."*[102] Yet it is a legally valid document, a binding contract ("between High Contracting Parties"), which reflects the positions of the parties and creates obligations.

3. The differences between the treaties

From a legal standpoint, the treaty of Sèvres and the treaty of Lausanne are two different documents. The treaties are distinctive:

1) By the parties to the treaties:

a) The treaty of Sèvres was signed between *"Allied and Associated Powers"* (*i.e.* by an *international alliance,* participants in the WWI) and Turkey;

b) The treaty of Lausanne was signed not by an alliance, but by individual counties, whose interests were touched on or were directly or indirectly involved in a confrontation or armed conflict during 1919-1922 and by a belligerent group on behalf of Turkey [as mentioned in the treaty by representatives of an organization called *"The Government of the Grand National Assembly of Turkey"*].[103]

2) By direct legal effect of the treaties:

a) The treaty of Sèvres was signed by *"the High Contracting Parties",* therefore, it was and is binding regardless *"whether or not the treaty has entered into force."*[104]

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[102] This is a legal term for the treaties that did not accomplish the ratification process.

[103] The treaty of Lausanne was signed on July 24, 1923, and the RT was proclaimed afterwards – on October 29, 1923.

[104] Vienna Convention on the Law of Treaties, Article 2. 1. (f) *"contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force".*

b) The treaty of Lausanne had no legal effect without ratification, thus before entering into force.

3) By the object and purpose of the treaties:

a) The object and purpose of the treaty of Sèvres was termination of the WWI and establishment of peace: *"Whereas the Allied Powers are equally desirous that the war in which certain among them were successively involved, directly or indirectly, against Turkey, and which originated in the declaration of war against Serbia on July 28, 1914, by the former Imperial and Royal Austro-Hungarian Government, and in the hostilities opened by Turkey against the Allied Powers on October 29, 1914, and conducted by Germany in alliance with Turkey, should be replaced by a firm, just and durable Peace."*[105] Therefore the official heading of the treaty is: *"Treaty of Peace between the Allied and Associated Powers and Turkey."*

b) The official title of the Lausanne conference reflects the object and the purpose of the conference*: "Lausanne Conference on Near East Affairs, 1922-1923."* Mr. Robert Haab, President of the Swiss Confederation in his official opening speech underscored the object and purpose of the conference as *"to put an end to the conflict in the Near East"*[106] namely "*Greco-Turkish War."*[107] The Preamble of the Treaty of Lausanne highlights the object and purpose of the treaty as *"to bring to a final close the state of war which has existed in the East since 1914."* nothing on peace, only re-establishing *"the friendship and commerce."* This wording was employed because legally there was no a war,[108] but merely an armed conflict - *"a state of war"* between an armed group *["a nationalist movement"]* of the one part, which as a result of a unlawful acts controlled Turkey (except for the capital) and a group of unconnected countries of the other part.

Conclusion:

During Lausanne Conference the intention was not to amend and modify or invalidate, terminate and suspend the Treaty of Sèvres, but to negotiate and sign a new treaty, which would end an armed conflict of 1919-1922 (the object) and would reflect the new realities between themselves alone (the purpose).

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[105] Treaty of Peace between the Allied and Associated Powers and Turkey signed at Sevres August 10, 1920, Preamble, [The Treaties of Peace 1919-1923, vol. II, New York, 1924, p. 789.]

[106] Proceedings of the Opening and Public Session of the Near East Peace Conference, held at the Casino de Montbenon, Lausanne, November 20, 1922, at 3:30 p.m., p. 1. [Lausanne Conference on Near East Affairs 1922-1923, Records and Proceedings and Draft of Peace, London, HMSO, 1923, Cmd. 1814.]

[107] *Ibid,* p. 2.

[108] International law defines war as *"a state of armed hostility between sovereign nations or governments."* Article 20, Lieber Instructions, 1863. [The Laws of Armed Conflicts, (ed. D. Schindler, J. Toman), Leiden/Boston, 2004 (4th ed.), p. 6.]

The Treaty of Sèvres and the Treaty of Lausanne are two successive and distinctive treaties, somewhat relating to the same subject-matter, where the parties to the later treaty (Lausanne) do not include all the parties to the earlier one (Sèvres). In this situation *"the treaty to which both States are parties governs their mutual rights and obligations."[Vienna Article 30 (4) b].*

Thus for the states-parties to the treaty of Sèvres, such as Armenia, Belgium, Poland, Portugal, the Serb-Croat-Slovene State and Czechoslovakia, as well as for the parties to the Sèvres treaty, such as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and India, the treaty of Lausanne has no legal effect and did not create either obligations or rights [Article 34, Vienna Convention, 1969].

Avetis Aharonian, President of the Delegation of the RA on behalf of the RA by the note addressed to the Foreign Ministers of the Allied Powers, dated August 8, 1923, officially denounced the Lausanne Treaty and formally reserves all grants under the Treaty of Sèvres:

"The delegation which signed the Sèvres Treaty for Armenia reserves and insists upon all the rights which the powers, during and since the war, solemnly recognized and which were duly embodied in the Sèvres Treaty and reincorporated and reaffirmed by decisions of subsequent conferences.

Whatever reception a solemn protest may receive at this time the delegation by virtue of the mandate which it holds from the Armenian people is impelled by a clear duty to denounce respectfully the act of Lausanne."[109]

4. Legal effect of the Treaty of Lausanne for Armenia

Although Armenia was not party to the Treaty of Lausanne, which means, as it was pointed out above, the treaty can create any not have any legal effect for Armenia, nevertheless there is a provision in the treaty (Article 16), which indirectly reconfirms the title and rights of the RA by virtue of the renunciation of the title and rights of Turkey over the *"Wilsonian Armenia":*

"*Article 16: Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.*

The provisions of the present Article do not prejudice any special arrangements arising from neighbourly relations, which have been or may be concluded between Turkey and any limitrophe countries".

[109] New York Times, September 12, 1923, p. 30.

Unconditional surrender (as was Moudros Armistice for the Ottoman Empire on October 30, 1918) creates definite legal status: it is totally legal submission of the defeated country and henceforth it is up to victories powers to decide when, how and on where to restore the sovereignty of the vanquished state. Both the treaties of Sèvres and of Lausanne, as well all other treaties with the defeated states of the Central Powers after WWI, were constructed in that way. Territorial clauses of the Treaty of Lausanne defined (or "laid down" as in the treaty) Turkey's boundaries with Bulgaria (Article 2.(1)); Greece (Article 2. (2)); Syria (Article 3. (1)); and Iraq (Article 2.(1)), *i.e.* restoration of Turkish sovereignty was recognized over the territories situated inside the frontier laid down by treaty of Lausanne. Turkish title and rights over "Wilsonian Armenia" was not restored, because that piece of land *"was situated outside the frontiers laid down by the present (Lausanne) treaty."* The second paragraph of the Article 16 recognized the validity of *"any special arrangements … which have been concluded."* Not incidentally, Article 16 speaks not about treaties, (to avoid the misinterpretation and not to give ground to speak about treaties of Alexandropol, Kars or Moscow), but speaks about *"special arrangements," i.e.* about arbitration as such.

5. Reconfirmation by US Senate the validity of Wilson's Award

On August 6, 1923, a US-Turkish treaty of amity and commerce was signed in Lausanne. *"After several weeks of intermittent discussion"*[110] the US Senate rejected the treaty on January 18, 1927, *i.e.* to reestablish diplomatic and commercial relations with Turkey In a statement issued by Democrats after the defeat of the treaty indicates that the opposition to the treaty was based on three major grounds, and the award issue was the first among them:

1) *"failed to provide for the fulfillment of the Wilson award to Armenia"*;
2) *"it contained no guarantee for the protection of Christians and other non-Moslems in Turkey"*;
3) failed *"for recognition by Turks of American nationality of former subjects of Turkey."*[111] Senate never approved the said treaty, thus never created a legal basis for US-Turkish relations.

[110] Democrats in Senate Kill Lausanne Treaty, p. 1. Salamanca Republican Press, January 19, 1927, p. 5.
[111] Lausanne Treaty is Defeated, The Davenport Democrat, January 19, 1927, p. 1.

Parties to the Treaty of Sèvres and Treaty of Lausanne

№	High Contracting Parties to the Treaty of Sèvres		Parties to the Treaty of Lausanne	
1.	The British Empire[112]	Turkey	The British Empire	The Government of the Grand National Assembly of Turkey
2.	France		France	
3.	Italy		Italy	
4.	Japan		Japan	
5.	Armenia		Greece	
6.	Belgium		Romania	
7.	Greece			
8.	Poland			
9.	Portugal			
10.	Romania			
11.	The Serb-Croat-Slovene State			
12.	Czecho-Slovakia			

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[112] For the British Empire there were separate signatories for the United Kingdom of Great Britain and Ireland, for the Dominion of Canada, for the Commonwealth of Australia, for the Dominion of New Zealand, for the Union of South Africa and for India.

7. Appeal to designate the 22nd of November as Hayrenatirutyan Day – Reclaiming the Homeland Day

For the past few decades now, the **24th of April** has served as one of the major dates on the calendar for the Armenian people, a day representing perhaps the most significant manifestation of united Armenian political will. In the Armenian world, this date began first as one of requiems and remembrance, gradually developing into a day of righteous indignation and demands for justice through the recognition of the Armenian Genocide. Nevertheless, the 24th of April is a day of loss, a day dedicated to acknowledging that greatest of losses.

However, as a nation and as a community in the pursuit of justice, we need a day of victory and reparation, a day of the establishment of justice and our rights. We have such a day; the day which keeps the flames of victory burning is the **22nd of November**, the date of the **Arbitral Award of US President Woodrow Wilson** deciding the frontier between Armenia and Turkey. On that day, the arbitral award granted to the RA a part of our historical heartland, in the north-east. That day put in place and enforced forever a ruling which is binding, legally inviolable and perpetual for the existence of our rights, all in accordance with international law.

As the arbitral award was realised on the basis of the unqualified *compromis* of Turkey and Armenia, as well as of the British Empire, France, Italy, Japan, Poland, Portugal, Belgium, Greece, Canada, India, South Africa, Australia, New Zealand, Czechoslovakia, Yugoslavia, Romania, having been enforced upon signing, it is therefore binding, inviolable and perpetual for all of the above countries and their successor states. It is also binding, inviolable and perpetual for the US, as the arbitral award bears the Great Seal of the USA, signed by the US President, and co-signed by the Secretary of State.

According to the basic principles of international law, codified by numerous international documents, the arbitral award is to be carried out by all parties to that document, that is, by the countries, which formed part of the *compromis*. It is their duty without reservation, their absolute responsibility. Thus, it ought to be a pan-national issue for us, to demand from those countries on the **22nd of November** each year, to carry out

their responsibility as per international law, and not to do so simply as a gesture of goodwill, but as an immediate and inviolable international obligation, which has lain forgotten, and which has partly been denied.

The 22nd of November must be rendered a day of restoration of justice, of demands for national reparations and the re-establishment of our dispossessed rights. In the words of that great Armenian, Garegin Nzhdeh, *Hayrenatirutyan Day* – Reclaiming the Homeland Day.

Thus, we appeal the National Assembly of the Republic of Armenia to designate the November 22 as HAYRENATIRUTYAN DAY according to paragraph 2 of Article 62 of Constitution of the Republic of Armenia.

16 November 2008

project

8. DECLARATION
FOR RECLAIMING THE SOVEREIGNTY OF THE REPUBLIC OF ARMENIA ON PART OF THE TERRITORY STIPULATED TO THE REPUBLIC OF ARMENIA BY INTERNATIONAL LAW

1. Governed by the stipulation stated in the declaration, signed by the Presidents of the Republic of Armenia, the Azerbaijani Republic and the Russian Federation in Moscow on November 2, 2008, that the political solution of the Nagorno-Karabakh conflict is considered *"on the basis of international law and norms, and decisions and documents accepted within this framework";*

2. Being convinced that only upon reclaiming the disrupted sovereignty of the Republic of Armenia over the territory, which is provided for or stipulated by international law to the Republic of Armenia, is the *guarantee of the Armenian statehood's persistence and survival of the Armenian nation*;

3. Being certain that the ensuring our citizens' security, ensuring and establishing favorable conditions for the country's economic development and welfare are possible only in the presence of reliable essential conditions;

4. Having for an object seeking the *establishment of long-term and permanent peace* in the entire region, which can be anchored only on justice and the full realization of obligations and the engagements of international organizations and states upon the Republic of Armenia;

5. Considering that any border is illegal and void if it has taken place or been approved on the basis of an illegal and void treaty or any other such international instrument, and thus the principles of international law, including the "principle of inviolability of borders", cannot be applied on that border;

6. Evoking that the purpose "*to develop friendly relations among the nations based on respect for the principle of equal rights and self-determination of peoples"* is enshrined in the Charter of the UNO (Article 1, § 2);

7. Reaffirming, in accordance with the *Declaration on Principles of International Law, Friendly Relations and Co-operation among States in accordance with the Charter of the UN (October 24, 1970),* that *"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples"*;

8. Recalling that the Azerbaijani Republic by imposing total blockade against the Armenian state and by virtue of unprovoked and malicious attacks first against the territory of the Armenian Soviet Socialist Republic and the Republic of Armenia later on, and by occupying part of the territory of the Republic of Armenia (township Artsvashen) *i.e.* violating the principle of refraining *"from the treat or use of force against the territorial integrity and political independence of any state,"* Azerbaijani Republic has vanished the right to render the above mentioned principle regarding to Azerbaijani Republic;

9. Observing that Artsakh (*Upper and Lower Karabakh*) and Nakhijevan were arbitrarily placed under the control of the Azerbaijani SSR with gross infringements of international law and national legislation, *i.e.* by the decision of the Caucasian bureau of the Central Committee of Russia's Communist party on July 5, 1921, and on the basis of Articles 3 and 5 of the illegal and void Treaties of Moscow (March 16, 1921) and Kars (October 13, 1921), correspondingly;

10. Referring to the Article 53 of the Vienna Convention on the Law of Treaties (1969), according to which *"The treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm ("jus cogens") of general international law"*;

11. Noting the illegality of the above-mentioned Moscow (March 16, 1921) and Kars (October 13, 1921) Treaties from the point of their inception, as they have having been concluded with evident, multiple and gross infringements of peremptory norms ("*jus cogens"*) of general international law;

12. Guided by the proposal of the League of Nations' (predecessor of the UNO) *Commission for the Delimitation of the Boundaries of Armenia* (Commission members: – Great Britain, France, Italy and Japan; February 24, 1920), which envisaged the realization of border delimitation in the Southern Caucasus *"taking into account, in principle, of ethnographical data*";

13. Recognizing that responsibility for the delimitation and demarcation in the Southern Caucasus was and is granted to the Principal Allied Powers: – Great Britain, France, USA and Italy (Article 92 of the Treaty of Sèvres, August 10, 1920), which, for their part, must follow the above-mentioned Commission's *principle of ethnographical data, on the basis of the demographical situation at the time of delimitation of the Armenian-Turkish boundary (November 22, 1920)*;

14. Underscoring the fact that the United States of America has recognized this principle, and incorporated the document containing

it into the *Full Report of the Committee upon the Arbitration of the Boundary between Turkey & Armenia* (Done by Woodrow Wilson, the President of the United States on November 22nd, 1920) as Annex I, Document No 2;

15. Realizing that the Treaty of Sèvres (August 10, 1920) was signed between *High Contracting Parties*, therefore the parties having consented to be bound by the treaty, whether or not the treaty has entered into force, according to the Article 2, paragraph 6 of the Vienna Convention on the Law of Treaties (1969) and Article 2, paragraph 11 of the Vienna Convention on Succession of States in respect of Treaties (1978);

16. Taking into account that the Azerbaijani Republic proclaimed itself as a direct legal successor of the first republic of Azerbaijan (1918-1920) by *The Constitutional Act on Restoration of the State Independence of the Azerbaijani Republic* (October 18, 1991) and thereby invalidated even its' administrative connection with Nagorno-Karabakh, which had existed during a period of existence the era of the Azerbaijani SSR (1921-1991);

17. Knowing that the foreign ministers of the European Community (currently European Union) by the *Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union"* (Brussels, December 16, 1991) have accepted that the frontiers can be changed "*by peaceful means and by common agreement"*;

18. Emphasizing that "*the respect for the inviolability of all frontiers"*, which is mentioned in the same *Declaration*, has been due to respect for "*the rule of law, democracy and human rights"*, as well as the "*guarantees for the rights of ethnic and national groups and minorities"*, neither of which has not been complied with the Azerbaijani state;

19. Keeping in mind that the Azerbaijani Republic's employed arm-twisting repeated application of a policy of ethnic *cleansing by military means* (1918-1920 and 1991-1994) and *discriminatory policy* (1920-1991) against its' Armenian citizens and residents;

20. Unable to forget also that in response to the free and peaceful expression of the will of Nagorno-Karabakh's people (as expressed in peaceful demonstrations, mass-meetings, referendums/polls, applications, appeals etc.), Azerbaijan applied violent force against the peaceful civilian population, has launched indiscriminate penalizing operations by domestic security forces which were brutal and disproportionate in their retaliation against civilians, also organized at the state-level massacres of the Armenian population of Azerbaijan (in Sumgait, Baku, Kirovabad etc.), and levied a merciless war against the peaceful Armenian population

using foreign mercenaries (including Ukrainians, Afghans, Russians etc.), and *has finally sustained an ignominious military defeat*;

21. Underlining the circumstance that the Azerbaijani Soviet Socialist Republic became independent from the USSR, violating USSR legislation of that time, particularly violating Article 3 of the Law on Secession of Soviet Republics from the USSR (April 3, 1990), which gave to the *autonomous units and ethic regions the right to choose their fate by a separate referendum*;

The National Assembly [Parliament] of the Republic of Armenia, acting within the framework of its authorization (RA Constitution, Article 62), addresses the present Declaration to the President of the Republic of Armenia, as the guarantor of territorial integrity of the Republic of Armenia (RA Constitution, Article 49), to take a step in the direction of reclaiming the territorial integrity of the Republic of Armenia: to reclaim the sovereignty of the Republic of Armenia on the whole territory under the Nagorno-Karabakh Republic's control, and to proclaim the Nagorno-Karabakh Republic as Nagorno-Karabakh marz [region] of the Republic of Armenia.

At the same time, the National Assembly of the Republic of Armenia applies to the UN Security Council, to national legislatures and executive powers of particular countries, especially those having obligations stipulated by international law, to support with every means the reclaiming of the violated sovereignty of the Republic of Armenia on those territories. These territories were surely a part of the Republic of Armenia in case of application of international law and international proposals and obligations and which were placed under the administrative control of the Azerbaijani Soviet Socialist Republic by Stalin's Soviet administrative division, and by the Russian-Turkish political bargain (1921), and which continued to remain occupied by the Azerbaijani Republic until today.

Done by independent expert Ara Papian,
at the city of Yerevan, Armenia, on 19 November 2008

9. Unlawfully Confiscated American Property in Turkey: Problems and Perspectives for the Indemnification and Compensation

This is only the first attempt to outline a general sketch for a thorough research on the unlawfully confiscated American property in Turkey during and after WWI.

1. Background Information: American churches began their evangelistic activates under the auspices of American Board of Commissioners for Foreign Missions (hereafter – ABCFM or the American Board) in the Ottoman Empire with the appointment of two missioners to Jerusalem in 1819. The first missionary station was established at Beirut in 1824. The ABCFM first presence on the territory within the borders of modern Turkey was established at Constantinople in 1831.[113]

The ABCFM began as an inter-denominational society, including Presbyterian and Reformed churches, besides its core of Congregationalists. A fundamental transformation occurred in 1870. For the missionary purposes the territory of the Ottoman Empire was divided into two domains: Afterward ABCFM perused its activates in the European and Asiatic Turkey and Presbyterian Board of Foreign Missions was in charge of evangelistic work in Palestine and Syria. Therefore, on the eve of WWI the major, may be the single possessor and title-holder of the American missionary property in the territory of modern Turkey was the American Board of Commissioners for Foreign Missions.

For the purpose of this essay: a) The term *"Turkey"* is used as referring to the present territory of the RT; b) The term *"American property"* is used as referring to the immovable property of the American Board of Commissioners for Foreign Missions.

2. The Scope and Value of American Property in Turkey: Since 1920-30s, ABCFM was illegally deprived of its properties and was gradually forced out of the country by Turkish authorities. The institution's immovable properties were unlawfully confiscated and the movables were plundered.

On the eve of the WWI, the American Board had a total of 15 stations,[114] 270 outstations, 146 missionaries, 179 native ministers, 811

[113] The Encyclopedia of Missions (edited under the auspices of the Bureau of Missions, 2nd ed.), New York-London, 1904, p. 30.

[114] The first station was instituted in Constantinople in 1831. The following years stations were established at Trebizond, 1835; Erzerum, 1839; Aintab, 1847; Sivas, 1851; Marsovan, 1852; Harpoot, 1855; Cesarea, 1854; Diarbekr, 1853; Adana, 1852; Urfa, 1854; Marash, 1854; Mardin, 1859; Tarsus, 1859; Van, 1872. [Lybyer Albert Howe, America's Missionary Record in Turkey, p. 804, Current History, vol. XIX, Feb., 1924.]

native workers, 114 organized churches with 13,891 communicants,[115] and 50,900 adherents.[116] In addition the ABCFM maintained in Asiatic Turkey 132 high grade and 1,134 lower schools with a total of 60,964 under instruction,[117] nine colleges, ten missionary hospitals, (besides two or three others under American management),[118] as well as numerous Bible bookshops, publishing establishments and houses. Of all foreign educational systems, Americans held the first place. Armenians financed a large number of the American schools in Anatolia.[119] Consequently, ABCFM owned hundreds and hundreds of buildings and land possessions within the borders of modern Turkey.

So far, no study was conducted to evaluate the total market value of American missionary property in Turkey before WWI. Nevertheless, it was worth several millions of dollars at that time:

1. According to Albert Howe Lybyer, Professor of History from the University of Illinois: "*Though buildings were constructed in the interior of Anatolia at remarkably low cost, the total value of American property came to be several millions of dollars.*"[120]
2. Everett P. Wheeler, an authority in the missionary history, claims that: "*They [American missioners] went there with the full consent of the Turkish Government. We invested over $9,000,000 in schools, colleges and hospitals.*"[121]

The exact value and current market price of unlawfully confiscated American private and corporate property in Turkey and by Turkey is unclear yet. However, even the most conservative appraisal indicates that **in today's market the price for ABCFM owned real estate can easily surpass 150-250 mln USD**.

For instance, the total property value of one institution – Central Turkey College at Aintab – was appraised at $119,020 USD, in 1914.[122] The current price for that property can be over a 1-1.5 million USD.

3. The Treaty Basis for US activities in Turkey: The first treaty between the US and Turkey, which authorized the entry of American

[115] The Evangelicals were recognized as a separate Protestant community (a millet) in 1847.
[116] Judd W. Kennedy, American Missionaries in Turkey and North Syria and the Development of Central Turkey and Aleppo College, 1874-1967, /a thesis for BA/ Williamburg, Virginia, 2008, p. 61. The Encyclopedia, p. 31.
[117] The Encyclopedia, *op. cit.*, p. 31.
[118] Lybyer Albert Howe, *op. cit.*, p. 806-07.
[119] Albert W. Staub, American School Work in the Near East, Current History, January, 1923, vol. XVII, No. 4, p. 597.
[120] Lybyer Albert Howe, *op. cit.*, p. 807.
[121] Everett P. Wheeler, American Missionaries in Turkey, Current History, November, 1922, vol. XVII, No. 2, p. 300.
[122] "Inventory of the Property in Aintab, as of 1914." Papers of the American Board of Commissioners for Foreign Missions, Research Publications from Wesleyan University Library. ABC 16.9.6.1, 1817-1919, Unit 5, Reel 674, Vol. 2, Part 1, No 152.

citizens into Turkey, guaranteed protection and security to them and authorized them to engage in any lawful business there, was made on May 7, 1830.[123] Pursuant to Article # 4 of referred treaty, the US gained the advantages of the capitulatory[124] regime.[125] In 1839, the benefits of Turko-British Treaty of 1838 were extended to the US.[126] In 1862, the US concluded a second treaty of commerce and navigation with the Ottoman Empire.[127] In 1867, after strong diplomatic pressure, Turkish government passed a law granting foreigners the right to hold real property.[128] A protocol was issued by President Grant on October 29, 1874, accepting for the citizens of the US the law of the Ottoman Empire concerning the right of foreigners to possess real property in Turkey.[129] An extradition treaty was concluded between Turkey and the US in 1874 and proclaimed on May 26, 1875.[130] In 1906, Sultan Abdul Hamid bestowed the US with the status of *"most favored nation."* This meant that for the first time US citizens were entitled to own, sell and build on property as if they were native citizens.[131] So on the eve of the WWI the US citizens' and corporations' rights and privileges in the Ottoman Empire were rested upon solid body of international and municipal law.

As the US-Turkish Treaty of Lausanne (August 6, 1923) was rejected by the Senate (January 18, 1927) and did not enter into force, therefore it did not alter the legal basis for the bilateral relations. Accordingly, the US citizens currently uphold the same rights and privileges in the RT as had on the eve of WWI. The Senate's opposition to the treaty was based on three major grounds, and the issue of missionary rights and privileges was the second among them: 1) *"failed to provide for the fulfillment of the Wilson award to Armenia"*; 2) *"it contained no guarantee for the protection of Christians and other non-Moslems in Turkey"*; 3) failed *"for recognition by Turks of American nationality of former subjects of Turkey."*[132]

The treaty basis (*i.e.* the international law) is crucial for the positive ending of the legal claims, because *"all Treaties made, or which shall*

[123] For the complete text of the treaty see – Annual Register. 1831-1832, Public Documents, p. 91-4.
[124] The capitulations are exterritorial rights given to foreigners in Turkey, exempting them in large degree from the authority of the Ottoman Government both in the judicial and in the economic domain, and yielding this authority to the respective embassies and consulates. Although capitulations are privileges granted usually unilaterally nevertheless in the case of the US it was fixed in bilateral treaty, so it couldn't and can't be abrogated unilaterally.
[125] Clair Price, The Turkish *"Capitulations"*, Current History, June, 1922, vol. XVI, No.3, p. 464-5.
[126] Edward Hertslet, Treaties and Conventions between Great Britain and Foreign Powers, vol. V, p. 506-10.
[127] Leland J. Gordon, Turkish-American Political Relations, The American Political Science Review, vol. 22, No. 3 (Aug., 1928), p. 711-21.
[128] FRUS, 1867, pt. 2, p. 5.
[129] FRUS, 1874, p. xxiii-xxv.
[130] Treaties, conventions, international acts, protocols and agreements between the United States of America and other powers, 1776-1909 / Compiled by William M. Malloy/, vol. I, Washington, 1910, p. 1341-1344.
[131] Judd W. Kennedy, *op. cit.*, p.58.
[132] Lausanne Treaty is Defeated, the Davenport Democrat, January 19, 1927, p. 1.

be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby." [Article VI, US Constitution]

4. The status of the American Board of Commissioners for Foreign Missions (ABCFM) and the successor: The ABCFM was founded in 1810 and was the first organized missionary society in the US. It was officially chartered as an incorporated company under the laws of the State of Massachusetts in 1812 *"for the purpose of propagating the Gospel in heathen lands by supporting missionaries and diffusing acknowledge of the Holy Scriptures."*[133] The ABCFM was composed of corporate members, of whom one-third were by law laymen, one-third clergymen, and the remaining third were chosen from either of those two classes. The number of corporate members was increased to 500 (by 1904). The regular meetings of the Board were held in different parts of the country, in the month of October each year. For the many years the ABCFM headquarter was at 33 Pemberton St. and 14 Beacon St., Boston.

The ABCFM incorporated the Foreign Department of the Christian Church following the merger with that denomination in 1930. In 1957, the Congregational Christian Churches merged with the Evangelical and Reformed Church to form the United Church of Christ (UCC).[134] On June 29, 1961, the ABCFM was formally concluded, becoming part of the United Church Board for World Ministries (UCBWM), an instrumentality of the new denomination. On 1 July 2000, the UCBWM became Wider Church Ministries (WCM), one of the four covenanted ministries of the United Church of Christ (UCC). Currently the Eexecutive Minister of the Wider Church Ministries, the ABCFM successor organization since July 7, 2005, is Ann Calvin (Cally) Rogers.

5. Documentation and evidence: There is plenty of documentation and evidence to prove the title and the status of the property. The enormous (1261 linear ft.) and almost intact (for the years 1810-1961) archives of the ABCFM presently are in the Houghton Library, Harvard University, (Cambridge, MA 02138) under the Call No. ABC 1-91. As the mission to Turkey was a key task, presumably at least 15-20% of the documents do

[133] The Encyclopedia, *op. cit.*, p. 28.

[134] The parent organization – United Church of Christ (UCC) – is a mainline Protestant Christian denomination principally in the United States, generally considered within the Reformed tradition was formed in 1957 with the union of the Evangelical and Reformed Church and the Congregational Christian Churches. United Church of Christ is member of the World Council of Churches. According to the 2007 yearbook, the United Church of Christ has approximately 1.2 million members and is composed of approximately 5,518 local congregations. In 2007, US Presidential candidate and longtime UCC member (a member of Trinity UCC in Chicago), Barack Obama spoke at the UCC's Iowa Conference meeting (on June 16 in Fort Dodge, Iowa) and at the General Synod 26 (on June 23, at the Hartford, Conn.).

relate to the subject of our interest. The subject matter documents are organized into the following series: *ABC 16.7: Mission to the Armenians; ABC 16.9 Mission to Turkey; ABC 8.2.2 Financial correspondence re Euphrates College, 1895-1903, 4 vols.; ABC 8.2.3 Trustees of Armenia college (later Euphrates College) Funds. Account books, 1877-1930, 3 vols.; ABC 16.5: Near East Mission, Documents, letters; etc.*

The main body of the archive was received on deposit from the ABCFM in 1944. Additions were made by the successor - Wider Church Ministers. The archive includes records of the ABCFM, including personal papers and photographs of individuals and organizations associated with it. The WCM remains one of the two custodians of the archive and permission to quote the ABCFM archives for publication should be requested from the Curator of Manuscripts, Houghton Library, and the Executive Minister of Wider Church Ministers.

Another reliable source is the official organ of ABCFM, a monthly magazine *"The Missionary Herald",* published in Boston, Massachusetts. The magazine scrupulously reflects the worldwide missionary work. The magazine has entered public domain.

American missioners were very productive in writing of memoirs. Commonly, reliable information on the property issues is by and large dispersed in these books.

6. Significance and Implication: There is great need to conduct a detailed research on the unlawfully confiscated American property in Turkey in order to clarify the previous and current title and legal status of that estate. The positive outcome of the research will have great significance and sustainable legal implication. It will seriously enhance the possibilities for various denominations, entities and group of citizens to reclaim wrongfully lost properties or to be duly compensated.

22 March 2009

10. Again on Deblocking Armenia by Turkey and Possible Recognition of Consequences of Treaty of Kars

Turkish media have recently circulated vague rumours about recognition of Treaty of Kars by Armenia or about accepting the former Soviet-Turkish border as Armenian-Turkish border. Presently, the dividing line through the rivers of Araks and Akhuryan does not have the status of Armenian-Turkish state border, because we do not have any ***legal*** and ***valid*** international treaty on this issue.

Let us suppose, I am emphasizing suppose, that Armenian authorities somehow give *de jure* interstate border status to the present *de facto* dividing line. Would it be legal from international law and constitutional law aspects?

The Armenian-Turkish border, of course I mean the only existing *de jure* border between the RA and the RT (*i.e.* "Wilsonian border"), was not approved by a bilateral treaty in order to be possible to reject or to change it only by agreement of these two sides. The Armenian-Turkish border was determined by US president Woodrow Wilson's Arbitral Award, which served as ***mandatory*** legal decision for a number of countries, including RA and RT. It means that President Wilson's Arbitral Award, which came into effect irreversibly on November 22, 1920, does not only recognize the right and the title of the RA to certain territories but also obliges the RA to follow international norms and commitments.

The most striking demonstration of irreversibility of the Arbitral Award was the refusal of the treaty between the US and *de facto* Turkish government (August 6, 1923) by the US Senate on January 18, 1927. The only reason of this refusal was that the approval of that treaty would contradict already taken by the USA commitments, which were proceeding from Arbitral Award.

Therefore, the RA cannot legally recognize in any formulation the situation, which is caused in consequence of Treaty of Kars, because such an action will contradict the international commitments of the RA.

Recognition of consequences of Treaty of Kars (I do not say consequences of Treaty of Kars because it was illegal since its' signing day) will also be violation of Constitution of the RA. Article 49 of the RA Constitution reads as follows: "The President of the Republic is the

guarantor of independence, ***territorial integrity*** and security of the Republic of Armenia". It means that recognition of an illegal bargain between Kemalist Turkey and Bolshevik Russia will be a violation of the RA territorial integrity. Because regardless of that Turkey has occupied a considerable part of the RA since 1920, occupation cannot serve as the basis for legal possession of any territory, especially as to result to assignation of the title of territory.

4 May 2009

11. The Lone Crusader of Hayrenatirutyun – Reclaiming the Homeland

June 11, 2009 was the 75th anniversary of ***Mr. Vahan Cardashian***'s demise.

He was one of the most prominent political personalities of modern Armenian history. His name may tell nothing to many people today; however, **Mr. Cardashian's** self-sacrifice for the idea of Hayrenatirutyun (Reclaiming the Homeland) and his services for Armenian claims remain unsurpassed until these days.

Thanks to **Vahan Cardashian,** the Armenian people gained the greatest and probably the only victory in the US Senate so far. **Vahan Cardashian** was a man who unified the American public opinion and political will against American-Turkish treaty, which was signed on August 6, 1924 in Lausanne. Therefore, this treaty kept inviolable and even reconfirmed the basis of Armenian claims – the Arbitral Award of the US President Woodrow Wilson.

Vahan Cardashian was born in Caesarea on December 1, 1883. His father was hadji Nazar agha Cardashian, and mother – Mariam Galaichian. Cardashian family had two sons – Garabed and Vahan, and a daughter – Hranoush.

After graduation from Armenian school, Vahan receives 10 years education at French l'Université St. Basil, and then studies at the local American college (Talas American College) during 2 years.

Vahan Cardashian immigrated to the US in 1902, where he studies law at world-known Yale University from 1904 to 1908. During this period, he is acquainted with American public life, writes a hundred of articles, and publishes two books: "The Ottoman Empire of the Twentieth Century" and "Actual Life in Turkish Harem".

On May 15, 1907, **Mr. Cardashian** married a leader of women's liberation movement – Cornelia Alexander-Holub.

He becomes a member of New York bar association and begins his private activity after the graduation from Yale University in 1909.

It was the period of crucial changes in the Ottoman Empire. "Young Turks" came to power with very fascinating and loud motto of liberty, equality and fraternity. It was the period, when Armenians believed again that Turks had been changed, and they were not "that previous Turks". That is why **Mr. Cardashian** accepted the suggestion of Turkish consul to hold the position of counselor of the embassy and legal councilor of Turkish consulate in New York.

However, when **Mr. Cardashian** heard about massacres and deportations of Armenians in 1915, he threw all his medals that he received from Ottoman Empire on the face of the representative of Turkish state and signed up to the sacred duty of helping his miserable homeland. From that moment, **Mr. Cardashian** was completely another man – Hayrenatirutyun fighter and consecrated to nation.

Armenians under the leadership of Mihran Svazli (Svazlian) created **Armenian National Union (ANU)** in 1915. ANU established **Armenian Press Bureau** with **Vahan Cardashian** as executive director and main author of published materials. He was going to Washington every week, where he had many meetings with powerful persons. After the proclamation of newly independent Armenian statehood (May 28, 1918) on a small part of Armenian broad homeland, **Mr. Cardashian** exerted every effort to recognition of Armenian state by USA and to assignment of American aid to his long-suffering country.

In December 1918, **Vahan Cardashian** created **American Committee for the Independence of Armenia (ACIA)**, which had general council of 72 persons and was leading by 9 members of executive board under the leadership of James Gerard, the US former ambassador to Germany. The honorary chairperson of the general council of ACIA was ex-member of US Supreme Court and future Secretary of State Charles Evans Hughes. It was an unprecedented influential organization consisting of Americans except **Mr. Cardashian**. ACIA's members were former lawmakers, ministers, ambassadors, rectors and 21 governors. ACIA had 23 branches in 13 States.

The greatest achievement of **Mr. Cardashian's** and his colleagues' activity of this period was undoubtedly the recognition of independence of the Republic of Armenia by USA on April 23, 1920 (compare with known "event" of April 23, 2009). It is especially noteworthy because USA did not recognize independence of first Republics of Georgia and Azerbaijan.

Another tangible result was also assignment of 17 million 202 thousand USD humanitarian aid to the RA through different American agencies, as well as considerable facilitation of credit arrangement of 11 million USD.

The years from 1920 to 1923 were the period of greatest achievements and greatest losses in the modern Armenian history.

On the one hand, it was the period when international community recognized and approved the right of Armenians to have a state in the northeastern part of their motherland by virtue of Wilson's Arbitral Award. On the other hand, the embrace of two internationally

unrecognized and unlawful administrative packs (Turkish and Soviet) strangled Armenian independent statehood.

Despite the assurances of keeping the promises and legal commitments given to Armenians, there were obvious and hidden renunciations of these promises and commitments. This difficult political situation leaded to desperation of many people; many of them abandoned their ideas, and many deserted to the opposite camp.

And in these hardest conditions, **Vahan Cardashian's** long-lasting patriotic activity recorded its' most important and greatest result: he succeeds to block the US Senate consent and advise to the American-Turkish treaty, which was signed on August 6, 1924 in Lausanne. It was a diplomatic démarche, which reaffirmed the validity of the US President Woodrow Wilson's Arbitral Award on Armenian-Turkish borders and gave an opportunity to coming generations, *i.e.* to us, to have an invincible tool for Armenian claims, which is based on international law.

According to the American Constitution, the US Senate must approve every treaty in order to come into effect. As US-Turkish treaty the was submitted to the US Senate's consideration on 3rd May 1924, **Mr. Cardashian** formed **"American Committee Opposed to the Lausanne Treaty (ACOLT)"** with the aim of preventing the approval of this treaty in Senate and keeping alive the rights of the RA at least in the legal field. The debates and voting of the treaty were postponed for almost 3 years because the memories about Genocide of Armenians by Turkish state were still fresh in the US.

During this period **Vahan Cardashian**, almost alone and on his own means, fulfilled the impossible: by writing, publishing and spreading many hundreds of letters, reports, statements, and publications to American political circles he kept alive the rights of Armenians.

Mr. Cardashian published **"The Lausanne Treaty, Turkey and Armenia"** collection in 1926. In this book, he brilliantly summarized all legal bases, political commitments and moral obligations against Lausanne American-Turkish treaty. The result was perfect! The US Senate refused the approval of this Treaty on 18 January 1927. Moreover, non-fulfillment of Woodrow Wilson's Arbitral Award by the RT was mentioned as the main reason of that refusal.

After several years of suspension in US Senate, the Lausanne Treaty was sent back to White House on 16 January 1934. **Vahan Cardashian** had completed the greatest mission of his life: he assured the legal anchor of Hayrenatirutyun struggle for his homeland. Henceforth he could finish his terrestrial path.

Few months later, on June 11, 1934, at the age of 51, the heart of **Vahan Cardashian**, great patriot and **"lone crusader"** as his colleagues called him, ceased throbbing. The leading fighter of Hayrenatirutyun, whose activity's outcome was irrevocable and unsurpassed, and who devoted himself entirely to the homeland, quit the world.

Vahan Cardashian was one of the richest Armenians of the time at the beginning of his political activity. Following almost 2 decades of struggle, he did not have money even for his funeral. With fundraisings of New York Armenians, his body was modestly consigned to the earth at Cedar Grove Cemetery, Long Island. This is the end of one of the prominent national figures of modern Armenian history.

***P.S.**: I was in New York in May 2008. I unsuccessfully wanted to visit the tomb of the great patriot **Vahan Cardashian**. Even his grave did not survive because for decades it had even a single visitor. Today our comprehensive and deepening crisis has many big and small reasons. Surely, one of the reasons is the denial of devotees to homeland and the idolatry for pseudo-heroes. Two main avenues in Yerevan bear the names of alien marshal (Soviet marshal Baghramyan) and admiral (Soviet admiral Isakov). We have erected their grandiose statues, and after all this we still wait that our young generation will devotedly serve to the Motherland and will not choose the way of winning fame at its' homeland by means of serving to the foreigners.*

11 June 2009

12. **Waiting for the Return of Pokr Mher**

There was a custom in ancient times, of beheading the bearer of ill tidings. When I was a child, I could not understand why people would take on the fatal mission of a messenger with bad news. It came to me later. From the perspective of the interests of nation and society, nothing is higher than the truth. The simple, sometimes bitter truth is of vital significance, for, without viewing reality with open eyes, it would be impossible to discover the path to salvation. After all, can the blind lead the blind? It is our turn now to view reality with open eyes.

The existence of the Armenian people has never been in greater danger in the course of her five-thousand-year history than it is at present. This is due to the threatening demographics that have been formed in Armenia: a falling birth rate, an ageing population, the increasing death rate, not to mention incessant emigration. The reasons are many, but they will not come under discussion now. According to data from the UN, the population of Armenia will decrease up to 25% by 2025. During that same time, the population of Azerbaijan will increase 31%, while that of Turkey, by 43%.[135] Fifty years from now, half the current population of Armenia will remain in the country. In order to guarantee the basic sustenance of any society, it is necessary to maintain a minimal birth rate of 2.11. The peoples with a birth rate of 1.3 are condemned to destruction. In 2007, Armenia's birth rate was 1.348.[136]

The situation was not as tragic even during the years of the Armenian Genocide. It was clear that some amount of Armenians would be saved, that they would re-create their homes on one part of the Homeland, and that the Homeland would be built up of their children. It was a question of time; if many were saved, it would take less time to for the nation to recover, if few were saved, it would take longer. The child of eternity – time – was on our side. Now, time is our enemy. In five to ten years, for the first time in Armenia in years of peace, there are to be fewer children coming into the world than those who are to depart from this world. That is to say, we are to begin to end, as the water in the brook upon the drying of the spring, as the light in sky upon the sun is setting. The bright, twenty-first century, might be our last. The beginning of the end is already in place.

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[135] Gayane Abrahamyan, ArmeniaNow.com, 29.06.2007.
[136] Karine Kuyumjian, Head of the Census and Demographics Department of the State Statistical Service, 22.04.2008, Panorama.am.

Of course, the destruction of a nation does not imply the destruction of the individuals of a nation. For a century or two yet, there might be some communities left, some individuals would come up with programs for saving the nation, some political parties would take up collections to save the nation. Perhaps there would even be some sort of administrative unit, an "Армянский форпост" (*armyanskiy forpost* – "Armenian outpost", in Russian), or an "Ermenistan vilayeti" ("Armenia province", in Turkish). Perhaps the leader of such a place would be referred to as a "president", with a security detail to boot. That would not be Armenia, however, but a sacrificial lamb of somebody else's flock, ready to be lain on the altar at any moment for the well-being of that somebody else's child. Do you remember how they sacrificed us once already, en route to the victorious global revolution?

Let us now take up an obvious question: what to do, then? The answer is simple: having many children must be encouraged. For every child born in Armenia, each family should receive a monthly sum until he or she comes of age, a hundred dollars for the first child – or its equivalent in Armenian drams, if you will – two hundred for the second, three for the third, and so on. An extra two to three billion dollars a year would be necessary for this. That would also be the amount needed to renovate infrastructure, to improve healthcare and education, in a word, to have a worthwhile country. Of course, the annual expenditure of five to six billion dollars in Armenia would go a long way to boost the economy, create more employment while, naturally, generating new income as taxes, customs, duties and other payments. At first glance, seven to eight billion dollars' worth of expenditure a year might seem enormous as compared to the current budget of the RA (2.7 billion USD), but in reality that is merely, for example, barely half the 2008 expenditure of a not-so-rich European country with similar demographics, Lithuania.

And now let us turn to the most important question: where and how to acquire this money? It is evident that, in terms of collecting taxes or of guaranteeing human rights, Armenia is never going to be a Switzerland or a Sweden. Let us say it does. Then what? Well, then, best-case scenario, Armenia's budget would double, and we would be the equivalent of Albania. Is our goal the creation of an Armenian Albania? Of course not! Even with a budget twice of what we have now, we could not allow ourselves to spend two to three billion dollars on the preservation of the nation, or, to put it more simply, on programs of population maintenance.

It is clear that our circumstances today are the dull echoes of the Armenian Genocide and the dispossession of our Homeland. If there had not been genocide, we would be more in number, within the frontiers of

a larger and more prosperous homeland. The axe of the genocidal culprit, which was raised almost a century ago, has struck its final blow in our time today. The tree of life of our people is no longer capable of healing its own wounds. And so, the two greatest tragedies of the existence of our nation – the Armenian Genocide and the dispossession of our Homeland – will serve as the two main sources for a new serum of our national survival. We have no other choice.

Dear reader, please refer to a more detailed and professional treatment of this issue in the "**Strategy Paper on the Armenian Cause**" at the end of this book. One thing must be clear to all of us, that a resolution to the Armenian Question is not a thought experiment or a theoretical riddle. It is the **only way** for the survival of the Armenian people. We would commence with the coming decade by receiving three to five billion dollars annually from Turkey as material reparations as well as rent for use of Armenian territory and property, and then, perhaps, we would create conditions for a secure existence and economic development. If we cannot do these things, then we will go on to join our old neighbors, the Babylonians, Sumerians, and others.

The proposed strategy paper is realistic, in that it has strong legal bases and also interested political powers. However, we will not be able to accomplish anything as long as the re-establishment of our rights and the reparations in return for our losses are not rendered pan-national goals and state policy. Minor successes blown out of proportion will not save the country. It is impossible to keep a country with political shamanism.

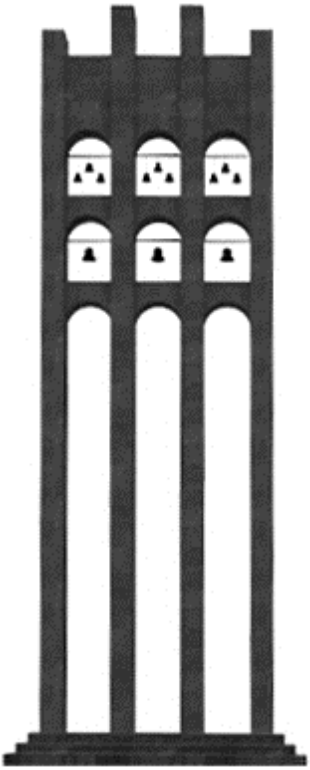
It is time for **practical** solutions.

The protagonist of the final part of our national epic – Pokr Mher – emerged victorious over his own father, the undefeated Sassountsi Davit (David of Sassoun), after which, very unlike a son, he went away, ceasing to exist, into the den of the Agravakar ("the Crow-Stone"). Will the Armenian people, defeating itself, be confined, childless, in the Agravakar of history?

2 July 2009

Part II

Sound the Alarms! This is Our Final Sardarapat



13. **I lament thee, o Armenian World** *or* **Three-Zero, in Turkey's favour**

Until now we were saying and they were confirming, that diplomatic relations were to be established with Turkey without preconditions. Many believed it. They believed it perhaps because it would have been impossible to imagine otherwise. The opposite would have simply demeaned Armenian statehood; it would have turned blood into water, debasing our land. Today we can say that the reality is more startling than even the most pessimistic predictions. The current protocols propose that the leadership of the RA accepts all three preconditions of Turkey.

The first precondition set by Turkey is relinquishing our rights and abandoning the territorial demands we have with regards to Turkey, that is to say, recognising the current border. The fourth clause in the protocol "*On the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey*" fulfils this Turkish demand.

Turkey's second precondition is the insistence on a Nagorno-Karabakh within Azerbaijan, that is, a resolution to the Nagorno-Karabakh dispute solely on the basis of the principle of territorial integrity. The same protocol fulfils this demand as well, since the second clause, reconfirming those principles upon which international relations are based, fails to mention the right to self-determination of peoples.

The third precondition for Turkey is doing away with the process of international recognition of the Armenian Genocide. This demand, too, is fulfilled. The protocol "*On developing bi-lateral relations*" calls for the creation of sub-commissions, including one "*on historical issues*", which has to deal with "*defin[ing] existing problems … between the two nations*". And which issue is the most controversial issue, exactly, which requires such definition? Certainly, the Armenian Genocide.

It is evident that, if Armenia were to accept the proposed protocols, then Turkey would entirely acquire what it desires. And what are we to expect in return? Are we that shortsighted as to legalise the illegal occupation of territories of the RA and the illegal possession of our national property by the RT, ultimately sacrificing the future of our people?

If the aforementioned protocols get ratified, then we will need a new Movses Khorenatsi (Moses of Khoren, the classical Armenian historian and chronicler), to write, "*I lament thee, o Armenian world, for thy king and clergy are undone, and ignorant decadence reigneth*".

31 August 2009

14. **Once More on the Pair of Unfortunate Protocols**

Through their own dubious analysis and that of others, certain *Parteikanzlei* (party leaderships) are attempting to equate opposition to signing the pair of unfortunate protocols and the establishment of Armenian-Turkish diplomatic relations with opposing the opening of the so-called border. Personally, I am 100% for establishing diplomatic, as well as consular, relations and 50% for opening the so-called border. At the same time, I am 100% against signing, much less ratifying, the aforementioned protocols as, apart from the establishment of diplomatic relations and the lifting of the blockade on Armenia, they consist of more than ten very serious, even historically critical, liabilities, which are not even so much preconditions in nature, but are designated demands to be fulfilled.

Establishing diplomatic relations is not a self-serving prospect. It is a means to resolve present and potential problems, disputes and disagreements between countries through negotiations. If we are adopting final compromises on all issues of principle, what are we to discuss with the Turks in future? The preservation of Armenian cultural monuments or regulations on importing Toyota spare parts?

A brief observation on how there supposedly is not any mention of the Treaty of Kars in the protocols. Firstly, could someone please explain to me what the parties mean by, "*the existing border between the two countries as defined by the relevant treaties of international law*"? Perhaps even the Treaty of Alexandropol, seeing as how the word "*treaties*" is in the plural.

Politically speaking, what was the Treaty of Kars? It was a bribe by Bolshevik Russians to those generals of the Ottoman army – already defeated by the Armistice of Moudros (on the 30th of October, 1918), condemned by their own legal authorities, declared as criminals by their own allies – who were ready to annihilate Armenian and Greek "*imperialism*".

Despite its rapacious nature and illegal status, the Treaty of Kars does consist of some beneficial clauses. In particular, articles 11, 17 and 18 refer respectively to rights of foreign nationals, unimpeded communication and trade, regulating them to a certain extent.

Putting aside the legality of the Treaty of Kars, as well as those of Alexandropol and Moscow, or rather, the question of their illegality, let me briefly turn to the liability mentioned in the fifth clause of the protocol "*On the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey*", which is, "*the mutual recognition*

of the existing border between the two countries as defined by the relevant treaties of international law".

One can assert with conviction that it would have been better to directly mention the Treaty of Kars instead of such convoluted, but simultaneously clear, citations. In the second case, we are legally stating and recording the territorial occupations by rebel Turkish forces against a legally-recognised state, the RA, without even making note of the advantages brought about by the Treaty of Kars.

I would like to believe that the more than ten anti-Armenian mistakes found in the unfortunate protocols are the result of the negligence of the bureaucracy, or else one may blame the heat for affecting the minds at work. It is summer, after all.

6 September 2009

15. **The Legal Possession of Territory, and on Salmast and Khoy**

The renowned classical Armenian philosopher, Davit Anhaght (David the Invincible), once asked, "*How can there be a limit to knowledge, when there is no limit to ignorance?*". A similar kind of unlimited ignorance was seen and heard lately, when a young person with an air of authority stated, "*Khoy and Salmast are also historical Armenian lands. Why don't we ever mention them, while we always make territorial demands of Turkey?*".

The youth was clearly unaware that claims to territory are based not on history, but on corresponding documentation pertaining to international law. In international relations, the legal possession of any territory is decided not on past history or a *de facto* situation, but with a recognised title to that territory. When, during a war, a country occupies another country's territory, that territory continues to remain the territory of the occupied party as long as any document with regards to settling the title to that territory has not been signed. This is similar to day-to-day life. If you do not have any official documentation asserting your claims to a piece of land, that land does not belong to you, regardless of how long you have lived there or how many structures you have raised on it.

Now, on to Khoy and Salmast. The title to Khoy and Salmast of Iran (Persia) was recognised by a Turkish-Persian treaty on 17 May 1639, and then reaffirmed by further treaties on 4 September 1746, 28 July 1823 and 31 May 1847. There is no legal document by which the RA may claim title to Khoy and Salmast. What is more, the Paris Peace Conference (1919-1920) confirmed the frontier of the former Russian Empire with Persia as the frontier of the newly established RA with Persia.

As for territorial demands with regards to Turkey, if we are to provide an accurate legal definition for this issue, then we are not demanding land from Turkey, but demanding Turkey end its illegal occupation of a portion of the territory of the RA. That territory is not decided as per history, but by a given legal Armenian title to the territory. And so, 63%, 66%, 100% and 75%[137] of the provinces of Van, Bitlis, Erzurum and Trabizon respectively of the former Ottoman Empire belong *de jure* to the RA, not because they are "historical Armenian territory" or because a genocide took place there, but because, to this day, their legal title belongs to the RA, although Turkey has occupied that territory since 1920.

[137] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Washington, 1920, p. 234. (Washington, National Archives, 760J.6715/60-760J.90C/7).

This title was initially recognised on behalf of 50 (fifty) states by Great Britain, France and Italy on 26 April 1920, and was then reconfirmed by the Great Seal of the US and the signature of President Woodrow Wilson, officially enforced on 22 November 1920, and then reconfirmed once more by Article 16 of the Treaty of Lausanne on 24 July 1923.

I don't want to bring up any other issue, but I would like to answer one question, however, which is often raised. How are we to deal with that territory? This is to be decided by all of us, by the Armenian people, whether living in Armenia or the Diaspora, Armenian-speaking or not, Christian, Muslim, rich or poor. We can sell it, rent it out, gift it to Iceland, whatever, but we are the ones who decide. Whatever is decided, it has to take place with all of our participation. The Homeland belongs to us all; it is not divided according to office.

7 September 2009

16. **On Protocols, Authority and Resignations**

A question has been raised a great deal lately, to which a clear answer has not been given. Why is the Armenian Revolutionary Federation (ARF) demanding the resignation of the foreign minister, but does not demand the resignation of the president? Although I am not a member of the ARF, I shall try to answer this question, because it is bad form, in principle, to leave questions raised by society unanswered.

According to the current Constitution (Article 55, clause 7), the president of the RA shall "… execute the general guidance of the foreign policy …". That is to say, as the leader, he has the prerogative of generally directing foreign policy, but not carrying it out. As a part of the executive branch, the Ministry of Foreign Affairs has, in turn, the prerogative of actually implementing foreign policy. Moreover, the Foreign Ministry is bound to be led by the directives of this "general guidance" and take corresponding steps only within the given directives. Officials of the Foreign Ministry do not have the right to work outside presidential directives and negotiate on other issues, much less take on additional liabilities in the name of the country.

What is our current situation? The president of the country has on many occasions stated explicitly in public *the normalisation of relations with Turkey without preconditions* as a prime directive of foreign policy. The foreign minister has also publicly repeated the president's position, emphasising the main characteristic of the policy being *"without preconditions"*. What is more, both the president and the foreign minister have clarified more than once that normalisation in the current stage will essentially have two directions: the establishment of diplomatic relations with Turkey, and the opening of the – so-called, as I like to put it – border between Armenia and Turkey.

There are no concerns on the first point. Naturally, we have expectations from Turkey, and therefore we must establish diplomatic relations so that we negotiate our expectations or equivalent reparations. There are some questions pertaining to the second point. However, there are no disputes really. We shall open the border and we shall see that our expectations are not coming through, and we shall be disappointed.

Now let us look over the current two protocols and see how exactly they correspond to the president's directive *without preconditions*. I shall yet have the opportunity to discuss the said documents and to reveal the more than ten unrelated liabilities in place, point by point. Unrelated, because they do not have anything to do with establishing diplomatic relations and to open the so-called border.

For now, let me bring up only one point, the presence of which testifies as such to the dismissal of the policy directive and is enough to render the entire document useless. The fifth clause of the protocol on establishing diplomatic relations between the RA and the RT says the following, word-for-word: *"Confirming the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law"*.[138]

Putting aside in general the question of the relevance of such legal treaties, let me simply stress that the aforementioned clause is well beyond any precondition. This is a non-negotiable, sovereign duty of the RA. That is to say, the parties have based the establishment of diplomatic relations on *"the mutual recognition of the existing border"*.

Clearly, the negotiators have acted *ultra vires*, that is to say, it is evident that they have surpassed their own authority and ignored the president's directive. In a word, the negotiators acted in an area, which fell outside their legal authority.

How to salvage the situation? Armenia must not ratify the signed protocols, citing that they do not reflect the intent and essence of the negotiations as they were announced from the very beginning. The RA must reaffirm its willingness to establish diplomatic relations with the RT without preconditions and to open the crossing points at the frontier, signing brief and pointed documents, which consist solely of those clauses.

10 September 2009

[138] It is notable that the Armenian translation of the protocols as presented by the Ministry of Foreign Affairs of the Republic of Armenia is full of errors and very inadequate. The aforementioned clause in the Foreign Ministry's translation goes as follows: *"Reconfirming the mutual recognition of the common border between the two countries, as defined by treaties in accordance with international law"* (unofficial, more literal English translation). The English version does not mention "reconfirming" in this clause; it instead begins with "confirming". It is indisputable that "confirming" and "reconfirming" have different legal significance. The same clause in the English does not consist of the term, "common border". It only mentions the "existing border". If it is characterized as a "common border", then it is being considered as such to be legal and established to a certain extent.

17. The Ideological Basis of Armenian Statehood

Ten days of discussion have already passed from the forty (of traditional mourning) granted to that dark pair of protocols. It is evident that the "internal discussions" are not working out. Naturally, they would not come to pass, given the circumstances. The current situation makes nothing work, and nothing will work in this scenario.

Due to my own circumstances, I am participating in these discussions as Vladimir Ilyich once did, in the form of "Letters from far away". Even with some hindrances, this does have its advantages. I am free from the influence of any faction and can act solely in accordance with my own beliefs, which have been formed as a result of years of inquiry.

Comprehensive research and experience in the diplomatic world have led me to the following conclusion: **The solution to the Armenian Question lies in the singular opportunity of consolidating the Armenian State, which is the only way for the Armenian people to endure**. A question may immediately crop up: what is meant by "the Armenian Question" and also its "solution" at this stage?

Commencing as an issue of the individual and collective security and dignity of the Armenian subjects of the Ottoman Empire, it gradually grew into an issue of Armenian statehood and the reaffirmation of the rights of that statehood. **Today, the Armenian Question is the re-establishment of the territorial, material and moral rights by international law pertaining to or retained by the current Republic of Armenia.**

One must have the courage to view the bitter truth and be clearly aware that we find ourselves without any options. The RA, as a singular and dignified political entity, can either exist only by the affirmation of its unalienable and permanent rights, or it cannot exist as such.

This is the very perspective from which one must analyze the current processes and the pair of protocols that go along with it. Is it that signing the protocols benefit the consolidation of the existential factors of Armenian statehood and increase the strength of the nation and state, or can it, as an opposing expectation, have a destructive effect?

I may immediately say that, in my opinion, the end result will be negative. The current protocols include clauses whose official recording will render settling the Armenian Question impossible even in future. We must not forget that both the struggle for Artsakh and that of international recognition of the Armenian Genocide have never been separate and the majority of Armenian society has viewed and continues to view it, whether consciously or not, as components of resolving the Armenian Question. The desire to settle the Armenian Question has been the greatest goal of Armenian survival for more than a century now. Regardless of inconsis-

tent opinions that are sometimes raised nowadays, it remains the only national goal of the Armenians.

Giving up on the demand for Armenian rights with regards to Turkey, which is indicated in the two documents, implies giving up on the sole goal which brings Armenians together, which in turn would result in a core weakening of the RA, and its eventual destruction. In order not to resemble the many witch-doctors who are concocting their potions under the Armenian sky nowadays, let me present my thoughts scientifically.

Political science has long since developed a formula to measure the strength of a given state. This is known as the Jablonsky formula in American political science.[139]

$$P_p = (C+E+M) \times (S+W)$$

In this formula, P_p is Perceived power, C is critical mass (population + territory), E is Economic capability, M is Military capability, S is Strategic purpose and W stands for the Will to pursue national strategy.

It is clear from the formula that the strength of a state depends as much on the presence of long-term goals and the state's goal-oriented practices, as the population, territory, economic and military strength. The strength of a state is not merely the sum of some indicators, but it is the product of tangible, material indicators with the sum of the goal and the willingness to achieve it. Regardless of territory, population, economic or military prowess, if the state does not have a goal, and consequently the will to attain it, the strength of the state would then be nothing, as any number multiplied by zero is zero.

Today, the Artsakh issue is not considered to be a pan-national goal, due to some disputable and not-so-disputable circumstances. The political process to get recognition of the Armenian Genocide, as a pan-national goal, cannot essentially serve as a goal of the state, because there is an absence of a clear path to reach some core result through this goal.

Therefore, not only is settling the Armenian Question a singular opportunity to strengthen Armenian statehood and the only way for the Armenian people to endure, but also the very goal-oriented process of resolving the Armenian Question, that is to say the presence of such a goal and the political will to act on it, is an indispensable factor in consolidating the strength of Armenian statehood.

We must not take steps, which could weaken Armenian statehood and deprive it of its preservation simply because the Homeland, which does not have a goal in itself, is merely a place to live.

11 September 2009

[139] David Jablonsky, National Power, Parameters, vol. 27, 1, Spring, 1997, p. 34-54.

18. **The Protocols Fall outside the Authority of the National Assembly**

The National Assembly of the RA is not authorised to discuss and vote on, much less ratify the protocols between the RA and the RT on establishing diplomatic relations and developing bi-lateral ties.

The said protocols fall outside the authority of the National Assembly. The current Constitution of the RA is clear on this point. According the Article 81, clause 2 of the Constitution, "international treaties" – only "treaties" – are subject to ratification by the National Assembly. The article does not provide for the ratification of any other international document, including protocols. The protocols are an arrangement, but not a treaty. Any activity or process in the National Assembly having to do with the aforementioned protocols would be anti-constitutional.

12 September 2009

19. **The American Example**

/once Again on Armenian-Turkish Relations/

In 1927, the leadership of the US was considering the same dilemma as the authorities of the RA face today. The administration, giving in to the interests of the business community, intended to establish diplomatic relations with Turkey, while public opinion and a majority of the Senate remained against such a move. It is not that they opposed it in general, but that the cost seemed unacceptable. It was felt that it would be inappropriate to work for one's interests through treachery.

The problem was the following. Although there was no formal declaration of war between the US and the Ottoman Empire during the WWI, the Turks had withdrawn their diplomatic relations with America on 20 April 1917. Ten years after the end of the war, it seemed natural that the parties would works towards re-establishing diplomatic ties, especially because American companies held increasing economic interests in Turkey. A bi-lateral treaty had been signed on normalising relations as far back as the August 6, 1923, in Lausanne, Switzerland. According to the US Constitution, that document could only enter into force upon the approval of the Senate.

And so, in December, 1926, the White House sent on this treaty to the Senate. Although well aware of the major economic stakes that America had in Turkey, the Senate declined to approve the said treaty on 18 January 1927. It turned out that the 1923 treaty had very convoluted wording, which could have been interpreted as a denial of the arbitral award of President Woodrow Wilson (granted on 22 November 1920). Let me once again state that this is the very document by which the common frontier maintained to this day between Armenia and Turkey was decided. The Senate of the US did not dismiss its own international liabilities and did not deny the territorial rights of the RA for the sake of economic interests.

Now, this was 1927. There was no longer a RA, and no one knew whether Armenian statehood would ever rise again. However, American lawmakers decided not to close for good the only door to salvation for the Armenian people.

It is due to this vote that, to this day, we have influential political and legal means, the skilful utilisation of which can not only lift the blockade on Armenia, but can also bring about real security guarantees for the country as well as immense monetary income.

After the Senate rejected the treaty, the Americans, as a practical people, were quick to act and, one month later, on February 17, 1927,

diplomatic relations between the US and Turkey were re-established with the exchange of diplomatic notes. Naturally, the territorial rights of the RA were not considered. The diplomatic notes only served their own direct purpose, and thus did not consist of dense or ambiguous wording. An excerpt follows:

The United States of America and Turkey are agreed to establish between themselves diplomatic and consular relations, based upon the principles of international law, and to proceed to the appointment of Ambassadors as soon as possible.[140]

And not a single superfluous word. I would like to suggest following the American example both with regards to the conduct of their lawmakers, and also in the contents of any document establishing diplomatic relations. If the Turks were sincere and really willing to normalise their relations with us, they would not hesitate to establish diplomatic relations and lift the blockade on Armenia. If their real intent is to extort the denial of our rights from us, then they would play at their games and the issue would move to other circles.

It would be most prudent not to render the establishment of diplomatic relations and the opening of the so-called border a self-serving act.

15 September 2009

[140] Papers Relating to the Foreign Relations of the United States, 1927, v. III, Washington, 1942, p. 794.

20. **Options on Armenia as a Transit Country According to International Law**

The authorities of the RA have cited the necessity of lifting the blockade on Armenia as a major incentive for signing and ratifying the two unfortunate protocols. Although not sharing in the rippling joy of the opening of the so-called Armenian-Turkish border, I consider this desire of the authorities of the RA completely in line. Nevertheless, the way they have chosen to go about it is wrong, because, if Turkey opens the border not as an international obligation, but simply as a gesture of goodwill, then it can close it whenever it likes, using any excuse. And so, Turkey has expressed its willingness "*to open the common border*" in exchange for Armenia giving up on its territorial rights, questioning the genocide and a fair few other unacceptable compromises. That is an unjustifiable price and is more akin to ransoms paid for hostages, than a negotiated agreement reached upon by two states in equal standing.

Now, it is necessary to address an important question: have the Armenian authorities really exhausted all the possibilities for opening the said border, or rather, for lifting the blockade on Armenia, that why they are ready today to pay for it with our past and our future?

Let me state at the outset that the RT has been executing a ***war measure***[141] on the RA since July 1993, as, according to international law, ***blockades*** are considered to be as such. The blockade of Armenia by RT is in complete violation of international law and its corresponding obligetions. And it is in this regard that international law; a few important documents in particular, grant Armenia many means for lifting this blockade. Among the many such documents, let us refer to only one here.[142]

On 25 May 1969, the RT became party to the Convention on Transit Trade of Land-locked States (New York, 8 July, 1965). The first principle of this convention states, "*The recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development*". The third principle of this convention recognises without any qualification the rights of land-locked countries to have free access to the sea, "*In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea*". Moreover, the fourth principle of this convention decisively states that, "*Goods in transit should*

[141] Jack C. Plano, Roy Oltan, The International Relations Dictionary, Santa Barbara, 1988, p. 194.
[142] This issue is more thoroughly treated in the article, "The blockade by the Republic of Turkey of the Republic of Armenia as a complete violation of international law and corresponding obligations", in Armenian, by Ara Papian, the "Azg" daily, Armenia, 3 April 2007.

not be subject to any customs duty. Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country".

The aforementioned principles are clearly laid-out in articles 2 and 3 of the convention. Article 2, clause 1 states, "*Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. (…) Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used*".

Article 3 of the convention is about customs duties and special transit dues, "*Traffic in transit shall not be subjected by any authority within the transit State to customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit*".

As strange as it may seem, the RA is still not itself party to *the Convention on Transit Trade of Land-locked States*. I believe that, instead of signing on to the unfortunate pair of protocols, it is first and foremost necessary to enter into *the Convention on Transit Trade of Land-locked States* and its additional documents.

With the initiative of the RA, the UN Security Council and the General Assembly can be notified of the purposeful negligence on the part of Turkey with regards to fulfilling its international obligations as per the aforementioned convention, and the consequent evident, outright malevolent violations on numerous occasions of international law. This can provide serious leverage for the RA in the political process of lifting the blockade.

I believe that, as long as the RA has not exhausted all of the possibilities, which can apply to it in international law for lifting the blockade on Armenia, it does not have the right to sign the unfortunate pair of protocols.

We will always be ready to raise a white flag…

19 September 2009

21. **Armenia and Turkey Are Not Authorized *"to Define"* the Border**

In the fifth clause of the protocol *on the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey*, the parties agree *to define the existing border*.

In this regard, it is necessary to take up a very important question, even if strange at first glance, whether the RA and the RT are in fact within their authority according to international law "*to define the existing border*".

Let me clarify the idea behind the question. From the perspective of international law, any international multilateral agreement, no matter how it ends up, be it a treaty, an agreement, protocol, etc., can be altered (amended, modified, suspended, terminated or nullified) only with the participation and agreement of *all parties* to the given document. This principle, in terms of treaties, is codified in Articles 39-41 of the Vienna Convention on the Law of Treaties (1969).

The "*definition*" of the Armenian segment of the border of the former USSR as the border between Armenia and Turkey, from a legal point of view, implies a change in the border[143], because the *de jure* Armenia-Turkey border is very different from the Soviet-Turkish border. This *de jure*, and thus the only legal border was "*defined*" by a multilateral treaty, and consequently "*to define the existing border*" is in reality a change in frontiers and, in this case, falls outside of bilateral relations for the following reason.

After suffering ignominious defeat in the WWI, on October 30, 1918, the Ottoman Empire signed the Moudros Armistice. Legally speaking, this armistice was an *unconditional surrender, i.e. unqualified capitulation*, and so the entire sovereignty of Turkey was transferred to the victors until a peace treaty was signed. That is to say, the victorious Allies[144] were to subsequently decide which part of the Ottoman Empire was to come under the sovereignty of a Turkish state and to what degree.

During 1919-1920, the Paris Peace Conference took place to discuss the conditions of the peace treaties. In April 1920, the San Remo session took up the fate of the Ottoman Empire. Naturally, one of the most important questions was the future of Armenia. Therefore, on 26 April,

[143] Also, the insistence on the Turkish side to ratify the protocols in the respective parliaments is not only based on a desire to lengthen the process. There are much simpler tricks to accomplish that. The ratification has necessarily come up because a change in the borders requires parliamentary ratification according to the constitutions of both countries.

[144] In Armenian circles, the Allied Powers are more widely referred to as the countries of the Entente.

the Supreme Council of the Allied Powers officially approached the President of the US Woodrow Wilson "to arbitrate the frontiers of Armenia" as per an *arbitral award*.[145]

Two factors in this previous paragraph need further clarification:

a) The Supreme Council of the Paris Peace Conference was authorised and functioning on behalf of *all the Allied Powers*. That is, the *compromis* for the arbitration deciding Armenia's border, and consequently the unqualified acceptance of obligations by the award to be made on that basis was made on behalf of all the Allied Powers. During the WWI, more than thirty states formed part of the Allied Powers, and, counting the British Empire, the Third French Republic, the kingdoms of Japan and Italy, with all their dependent territories, it came to almost a hundred countries.

b) The border with the RA, as opposed to other borders with Turkey, was to be decided not by a peace treaty, but through arbitration. From a legal perspective, this is an extremely important detail, because treaties can always be modified, suspended or terminated *upon the agreement of the parties*, whereas arbitral awards are "*final and without appeal*", as well as being binding.[146] That is, arbitration cannot be altered or repealed, as opposed to treaties. Besides which, arbitration and treaties are carried out with opposite procedures. While in treaties, the agreement is first reached and only then a corresponding legal document put in place, arbitration begins with signing the *compromis* on unqualified acceptance of the future agreement, after which only the award is granted.

And so, as a consequence of the aforementioned *compromis* on 26 April, US President Woodrow Wilson officially took on the arbitration of the Armenian-Turkish border in writing on 17 May 1920, and began to carry out the required work. It is necessary to point out here that this was almost three months before the Treaty of Sèvres was signed (10 August 1920) and so, the arbitration process commenced independent of the signing of that peace treaty and this *compromis* which is mentioned in it as Article 89.

In summary, one may draw this clear conclusion. The border between Turkey and the RA was decided based on the arbitral award, which came out of two independent *compromis* (San Remo, 26 April 1920, and Sèvres, 10 August 1920). The award was granted on 22 November 1920, to

[145] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 10. (The National Archives, Washington, 760J.6715-760J.90C/7)
[146] Hans-Jurgen Schlochauer, Arbitration, Encyclopedia of Public International Law, v. I, 1992, Amsterdam, p. 226.

come into effect that same day. Two days later, on 24 November, the ruling was officially conveyed to Paris by telegraph. This Arbitral Award has never been appealed; it is in effect to this day. The award was legal and lawful. It functions independent of the Treaty of Sèvres. The *compromis* included in the Treaty of Sèvres as Article 89 was and continues to be an additional, but not the basic *compromis*.

And so, the border between Armenia and Turkey has been decided by a multilateral instrument of international law, an arbitral award, to which almost a hundred countries are party today.

After all this, let us return to the real question at hand:

Upon what basis of international law do the authorities of the Republic of Armenia and the Republic of Turkey wish to dismiss their own international obligations by transgressing an inviolable international decision, the arbitral award, through a bilateral protocol?

Additionally one must bear in mind that international law does not take into account in principle any procedure or precedent for modification or annulment (nullification of the legality) of an arbitral award which has legally come into effect. Refusal by the losing party to comply with the award is not in itself equivalent to a lawful annulment. The plea of nullity is not admissible at all and this view is based upon Article 81 of The Hague Convention of 1907, and the absence of any international machinery to declare an award null and void.[147]

20 September 2009

[147] Manual of Public International Law, (ed. by Max Sorensen), New York, 1968, p. 693-94.

22. **Why are the Catholicoses silent?**

The Holy Armenian Apostolic Church has had and continues to have an immense role in the life of the Armenian people. Our Church is not only a House of God for us, but also one of the main means of organising ourselves nationally. The "*exclusive … mission*" of the Holy Armenian Apostolic Church is even mentioned in the Constitution of the RA (Article 8.1).

In these turbulent years of independence, the Armenian Church has never been a spectator on the side. Especially in these last few years, high-ranking servants of the Armenian Church have had an active role in the social, and even in the political life of the Armenian people. As citizens of the RA, many of them have participated without hesitation in many electoral campaigns, directing public opinion and votes.

There are two extremely important documents on the table today: the protocols *on the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey* and *on the development of relations between the Republic of Armenia and the Republic of Turkey*. Alongside these, the past, present and future of the Armenian people are also at stake. One may have various opinions on these protocols, but it is impossible not to perceive their fateful significance. It is impossible not to perceive, and it is unacceptable to stay silent about it.

We, the children of the Armenian Apostolic Church, in Armenia and in the Diaspora, have the need and the right to hear the thoughts loud and clear of our two Vehapar Patriarchs on these protocols. One cannot dismiss the importance of this occasion. It is impossible not to see it, and it is unacceptable to stay silent about it.

With filial love,

21 September 2009

23. The Meaning of Statehood and the Armenian Question

Statehood is the highest form of societal organisation. A nation-state is the highest form of national organisation, the most effective means for creating the opportunity to solve national issues and dealing with the challenges facing national security. The nation-state is the existential guarantee of the given nation, and also that of maintaining the national identity, serving as a strong basis of its economic development as well.

Taking this into account, when we discuss modern Armenian statehood from the perspective of national survival, maintaining the identity and developing the economy, then it becomes clear that, without solving the Armenian Question, not only is the modern Armenian state with its current borders and form inadequate and not only will it continue to be inadequate in guaranteeing the realisation of the aforementioned factors, but the very possibilities of its endurance as a sovereign state, as an individual political entity, will remain under question. Thus, a partial solution to the Armenian Question (for example, only on the eastern frontier, *i.e.*, in terms of Nagorno-Karabakh) will not resolve the core issues before Armenian statehood and will not deal with the challenges threatening our existence.

The RA is facing serious challenges at present. A solution to the Armenian Question, that is, the restoration of the rights of the RA and the Armenian people, is not an end in itself. The RA, as a unique and dignified political unit can either exist solely with the establishment of its unalienable and perpetual rights, or it cannot exist as such.

The real intention of solving the Armenian Question is to create a sustainable state, and, through the minimal requirements necessary for security and development, to guarantee the survival of the Armenians as an inseparable and unique part of mankind.

Without a solution to the Armenian Question, Armenian statehood will remain politically unstable, militarily vulnerable, economically dependent and psychologically timid. The very purpose of the Armenian state would be questioned, seeing as how it would be a mere formality and would not take on the main issues of statehood:

I. securing the sovereignty of the state and the security of the citizens of that state,
II. creating conditions for the country's economic development and the prosperity of the citizens of that country,
III. developing the national identity and culture based on the above two, that is, in a secure and prosperous country.

Therefore, solving the Armenian Question is of vital importance not only for the Armenian state, but also in order to realise the collective rights of the Armenian people to live as a community in their own homeland.

A solution to the Armenian Question has but one path: through peaceful means and compromise, the path of persistent and lasting efforts. Simultaneously, however, considering how the general political, economic or military potential of the RA, as well as that of the Armenian people, falls behind and will always fall behind the resources of Turkey and Azerbaijan, and also Georgia, which is caught up in their politicking, it thus becomes necessary for the struggle and resistance to take place entirely on such a field in which Armenia is not only on par with the others, but also has tangible advantages.

That is to say, the relations between the Republic of Armenia and those countries who have violated its rights must manifest themselves in terms of international law, and all the prevailing issues among those relations must be given legal approaches and solutions.

As a political issue, the Armenian Question has undergone a few stages. Starting as an issue of the individual and collective security and dignity of the Armenian subjects of the Ottoman Empire, it gradually grew into an issue of Armenian statehood and the restoration of the rights of that statehood.

Today, the Armenian Question is the re-establishment of the territorial, material and moral rights by international law pertaining to or retained by the current Republic of Armenia.

At the present stage, the Armenian Question has three main components: territorial, material and moral. Consequently, one can only consider the Armenian Question resolved with a complete resolution of the issues arising from the aforementioned three components, that is, with complete or partial reparations.

It is in fact possible to resolve the Armenian Question, and it can be directed in many ways. Nevertheless, a solution to the Armenian Question would only be conceivable by basing it on a realistic approach, that is, by taking into account current demographic, military, political and economic realities. At the same time, in order to be viable, a solution to the Armenian Question must be practicably beneficial for establishing a lasting peace in the whole region, alongwith the development of a diverse economy, the creation of a co-operative atmosphere, as well as serving certain interests of global power centres, drawing them in towards further involvement in regional issues.

There is no doubt that, on November 22, 1920, the territories that passed on their title to the RA by the arbitral award granted to President Wilson (which included a major part of the provinces of Van, Bitlis, Erzurum and Trabzon of the former Ottoman Empire) legally comprise part of the RA to this day. But it is unrealistic to think that the RT would wilfully return these territories to their legal owner solely under duress of international law, without any military pressure. Therefore, it is necessary to find a way which is mutually acceptable for the RA and the RT, which is approved by the other countries which granted the arbitral award, which also takes into account the interests of the global power centres and which can be codified by international law. And so, that solution must be such that it dispels the security concerns of the Armenian side, while providing conditions of sustained economic growth and development for the RA, as well as guaranteeing the preservation of Armenian cultural values. Simultaneously, the solution must not go against the core interests of Turkey, and the Turkish side must appreciate the fact that the proposal is a dignified solution to the given circumstances.

Therefore, resolving the Armenian Question would be possible through the territorial lease of the territories under question, through a novel status being granted to those territories, by which the *de jure* territorial title of the Republic of Armenia would be recognised alongside the *de facto* rule of the Republic of Turkey over those territories.

i.e.,

I. The RT would lease "Wilsonian Armenia" from the RA on the basis of a bilateral treaty containing international guarantees with reasonable terms[148]. This treaty and its adjunct agreements would codify the rights and obligations of the parties, as well the participation and involvement of international organisations and interested countries in the territories under question. The terms of lease, the method of payment and its periodicity would be decided by a corresponding agreement.
II. Citizens of the RT and the RA, independent of their place of residence, would maintain their citizenship, enjoying all the rights of that citizenship, carrying out their duties as citizens. All citizens of both countries would be allowed the unconditional rights of free move-

[148] "Reasonable" terms for rent might involve an annual payment of 1% of the GDP of the RT – $8.6 billion USD – as those territories comprise almost 13% of territories under RT (>100,000 km^2), and >8% of Turkey's population resides there (~5.6mln people). The aforementioned does not include the Kars region of the former Russian Empire and the RA (1878-1918/1920), the southern part of the Batumi region and the territories of the Surmalu region, because another solution is being proposed with regards to those territories.

ment, transportation of goods, residence and economic occupation in those territories. Apart from local taxes and payments, the individuals and companies who work in those territories would pay taxes according to their place of registration and citizenship as per corresponding regulations.

III. Income received through transit from third countries (including gas and oil pipelines) would go towards the improvement and development of local infrastructure (roads, railways, public places for general use).

IV. The territory would be demilitarised, that is, the five kinds of offensive armaments as per the Treaty on Conventional Armed Forces in Europe (1990) would be removed from the territory.[149] Security provisions, even the defence, if necessary, of the territory would be the responsibility of international peacekeepers with corresponding authority and under the aegis of the UN Security Council. Maintaining law and order within communities would come under community police and, if necessary, internal forces. International civil and military observer and advisory bodies would have missions in the territory.

V. The status of the Kars region of the former Russian Empire and the RA (1878-1918/1920), the southern part of the Batumi region and the territories of the Surmalu region would be subject to a separate discussion. Currently, those territories comprise the provinces of Kars (9 587 sq.km, population 130 000), Ardahan (5 661 sq.km, population 120 000), Artvin (7 436 sq.km, population 192 000) and Igdir (3 587 sq.km, population 180 000) of the RT. In total, 26 241 sq.km, or 3.4% of the total territory of the RT, and 779 000 people, 1.1% of the total. As opposed to Wilsonian Armenia, direct Armenian sovereignty would be imposed upon these territories.

In conclusion,

- **A solution to the Armenian Question is realistic and viable.**
- **There is no alternative to a solution to the Armenian Question. If this issue is not resolved, the Republic of Armenia will always be dependent on the circumstances and goodwill of its neighbouring countries.**
- **The solution to the Armenian Question is the singular opportunity of consolidating the Armenian State, which is the only way for the Armenian people to endure.**

22 September 2009

[149] Tanks, artillery pieces, armoured combat vehicles (ACVs), combat aircraft and attack helicopters.

24. The Arbitral Award of Woodrow Wilson and on Other Matters Concerning the Same

I recently read the following news article with great astonishment: "*Dwelling on Woodrow Wilson's arbitral decision, Andranik Mihranyan noted that the decision has no legal force, and is unacknowledged by US Congress.*"[150] If the news agencies have quoted this respected professor correctly, then he is in error. Mr. Mihranyan has clearly confused the chronologically close, yet two very distinct issues – the mandate for Armenia and the question of Armenia's borders – and has therefore arrived at a wrong conclusion.

Considering the timeliness of the matter, I find it appropriate to give a brief account of the aforementioned issues.

The mandate for Armenia and the question of Armenia's borders

The Paris Peace Conference ultimately took up the main issues of the Ottoman Empire in the San Remo session, which took place from the 24th to the 27th of April 1920. The conference got involved with clarifying the fate of Armenia as well within this context, by which the Supreme Council of the Allied Powers officially approached the US President Woodrow Wilson on April 26, 1920 with two separate requests: a) for the US to assume a mandate for Armenia, and b) for the President of the US to arbitrate the frontiers of Armenia.[151] The two issues were completely independent of each other, and therefore were addressed to separate people or bodies and came under separate judicial authorities.

For the first – the mandate – the Paris Peace Conference approached the US as a state. The legal basis for such a request was Article 22 of the Covenant of the League of Nations, according to which member states of the League of Nations could carry out "*tutelage*" on behalf of the League of Nations. Since this issue concerned an obligation by an international treaty, the President of the US had to receive the "*Advice and Consent*" of the Senate, in accordance with the US Constitution. And so, the Senate of the US – and not Congress – having discussed the issue of taking on a mandate for Armenia from the 24th of May to the 1st of June, 1920, voted against it. The real reason for this was that the US was not a member of the League of Nations, and therefore there was no legal basis to carry out any activities on its behalf.

[150] www.panarmenian.net/news/eng/?nid=36602&date=2009-09-18, dated 18 Sep 2009, retrieved on 22 Sep 2009.
[151] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 10. (The National Archives, Washington, 760J.6715-760J.90C/7).

The second request – arbitrating the frontier of Armenia with Turkey – did not come under the authority of the Senate, and so that part of the legislative branch of the US could not and in fact never did take up this issue. International arbitration forms part of international law and is regulated exclusively as per international public law. Therefore, even a week before the Senate began to discuss the mandate for Armenia, on May 17, 1920, President Wilson gave an affirmative answer to the second request, taking on the responsibility and authority of arbitration to decide the frontier between Armenia and Turkey.

What followed in this regard is relatively better known. Based on the *compromis* of San Remo (26 April 1920), as well as that of Sèvres (10 August 1920), US President Woodrow Wilson granted the arbitral award on the frontiers between Armenia and Turkey on November 22, 1920, which was to come into force in accordance with the agreement *immediately* and *without preconditions*. Two days later, on the 24th of November, the award was conveyed by telegraph to the Paris Peace Conference and for the consideration of the League of Nations. The award was accepted as such, but remained unsettled, because the beneficiary of the award – the Republic of Armenia – ceased to exist on December 2, 1920.

The status of Wilson's arbitral award

It is necessary to state, first of all, that any arbitral award, if it is carried out with due process, does not just have some theoretical "*legal force*", but is a binding document to be carried out without reservations. Moreover, arbitral awards are "*final and without appeal*".[152] "*The arbitral award is the final and binding decision by an arbitrator*".[153]

The final and non-appealable nature of arbitral awards is codified within international law. In particular, by Article 54 of the 1899 edition and Article 81 of the 1907 edition of the *Hague Convention for the Pacific Settlement of International Disputes*.

It is evident from the aforementioned that arbitral awards a) are inherently binding and non-appealable decisions, and b) do not require any ratification or approval from within a state.

And so, by the arbitral award of the President of the United States Woodrow Wilson, the frontier between Armenia and Turkey has been decided *for perpetuity*, *being in force to this day* and *not subject to any appeal*.

[152] Hans-Jurgen Schlochauer, Arbitration, Encyclopedia of Public International Law, v. I, 1992, Amsterdam, p. 226.
[153] A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

There is another important issue to consider. Have the authorities and public bodies of the US ever expressed any position with regards to President Wilson's arbitral award deciding the border between Armenia and Turkey?

The position of the executive branch

The highest executive power of the US not only recognised Wilson's arbitral award, but has also ratified it and, therefore, it has become part of the law of the land of the US. The US President Woodrow Wilson and Secretary of State Bainbridge Colby ratified the award of the arbitrator Woodrow Wilson with their signatures and *The Great Seal of the United States*. According to international law, the personal signature of the arbitrator and his seal, if applicable, are completely sufficient as ratification of an arbitral award. Wilson could have been satisfied with only his signature or as well as his presidential seal. In that case, the award would have been the obligation of an individual, albeit a president. However, the arbitral award is ratified with the *official state seal* and confirmed by the keeper of the seal, the Secretary of State. The arbitral award of Woodrow Wilson is thus an unqualified obligation of the USA itself.

The position of the legislative branch

As mentioned above, arbitral awards are not subject to any legislative approval or ratification. So the Senate, which reserves the right to take up matters relating to foreign policy according to the US Constitution, never discussed the arbitral award deciding the Armenian-Turkish frontier. Nevertheless, in the course of discussing other matters, the Senate of the US explicitly expressed its position on this award on at least one occasion.

On January 18, 1927, the Senate rejected the Turkish-American treaty of August 6, 1923, for three reasons. One of the reasons was that Turkey "*failed to provide for the fulfillment of the Wilson award to Armenia*".[154] Senator William H. King (D-Utah) expressed himself much more clearly in an official statement on this occasion, "*Obviously it would be unfair and unreasonable for the United States to recognize and respect the claims and professions of Kemal so long as he persist in holding control and sovereignty over Wilson Armenia*."[155] The vote in the Senate in 1927 testifies without a doubt to the fact that Wilson's arbitral award was a ratified award and had legal bearing in 1927. Nothing from a legal perspective has changed since then, and it thus remains in force to this

[154] Lausanne Treaty is Defeated, The Davenport Democrat, January 19, 1927, 1.
[155] The New York Times, January 19, 1927, 1.

day. I would like to especially emphasise that this aforementioned discussion and vote took place years after "*the relevant treaties … defin[ing] … the … border*" cited in the unfortunate pair of protocols.

Let me also add that the restoration of relations between Turkey and America (after the WWI) still does not have a basis in any treaty, and numerous controversial legal questions are left unaddressed in that matter.

The position of public bodies

The most important public bodies in the US are the political parties. The main clauses of party programmes are to be found in the party platforms, which are approved by the general assemblies of political parties.

The Democratic Party of the US (the party of current President Obama) has official expressed a position on Wilson's arbitral award on two occasions, in 1924 and in 1928.

In its 1924 programme, the Democratic Party included a separate clause of the "*Fulfillment of President Wilson's arbitral award respecting Armenia*"[156]as a platform and goal. The 1928 platform went even further, citing the US as a state and, as per the "*promises and engagements*" of the Allied Powers, "*We favor the most earnest efforts on the part of the United States to secure the fulfillment of the promises and engagements made during and following the World War by the United States and the allied powers to Armenia and her people.*"[157] The only "*promise and engagement*" of the US to the RA was and continues to remain the arbitral award of Woodrow Wilson on the border between Armenia and Turkey.

Let us put to one side the person of Andranik Mihranyan. I simply used his statement as an opportunity to say all of the above. Let us instead consider the most important question, which remains unanswered, at least to me:

Is there indeed any other people, except for the Armenians, who, even after possessing all of the above and many more legal leverages, would willfully, with great pomp and show even, go ahead and reject her own Homeland and bring in outside dictators?

22 September 2009

[156] National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p, 277.
[157] *Ibid*.

25. **A Snare of Words**

It is simply incredible how innovatively the snares have been woven into that unfortunate pair of Armenian-Turkish protocols. Let us take up but one of many.

Many drew attention to the fact that the vagueness in deadlines in the protocols for parliamentary ratifications can cause the parties to drag out the actual enforcing of the protocols. This is a very valid concern. Even more so, when those in power in Turkey have announced on numerous occasions that the protocols would not be carried out "*without significant progress in the Nagorno-Karabakh conflict*".

Progress, naturally, *à la Turquie*.

However, the protocols themselves contain two more loopholes for procrastination on acting on them. The penultimate clauses of the protocols clearly state that the protocols would be enforced "*following the exchange of instruments of ratification*". In general, international or inter-state ratification of documents proceed as follows. Upon parliamentary approval (which, for some reason, is referred to as "ratification" in the Armenian Constitution), the protocols have to be ratified by the heads of state, as is the order, and only then would instruments of ratification be exchanged. International law does not take into account any deadlines when it comes to exchanging instruments of ratification and the ratification itself by heads of state of documents that have been approved (or "ratified") by legislatures. Since that process, even in general terms, has not been clearly outlined in the pair of protocols as well, then it turns out that the protocols contain a three-tier possibility of delay: parliamentary approval ("ratification"), presidential ratification, and the exchange of the instruments of ratification.

For example, the ill-reputed Treaty of Moscow (16 March 1921), had a provision of the exchange of instruments of ratification *"as soon as possible"*.[158] The Treaty of Kars – even more ill-reputed – demanded it "*within the shortest possible time*".[159]

Of course, it is possible that the Turks not delay at all the parliamentary approval of the protocols and the exchange of the instruments of ratification. Ultimately, they are working towards the complete fulfillment of their demand, that the RA "*confirm […] … the existing border between the two countries*". The rest – the Genocide issue, Nagorno-Karabakh, etc. – are simply bonuses. If they pull it off, all well and good. If they do not

[158] Treaty of Friendship, Soviet Treaty Series, v. I, (ed. by L.Shapiro), Washington, 1950, p. 101.
[159] *Ibid,* p. 137.

manage it now, even then it comes to the same thing, as they are to hold the reins to the Armenian state from now on.

If some people are ready today to pay a high, an unjustifiably high price in order to lift the blockade on Armenia by Turkey, then they need to act such that the delivery on the paid goods be made on time and that there not be any further, hidden costs.

24 September 2009

26. **More Dangers in the Protocols**

In the course of this discussion process of the pair of unfortunate protocols presented for the public's scrutiny, one hears emotional opinions that have nothing at all to do with the actual protocols: open borders in line with the 21st century, discarding perpetual enmity with one's neighbours, opportunities for the economic development of Armenia, and other such hyperbolic flawed thinking. These can be relegated with a clear conscience to attempts at derailing the discussions and desires to skew the question.

In reality, the discussions are exclusively about the two documents on the table, that is, the protocols on the establishment of diplomatic relations between the RA and the RT, and on the development of relations between the RA and the RT. That and only that. Therefore, those two documents must be subject to discussion, word-for-word, and the dangers contained in them must be pointed out. Even more so, when considering that the legal applicability of international treaties is much broader than what might seem at first glance.

International treaties – if the protocols are being considered as such – are, first and foremost, legal documents between states. Thus, upon enforcement, a treaty becomes "*a component of the legal system*" of the RA and "*the norms of the treaty are immediately applied in the territory of the Republic of Armenia*", in accordance with the first point in the fifth article of the Law on International Treaties of the RA.

Consequently, the attempts of certain yokel politicians to cover up the numerous very worrisome clauses in the protocols – saying things like "those are simply general expressions" or "all treaties contain such points" – are not quite erudite, to put it one way. The protocols bring rights and duties into effect not just for some abstract parties to them, but as the very "*component of the legal system*" of the countries, as well as for the individual citizens of those countries.

Let us consider some facts. I turn to but two clauses.

The third clause of the protocol on the establishment of diplomatic relations reconfirms the obligation of the parties "*in their bilateral and international relations* …" (note that it is not just in the bilateral, but the international as well) "… *to respect and ensure respect for the*

principles of … non-intervention in internal affairs of other states, territorial integrity and inviolability of frontiers". And this obligation is to become "*a component of the legal system*" of the RA. That is, after the protocols come into effect, no citizen of the RA can bring up independence for Nagorno-Karabakh, or our title and right to Wilsonian Armenia, or Armenian monuments in the territories under Turkish rule, and other such things without violating "*a component of the legal system*" of the RA. I am not claiming that we are all to be arrested for saying such things, but in any case, a duty is a duty; how can we tell how it will turn out? The Armenians of Van, whose descendants live on today, are better acquainted with the Turks than our brethren from Nagorno-Karabakh. They have a nice saying in their dialect, that it is good to be cautious.

The seventh clause of the protocol in question reiterates the obligation of the parties to refrain from "*pursuing any policy incompatible with the spirit of good neighbourly relations*". This brings up some questions. Is the president of our republic to address the Armenian people on the 24th of April? Will he speak on the genocide carried out on the Armenians by the Ottoman Empire, which is to say, Turkey? How is that to be in compliance with the obligation to refrain from "*pursuing any policy incompatible with the spirit of good neighbourly relations*"? How is the prosecutor of the RA to take that? How are we to respond to the Turks, if they officially protest for that reason? Are we to say we are sorry, and that we will never do it again? How will Turkey react? Will it close the border, and order its businessmen to cease trading with Armenia?

If certain codified obligations are to form the basis of opening the so-called Armenian-Turkish border, then one must take into consideration that when one of the parties reneges on but even one of its obligations, then the other party is automatically, lawfully freed from carrying out its own. That is to say, as a result of these protocols, we may end up exchanging the illegal blockade by Turkey for a worse, lawful blockade.

25 September 2009

27. **Symbolic Dates in Diplomacy**

Symbols have always held some sway in various spheres of human life. To put it crudely, Mount Ararat is not just a few million tonnes of ice, rocks and soil for us. Symbols, and dates with symbolic significance, are just about sanctified in national psychology.

On October 29, 2002, an important event for us was taking place at the National Gallery of Canada in Ottawa. On that day, with the joint invitation of Sheila Copps, the Minister of Heritage (equivalent to minister of culture), and the Ambassador of the RA, ambassadors and diplomats accredited to Ottawa were congregated for a screening of the film *Ararat*. The guests of honour for the day were director Atom Egoyan, Arsinée Khanjian, who was one of the principal actors in the film, as well as producer Robert Lantos.

There was something special and somewhat unbelievable in the air that evening, as that day was not just any day of the year, but the nationnal day of the RT as well. The guests arrived to watch *Ararat* having left the official reception by the Embassy of Turkey.

After the film finished, some ambassadors, moved by what they had seen and astounded at their own ignorance, approached me and asked whether this day, the October 29, was purposefully chosen, so that the effect would be even stronger in contrast. I replied, "Of course," and all of us smiled broadly.

And so, if someone were to ask me today whether it is not a cruel intention, or the Turks rubbing salt on our open wounds, when they are to make us sign the protocols which will deny us our rights on the day before the anniversary of the Treaty of Kars, then I would respond, "Of course."

Ara Papian
Ambassador Extraordinary and Plenipotentiary 2000-2006
of the Republic of Armenia to Canada
28 September 2009

28. **Analysis of Armenian-Turskih Protocols**
Speech during hearings held at the National Assembly of the Republic of Armenia

In question:
the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey;
the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey.

Respected audience,

In order to lead the ongoing discussions in a pertinent direction, it is necessary to clarify a few factors:

1. The discussions are not about Armenian-Turkish relations at all. The discussions are solely on the two authenticated documents on the table: the protocols on the establishment of diplomatic relations between the RA and the RT and on the development of relations between the RA and the RT. That and only that. And so, any emotional opinion – open borders in line with the 21st century, discarding perpetual enmity with one's neighbors, opportunities for the economic development of Armenia, and other such hyperbolic flawed thinking – have absolutely nothing at all to do with our discussions today, and can be relegated with a clear conscience to attempts at derailing the discussions through skewing the question.

2. The protocols are, first and foremost, documents under international law, by which the parties intend to mutually take on certain rights and obligations. Consequently, the protocols can function only as whole documents, that is to say, if there is even a single rejected clause in the document, and then the entire document is to be rejected. The protocols are not a menu from which we can choose whatever suits our palate.

3. The two protocols contain cross-references, as well as the condition of enforcement on the same day. Consequently, they form a duality, that is, even if one of the protocols has a single unacceptable clause, then both of them are to be rejected in their entirety. One cannot have an "*acceptable in general, with some specific reservations*" or anything like that. International documents are not documents on decisions taken by political parties.

4. The protocols are initialized. So, in accordance with Article 10 of the Vienna Convention on the Law of Treaties, the texts are authenticated and definitive (not subject to change). Thus, the protocols can either be accepted or rejected, but only in their entirety. Let us not waste any time by considering various proposals, let each of us clearly express his position on the current documents in question.

I shall immediately state the following.

Whereas the current documents violate the *de jure* territorial integrity of the Republic of Armenia, dismissing a series of principles of international law, opposing the Constitution and prevailing legislation of the Republic of Armenia;

Whereas they render the interests and rights of the Republic of Armenia and the Armenian people subject to bargain as well, and render very dubious their greatest tragedy, depriving us of possible means for future development and threatening the very existence of the Republic of Armenia, all for a presumed economic gain;

And whereas they do not guarantee the establishment of full diplomatic relations, declared as the intention of the negotiations, nor the guaranteed opening of the border and its maintenance as open,

I am thereby definitively against signing these protocols.

As, over the course of the past thirty days, I have written and published almost thirty statements and articles on the question under discussion, and due to paucity of time, I shall refer by a paragraph each to the bases for rejecting these protocols.

The tentatively signed protocols have political, economic, moral, legal and other bases for rejection. Taking into account the fact that the legal aspects of the question are taken up comparatively less, I shall list just a few legal bases for rejecting the protocols.

1. The protocols cannot be signed, as that would be a violation of international law. Through a bi-lateral agreement on the so-called Armenian-Turkish frontier, the parties cannot violate or alter a multi-lateral legal document, that is, the arbitral award of Woodrow Wilson. Arbitral awards are final and binding. The parties cannot "*confirm*" the Armenian section of the Soviet-Turkish border as the frontier between the two countries based on the so-called "*relevant treaties*" which are void as per international law.

2. The protocols cannot be signed, as that would be a violation of the Constitution of the RA. Armenia cannot take on obligations, which limit its international activities and oppose the obligation codified in the Constitution, which is to support "*the recognition of the Armenian Genocide of 1915 in Ottoman Turkey and Western Armenia*".

3. The protocols cannot be signed, as the documents contain legal flaws. In particular, the prime principle of "*equal rights and self-determination of peoples*" in international law, as codified in the second clause of Article 1 of the UN Charter, has been ignored, while, for some unknown reason, the "*non-intervention in internal affairs of other states*" and "*inviolability of frontiers*" have been declared and commented on as

principles. Such principles do not – I repeat, do not – exist as such in the UN Charter. They are also absent in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN, 1970*, which codifies the principles of international law. As for the principle on "*territorial integrity*" mentioned in the protocol on the establishment of diplomatic relations, it must be noted that no such absolute and unqualified principle exists in international law. The UN Charter (Article 2, clause 4) calls upon UN member-states to refrain from "*the threat or use of force against the territorial integrity or political independence of any state*". That is, it refers to ruling out external forces and has nothing to do with the seceding community's realisation of its right to self-determination, the secession and establishment of its own territory.

4. The protocols cannot be signed, as the documents contain an arbitrary approach in choosing international documents, as well in citing clauses of those documents. For example, the protocol on the establishment of diplomatic relations refers to the Helsinki Final Act. Is not it obvious why? The Helsinki Final Act has very limited legal applicability; it refers to the conditions and frontiers in Europe that came about as a result of the Second World War.[160] The so-called Armenian-Turkish border did not come about as a result of the WW II, and is consequently beyond the legal scope of this document. Moreover, the Helsinki Final Act is not a treaty, and therefore is not a legally binding document.[161]

Nevertheless, as certain principles of the Helsinki Final Act are cited in the protocol on the establishment of diplomatic relations, let us turn to the principles of the Helsinki Final Act. The first part of this document, as "*the Principles Guiding Relations between Participating States*" – let me emphasise this: not principles of international law, but only the principles of international conduct – lists ten principles. Of these ten principles, the given protocol refers to but three, for some strange reason, "*the inviolability of frontiers*", "*the territorial integrity of states*", and "*the non-intervention in internal affairs*". The following – listen carefully – have been left out: "*sovereign equality*", "*refraining from the threat or use of force*", "*peaceful settlement of disputes*", "*respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*", "*co-operation among States*", "*fulfillment in good faith of obligations under international law*" and, finally, "*equal rights and self-determination of peoples*". Of the ten guiding principles of the Helsinki Final Act, seven are in our favor – all of which have been left out – and three are beneficial

[160] Massimo Coccia, Helsinki Conference and Final Act, Encyclopedia of Public International Law, v. 2, Amsterdam, 1995, p. 693.
[161] *Ibid,* p. 694-695.

to the Turks, all of which are included. The above oversight is enough in itself to render ineffective the entire negotiation process.

5. The protocols cannot be signed, as they oppose the national security strategy of the RA. The strategy paper, which has the status of law, explicitly states, "*Armenia has long advocated the establishment of diplomatic relations [with Turkey] without any precondition*". And the current protocols include at least ten unacceptable preconditions in the form of obligations. The claim that there are no preconditions is not only false, but is insulting.

6. The protocols cannot be signed, as, if the given protocols are considered to be international treaties, they have come about and been tentatively signed in violation of *the law of the Republic of Armenia on international treaties*. By the first part of Article 8 of that law, "*signing international treaties … is the conclusion of necessary procedures as provided [by the law]*". The procedure defined by the law requires that, before the treaty be authenticated, the treaty undergo official scrutiny, examination, and agreement within the state, that is, being reviewed and amended by the state authorities in question in a series of stages. As far as I can tell, this requirement of the law has not been fulfilled or has been carried out only in part and in a very flawed manner.

Respected audience,

They say that Nadir Shah had once decreed that, upon his entry to any city, the garrison of that city salute him by firing cannons. When a city once did not do so, he summoned the commander of the garrison and asked him for the reason. The soldier replied, "Long live the King. There are a thousand and one reasons, but the first one is that we do not have cannon". "That one reason is enough" thus was the answer of the Shah.

And now, for us as well. One can bring up a few tens of political, moral, economic, security, cultural, strategic and other sorts of reasons as to why we must reject these protocols in question and start a new process. I believe, however, that each of the above reasons is enough in themselves not to sign the given protocols.

If we do not sign, it is possible that we face problems, but those would only be in the short-term and, most importantly, they will certainly pass. If we do sign, then we would, once again, face problems, but this time, they would be permanent and fatal.

Thank you.

1 October 2009

29. OPEN LETTER
to the Foreign Minister of the Republic of Armenia Mr. Edward Nalbandian

Respected Minister,

On the 1st of October this year (2009), at the end of the parliamenttary hearings on the pair of unfortunate Armenian-Turkish protocols, you declared the following in the course of answering the predetermined questions: "*Wilson's decision has no legal implications, as it was not ratified by the US Senate*" (I would like to apologise if your wording is not reproduced exactly; the meaning, however, is accurate, I believe). It was most unfortunate that I was not in attendance at that time. I could not have known beforehand that your responses would be delayed until the end of the working day and had to leave for a prior engagement.

But something good has come of this. I am now compelled to respond to your claim in the form of an open letter. It is not worthy to leave the words of a Minister unaddressed. You have repeated, word-for-word, the opinion expressed in Yerevan two weeks ago by your compatriot, Andranik Mihranian. I had the honour then of clarifying certain things, and so, would like to repeat my own arguments now.

You, as well as Mr. Mihranian have clearly confused the chronologically close, yet two very distinct issues – the mandate for Armenia and the question of Armenia's borders – and have therefore arrived at a wrong conclusion. Considering the timeliness of the matter, I find it appropriate to give a brief account of the aforementioned issues.

The mandate for Armenia and the question of Armenia's borders

The Paris Peace Conference ultimately took up the main issues of the Ottoman Empire in the San Remo session, which took place from the 24th to the 27th of April, 1920. The conference got involved with clarifying the fate of Armenia as well within this context, by which the Supreme Council of the Allied Powers officially approached the US President Wilson on April 26, 1920 with two separate requests: a) for the US to assume a mandate for Armenia, and b) for the US President to arbitrate the frontiers of Armenia.[162] The two issues were completely independent of each other, and therefore were addressed to separate people or bodies and came under separate judicial authorities.

For the first – the mandate – the Paris Peace Conference approached the US as a state. The legal basis for such a request was Article 22 of the Covenant of the League of Nations, according to which member states of

[162] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 10. (The National Archives, Washington, 760J.6715-760J.90C/7).

the League of Nations could carry out "*tutelage*" on behalf of the League of Nations. Since this issue concerned an obligation by an international treaty, the US President had to receive the "*Advice and Consent*" of the Senate, in accordance with the US Constitution. And so, the Senate of the US – and not Congress – having discussed the issue of taking on a mandate for Armenia from the 24th of May to the 1st of June, 1920, voted against it. The real reason for this was that the US was not a member of the League of Nations, and therefore there was no legal basis to carry out any activities on its behalf.

The second request – arbitrating the frontier of Armenia with Turkey – did not come under the authority of the Senate, and so that part of the legislative branch of the US could not and in fact never did take up this issue. International arbitration forms part of international law and is regulated exclusively as per international public law. Therefore, even a week before the Senate began to discuss the mandate for Armenia, on May 17, 1920, President Wilson gave an affirmative answer to the second request, taking on the responsibility and authority of arbitration to decide the frontier between Armenia and Turkey. So, whether there would be a Treaty of Sèvres or not, the legal *compromis* existed, and, consequently, the legal arbitration was to take place.

What followed in this regard is relatively better known. Based on the *compromis* of San Remo (26 April 1920), as well as that of Sèvres (10 August 1920), US President Woodrow Wilson granted the arbitral award on the frontiers between Armenia and Turkey on November 22, 1920, which was to come into force in accordance with the agreement *immediately* and *without preconditions*. Two days later, on 24 November, the award was conveyed by telegraph to the Paris Peace Conference and for the consideration of the League of Nations. The award was accepted as such, but remained unsettled, because the beneficiary of the award – the RA – ceased to exist on December 2, 1920.

The status of Wilson's arbitral award

It is necessary to state, first of all, that any arbitral award, if it is carried out with due process, does not just have some theoretical "*legal force*", but is a binding document to be carried out without reservations. Moreover, arbitral awards are "*final and without appeal*".[163] "*The arbitral award is the final and binding decision by an arbitrator*".[164]

The final and non-appealable nature of arbitral awards is codified within international law. In particular, by Article 54 of the 1899 edition and Article 81 of the 1907 edition of the *Hague Convention for the Pacific Settlement of International Disputes*.

[163] Schlochauer H, Arbitration, Encyclopedia of Public International Law, v.I, 1992, Amsterdam, p. 226.
[164] A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

It is evident from the aforementioned that arbitral awards:

a) are inherently binding and non-appealable decisions, and

b) do not require any ratification or approval from within a state.

And so, by the arbitral award of the President of the USA Woodrow Wilson, the frontier between Armenia and Turkey has been decided *for perpetuity*, *being in force to this day* and *not subject to any appeal*.

There is another important issue to consider. Have the authorities and public bodies of the US ever expressed any position with regards to President Wilson's arbitral award deciding the border between Armenia and Turkey?

The position of the executive branch

The highest executive power of the US not only recognised Wilson's arbitral award, but has also ratified it and, therefore, it has become part of the law of the land of the USA. The US President Woodrow Wilson and Secretary of State Bainbridge Colby ratified the award of the arbitrator Woodrow Wilson with their signatures and *The Great Seal of the United States*. According to international law, the personal signature of the arbitrator and his seal, if applicable, are completely sufficient as ratification of an arbitral award. Woodrow Wilson could have been satisfied with only his signature or as well as his presidential seal. In that case, the award would have been the obligation of an individual, albeit a president. However, the arbitral award is ratified with the *official state seal* and confirmed by the keeper of the seal, the Secretary of State. The arbitral award of Woodrow Wilson is thus an unqualified obligation of the USA itself.

The position of the legislative branch

As mentioned above, arbitral awards are not subject to any legislative approval or ratification. So the Senate, which reserves the right to take up matters relating to foreign policy according to the US Constitution, never discussed the arbitral award deciding the Armenian-Turkish frontier. Nevertheless, in the course of discussing other matters, the Senate of the US explicitly expressed its position on this award on at least one occasion.

On January 18, 1927, the Senate rejected the Turkish-American treaty of August 6, 1923, for three reasons. One of the reasons was that Turkey "*failed to provide for the fulfillment of the Wilson award to Armenia*".[165] Senator William H. King (D-Utah) expressed himself much more clearly in an official statement on this occasion, "*Obviously it would be unfair and unreasonable for the US to recognize and respect the claims and professions of Kemal so long as he persist in holding control and sovereignty over Wilson Armenia*."[166] The vote in the Senate in 1927

[165] Lausanne Treaty is Defeated, The Davenport Democrat, 19 January 1927, 1.
[166] The New York Times, January 19, 1927, 1.

testifies without a doubt to the fact that Wilson's arbitral award was a ratified award and had legal bearing in 1927. Nothing from a legal perspective has changed since then, and it thus remains in force to this day. I would like to especially emphasise that this aforementioned discussion and vote took place years after "*the relevant treaties … defin[ing] … the … border*" cited in the unfortunate pair of protocols.

Let me also add that the restoration of relations between Turkey and USA (after the WWI) still does not have a basis in any treaty, and numerous controversial legal questions are left unaddressed in that matter.

The position of public bodies

The most important public bodies in the USA are the political parties. The main clauses of party programs are to be found in the party platforms, which are approved by the general assemblies of political parties.

The Democratic Party of the US (the party of current President Obama) has official expressed a position on Wilson's arbitral award on two occasions, in 1924 and in 1928.

In its 1924 programme, the Democratic Party included a separate clause of the "*Fulfillment of President Wilson's arbitral award respecting Armenia*"[167]as a platform and goal. The 1928 platform went even further, citing the US as a state and, as per the "*promises and engagements*" of the Allied Powers, "*We favor the most earnest efforts on the part of the United States to secure the fulfillment of the promises and engagements made during and following the World War by the United States and the allied powers to Armenia and her people.*"[168] The only "*promise and engagement*" of the US to the RA was and continues to remain the arbitral award of Woodrow Wilson on the border between Armenia and Turkey.

Respected Minister,

You have stated, "*Armenia is the inheritor of treaties signed by the USSR*" (I apologise again for any inaccuracy in exact wording). You are incorrect, as the heir to the Soviet Union is the Russian Federation. Have a look at the composition of the UN Security Council. The international personality of a state cannot be so torn apart. When, for example, India was partitioned into India and Pakistan, the country's personality did not shift. It inherited India, and Pakistan was forced to create its own international personality, step-by-step, including signing treaties and establishing relations. When Bangladesh seceded from Pakistan, the personality of Pakistan was unaffected and Bangladesh started to create its own international personality.

[167] National Party Platforms, 1840-1968, (compl. by Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p, 277.
[168] *Ibid*.

With the collapse of the USSR, the heir of the international personality of that state was unequivocally the Russian Federation, and not Armenia under any circumstances. The newly-created Armenia, as well as the other newly-independent countries, declared merely the following in Article 12 of the agreement on the establishment of the Commonwealth of Independent States: "*The parties in high negotiation guarantee the fulfilment of international obligations arising from treaties and agreements of the former USSR*".[169] That is, the newly-established states bore certain responsibilities of conduct, but that does not mean that they became party to treaties signed by the USSR. In that case, the RA would not need to sign one-by-one or become party to numerous international conventions, treaties or protocols of which the Soviet Union was part for years. For example, the RA joined the Vienna Convention on Diplomatic Relations (1961), which has come up a lot lately, only on July 23, 1993, whereas the USSR (that is to say, the current Russian Federation) has been party to that convention since February 11, 1964.

The "*tabula rasa*" principle ("a clean slate") was put in place when the Soviet Union collapsed. It could not have been otherwise, because, from the perspective of international law, the countries of the Southern Caucasus were under occupation, as when Bolshevik Russia re-conquered Azerbaijan, Armenia and Georgia in 1920-1921, they were already recognised states. Not only is the RA not the inheritor of treaties of the USSR ("*In general, no treaty or obligation can have a legal basis for any country, if the officials of that country were clearly functioning under the command of a foreign power*"[170]) but any changes in the territory of the RA during the years of Soviet Russia (1920-1922), then the occupation by the USSR (1922-1991), is illegal, as "*a cession of territory during occupation is not effective*".[171]

Please accept, Minister, the assurances of my highest consideration.

2 October 2009

P.S. Minister, if you disagree with my arguments, I would like to request an invitation to debate on live television. Silence, that is, the absence of an invitation, would be perceived as a sign of agreement with my arguments.

[169] Official Bulletin of the Ministry of Foreign Affairs of the RA, # 3 (11) 20.12.2004, p. 13.
[170] Ian Brownlie, Principles of Public International Law, Oxford, 2001, p. 449.
[171] W. Fiedler, Continuity, Encyclopedia of Public International Law, v. 1, Amsterdam, 1992, p. 808.

30. **S T A T E M E N T**
on the Legal Status of the Protocols on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and on the Development of Relations between the Republic of Armenia and the Republic of Turkey

The following is defined in the second clause of Article 2 of *the law of the Republic of Armenia on international treaties (February 22, 2007)*: "*By this law, any written agreement is considered to be an international treaty of the Republic of Armenia, be it in the form of a treaty, agreement, convention, memorandum, protocol or as a document of any other name, or which has been expressed with the exchange of official notes or letters.*"(unofficial translation)

In my opinion, such wording has provided much broader commentary on the concept of a *treaty* than is prevalent in international public law (cf. Article 2 of the Vienna Convention on the Law of Treaties). Nevertheless, seeing as the aforementioned definition is different from, but not opposed to, international law, taking it into consideration as such, let us examine the protocols on the establishment of diplomatic relations between the RA and the RT and on the development of relations between the RA and the RT.

According to the definition as per *the law of the Republic of Armenia on international treaties* above, a protocol between states is an international treaty. Therefore, the passing of a protocol is "***the conclusion of necessary procedures as provided [by the law]***" (Article 8, clause 1; unofficial translation). That is to say, the passing of such a protocol is a chain of regulated, consecutive stages and is required by law for its provisions ***to be completely fulfilled without error***.

The law of the RA as cited provides for the following preparatory stages for treaties, that is, the protocols, in this case:

Stage 1. **The initiative to sign an international treaty**

In order to commence the process of passing the Armenian-Turkish protocols, it would be necessary as a first step to have *the written orders of the President* (*Article 8, clause 5*).

Stage 2. **Pushing forward with the initiative to sign an international treaty**

As the ministry with the corresponding purview, the Ministry of Foreign Affairs would be obligated to prepare a *statement* on the appropriate nature of signing an Armenian-Turkish protocol and *drafts* of such a protocol (*Article 9, clause 1*), to be presented to the President (*Article 9, clause 2.1*).

Stage 3. **Starting the process of signing an international treaty**

In this stage, the President, having received drafts of the protocols, would express his position in a letter to the Foreign Ministry. If the position were in the affirmative, the Foreign Ministry would start the process of getting agreement within the state on the drafts of the protocols within ten days of receiving the President's written agreement. That is, written documentation pertaining to the protocols would be sent to *all state bodies* having prerogatives to do with the matter at hand, along with the drafts (*Article 10, clause 2*).

Stage 4. **Agreement on the drafts of the international treaty and proposals and criticism with regards to the international treaty**

The state bodies involved – and, in our case, that would be all the ministries, as well as around twenty or so other agencies – upon receiving *the documentation and draft protocols*, would present in writing to the state body with the legal purview (the Ministry of Foreign Affairs) proposals and criticisms pertaining to areas of operation within their own jurisdiction, within fifteen days at the most (*Article 12, clauses 1 and 2*).

Stage 5. **Summation of opinions on the draft international treaty**

The state body with the legal purview – the Foreign Ministry in this case – would review or amend the draft of the international treaty upon receiving the opinions of the state bodies with prerogatives on the matters of the treaty (*Article 14, clause 1.1*).

Stage 6. **Agreement on the text of the international treaty with the opposite party**

The law of the RA as cited has the provision that the text of the given international treaty of the RA would be agreed upon with the opposite party by authentication or through some other means provided for by law (*Article 18, clause 1*). In our case, it is through *authentication*. It is essential to emphasise that the given international treaty could be authenticated by the RA only *after the completion of the process as defined for the preparation and authentication* of the draft treaty (*Article 18, clause 2*).

Conclusion. Considering the fact that the protocols in question have not undergone "***the conclusion of necessary procedures***" as provided by this law, as well as the fact that the authentication of the protocols has been carried out without due process as defined by law for authentication, therefore the authentication of the protocols on the establishment of diplomatic relations between the RA and the RT and on the development of relations between the RA and the RT ***is void, and thus the protocols themselves are not subject to being signed. Signing them would be an illegal act.***

5 October 2009

31. **Sound the Alarms! This is our Final Sardarapat**

A few hours separate us from the termination of the penultimate act in that greatest of tragedies known as the Armenian Genocide. Another step will be taken today in the efforts that have lasted almost a century to legitimize the consequences of the Armenian Genocide. Today, Turkey will receive – a gift, instead of a punishment – our millennia-old Homeland, a Homeland which belongs to us to this day through the inviolable ruling of international law, but which has nevertheless been taken away from us. We are going to encourage the oppressor today; today we are going to decorate our Homeland as a present. We are going to wrap this present with our own hands, o Lord Almighty, with the participation of many from among us, under the silent and indifferent gaze of many from among us.

That which is to take place today in Zurich is the encouragement of genocide, it is simply an order to the powerful to destroy and pillage. Do you remember the words of the Russian ambassador to Abdul Hamid? "Kill them, Your Excellency, kill them all." Our blood has run like water. Do you suppose the ink of the signatures will turn to blood?

However, this is still not the end. If this is a show for some – that too, a tragicomedy, or perhaps a farce – then for us, it is a question of existence, of dignified existence. There is yet another act, a final and decisive one, our final battle. This is the way we are. We always emerge victorious in the end. We surrender impregnable fortresses, but we ignominiously defeat our enemies at the last moment in open battle. That is what happened at Sardarapat. And that is what is to happen now. The National Assembly is our new Sardarapat. We have no room for retreat. We have no right to lose.

Sound the alarms! This is our final Sardarapat, the final hope for victory.

2:30 PM
10 October 2009

32. **The First Fruits of the Protocols**

Apologists for the Armenia-Turkey protocols denied all the warnings that there would be negative effects on the Armenian Genocide recognition process, while I, alongwith many others, foresaw that negative consequences would manifest themselves even in those countries that have already recognized the Armenian Genocide. Unfortunately, that turned out to be the case. Example:

Canada is one of those few countries where both the parliament (in 2002 and 2004), as well as the cabinet (in 2006) have recognized the Armenian Genocide. Consequently, since 2004, no self-respecting member of the media would ever publish or broadcast any article or program denying the Armenian Genocide. Moreover, when, in February of 2006, as a reaction to my mentioning the Armenian Genocide as part of a farewell interview to the influential *Embassy* magazine, the ambassadors of Turkey and Azerbaijan complained, the editor of that periodical responded, without any intervention on my part, that, "*the fact of the genocide cannot be disputed, as it is not subject to any doubts*". Clear and precise.

And what do we have now? Only ten days after signing the protocols, the very same *Embassy* magazine (21 October 2009) published an article by Gwynne Dyer, where it is said that, "*the Armenians back home have made a deal … [which] create a joint historical commission to determine what actually happened in 1915*". The author's concluding remarks of the article state that, "*It was not a genocide…*". And this in Canada, which has recognized the Armenian Genocide. As people on the streets say, we have messed with Canada, and she will not forgive us. People do not forgive those who mess around with them, even in international relations.

And now for yet another prediction. After the protocols get ratified (God forbid), it would mean legally doubting the Armenian Genocide (please save your arguments for the Canadian courts), upon which the Canadian courts will be filled with applications against the prior governmental declarations for having "*insulted honor and dignity*", seeing as we have insulted the Turkish state – and, of course, Canadian citizens of Turkish descent – in a yet-to-be-proven crime (genocide), subject to discussion by some sub-commission.

Since the Canadian court system provides for monetary compensation concerning moral damages, I would therefore like to call for an extra line in next year's state budget of the RA, of a few hundred million dollars (nothing less), to pay for moral damages. Ultimately, we are the ones who are going to be billed for these complaints.

21 October 2009

33. **The Fruits of the Armenia-Turkey Protocols**

Some people do not want to understand a simple truth. As much as political theory is abstract, political practice, – policy – is concrete. That is to say, a Gospel truth is evident that one recognizes the tree from the fruit. Politics manifests itself with concrete policy. Consequently, all the particular incidents, as it were, which render the recognition of the Armenian Genocide more difficult are the most important, I would even say the most worrying, cases in point. Of course, Senators Menendez and Ensign can always bring the resolution recognizing the Armenian Genocide to the floor of the US Senate. Thank goodness, we do not yet have the power to prevent that. However, we do not have the power to credit their honest goodwill to ourselves either.

My missive on the change in policy in the Canadian *Embassy* magazine had only just been sent out, when I received yet another testimony to the truth of my concerns, from Sweden. My friend of mutual ideas of many years shared with me his bitter experience from the other side of the world. The editor-in-chief of the influential *Metro* newspaper, Per Gunne, refuses to print any article, which mentions the Armenian Genocide because he is no longer "sure that there was genocide". Another Swedish daily, Svenska Dagbladet, which, through the well-known journalist Bitte Hammargren, now uses the media expression of "Armenian massacres", as opposed to the legal term "genocide", has adopted the same change in policy. These are not mere words, but represent policy. Policies have changed immensely lately, and they have changed after that unfortunate pair of protocols was signed.

22 October 2009

34. OPEN LETTER
to the Minister of Foreign Affairs of the Republic of Turkey Ahmet Davutoğlu

Respected Minister,

I read with interest the text of your speech of October 21 at the Grand National Assembly of Turkey. My impressions were mixed. However, I mainly felt that you wished to present what was desirable, instead of what was real.

To begin with, it was astonishing to hear of "*occupation*" from the foreign minister of a country, which has itself been occupying 37% of the territory of Cyprus for more than three decades now, not to mention ¾ of my homeland – the Republic of Armenia – for almost nine decades. I would like to stress that I am not referring to some abstract "*Armenian lands*", but solely the territory granted to the RA through a document of international law, that is, the arbitral award of US President Woodrow Wilson of November 22, 1920. I shall elaborate on the arbitral award later, but for now I would simply like to say that, in accordance with international law, arbitral awards are "*definitive and without appeal*."[172]

Respected Minister,

While commenting on the fifth clause of protocol on the establishment of diplomatic relations between the RA and the RT[173], you drew the conclusion that the RA recognises "*the existing border*" according to the treaties of Moscow (16 March 1921) and Kars (13 October 1921).

This is a very arbitrary conclusion indeed. The document in question does not cite the aforementioned so-called treaties. The protocols refer only to "*the relevant treaties of international law*". That is, evidently, the treaties in question must be governed by international law, at the very least not being in violation of it. Simultaneously, by referring to "*the relevant treaties of international law*" and not simply "*international treaties*", the protocol provides a more inclusive definition, and thus brings in "*the instruments of international law*" in general, regardless of the kind of document, as, given the present case, we have a document known as a "*protocol*". Accordingly, a "*treaty*" must be understood in a way separate from the term for the document, purely as a legal, written international agreement. [*"Treaty" means an international agreement concluded between States in written form and governed by international law – Article 2.1(a), Vienna Convention on the Law of Treaties, 1969*].

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[172] The Hague Convention for the Pacific Settlement of International Disputes, 1899, #54; 1907, #81.
[173] "Confirming the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law."

It is evident that "*the existing border*" mentioned in the protocol is not the illegal dividing line, which came about as a result of Bolshevik-Kemalist actions. *Ex injuria non oritur jus*, illegal acts cannot create law. "*The existing border*" implies that which exists in international law and in accordance with international law. Moreover, there is no only one such border between Armenia and Turkey: the border decided by the arbitral award of US President Woodrow Wilson.

The treaties of Moscow and Kars, which you mentioned in your speech, are not treaties at all from an international law point of view. In order for them to be considered as treaties, they ought to have been signed by the plenipotentiary representatives of the lawful governments of recognised states. Neither the Kemalists, nor the Bolsheviks, to say nothing of the Armenian Bolsheviks brought to power in Armenia, fulfilled the above requirement in 1921. Therefore, the act of signing those treaties was in violation of the basic principles of international law – *jus cogens* – at the very moment they were signed. And according to Article 53 of the Vienna Convention on the Law of Treaties, 1969, which you yourself cited in your speech, "*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.*"

Do you really believe that two unrecognised, and consequently illegal self-proclaimed administrations, as the Bolsheviks and Kemalists were in 1921, could, through a bilateral treaty (of Moscow), nullify a legally negotiated international document signed by eighteen recognised states (the Treaty of Sèvres)? Do you believe that the Molotov-Ribbentrop Pact, e.g., is a legal document? I do not think so, because 2 countries, namely the USSR and Germany, could not decide the borders of a third country. Then why do you believe that two rebel movements, as, I repeat, the Bolsheviks and Kemalists were in 1921, had the authority to decide in Moscow the borders of some other country, the RA, even if it were occupied?

Do you really believe that the Armenian Soviet Socialist Republic, as well as the Georgian and Azerbaijani Soviet Socialist Republic ever had the capacity to make treaties under international law? Of course not. Since April of 1920 (for Azerbaijan), December of 1920 (for Armenia) and February of 1921 (for Georgia), these countries were rendered simply territories of different administrative units under Russian Bolshevik occupation. In Armenia's case, the Senate of the US adopted outright the following by Resolution #245 on June 3, 1924: "*Turkey joined with Soviet Russia in the destruction of the Armenian State.*"[174] If there were no RA from December 2, 1920, how could it sign an international treaty in Kars in October of 1921?

[174] The Armenian Review, vol. 30, No. 3-119, 1977, p. 286.

It is an indisputable fact of international law that no legal consequences are held for an occupied country by the acts of the occupiers, as "*a cession of territory during occupation is not effective*."[175] There is no ambiguity in this matter.

The fact that the protocols do not make legal the situation created as a result of the Armenian Genocide and that they do not recognise any frontiers was stated outright in the address of the President of the RA, Serzh Sargsyan, on October 10, 2009: ***"Any sort of relationship with Turkey cannot cast into doubt the reality of the dispossession and genocide of the Armenian people"***, and ***"The issue of the current frontier between Armenia and Turkey is subject to a resolution as per prevailing international law. The protocols say nothing more than that."***

Clear and simple.

Now let us see what this "*prevailing international law*" is exactly, according to which "*the issue of the current frontier between Armenia and Turkey is subject to a resolution*."

In order to understand this, one must return to the not-too-distant past, during that short period of time, when the international community recognised the RA as a state. When, on 19 January 1920, the Supreme Council of the Paris Peace Conference, that is, the British Empire, France and Italy, recognised the RA, it was done so with a certain condition, that the borders of the RA were to be determined soon afterwards. The US also recognised the RA with that same condition on 23 April 1920.

When it came to the borders of the RA, naturally, the most important was the question of the Armenia-Turkey frontier. And so, at the San Remo session of the Paris Peace Conference, alongside other issues, this particular question was discussed during the 24th to the 27th of April, 1920, and, on April 26, the US President Woodrow Wilson was officially requested to arbitrate the frontiers of Armenia.[176] On May 17, 1920, President Wilson accepted and took on the duties and authority as the arbiter of the frontier between Armenia and Turkey. I would like to especially emphasise that this was almost three months before the Treaty of Sèvres was signed (which took place on August 10, 1920). Whether the Treaty of Sèvres would come to pass or not, the *compromis* of a legal arbiter existed, and consequently, the arbitral award deciding the border between Armenia and Turkey would take place. It is another matter that the Treaty of Sèvres consisted of an additional *compromis*. It is necessary to note that the validity of the *compromis* only requires the signatures of the authorised representatives and that no ratification is required for *compromis*.

[175] W. Fiedler, Continuity, Encyclopedia of Public International Law, v. 1, Amsterdam, 1992, p. 808.
[176] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 10. (The National Archives, Washington, 760J.6715-760J.90C/7).

Accordingly, based upon the *compromis* of San Remo (26 April 1920), as well as that of Sèvres (10 August 1920), US President Woodrow Wilson carried out his arbitral award on the borders between Armenia and Turkey on November 22, 1920, which was to be enforced *thereupon* and *without reservations* in accordance with the agreement (*compromis*).

Two days later, on 24 November, the award was officially conveyed by telegraph to the Paris Peace Conference for the consideration of the League of Nations. The award was accepted as such, but remained unsettled, because the beneficiary of the award – the Republic of Armenia – ceased to exist on 2 December 1920.

The issue of the current status of Wilson's arbitral award

It is necessary to state, first of all, that any arbitral award is a binding document to be carried out without reservations. Moreover, arbitral awards are "*final and without appeal*".[177] "*The arbitral award is the final and binding decision by an arbitrator*".[178]

The final and non-appealable nature of arbitral awards is codified within international law. In particular, by Article 54 of the 1899 edition and Article 81 of the 1907 edition of the *Hague Convention for the Pacific Settlement of International Disputes*. And so, by the arbitral award of the US President Woodrow Wilson, the frontier between Armenia and Turkey has been decided *for perpetuity*, *being in force to this day* and *not subject to any appeal*.

Therefore, when the fifth clause of the protocol on the establishment of diplomatic relations between the RA and the RT mentions "*the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law*", then that can only take into consideration the border defined by the only legal document in force to this day, the arbitral award of US President Wilson. There is no other legal document "*of international law*", as the protocol says.

There is another important issue to consider here. Have the authorities and public bodies of the USA ever expressed any position concerning Wilson's arbitral award deciding the border between Armenia and Turkey?

The position of the executive branch

The highest executive power of the US not only recognised Wilson's arbitral award, but has also ratified it and, therefore, it has become part of the law of the land of the US. The US President Woodrow Wilson and Secretary of State Bainbridge Colby ratified the award of the arbitrator Wilson with their signatures and *The Great Seal of the United States*. According

[177] Schlochauer H, Arbitration, Encyclopedia of Public International Law, v.I, 1992, Amsterdam, p. 226.
[178] A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

to international law, the personal signature of the arbitrator and his seal, if applicable, are completely sufficient as ratification of an arbitral award. Woodrow Wilson could have been satisfied with only his signature or as well as his presidential seal. In that case, the award would have been the obligation of an individual, albeit a president. However, the arbitral award is ratified with the *official state seal* and confirmed by the keeper of the seal, the Secretary of State. The arbitral award of Woodrow Wilson is thus an unqualified obligation of the USA itself.

The position of the legislative branch

Arbitral awards are not subject to any legislative approval or ratification. They are governed by international public law. Therefore, the Senate, which reserves the right to take up matters relating to foreign policy according to the US Constitution, never directly discussed the arbitral award deciding the Armenian-Turkish frontier. Nevertheless, in the course of discussing other matters, the Senate of the US explicitly expressed its position on this award on at least one occasion.

On 18 January 1927, the Senate rejected the Turkish-American treaty of 6 August 1923, for three reasons. One of the reasons was that Turkey "*failed to provide for the fulfilment of the Wilson award to Armenia*".[179] Senator William H. King (D-UT) expressed himself much more clearly in an official statement on this occasion, "*Obviously it would be unfair and unreasonable for the United States to recognize and respect the claims and professions of Kemal so long as he persist in holding control and* sovereignty *over Wilson Armenia*."[180] The vote in the Senate in 1927 testifies without a doubt to the fact that Wilson's arbitral award was a ratified award and had legal bearing in 1927. Nothing from a legal perspective has changed since then, and it thus remains in force to this day.

The position of public bodies

The most important public bodies in the US are political parties. The main clauses of party programmes are to be found in party platforms, which are approved by the general assemblies of political parties.

The Democratic Party of the US (the party of current President Obama and Secretary of State Clinton) has official expressed a position on Wilson's arbitral award on two occasions, in 1924 and in 1928.

In its 1924 programme, the Democratic Party included a separate clause of the "*Fulfilment of President Wilson's arbitral award respecting Armenia*"[181] as a platform and goal. The 1928 platform went even further,

[179] Lausanne Treaty is Defeated, The Davenport Democrat, 19 January 1927, 1.
[180] The New York Times, January 19, 1927, 1.
[181] National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p, 277.

referring to the US as a state and, as per the "*promises and engagements*" of the Allied Powers, "*We favour the most earnest efforts on the part of the United States to secure the fulfilment of the promises and engagements made during and following the World War by the United States and the allied powers to Armenia and her people*."[182] The only "*promise and engagement*" of the US to the RA was and continues to remain the arbitral award of Woodrow Wilson on the border between Armenia and Turkey.

Respected Minister,

As opposed to the current generation of Americans and Europeans, we know the Turks well, and we therefore do not harbour any illusions. I believe that you, in turn, know us well, and must therefore bear no illusions of your own. If you Turks believe that by arm-twisting Armenia you can force anything upon the Armenian people, you are much mistaken. Our history is proof of quite the contrary.

We – the Armenians and the Turks – are condemned together to find mutually acceptable solutions. Such solutions may come in many forms, but one thing must be clear, that they have to benefit the establishment of a stable peace for the entire region, the development of a diverse economy, the creation of a co-operative atmosphere, while serving as well the realisation of certain interests of global powers and their greater inclusion in regional issues. And so, that solution must be such that it dispels the security concerns of the Armenian side, while providing conditions of sustained economic growth and development for the RA, as well as guaranteeing the preservation of Armenian cultural values. Simultaneously, the solution must not go against the core interests of Turkey, and the proposal must be appreciable by the Turkish side as a dignified solution to the given circumstances.

Respected Minister,

We are willing to co-operate, but do not take that as a sign of weakness and do not force us to raise a white flag of surrender. That will never occur.

Accept, Minister, the deepest assurances of my consideration.

23 October 2009

[182] *Ibid*.

35. **Recognition of the [First] Republic of Armenia by the USA**

Armenia declared its independence on May 28, 1918. Acting on behalf of the Supreme Council of the Paris Peace Conference, it was recognized by Great Britain, France and Italy on January 19, 1920:

"It is agreed:

(1) that the government of the Armenian State shall be recognized as a de facto government on the condition that this recognition in no way prejudges the question of the eventual frontier.

(2) that the allied governments are not prepared to send to the Transcaucasian states the three divisions contemplated by the Inter-Allied committee.

(3) (a) to accept the principle of sending to the Caucasian States arms munitions and if possible food. (b) Marshal Foch and Field Marshal Wilson are invited to consider of what these supplies shall consist and the means for their dispatch.

The American and Japanese representatives will refer these decisions to their respective Governments."

(Paris, 19 January 1920)[183]

The US recognized the RA on April 23, 1920. The American recognition was couched in the following language, in the letter from the Secretary of State Bainbridge Colby to the "Representative of the Armenian Republic" in Washington Dr. G.[Garegin] Pasdermadjian:

"Sir: Referring to communications heretofore received from you on the subject of the proposed recognition of your Government by the Government of the United States, I am pleased to inform you, and through you, your Government, that, by direction of the President, the Government of the United States recognizes, as of this date, the de facto Government of the Armenian Republic.

This action is taken, however, with the understanding that this recognition in no way predetermines the territorial frontiers, which, it is understood, are matters for later delimitation.

Accept, Sir, the assurances of my highest consideration"

(Washington, 23 April 1920).[184]

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[183] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 1. (The National Archives, Washington, 760J.6715-760J.90C/7).

In addition to the recognition of the RA by the executive branches of the American government, the legislative branch confirmed this recognition. The US Senate, upon the unanimous recommendation of the Committee on Foreign Relations, adopted the preamble and resolution of Senator Harding, subsequently President of the US (1921-1923). The pertinent portions of the preamble and resolution, both agreed to by the Senate on May 13, read as follows:

"Whereas the independence of the RA has been duly recognized by the Supreme Council of the Peace Conference and the Government of the United States of America: Therefore be it.

Resolved: That the sincere congratulations of the Senate of the United States are hereby extended to the people of Armenia on the recognition of the independence of the RA, without prejudice respecting the territorial boundaries involved; and be it further.

Resolved: That the Senate of the United States hereby expresses the hope, that stable government, proper protection of individual liberties and rights, and the full realization of nationalistic aspirations may soon be attained by the Armenian people."[185]

It is obvious that the RA was recognized by the US on the condition that: "the territorial frontiers … are matters for later delimitation."

Conclusion

Whereas the Turkish-Armenian boundary was determined upon the bases of:

a) the official request (first compromis) of the Supreme Council of the Paris Peace Conference (April 26, 1920, San Remo) and

b) Article 89 (second compromis) of the Treaty of Sèvres (August 10, 1920),

therefore the officially recognized Turkish-Armenian boundary by the United States is the border defined by virtue of the Arbitral Award of President Woodrow Wilson on November 22, 1920.

Some explanation must be given regarding Article 89 of the Treaty of Sèvres. Generally, *"A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may*

[184] Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 5. (The National Archives, Washington, 760J.6715-760J.90C/7).
[185] Congressional Record, vol. 59, pt 7, May 13, 1920, p. 6978-6979.

agree". (Article 24(1), Vienna Convention on Law of Treaties, 1969). Nevertheless, "A treaty or a part of a treaty is applied provisionally pending its entry into force if: (a) the treaty itself so provides; or (b) the negotiating States have in some other manner so agreed." *(Article 25(1), Vienna Convention on Law of Treaties, 1969).*

Article 89 of the Treaty of Sèvres states that:

"Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the USA the question of the frontier to be fixed between Turkey and Armenia in the vilayets of Erzurum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarisation of any portion of Turkish territory adjacent to the said frontier."

It is apparent that the Treaty of Sèvres certainly provides that the *"High Contracting Parties"* agreed to accept President Wilson's decision *"thereupon"* and without any conditions. Moreover, Article 90 of the said treaty provides the unconditional transfer *"from the date of such decision all rights and title over the territory"* to be transferred to Armenia.

"In the event of the determination of the frontier under Article 89 involving the transfer of the whole or any part of the territory of the said Vilayets to Armenia, Turkey hereby renounces as from the date of such decision all rights and title over the territory so transferred. The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory."

Conclusion

The part of the Treaty of Sèvres, namely the Article 89, as well as Articles 88; 90; 91 and 92, was applied independently and regardless the legal status of the rest of said treaty, as it was agreed by parties to the treaty.

29 October 2009

36. **The Question of Succession of States and Treaties**
/with the example of the treaties of Moscow and Kars/

The question of state succession, especially when it comes to treaties, being under the purview of international public law, is of extreme importance at present in the practical sense. With the twin Armenia-Turkey protocols, and especially with the reference to "*the relevant treaties of international law*" in the first one, this issue has completely taken on a significance of direct applicability. The Turkish party interprets the expression "*the relevant treaties of international law*" as the treaties of Moscow (16 March 1921) and Kars (13 October 1921).

Accordingly, our issue at hand is to briefly discuss a few points:

1. the question of state succession in general,
2. the question of treaties in state succession,
3. and particularly, the succession to the treaties of Moscow (16 March 1921) and Kars (13 October 1921) in the case of the RA.

The Question of State Succession

a) The Armenian Soviet Socialist Republic, the Republic of Armenia and state succession

"*State succession is a definitive replacement of one state by another in respect of sovereignty over a given territory in conformity with international law.*"[186]

Thus, state succession is no mere theoretical concept, but something derived from sovereignty. State succession can occur only between two sovereign states. "*Sovereignty is the exclusive right of a State to govern the affairs of its inhabitants – and to be free from external control*",[187] and so it is evident that the Armenian Soviet Socialist Republic never was a sovereign state. And because the Armenian Soviet Socialist Republic was never a sovereign state, the RA consequently cannot be its successor state. From December of 1920 (when Armenia was occupied by an external military force, and the functioning decrees of the Russian Soviet Federative Socialist Republic became enforced as law in the Armenian Soviet Socialist Republic) until September-December 1991 (until the constitution, laws and regulations of the Soviet Union remained in place), the Armenian Soviet Socialist Republic never had exclusive rights, neither over its own territory, nor its own population.

The second clause of the Declaration of Independence (23 August 1990) reinstated the sovereignty of the RA, "*The Republic of Armenia is a self-governing state, endowed with the supremacy of state*

[186] Ian Brownlie, Principles of Public International Law, (5th ed.) Oxford, 1998, p. 649.
[187] Slomanson WR, Fundamental Perspectives on International Law, (3d ed.), Belmont, 2000, p. 206.

authority, independence, sovereignty, and plenipotentiary power. Only the constitution and laws of the Republic of Armenia are valid for the whole territory of the Republic of Armenia".

b) The USSR, the Republic of Armenia and state succession

State succession, in broad terms and, specifically, in terms of rights and obligations stemming from treaties, is not a question of the will or desire of the state, but is a legal consequence derived from the status, size and significance of the territory inherited by a given state. That is to say, what is decisive in this case is the legal status, as well as the size and significance, which the seceding territory or administrative unit had in the erstwhile state. When a new country arises on the *core and dominant* territory of the old one, it is referred to as a new state, bearing the succession to existing treaty rights and obligations. For example, when Austria-Hungary collapsed after the WWI, both Austria and Hungary inherited completely the rights and obligations of the former Austria-Hungary.[188] However, Czechoslovakia and Poland, being newly independent states of the same empire, did not bear any succession, their case taking on the principle of *tabula rasa* ("a clean slate").[189]

Naturally, each state comprises some territory. For the sake of convenience, let us refer to such territory as "politogenetic" or "state-creating". If that territory had the status of former colonies or other territories dependent upon a dominant state for the conduct of foreign policy, then the principle of *tabula rasa* would be utilised in their cases.[190] The logic is quite plain; the newly independent state cannot bear any responsibility for something – such as, for foreign policy – when it had absolutely no influence on its course of realisation.[191]

Clearly, when it came to foreign policy, as well as all other issues, really, the Armenian SSR had the status of a dependent territory. Hence, the *tabula rasa* principle unquestionably applies to the RA.

Moreover, the Armenian SSR could never pretend to be the core and dominant territory of the USSR, given its own territory and population. The Armenian SSR comprised about 0.14% of the area of the USSR (29,800 sq.km out of 22,402,200 sq.km), with almost 1.2% of the population (3.4 million out of 290 million).

From the perspective of international law, fourteen newly independent states – including the RA – did not arise from the collapse of the USSR, as

[188] Edwin D. Williamson, (Legal Adviser, U,S. Department of State), Treaty Succession and Related Issues in the wake of the Breakup of the USSR, p. 3. ("Panel on State Succession and Relations with Federal States," March 31, 1992, Washington, D.C.)
[189] *Ibid*.
[190] *Ibid,* p. 4.
[191] The Restatement of the Law (3d) of Foreign Relations Law of the United States reserves the *tabula rasa* principle not only for newly independent states, but for all new states.

is often described in the media, but through the creation of new states by parts seceding from the parent state, the Soviet Union. Even after all that, Russia's area continues to be much larger than the territories of all fourteen of those states combined. And for that reason, the Russian Federation was rendered the continuity of the USSR without question and so, as opposed to the other countries, it did not need to gain readmission to international organisations or to once again sign the international, multilateral or bilateral treaties of the USSR.

The Secretariat of the UNO has dealt with a similar issue on another occasion, namely, the creation of Pakistan out of India in 1947, and has given its outright legal opinion on the matter: "*From the viewpoint of international law, the situation is one in which a part of an existing State breaks off and becomes a new State. On this analysis, there is no change in the international status of India; it continues as a State with all the treaty rights and obligations, and consequently, with all the rights and obligetions of membership in the UN. The territory which breaks off, Pakistan, will be a new State; it will not have the treaty rights and obligations of the old State, and it will not, of course, have membership in the UN*".[192]

The legal clarifications made by the UN Secretariat conclude expressly that the seceding state does not bear succession to the treaty rights and obligations of the prior state.

State Succession and Treaties

In order to discuss any issue pertaining to international law, international conventions, whether general or particular, are considered to be primary sources.[193]

One of the cornerstones in this regard is *The Vienna Convention on Succession of States in respect of Treaties (1978)*.[194] Although that document does not yet have very widespread signatories, nevertheless it is the most important starting point when it comes to this issue, as it consists of the sum of the decades-long work and experience of the International Law Commission.

The Vienna Convention of 1978 has codified the following:

- "*A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to*

[192] Succession of States and Governments, Document A/CN.4/149 AND Add. l; The succession of States in relation to membership in the United Nations: memorandum prepared by the Secretariat, Yearbook of the International Law Commission, 1962, vol. II, p. 101.
[193] Statute of the International Court of Justice, Article 38.1. a.
[194] The convention has been open to accession since 22 Aug 1978, coming into force on 6 Nov 1996. The following countries are currently party to it: Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Dominica, Ecuador, Egypt, Estonia, Ethiopia, Iraq, Libya, Macedonia, Morocco, Saint Vincent and the Grenadines, Serbia, the Seychelles, Slovakia, Slovenia, Tunisia and Ukraine (twenty states).

which the succession of States relates." (*Article 16, Position in respect of the treaties of the Predecessor State*)

By the definition as per international law above, it is evident that general state succession – which is, in essence, ***consecutiveness*** – and the ***inheritance*** with regards to treaties, are two different legal phenomena. That is to say, a newly independent state does not at all imply that that state inherits the obligations codified by international law pertaining to that given territory as well.[195] As mentioned, the most important factor in such cases is the legal status formerly borne by the "politogenetic" or "state-creating" territory. For the newly independent state of the RA, the *tabula rasa* principle was certainly put in place.

Nevertheless, certain documents of the Commonwealth of Independent States (CIS), as well as some international treaties, contain the expression, "*USSR successor-states*" ("*государства-правопреемники СССР*"). It is clear that this is more a matter of policy or status of general succession, in terms of property, debts, munitions, archives, etc. It does not and cannot pertain to state succession of treaties, for the founding declaration of the CIS (the Alma-Ata Protocols, 21 December 1991), simply codifies "*the fulfillment of international obligations arising from treaties and agreements of the former USSR*" without any question of succession, that too, only '*in accordance with their constitutional procedures*', that is, upon corresponding ratification. ("*Государства – участники Содружества гарантируют в соответствии со своими конституционными процедурами выполнение международных обязательств, вытекающих из договоров и соглашений бывшего Союза ССР. Алма-Ата 21 декабря 1991г.*")

Moreover, on 6 July 1992, CIS heads of state signed a '*Memorandum on Mutual Understanding on the Question of Succession to Treaties of the Former USSR Representing Mutual Interest*'.[196] In particular, the memorandum specifies that each state would decide for itself whether or not to succeed to a treaty, based on the nature and contents of a given treaty, '*The question of participation in these treaties [of the former USSR] will be decided in accordance with the principles and norms of international law by each member-state of the Commonwealth independently, as per each specific case, character and contents of each given treaty*' ("*Вопрос об участии в этих договорах [бывшего Союза ССР] решается в соответствии с принципами и нормами международного права каждым государством-участником Содружества самостоятельно, в зависимости от специфики каждого конкретного случая, характера и содержания того или иного договора*").

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[195] I believe that the constant translation of the term "*succession of states*" into Armenian as something akin to "*the inheritance of a state*" has added further to the confusion. The succession more often simply implies a consecutive ordering of states.

[196] Меморандум о взаимопонимании по вопросу правопреемства в отношении договоров бывшего СССР, представляющих взаимный интерес от 6 июля 1992 г. // Действующее международное право: В 3 т., М., 1996, Т. 1, с. 492-493.

For example, after that memorandum was accepted (13 August 1992), Azerbaijan officially notified the Secretary-General of the UN that it is not the successor state of treaties of the Soviet Union, except for three treaties pertaining to human rights.[197]

The question of the succession of the Republic of Armenia to the treaties of Moscow (16 March 1921) and Kars (13 October 1921)

It is imperative to emphasise that "*the fulfillment of international obligations arising from treaties and agreements of the former USSR*" does not and cannot pertain to the treaties of Moscow (16 March 1921) and Kars (13 October 1921) for a number of reasons:

1. The aforementioned obligation has specific limits on time, that is, it applies only to the time period of the existence of the Soviet Union, from 30 December 1922 to 26 December 1991.

2. The aforementioned obligation has specific limits on parties to treaties. It does not apply to the so-called treaties of the Armenian SSR or the RSFSR. The obligations apply solely to those treaties signed by the USSR on behalf of the USSR.

3. The aforementioned obligation has specific legal limits. It naturally applies only to legal treaties, that is, those signed in accordance with international law.

4. The aforementioned obligation has specific constitutional limits. The obligation applies only as per those treaties which have been adopted by the RA '*in accordance with … constitutional procedures*'.

CONCLUSION

1. **The Republic of Armenia is not the successor to the administrative-territorial unit that was the Armenian Soviet Socialist Republic.**
2. **The Republic of Armenia, being one of the states politically or historically arising from the USSR, does not bear any legal succession to any of its treaties.**
3. **The Republic of Armenia does not bear any legal succession to the treaties of Moscow (of 16 March 1921) and Kars (of 13 October 1921).**

3 November 2009

[197] Rein Mullerson, The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia, The International and Comparative Law Quarterly, vol. 42, No. 3 (July 1993), p. 490.

37. **The Glory and Misery of an 'Open Border'**

It was absolutely incorrect to negotiate on "*open[ing] the common border*", much less referring to it in the protocols. It is incorrect both legally and factually. Let us first of all understand what it means to have an '*open border*'. There are indeed open borders, for example, among countries of the European Union, or between the US and Canada. This is the regime of regulating border crossings by which citizens of the bordering countries can go across without requiring a visa, simply upon the presentation of passports or other official identification, or even without them. Is there any intent, idea or possibility of doing away with the visa regime between Armenia and Turkey? Of course not. And even if no visa requirements are in place any longer, would that still be the same as having an open border? Citizens of Armenia and Georgia do not need visas for mutual visits, but does that mean we have an open border with Georgia? No, it does not follow.

The protocols refer only to the possible functioning of two crossings of the so-called Armenia-Turkey border. It has been months since I called attention to that fact, "*This noisy process does not mention 'opening up the Armenia-Turkey border', but the possible functioning of the Akhuryan-Dogukap railway and the Margara-Igdir crossing point. One ought to therefore refer to things by their name, and the document must thus clearly state the above and not utilise the expression 'the Armenia-Turkey border'. That is incorrect as per international law, and is incorrect as per the long-term interests of the Republic of Armenia*".

Unfortunately, our leadership conducted itself in the worse possible way. The proposed protocols – while taking on almost all the issues that have cropped up between two peoples over six hundred years of history, interpreting almost all of them to our disadvantage – do not mention anything at all on a border regime. If the protocols have an attached timetable, why could they not have added half a page's worth of a section entitled '*On the main principles of the functioning of the border crossings*', which would then have formed part of the entire package? These uncertain circumstances provide fodder for Turkey, for it to – as the protocols say – "*open*" the border, while keeping it quite closed. For example, it is unclear whether or not one could receive a visa at the border. Turkey could insist on regulating this solely through the corresponding depart-

ments of embassies. This would mean that someone from the Shirak region need come all the way to Yerevan to receive a Turkish visa. Or, even worse, someone from Kars would have to travel to Ankara to get an Armenian visa. If some other regime is in place at the Georgia-Turkey border that does not imply in the least that the same would be the case at the so-called Armenia-Turkey border. I do not claim that this will indeed be the case, but allowing the Turks such a possibility is a serious error. Turkey could use it as leverage against Armenia at any moment. I would like to recall the fact that, in the year 2000, when the US House of Representatives was close to passing a resolution recognising the Armenian Genocide, Turkey, although powerless against the US, ceased granting visas to citizens of Armenia at the border for a few months. Armenian citizens were forced to apply at the Turkish Embassy in Tbilisi, Georgia. One could object by saying that, once the protocols are in force, this issue will be clarified. Perhaps. However, if the childhood fantasy of our authorities is "*open[ing] the … border*", which state propaganda has rendered the equivalent of opening the pearly gates of heaven, then why did we defer this issue to future negotiations? How long will those negotiations take, what will we compromise on next? And if the Turks decide that the border crossings will be open twice a week, for three hours each, then what will we do? Are we to bring Clinton and Lavrov over, or call Solana, to twist the Turks' ears? If the Turks use some technical excuse or other to allow only accompanied cargo to receive the necessary paperwork at the Armenia-Turkey crossings, what will our response be then? Do we know how the entry of Armenian cargo transportation to Turkey will be regulated, or if they will let them in at all? The border with Iran is 'open'. Go on then, try to get our goods across through Iran, let's see if they'll allow it.

The railways are mentioned much when discussing an 'open border'. They say that the Turkish port of Trabzon will be an alternative to Batumi and Poti, in Georgia. They say so and they continue to say so, without knowing that the port of Trabzon does not even have a railroad. The closest Turkish port with a railroad is Samsun, which is three times as far from Yerevan as the Georgian ports. Which idiot would transport his goods that far to put them on a ship? Or perhaps they think that Armenian products will reach Europe on a train. Has anyone seen how the railroad goes across the Bosporus, and how much that costs? Is there a businessman who thinks that his goods, if he has any such goods, could

get to Europe on a train with less expense, than by ship via Batumi? Armenian railroads are on a Russian standard, and so are wider than the Turkish ones. This means that the mechanisms on all the wagons will have to undergo a change at the border. How long will that take? Hours? Days?

Eighty five percent (85%) of the 280-mln USD worth of trade between Armenia and Turkey takes place in Istanbul and its surrounding areas. It is even cheaper to transport goods there by boat than by train. We only sell 2-mln USD worth of goods in Turkey annually. If the issue is the closed border, then how can the Turks be able to sell 140 times more in little Armenia? Is it that we are bursting with goods to sell to Turkey without a way to get there? Any citizen of the RA can enter Turkey with much greater ease today, than visit our fraternal France. Is it really worth paying such a high price merely to avoid a detour of 180 km? Or are we that naïve to think that, if Azerbaijan invades, Turkey will keep the border 'open'?

A man from the Armenian town of Gavar crosses the border with a parrot on his shoulder. A customs official finds a handful of diamonds on him, and asks, *"What is this?" "Parrot feed."* the man from Gavar calmly responds. *"A parrot that eats diamonds?"*, the customs official asks sarcastically. The man from Gavar answers, *"I'm taking it along. If he eats it, he eats it. If he doesn't, well, to hell with him anyway"*.

And now it's our turn. If the protocols would codify the obligations of both parties in "*open[ing] the … border*" without preconditions, clarifying the border regime, then there would not be an issue. If it would work, fine, if not, then to hell with them. However, this is not the reality. For the sake of a so-called 'open border', which is merely a hearkening back to communist propaganda, a false economic hope, we are paying the price of our nation's past and the future of our state.

This is what is incomprehensible. And unacceptable.

5 November 2009

38. **The "reasonable" is quite unreasonable**

When it comes to discussing a possible timeframe for the ratification of the unfortunate Armenia-Turkey protocols, certain officials who claim to be politicians have declared with self-satisfied voices that the process of normalisation (according to them) must take place "*within a reasonable timeframe*". Accordingly, the question necessarily arises: is there a clearly defined limit to "*a reasonable timeframe*" in international law?

The term "*reasonable timeframe*" has, albeit of seldom use, but nevertheless a certain application in public international law. For example, Articles 5 and 6 of *the European Convention on Human Rights* guarantee the trial "*within a reasonable time*" of individuals in custody or under arrest ("*Everyone arrested or detained … shall be entitled to trial within a reasonable time or release pending trial*" – *Article 5.3;* "*Everyone is entitled to a fair and public hearing within a reasonable time*" – *Article 6.1*).[198] It is clear that such wording is sufficiently flexible to provide the possibility of the aforementioned multi-lateral document to be more inclusive and applicable in various judicial systems. However, any mention of "*reasonable times*" in bilateral agreements, where only mutual obligations are codified, does not make any sense and is undesirable. Even more so when one considers the centuries-old tradition of the Turks to deny their domestic obligations and renege on their own promises, such a move would be generally unacceptable in relations with them.

A well-known contemporary Belgian legal specialist, Olivier Corten, rightfully considers the "*profound ambiguity*" of the term "*reasonable*" to be its main characteristic.[199] That is, the usage of such a deadline in international relations does not bring in any clarification in the application of a bilateral document. In the Tunisia vs. Libya case over their continental shelf, the UN ICJ provided the following commentary on this question of interest to us: "*what is reasonable and equitable in any given case must be depend on its circumstances*".[200] Thus, the highest tribunal of the UN has clearly stated that the term "*reasonable*" is strictly relative and that there cannot be a universal and outright understanding of it in public international law.

And so, if, for the Armenian side, a "*reasonable*" timeframe would logically be, say, three months, then with just as much logic the Turkish side could have a "*reasonable*" timeframe of three years.

4 January 2010

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[198] Basic Documents in International Law, (ed. Ian Brownlie), Oxford, 1989, p. 323.
[199] Oliver Corten, The Notion of "Reasonable" in International Legal Discourse, Reason and Contradictions, The International and Comparative Law Quarterly, (Cambridge University Press), vol. 48, No. 3 (Jul. 1999), p. 613.
[200] Continental Shelf (Tunisia/Libyan Arab Jamahiriya) I.C.J. Re. 1982, § 60.

39. **On the Decision of the Constitutional Court of Armenia**

The Constitutional Court of the RA came to a decision on the unfortunate pair of Armenia-Turkey protocols. As seen as being bound to happen, it was declared that '*the obligations codified in the protocols are in accord with the Constitution of the Republic of Armenia*'. Of course, there could have been another declaration, which would have been more desirable. I maintain my position, that the protocols contradict the Constitution of the RA, and the processes of their authentication and signing have been in violation of the corresponding laws and regulations currently in place in the RA.

The deed is now done, however, and so the most important question arises: what must we do? One thing remains, to take a deep breath and carry on the struggle. The decision in question of the Constitutional Court provides even more opportunities for that struggle, as the legal opinion of the Constitutional Court is not absolute and without qualification, but has certain clear interpretations and reservations. Of course, it would take much longer and much greater detail for an analysis to lay out the leeway in its entirety. Nevertheless, it is clear at first glance that such leeway exists. For example, the Constitutional Court codifies in its legal opinion that the protocols are only '*mutual*' and that they '*bear exclusively a bilateral inter-state character*'. It is thus clearly stated that Armenia-Turkey relations are separate from Armenia-Azerbaijan relations or relations between Turkey and the Armenian Diaspora. Or, what I find most significant, '*international treaties can have juridical*[201] *force with regards to the Republic of Armenia ... only while taking into account their validity based on international law*'. That is to say, the Constitutional Court has codified that, for example, if the treaties of Alexandropol, Moscow or Kars are void as per international law – and there can be no doubt on the matter that they are – then those treaties cannot '*have juridical force with regards to the Republic of Armenia*', and the frontiers described in them consequently cannot act as legal bases for "*the existing border*". Accordingly, by the legal opinion of the Constitutional Court of the RA, the protocols cannot and do not render legal the treaties of Alexandropol, Moscow or Kars, as well as the consequences of other possible unlawful legal instruments that are void from the perspective of international law. Put simply, the Constitutional Court of the RA has provided an interpretation for the application of one of the basic and general principles of law with regards

[201] [Instead of the Armenian "*iravabanakan*"] I would prefer using the term '*legal*' ["*iravakan*"], as the "juridical" is with regards to jurisprudence, that is, with the science of law, while something "legal" refers to rights and laws.

to the unfortunate protocols, namely *jus ex injuria non oritur*, *illegal acts cannot create law*.

The Constitutional Court has also found that the clauses of the protocols '*cannot be interpreted and applied such that they contradict the clauses of the preamble to the Constitution of the Republic of Armenia and the demands of the eleventh clause of the declaration of independence of Armenia*'. I would like to recall that, according to the clause in question, "*The Republic of Armenia stands in support of the task of achieving international recognition of the 1915 Genocide in Ottoman Turkey and Western Armenia*".

The decision of the Constitutional Court is a very important and legally-defined step in the process of expressing the conduct of the RA when it comes to international treaties. Nevertheless, it forms part of the domestic process and has almost no significance in international law. In most countries, constitutional or other levels of courts have no role to play in foreign relations. In order for the opinion declared by the Constitutional Court of the RA to have any legal force in international law, it must be included as an official reservation, forming part of the corresponding decision of the legislature of the RA. The National Assembly must consider without question that the decision in question of the Constitutional Court is based on certain legal positions, and that the decision contains clear reservations and interpretations. Thus, the legislature of the RA *is obliged* to reflect in its discussions and, moreover, to at least include in its decision, all the reservations and interpretations expressed by the Constitutional Court.

Even after considering all this, I do not believe that ratifying the Armenia-Turkey protocols would be in favour of the interests of the RA and of the Armenian people. The best way out would be the general rejection of those protocols. Why are we creating problems for ourselves that we may heroically overcome them later? Is the spirit of Comrade Panchouni still thriving among us? He would say, '*Close the door, I'll come in through the window*'.

Let us not close the open door today, so that we are not forced to come in through the window tomorrow.

12 January 2010

40. **On Reservations to the Armenia-Turkey Protocols**

According to both speakers, having reservations with regards to bilateral international treaties is ridiculous.
"Azg" daily, Yerevan, 15 January, 2010

It is true that reservations are more widespread in multilateral treaties, but they have also applied and continue to apply to bilateral documents as well.[202] Such conduct is based on practicalities, but never due to limitations in place as per international law. It's a different case when, with only two parties, it becomes quite practical and logical to suppose that, before the authentication of the text – that is, until the final version of the document – all disagreements would be ironed out. Such is the case with legal and skillfully negotiated treaties, however. How does one react to a situation in which the people wake up one day to find that their foreign ministry, circumventing the entire process as laid down by the law for authentication, has half-heartedly negotiated two worthless and defective documents? How to react when the negligence, ignorance or treason of an official or a group of officials has caused the appearance of 2 unacceptable documents in the hands of the state? Is the state obliged to lay aside its interests and accept them without reservations? Of course not.

Almost all the vital issues of the past, present and future of our state and nation have today been compiled in a few pages' worth of a pair of wretched protocols, with regards to the clauses of which both parties have extremely disparate and contradictory positions. It is enough to have a look at the address by Serzh Sargsyan a few hours before the signing of the ill-boding Armenia-Turkey protocols, compared with the declaration by the prime minister of Turkey a few hours after the signing, in order that the truth of what I am saying is evident, that the sides have contradictory understandings on the matter. It is natural to expect in this case that each side, in turn, will codify its reservations and understandings in corresponding instruments of ratification. Not to do so would not only be unreasonable, but also unlawful.

I would like to bring two factors to mind. Firstly, by the Constitution of the RA, it is the purview of the president to generally direct foreign policy. Consequently, the National Assembly simply does not have the right to ignore the main arguments of the address by Serzh Sargsyan of the October 10, 2009. Secondly, the decision of the Constitutional Court of the RA was not absolute and unqualified, but founded on certain legal positions and is thus whole and consequently applicable only upon taking them into account.

[202] The American Law Institute, Restatement of the Law (3d ed.), St. Paul, Minn., 1987, § 313(f), Reservations to bilateral agreements, p. 182.

Let us now briefly turn to the 'ridiculousness' of having reservations in bilateral treaties. Article 19 of the Vienna Convention on the Law of Treaties states and allows for the following, "*A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservetion*". This convention does not differentiate or discriminate between bilateral and multilateral treaties. Any prohibition on reservations would be in place not based on the kind of treaty, whether bilateral or multilateral, but by its nature. For example, reservations cannot be formulated with regards to the Genocide Convention.[203]

If a country's interests have been such, many national parliaments have, without hesitation, declared their reservations with regards to bilateral treaties. For example, in the last 200 years, the US Senate has had reservations for more than a 100 bilateral documents, including at least 13 instances in the period 1975-1985[204] and 28 times during 1975-1995.[205]

Moreover, the other side is free to subsequently accept or reject the document, but that has to be done as a whole, that is, the treaty as well as the reservations. Let us provide a couple of examples. In May of 1824, despite President Monroe's warnings, the US Senate approved the Treaty between US and Great Britain for the Suppression of the African Slave Trade with some reservations.[206] The US President conveyed the document with an explanatory letter to the British, but the latter decided to reject the treaty.[207] More than a century and a half later, in 1985, the US Senate approved the UK-US Supplementary Extradition Treaty with some reservations. The US government informed the British of the Senate's reservations in a note and inquired whether they would be acceptable to the United Kingdom. Upon receiving an affirmative response, instruments of ratification were exchanged in December 1986.[208]

It is necessary to emphasise here that the American legal system is similar to that of Armenia, that is, legally enforced international treaties directly and immediately form part of domestic legislation. If the Constitutional Court of the RA gave certain legal positions and clear interpretations in its decision on the protocols in question, that is to say, it declared that the obligations borne by the protocols do not violate the Armenian Constitution only in the case of certain perceptions and understandings, then those details have to be codified in reservations to that document.

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[203] Whiteman M. M., Digest of International Law, v. 14, Reservations, Department of State Publication, Washington, 1970, p. 144.
[204] Anthony Aust, Modern Treaty Law and Practice, Cambridge, 2000, p. 106.
[205] For more detail, see Whiteman, Digest, Reservations at Time of Ratifying Bilateral Treaties, v. 14, p. 159-170.
[206] Moore J.B., A Digest of International Law, v. II., Washington, 1906, p. 924.
[207] Freming D.K., The Treaty Veto of the American Senate, New York, 1930, p. 54-55.
[208] Anthony Aust, *Ibid,* p. 106-107.

Otherwise the obligations codified with the exchange of instruments of ratification would themselves be anti-constitutional.

The possibility to have reservations is provided for not only within international law, but within the domestic laws of many nations. Article 93.5 of the law on the rules of procedure of the National Assembly of the RA also makes provisions for reservations to treaties in the parliamentary ratification process. However, as opposed to international law, which allows for reservations by the State, the law on the rules of procedure for some reason grants this purview solely to the executive, namely, the representative of the president. Article 93.5 of the law on the rules of procedure of the National Assembly of the RA states that, "*An international agreement may also be presented for ratification with reservations specified by the principal reporter*". The previous clause of the same law on the rules of procedure clarifies that, '*The principal report is delivered by the representative of the President of the RA, and additional reports are delivered by representatives of other Head Committees appointed by the presidents of the Standing Committee on Foreign Relations and of the National Assembly*'.

This procedure somewhat complicates the inclusion of reservations in the treaty documentation. Nevertheless, if the majority of the parliament together comes up with the reservations (and, after the decision of the Constitutional Court, such a step is simply demanded by law; the National Assembly is obliged to do so), then those reservations would be defined by the executive '*as per those of the principal reporter*' and would be presented once again for the parliament's approval.

Yes, it is possible that Turkey disagree with our reservations. It is possible that Turkey takes our reservations to be a request for modification of the entire document. So what? Does that mean we have to give up on our interests so that we please the Turks? Is it not clear that, if the concerns expressed in the president's address and the legal position of the Constitutional Court are not officially included in the corresponding instruments of ratification, then that would mean that both the president and the Constitutional Court were simply acting out roles in one and the same play?

Ultimately, accepting an international document is not an end in itself. Treaties are for codifying the interests of states, and states are not lambs to be sacrificed to treaties.

15 January 2010

41. **A Policy of Consistent Deceit**

When the highest officials of Turkey – the president, the prime minister, the foreign minister – linked the Armenia-Turkey protocols (the ill-omened nature of which is becoming clearer and clearer) to '*progress on the issue of Nagorno-Karabakh*' at every political turn, our authorities either remained silent, or said that such pronouncements '*were aimed at a domestic audience*'. Of course, such a claim is meant for the naïve, as international law (in particular, clause 2(a) of article 7 of the Vienna Convention on the Law of Treaties) manifestly codifies the unqualified rights in the area of foreign policy to a country's president, prime minister and foreign minister. That is to say, their powers with regards to foreign policy are so widespread that, without any additionnal authority, they hold the capacity to sign treaties on behalf of the state, to say nothing of making declarations. In a word, the statements of these three officials can never be viewed simply as '*only for domestic consumption*'.

Now let us have a look at what we have today. The Constitutional Court of the RA – in accordance with the constitution of our state – has taken a decision on the 2 protocols signed by the foreign minister of our country. In this case, we may truly say '*for domestic consumption*', as the legal position expressed in the decision will have no application or significance in foreign relations unless it be included in the instruments of ratification. It is another matter that the president of the RA is obliged to take the legal position of the Constitutional Court into consideration and his representative likewise is obliged to present the protocols in question, now with reservations, to the National Assembly for ratification. Not to do so would be to violate the decision of the Constitutional Court itself, a court whose decision is mandatory both for the president of the RA and for the foreign minister. Nevertheless, the decision itself of the Constitutional Court of the RA has absolutely nothing to do with any foreign country. It is our right and a requirement of our constitution, a purely internal affair.

Turkish diplomacy bears certain characteristics, some of which are worthy of emulation. For example, the provision of corresponding resources to deal with the issues being faced by the foreign ministry. Even in its most difficult early years, the Turkish Republic would not treat its foreign ministry as some illegitimate child. However, the most revealing feature of Turkish diplomacy is its *consistent deceit*. It is necessary to bear in mind always that the traditions of the diplomacy of the RT, even before its recognition, have been based on holding hostages and on freeing war criminals in exchange. In 1919, the Kemalists, having dismissed the obligations borne by their country by the Armistice of Moudros (of the 30th of October, 1918), treacherously captured more than sixty members of the British observer mission (including their families, as well as Colonel Sir

Alfred Rawlinson, who had negotiated at Erzurum), who were then exchanged for more than 150 war criminals in custody on Malta. The process of negotiations and especially their implementation are worth studying. Although on 16 March 1921, the British and the Kemalists signed an agreement whereby the Turkish side would "*immediately*" release the British captives,[209] the last Briton was let go almost six months later, on 31 October 1921. At the same time, regardless of the tentative agreement – that the same number of Turks would be released for 64 British hostages – it turned out that the British released them all, and even ended up somewhat behind. And just how did that happen? Very simply. The British, in accordance with the agreement, would release the corresponding captives, while the Turks, in their consistent deceit, would not only renege on their promise, but would raise new demands each time. The script seems familiar, does not it? We might call them preconditions today. Do you remember a statement from Turkey, that '*there were no preconditions when we signed, but Armenia must now show progress on the Nagorno-Karabakh issue for our parliament to ratify the protocols*'? This is a policy of consistent deceit at work. Nothing and no one can be forgotten. To rely on any promise made by Turkey, whether verbal or written, implies standing on the same razor's edge every time.

Today's Turkey is carrying out that very hostage policy. It's just that, this time, instead of holding a group of people in custody, Turkey has held captive an entire state, a whole people. Despite that, Turkey is allowing itself to teach us a lesson.

The statement by the foreign ministry of Turkey on the decision by the Constitutional Court is simply a direct and crude intervention in the internal affairs of the RA. As long as that legal position has not moved from the area of constitutional law to international law, the decision is solely a domestic matter. Has our foreign ministry ever officially declared anything on the necessity of reforming the criminal code of Turkey, without which it would be impossible to fulfill the obligations to be borne by the protocols? The principles of reciprocity and equal rights are among the key pillars of international relations.

If the highest authorities of the RA do not provide an equivalent response to the foreign ministry of the RT, it would mean that we accept the Turkish policy of treating us as a colony. If we don't put Turkey in its place today, we shall regret it all the more tomorrow, as Turkey has evidently not given up on its policy of **consistent deceit**.

19 January 2010

[209] British Foreign Office Dossiers on Turkish War Criminals (ed. By V. Yeghiayan), Le Verne, 1991, p. 470.

42. Taking into Account the Legal Positions Expressed in this Document

> '*While addressing the press today, the head of the faction of the Republican Party of Armenia, Galust Sahakyan, said that the decision of the Constitutional Court on the Armenia-Turkey protocols was only that they are in compliance with the constitution; other aspects, according to Sahakyan, cannot be mandatory for the National Assembly of the Republic of Armenia.*'
>
> www.aysor.am, 20 January 2010

One sometimes gets the impression that our legislators are not aware of the laws, which they themselves have passed. ***The law of the Republic of Armenia on the Constitutional Court (2006)*** outright codifies that, '*Decisions taken directly on cases of the Constitutional Court are mandatory for all State and local self-government bodies, their officials, as well as for individuals and legal entities throughout the territory of the Republic of Armenia*'. [Article 61(5)]

Accordingly, it is unquestionably plain and clear that the decision on the Armenia-Turkey protocols (10 January 2010) **is mandatory for the National Assembly** as a State body, and is also mandatory for deputies of the National Assembly as individuals. **It is also mandatory for the president of the Republic of Armenia** (as Head of State) **and the foreign ministry of the Republic of Armenia** (as the agency of the government with the corresponding purview) as legal entities, as well as **for Serzh Sargsyan and Edward Nalbandian** as individuals within the territory of the RA.

It is necessary to keep in mind that the law on the Constitutional Court has laid out responsibility as follows: '*Not fulfilling a decision of the Constitutional Court, fulfilling it inadequately or hindering its fulfillment shall be cause for responsibility as defined by law*'. [Article 66]

Now let us have a look at the decision made by the Constitutional Court of the RA. Many would like to present it as if the Constitutional Court simply decided that '*the obligations codified in the protocols comply with the constitution of the Republic of Armenia*'. This is not at all the case. The Constitutional Court did not take some abstract decision, but a decision with certain essential reservations, '*based on the results of examining the case, **taking into account the legal positions expressed in this decision***

and …'. That is to say, the decision is a decision all right, but only by '*taking into account the legal positions expressed in this decision*'. Without those positions, the decision ceases to be so.

Consequently, the representative of the president of the RA, in accordance with the requirements of the fifth clause of Article 61 of the law of the RA on the Constitutional Court, ***is obliged*** to present the protocols in question for ratification to the National Assembly now with the reservations as defined by the legal positions codified in the corresponding decision of the Constitutional Court of the RA. To do otherwise would be in violation of the law cited above, in which case the provision of the '*responsibility as defined by law*' in Article 66 of the same law would have to be invoked.

20 January 2010

43. **On Philip Gordon, the Decision of the Constitutional Court and the Rule of Law**

Numerous opinions have been expressed following the decision (12 January 2010) of the Constitutional Court of the RA on the Armenia-Turkey protocols. I believe, as I have already had the chance to say, that the decision was extremely significant. Although the decision itself does not resolve any issues in terms of international law, nevertheless, the legal position of the decision – which is mandatory for all, including the legislative and executive branches – creates serious tools for damage control with regards to the potential dangers of the protocols. Accordingly, everything henceforth depends on the level of abidance to the law of the president and the National Assembly of the RA.

One finds, in all this, a very interesting statement by the US Assistant Secretary of State Philip Gordon: "*We view the court decision as a positive step forward in the ratification process of the normalization protocols between Turkey and Armenia. The court decision permits the protocols, as they were negotiated and signed, to move forward towards parliamentary ratification, and does not appear to limit or qualify them in any way*".

I believe that the most important and just as problematic idea in this paragraph is the phrase, "*as they were negotiated and signed*". The problem is just that; the parties do not subscribe to the same interpretation of the very same paragraphs, expressions, or even words. Their interpretations are often not only fundamentally different, but also contradictory. It is enough to compare the statements on the same questions about the protocols by the president and foreign minister of the RA and by the prime minister and foreign minister of Turkey for it to be clear that the parties do not see eye-to-eye on the issues at hand, and it is therefore impossible to generalise, "*as they were negotiated and signed*".

And for this very reason the decision in question of the Constitutional Court of the RA is very significant. It is nothing short of the legal interpretation of the Armenian party on the issues taken up in the protocols, based on the Constitution and laws of the RA, as well as international law.

I agree with Mr. Gordon, that the decision of the Constitutional Court of the RA does not hinder the ratification of the protocols. The Constitutional Court of the RA has decided that the object and purpose of

the protocols – to establish diplomatic relations and to open the border – and also the obligations arising from them, do not violate the Constitution and laws of the RA. The Constitutional Court simply clarifies the Armenian side's position on *other issues* included in the protocols, giving legal expression to the interpretations of the Armenian party to those issues.

Here one must remind Mr. Gordon of a few facts. Firstly, the decision of the Constitutional Court of the RA is a final ruling, which is in force. Secondly, the decision of the Constitutional Court of the RA is a non-negotiable and binding document for all citizens of the RA, including the president and foreign minister of the RA, as well as deputies of the National Assembly, just as any decision by the Supreme Court of the US would apply to all Americans. Thirdly, the decision of the Constitutional Court is a complete document as a whole, where the legal position has just as much legal force as the conclusion.

And so, taking into account, to begin with, the requirements of the law on the Constitutional Court of the RA, as well as the positive reaction by the Americans to the decision of the Constitutional Court of the RA, **the President of the Republic of Armenia is obliged** to present the protocols in question for ratification to the National Assembly alongwith the legal position as per the decision of the Constitutional Court of the RA, having thus added them in as reservations.

It is mandatory for the president of the Republic of Armenia to demonstrate by his own example that he abides by the laws of the land. And the Americans are obliged to demonstrate in turn that they respect rule of law in general, and not just American law.

25 January 2010

44. In Anticipation of the President's Next Steps

The Armenian side simply '*suspended the ratification process of the protocols*', that is, it did not create any new conditions, but formalised the current reality. And by "*the Armenian side*", I mean only Serzh Sargsyan. Of course, this step was sugar-coated with '*in light of the numerous pleas of the workers*', that is to say, prefaced by '*taking into account the joint statement of the 22nd of April, 2010 of the boards of the parties forming the coalition in the National Assembly*', but it is nevertheless clear that the decision was unanimous. Even after this, if Serzh Sargsyan orders the parliament to ratify the protocols tomorrow, they would enthusiastically do so like obedient schoolboys. The speeches might be a little different in content in that case, but the expressions on the faces of those who recite them would remain just as heroic. It is tragic that we do not have a parliament. The state is running away from under our feet and, in general, we are finding ourselves in possession of less and less of a state. The political will of one official has completely removed the state's function of political decision-making today. This is unfortunately not a new phenomenon. A process is now coming to a close, something which began and was tending to become entrenched during the times of the previous two presidents. The two ill-boding protocols simply rendered the ridiculousness of these circumstances more evident.

Nevertheless, the fact itself of suspending the ratification process of the protocols must be appreciated as a step in the right direction; necessary, but not enough. Let us hope that such steps will continue to take place, as every journey begins with but a single step.

What is most important here? I believe we must focus on the consequences and the lessons to be learnt. In its most recent history, the newly independent Armenian state was subject to a serious political experience for the first time, and it clearly failed. It is not the time for long-drawn speeches; one must accept the fact that the failure was complete and absolute. How else to classify this result, as the state took on two issues – the establishment of diplomatic relations and the opening of the border – and both ended up with an output of zero? And could it really have happened any other way? I think so. The real mistake was not in the intent of the protocols, but in their content. They were replete with ambiguous wording and mutually unacceptable clauses. I believe that these protocols will go down in diplomatic history as an outstanding example of an irresponsible attempt to resolve the most complex issues with the single stroke of a pen. In the beginning was the word, and the word was wrong. If the protocols were to state those ends declared in two paragraphs, we would be in a different place today. An argument against such a notion might be that the

Turks would never go for it. Well, they would not, and we would not sign either, just as we have not signed on for at least fifteen years now. There are still other ways to open the border. The blockade of Armenia by Turkey ultimately conflicts with its own international obligations.

Of course, many will place laurels on their own heads in the coming days, but one must confess with all honesty that the credit and blame of suspending the ratification process of the protocols belongs to Turkey, and also to those who negotiated the protocols on our behalf. If Turkey were to be satisfied with the *de jure* affirmation of occupation of some territory of the RA (which would be codified by the recognition of the existing border) and with sounding the death knell of Armenian Genocide recognition (which would be codified by the establishment of a commission on the historical dimension of relations), then the protocols would have certainly been ratified. But Turkey demonstrated, as always, a ravenous policy. Besides its breakfast and lunch, it wanted to add the Nagorno-Karabakh issue for dinner.

It is necessary to bring two things up at this point: a) why do so, and b) what was the basis for doing so?

a) The goal of Turkey has been and continues to be the destruction of the Armenian state. I must clarify that this destruction does not only mean death marches and the sale of women and children and all that, as it was in the past. The world has changed. The destruction of Armenian statehood today involves the neutralisation of state functions. When the RA finally gives up on the desire to restore its territorial, material and moral losses, that is when it would cease being a state. Statehood is not required for renovating sewers or water pipes, managing pensions or collecting taxes. That can be taken care of at the province or *vilayet* level. Armenia can be destroyed by the creation of a listless and anti-national Turkish protectorate bearing the name "Republic of Armenia". It is clear for Turkey that Nagorno-Karabakh is an insurmountable obstacle on this path. As long as the Armenians have not agreed to hand Nagorno-Karabakh over to Azerbaijan – and that process will commence with the destruction, under sweet words, of Nagorno-Karabakh's already-established defence systems – then they are yet clutching on to the final straws of the desire to remain a nation. The continual Turkish claims aiming at literally and figuratively sacrificing the Nagorno-Karabakh Republic for the sake of Armenia-Turkey relations have nothing to do with Azerbaijan's interests. If it was only a question of Azerbaijan's interests, then Turkey would auction them off with the greatest pleasure, as it did in April, 1920. The Turkish policy of imposing compromises on Armenia in the Nagorno-Karabakh issue is based on the interests of Turkey itself, which is the goal of rendering the Armenians a

stateless nation with a state. Statehood is not the sheath of the state, but the will to pursue national interests and the capacity to see them through.

b) And what motivations did Turkey have for such endeavours? I believe they truly exist and that we have provided them ourselves. When we so easily relinquished our homeland with these protocols and even rendered our greatest tragedy into a mere bargaining chip, the protocols suddenly became very appetising. *L'appétit vient en mangeant*; 'the appetite comes in eating'. To place such a morsel before Turkey that is so famous for its political gluttony, and then to expect restraint, was and is *naïveté* at the very least. It is no coincidence that the Turks venerate the grey wolf as a totem, as it is the only animal, which kills not to eat, but for the sake of killing.

Thus, we share with the Turks, if disproportionately, the failure of the beginning of inter-state relations between Armenia and Turkey (it is ridiculous to refer to it as "reconciliation" or "normalisation"). By "we", I mean those officials who negotiated and authenticated the infamous protocols. Protocols, in which many slow-acting mines were placed from the start. Our country's de-miners did not do their job, for which reason we were undeservingly hurt, and are yet to be wounded. Also bearing their responsibility are all those officials of the state, including parliamentarians and those so-called specialists who receive their income from the taxes we pay and who ought to have spoken and pointed out those mines, given their positions, but who self-servingly stayed silent. All those who helped in the creation of this condition, either through their actions or through their negligence, must bear responsibility.

If, by the decree of the RA President, a governmental commission be created, including the National Assembly and relevant state bodies and agencies, in order to examine how such a relevant idea – that is, the establishment of diplomatic relations and the opening of the border – was spoilt and led to its sorry end, then we are still a state and a nation. If such a commission were to make clear and state plainly to us how the negotiation and authentication process of the unfortunate protocols took place in utter violation of the law, how the protocols got to contain anti-constitutional clauses (recall that the Constitutional Court provided its legal position and decision, and only taking that into consideration did it come to a positive conclusion), then the President truly intends on salvaging the situation.

If not, then the President's order on suspending the Armenia-Turkey protocols is merely a formality and, as usual, it is just the way Charents puts it,

"Greetings, comrade Ali!"

"Victory to the work of Ilyich!"

23 April 2010

Part III

Necessary Emphasis of the Struggle

45. **The Forebears of Erdoğan and the Armenian Genocide**

We have celebrated specialists of the Turks, namely Armen Ayvazyan, Ara Papian, most respected, let them investigate and find out who the forbears of Erdoğan were and what participation indeed their clan, tribe, dynasty had in the Armenian Genocide.

M. M.

from the 10th December, 2009 edition of Chorrort Inqnishkhanoutiun *("the Fourth Sovereignty"), Armenia. (The translation tries to maintain the syntax of the original; for the syntax itself, I apologise to the reader.)*

A noted French author said truly that, "*We are all products of our childhoods*". In order to correctly understand any politician, or even any man, it is necessary to understand where he or she comes from. This is even more important after Erdoğan stated, "*My ancestors have never committed genocide!*".

Let us first turn to Erdoğan's forebears. Recep Tayyip Erdoğan has Kartvelian ancestry,[210] more specifically, his ancestors were ethnic Laz. He declared this himself on 12 August 2004, during a visit to Batumi.[211] The grandfather of the current Prime Minister of Turkey was likewise called Recep; he lived in Bagat, near Batumi, up to 1878, and his father, in turn, was a local *imam* for many years. After the war of 1877-78, when Batumi became part of the Russian Empire, this Recep immigrated to the city of Rize,[212] where he was known as "*Bagatli Recep*". He died during the WWI, in 1916, while fighting against Russian forces advancing towards Rize.[213]

Although Recep Tayyip was born in Istanbul (26 Feb 1954), he did, in fact, spend most of his childhood – up to the age of thirteen – in Rize, the city of his ancestors. His father, Ahmed, worked in the coast guard, while his mother, Tenzile, was a homemaker, raising five children. In 1967, the Erdoğan family moved to Istanbul once again, where Recep graduated from a religious school – İmam Hatip Lisesi – in 1973. Even while at school, at the age of sixteen, he began to deliver sermons. Perhaps Recep Tayyip would have turned out to be an *imam* like his great-grandfather, if religion did not gradually take up a greater role in Turkish politics.

Recep Erdoğan's wife, Emine Erdoğan, is from the city of Siirt (*Sgherd* in Armenian), ethnically Arab. They have four children.

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[210] The Kartvelians consist of four related groups: the Svans, Georgians, Mingrelians and Laz [Silvia Kutscher, *Lazuri Nena – The Language of the Laz*, University of Cologne].
[211] RFE/RL. 23 July, 2007.
[212] Another Prime Minister of Turkey has roots in Rize; the ancestors of Ahmet Mesut Yılmaz, however, are considered to be Hamshen Armenians.
[213] The city of Rize was occupied by the Russians on March 7, 1916 [*The Russian Campaign of 1915-16 in Armenia*, The Times History of the War, v. X, London, 1917, p. 260].

And now, let us turn to the ancestors' participation in the Armenian Genocide.

Nobody is personally accusing the forbears of Erdoğan for carrying out the Armenian Genocide. Moreover, nobody is accusing the present generation of the Turkish people for the Armenian Genocide either. Nevertheless, although current Turks are not guilty of their ancestors' crimes, they are yet responsible for them, just as today's Germans, while free of blame with regards to the crimes of the Nazis, bear their responsibility and continue up to the present to silently and patiently carry that heavy burden. And that responsibility is manifested not only by the outright condemnation of the criminal act itself, but also by the hundreds of billions in aid that have been granted and that continue to be granted to Israel.

The current RT is not only the direct legal continuity of the Ottoman Empire, but it continues to also maintain an umbilical cord of political and ideological connections with those in power in the empire's last days, the Young Turks. It is a plain fact that all the founders of the RT – including Mustafa Kemal – were members of the *Ittihad ve Terraki* party ("Union and Progress") which had orchestrated the Armenian Genocide. For that reason, many specialists include the Young Turks in their chronologies of the early years of the republic, from 1908-1950 (as "The Young Turk era in Turkish history").[214]

Accordingly, even if Erdoğan's forebears were, say, not directly involved in the Armenian Genocide, indubitably however, Erdoğan's political forebears most certainly perpetrated the first genocide of the twentieth century.

And so, as long as the Turkish people do not condemn the Armenian Genocide and continue to enjoy the fruits of this crime, they are at the very least accomplice to the first genocide of the twentieth century. Ultimately, criminals are not merely the ones who carry out the crime, but also those on the side of the crime, and those who acquire its spoils.

12 December 2009

[214] Erik J. Zurcher, *Turkey: A Modern History*, London-New York, 1998.

46. **Territorial Lease**
or
Piece of the EU at the Armenia-Turkey Frontier

> *"Seeing a median alternative on the Wilsonian territory... that is, to turn Turkey into a tenant of Western Armenia and to expect an income, saying 'I demand the rights to that land, and not the land itself', remains incomprehensible to us."*
>
> Nora Baroutjian, article: *A meeting with Ara Papian: A Paper on Resolving the Armenian Question*, *Nor Haratch* Armenian periodical, Paris, 29 Dec 2009, p. 9

The greatest difficulty in resolving the territorial component of the Armenian Question, aside from the complete absence of Armenians from historical Armenia, is the presence of six and a half million Kurds and Turks in 'Wilsonian Armenia'. It is clear that, whatsoever resolution the Armenian Question undergoes in future, those people will continue to live in those territories. That is to say, the direct and unquestionable sovereignty of the RA over those territories (the taking over of that land by Armenia, to put it in everyday popular speech) can undermine the Armenian nature of the country itself, and, at the very first national elections, could put it an end to its existence as a nation-state. There are exactly half as many people currently living in the RA – voters, that is – than in 'Wilsonian Armenia'. Genocide, wars and inept governance by our national authorities have played their part.

Therefore, it is necessary to find such a way within international law to accommodate the *de jure* legal rights of the RA over those territories with the *de facto* rule by Turkey, whereby Armenia would restore a major part of its rights over 'Wilsonian Armenia', shying away, however, from handing over its political fate to Kurds or Turks. Simultaneously, in order that the resolution be practicable, it is necessary that the reality on the ground not change to a degree. That is, the resolution must be such that it presents a dignified exit to Turkey for the given circumstances, and not something forcibly imposed under the watchful eye of a stern taskmaster.

One possible solution involves a territorial lease. (To render it more palatable, such a project could receive some other name, such as "The Path to Reconciliation", or something like that.) Thus, the ruler over the territory of 'Wilsonian Armenia' (Turkey) would take on a long-term lease of that land from its rightful owner (Armenia). Correspondingly, the RA and the RT, with the participation and guarantee of world powers, would sign a bilateral treaty which would guarantee the free movement of people and capital through 'Wilsonian Armenia' for both parties, as well as providing the right to transport goods for free and without hindrance

through there. At the same time, the territory would be demilitarised, with the removal of all offensive arms and armaments.

Although it would seem at first glance that Turkey would be compromising a great deal, the above items are, however, essentially the preconditions for membership in the European Union for any country, with the exception of the payments for the territorial lease. The conduct of Turkey with regards to the above would also demonstrate just how ready Turkey is in practice for membership to the European Union.

A question could nevertheless arise: why would Turkey go for it? Because it is primarily in Turkey's own interest. A resolution to the Armenian Question is a necessity for Turkey. Without a resolution to this issue (and not the illusion of a resolution, as the current authorities of Armenia and Turkey are undertaking), Turkey cannot fulfill its main goal at present, to be or at least to be considered a regional power. In spite of all efforts, the ship of the Turkish state has been unable to and cannot yet set sail. The unresolved Armenian Question remains a small sandbar underwater, ever hindering and continuing to hinder the movement of that ship.

In a word, in order to achieve regional stability and prosperity, it is necessary to put in place a piece of the European Union between Armenia and Turkey, a territory which, instead of dividing, brings the two countries and peoples together, a territory within which both countries will have certain codified rights and responsibilities.

A few months ago, I had the opportunity to see one of the most ancient Armenian citadels, the excavations at Tigranakert-in-Artsakh. The immense sections of the fortress wall have remained unshaken for centuries as they were attached together with knots, though not very big ones. Even small knots sometimes play disproportional roles in the lives of great walls.

A resolution to the Armenian Question – and not the illusion of one – will bear the role of a knot for the entire Middle East, and will consequently benefit the stability of the entire region.

10 January 2010

47. On the (Non-)Ratification of the Treaty of Kars and Other Related Issues

'There are only two international agreements on the recognition of the existing border – the treaties of Moscow and Kars.'

Ahmet Davutoglu, Minister of Foreign Affairs of Turkey
Turkish Grand National Assembly, 21 October 2009

It is clear today that whatever be the end-result of the ratification process of the unfortunate pair of Armenia-Turkey protocols, there will no longer be a return to the *status quo ante*. Certain shortsighted people have let the genie out of the political bottle, and it is now difficult to predict what sort of conduct such a policy will have, though it has nothing to do with us anymore. Consequently, we ought to have given ourselves a head started due yesterday for the imminent re-opening and re-evaluation of various political – and especially legal – matters. Considering Turkey's position, the question of the legal status of the Treaty of Kars is of particular significance among those issues. Even given the extremely important role of that document in modern Armenian history, the Treaty of Kars has yet to be scrutinised on the basis of international law. The works that do exist are mostly of an ideological nature, analysing the political implications of the treaty without considering the legal essence of the actual document. As the questions on the legal status of the Treaty of Kars are manifold and diverse, let us try to illuminate certain aspects with a few points as far as our capacity allows.

The Treaty of Kars (13 October 1921) is a bilateral treaty.[215] It was signed, as stated in the document's preamble, "*The Government of the Grand National Assembly of Turkey on the one part and the governments of the Soviet Socialist Republic of Armenia, the Azerbaijani Soviet Socialist Republic and the Soviet Socialist Republic Georgia, on the other part", and,*' '*with the participation of the Russian Soviet Federative Socialist Republic*'. It is clear from this wording that the RSFSR was not party to the Treaty of Kars, but simply a participant; that is to say, it does not bear the entirety of the rights and obligations as provided by the treaty, but simply carries out certain functions as laid out by it. Of course, that function was the role of political supervisor, as the Bolsheviks were still obliged the following by Article

[215] Договор о дружбе между Армянской ССР, Азербайджанской ССР н Грузинской ССР, с одной стороны, и Турцией — с другой, заключенный при участии РСФСР в Карсе . [Документы внешней политики СССР, т. 4, М., 1960, ст. 420-429.] ('Treaty of Friendship between the SSR of Armenia, the Azerbaijani SSR and SSR of Georgia on one part, and Turkey on the other, concluded with the participation of the RSFSR at Kars ['Documents of Foreign Policy of the USSR', v. 4, Moscow, 1960, p. 420-429]')

15 of the Treaty of Moscow (16 March 1921): "*Russia undertakes to take the necessary steps with the Transcaucasian Republics with a view to securing the recognition by the latter, in their agreement with Turkey, of the provisions of the present Treaty which directly concern them*".[216]

The issue of the ratification of the Treaty of Kars. It is widely known that the exchange of instruments of ratifications of the Treaty of Kars took place on 11 September 1922, in Yerevan.[217] One party, the Kemalists, ratified the treaty on 16 March 1922 (law #207 of the Turkish Grand National Assembly)[218] [setting aside, for the moment, the legal authority of that body]. However, the Treaty of Kars was not ratified by the second party, by none of the so-called Soviet Socialist Republics of Armenia, Georgia or Azerbaijan [temporarily setting aside the question of their authority as well]. The Treaty of Kars was ratified only by the All-Russian Central Executive Committee, on the same day as the Turks, on 16 March 1922 (the first anniversary of the Treaty of Moscow).

And so, such ratification could never be viewed as legal, and consequently as having legal consequences, since that body of Russia did not have and could not have any such authority, neither according to domestic (constitutional) law, nor international law. A state body of a country cannot ratify the treaty signed by some other country or countries. After the military occupation of the countries of the South Caucasus (Azerbaijan in April, 1920, Armenia in December, 1920, and Georgia in February, 1921), until 30 December 1922 – that is, until the official formation of the USSR – the three aforementioned countries were, at the very least as a formality, independent states. So, officially, they were separate and not part of Russia. For example, in the case of Armenia, such a status was codified in the agreement on the official transfer of power signed by the RA and the representative of the RSFSR on 2 December 1920, where the first clause declared Armenia to be an "*independent soviet socialist republic*".[219]

It is necessary to emphasise at this point that during the so-called ratification of the Treaty of Kars by the Kemalists and Bolsheviks (16 March 1922), one of the parties to that treaty no longer existed. The Soviet

[216] Soviet Treaty Series, (ed. Leonard Shapiro), v. I, 1917-1928, Washington, 1950, p. 101
[217] Soviet Treaty Series, *Ibid,* p. 136; 'Documents of Foreign Policy of the USSR', v. 4, Moscow, 1960, p. 429; 'Armenia in documents of international diplomacy and Soviet foreign policy', Yerevan, 1972, p. 527
[218] A. Gunduz Okcun, A Guide to Turkish Treaties (1920-1964), Ankara, 1966, p. 4.
[219] Международная политика новейшего времени в договорах, нотах и декларациях. Ч. 3. От снятия блокады с Советской России до десятилетия Октябрьской революции. Вып. 1. Акты Советской дипломатии / Сост. и ред. Проф. Ю.В. Ключников и А.В. Сабанин, М., ХКИД, 1928. ст. 75-76. ['Modern international politics in agreements, notes and declarations, part 3: from the raising of the blockade with Soviet Russia up to the tenth anniversary of the October Revolution. Acts of Soviet Diplomacy / Compiled and edited by Prof. Y. V. Klyuchnikov and A. V. Sabanin, Moscow, 1928, p. 75-76']

Socialist Republics of Azerbaijan, Armenia and Georgia were no more, as, 4 days prior, on 12 March 1922, a new entity came into being, the Federative Union of the Socialist Soviet Republics of Transcaucasia.

Moreover, the newly-formed unit did not consider itself to be part of the RSFSR or under its authority, as codified in the treaty on the formation of the Federative Union (Article 13 of the Union Agreement on the Formation of Federative Union of the Socialist Soviet Republics of Transcaucasia, of 12 March 1922), states, '*The Union of Republics establishes its relationship with the RSFSR based on the union treaty*').[220]

Conclusion. The Treaty of Kars was not ratified by even a single country of the South Caucasus, including the Armenian Soviet Socialist Republic, and thus the so-called treaty in question bears no legal consequences for those countries.

7 February 2010

[220] Образование СССР, Сборник документов, М., 1972, ст. 259. [Formation of the USSR, A Collection of Documents, M., 1972, p. 259.]

48. **Just As We Were Saying, Turkey Hasn't Changed!**

170,000 Armenians live in Turkey, of which 100,000 are illegal and not citizens of Turkey. Tomorrow, if necessary, we shall exile them from our country.
Recep Tayyip Erdoğan, Prime Minister of Turkey. 16 March 2010

Any claim of a hundred thousand citizens of Armenia living illegally in Turkey is baseless. One can at the most speak of 12 to 14 thousand citizens of Armenia living in Turkey today, of which a significant part is legally resident in that country. However, they are not the subject under discussion, but the conduct of Turkey towards them and, in particular, the response of the international community. Or rather, the lack of one.

When the leader of the Party for Freedom of the Netherlands – merely the head of a party, a member of parliament – Geert Wilders declared that it was necessary to deport all illegal immigrants from the country, the world went into a flurry. How could we allow ourselves to do such a thing? Whatever happened to human rights? A very correct response indeed. So why is the world so silent today in the face of the head of the executive branch of Turkey's government, in hearing Prime Minister Erdoğan's similar statement against Armenians? What, are you afraid of riling up Turkey? Where are your principles and human rights now?

Ten to 12 million illegal immigrants from Latin America currently live in the US. These people are not only present in the country illegally, but many also entered America in an illegal manner. Nevertheless, – as opposed to the citizens of Armenia living in Turkey – their children have the right to attend school, and they receive major social benefits from the government. In countries of the European Union, towards which Turkey is tirelessly striving, there are 8 to 10 million illegal immigrants. There are a few hundred thousand immigrants from Turkey among them. A part of them – as opposed to the citizens of Armenia living in Turkey – eats their daily bread at the expense of local taxpayers.

Various sources indicate that 1.5 to 3 million Arabs live in the US today, whether by origin or citizenship. The data is unclear and very disparate, as a considerable part of them is illegally present in the country. When, on September 11, 2001, the US came under attack by Arabs, no American official made any mention of running any illegal Arabs out of the US. Society in America was reeling under pain, violation and sadness, but the attack organised and carried out by Arabs caused no one to think of deporting the illegal Arabs living in the country.

Now let us imagine the response of the international community if Bush had suddenly decided, because of the attack on his country, to exile

the illegal Arabs in the US. Certainly, ***"all of progressive humanity"*** would come together in anti-American demonstrations, protests and speeches. And it would have been right to do so. Each is responsible for his or her actions. The era of group punishments has passed.

To fully appreciate the absurdity of Erdoğan's threat, let us consider our circumstances. Armenia has not attacked Turkey. Armenians have not crashed a plane into the Blue Mosque or the Atatürk Mausoleum. Armenians have not killed three and a half thousand Turks in downtown Istanbul, as some did in downtown New York. It just so happens that a group of citizens of the US and Sweden, the majority of which in this case are Armenians by origin, have managed to achieve, through completely legal and civilised means, the passage of certain resolutions at different levels of the US and Swedish legislatures. I do not wish to even refer to the contents or nature of those resolutions. That is not of any significance at this point. What are important are Turkey's response and the lack of a condemnation of it by Europe or the US. Armenia, unfortunately, did not even have any part to play in the passage of those resolutions, but Turkey is gnashing its teeth in Armenia's direction. If Turkey is upset at those resolutions, although getting upset at the reaffirmation of the truth would be mindless, let Turkey deport its Americans and Swedes. What, does not the shoe fit? Or do they only know how to thumb their nose at us? And this is how the Turks wish to be members of the European Union, to live in the same household with the Germans? A medieval and vindictive stench reeks from Erdoğan's words.

Just as we were saying, Turkey hasn't changed!

17 March 2010

49. Erdoğan Expresses with His Tongue what is in the Heart of Turkish Society

Erdoğan, the prime minister of Turkey, stated that he had been misunderstood. He spoke not on Armenians in Turkey in general, but on deporting those *Armenians* who were in the country illegally. We understood him quite well the first time. The Turkish prime minister suggested a discriminatory implementation of the law, based on ethnicity. If the authorities of Turkey mentioned that it was decided to deport *all* illegal migrants from the country, which would have been reasonable. Although it would not have been acceptable, it would nevertheless have been understandable. However, the prime minister of Turkey spoke only of deporting Armenians. That is to say, the illegal Georgian, the Caucasian Tatar (known as the Azerbaijanis today), Arab or Russian would continue to enjoy the right of breaking the law, but not the Armenian. And how would the Turks have treated the ethnic Armenians who were citizens of Georgia or Russia? They would deport the Armenians with Georgian passports, but not the citizens of Georgia who are Caucasian Tatar or Georgian in origin? It would have been interesting to see the Georgian response.

In the 21st century, the mouth of a top-ranking official of the executive of a state aspiring towards the European Union issues words which call upon implementing the law on people not in accordance with what those people have done, but on their ethnicity. This is a serious matter. This is utterly in violation of Articles 1, 7 and 16.1 of the Universal Declaration of Human Rights (1948).

I am almost sure that current Turkey will not initiate new discriminatory state policies of suffering on Armenians. That would not be in line with Turkey's interests at the moment. Ethnic and religious minorities in Turkey are anyway in dire straits, facing unjustified limitations. Nevertheless, this is a very worrisome event, as what Erdoğan said is a manifestation of a very serious and profound illness of Turkish society. Erdoğan expresses with his tongue what is in the heart of Turkish society.

19 March 2010

50. **The Armenians of Javakhk are People too, and They are worthy of all Human Rights**
or
An Open Letter to the Editor of *Lragir.am*

The unknown author of the article '*Cutting of one's nose…*' of March 20, 2010 at www.lragir.am makes the following claim outright: '*… no more or less consolidated country in the world would allow the existence of any ethnically-based political party*', a claim which is absolutely baseless and contrary to the facts.

For example, six of the ten political parties and blocs represented in the Spanish legislature are ethnic or regional parties, namely the Convergence and Union Party of Catalonia (*Convergència i Unió Partido de Catalunya*), which is present in only four of fifty provinces in Spain and has six seats in the parliament; the Basque National Party (*Partido Nacionalista Vasco*), present in three provinces with six seats; the Republican Left of Catalonia (*Esquerra Republicana de Catalunya*), in four provinces with three seats; the Canarian Coalition (*Coalición Canaria*), in two provinces with two seats; the Galician Nationalist Bloc (*Bloque Nacionalista Galego*), in three provinces with two seats; and the Navarre Yes (*Nafarroa Bai*), in four provinces and one seat. The final two blocs mentioned include six and four parties respectively. Apart from the above, Spain also has a few tens of other ethnic or regional parties, which are not represented in the national parliament. I would like to especially emphasise that many of these political parties do not make demands of autonomy in their platforms (as many regions are autonomous already), as much as they demand complete political independence. However they do not render themselves or are not considered to be criminal in so doing. Demands for independence, or even more so, for autonomy, are not crimes in and of themselves. That is a right. That forms part of one's freedom of choice.

The *Bloc Québécois*, represented in the Canadian parliament (with 51 seats), is of an ethnic nature; it functions in only one of Canada's thirteen provinces and territories – Québec – but this party is not a criminal institution for that reason. The final goal of that party is to establish an independent state. Through its initiative, referenda on independence have been held a few times in Québec, but they have always fallen short of the required 50% mark by 2 or 3 points. I can say with confidence that if the majority of the people of Québec vote one day for independence, the central government would not send the army to suppress the Québec "*separatists*". Ultimately, the right to separate or join is one of the inalienable human

rights. In addition, this party, which wishes to secede from Canada, receives financial benefits from the central government of the very same Canada for its activities, as is required by law. The *Bloc Québécois* is the largest ethnic or regional party of Canada, but each of the other provinces has some ethnic or regional party as well. The First Peoples National Party of Canada took part in the last national elections in Canada (2006), but it did not gain any seats in the parliament, as it garnered 1201 votes. That was 7.7 times less than the results for the Marijuana Party of Canada. Canada also used to have an officially registered Rhinoceros Party.

The more significant ethnic or regional parties functioning in France include the *Abertzaleen Batasuna* party, or the Basque Patriot's Union, the Alsace First party ("*Alsace d'abord*") for Alsatians (Germans), the Breton Democratic Union ("*Union Démocratique Bretonne*") for the people of Brittany, the Savoyard League party ("*Ligue savoisienne*") and the Corsican National Union ("*Unione Naziunale*"). All of the aforementioned are parties aiming at wider autonomy or independence for their ethnic regions.

The Scottish National Party has 7 seats in the House of Commons of the United Kingdom, and also 2 seats in the European Parliament; the Irish nationalist party, Sinn Fein ("Ourselves Alone"), has respectively five and one seats; the Welsh Plaid Cymru has three and one seats; and the Ulster Unionist Party has one seat in each body. It is worth noting that all of the above, except for the last one, are parties with an independence or secession agenda, that is, they are struggling for the complete independence of their national areas or regions. Nevertheless, not only are those parties not shut down and their members not arrested or suppressed, but they are even represented in the European Parliament.

The gypsies or Roma are represented in Romanian politics with two bodies, the *Partija Roma*, which has seats in the legislature, and the extra-parliamentary "Roma" Civil Union. The Democratic Union of Hungarians in Romania party, which has 22 seats in the Chamber of Deputies, and nine in the Senate, alongwith three seats in the European Parliament, represents the Hungarians in the country. The Democratic Forum of Germans in Romania ("*Demokratisches Forum der Deutschen in Rumanien*") has one seat in the Chamber of Deputies.

For decades now, competition for votes in the US has been between the Democratic and Republican parties. However, there are other, many in fact, political parties, including regional or statewide ones. Two of the more interesting include the Boston Tea Party and the US Marijuana Party. There are no ethnic parties in the US, as there are no very densely populated ethnic regions in the country. Instead, there are currently many regional or state-based parties, including the Independent Party of Oregon and the Southern Independence Party (Texas).

It is clear that the Armenians of Javakhk do not have a desire for independence today. They do not even lobby for wider administrative or full autonomy. I am not really sure whether that is good or bad, but that is the fact. They only wish for a limited autonomy on certain matters. Simply put, they want to be considered as human beings, as they have an unquestionable right to living with dignity on their own lands as Armenians.

The Armenians of Javakhk are people too, and they are worthy of all human rights. These rights include the right to express their will freely, through their own political or non-political bodies. Consequently, for the sake of regional stability, the Armenians of Javakhk must be allowed to fulfill their rights, at the very least at such a level as the gypsies of Romania. If not, Javakhk will one day become weary of being the sacrificial lamb of Armenia and Nagorno-Karabakh.

20 March 2010

51. **The Necessity to Shift the Emphasis of the Struggle**

/looking towards the 95th anniversary of the Armenian Genocide/

Is the recognition of the Armenian Genocide an end or a means? A majority would certainly answer "a means" without thinking twice about it. Consequently, as the recognition of the Genocide is not an end in itself, the counter to the denial of any genocide is thus not simply the recognition of that genocide, but, through that recognition, the punishment (even if in moral terms, as in our case) of the perpetrator and the restoration as far as possible of the rights (including the property) of the victims. Is it possible for merely the recognition of a genocide to restore justice as long as the perpetrator or the heirs of the perpetrator continue to enjoy the fruits of the crime? What is more, the heirs who enjoy the fruits of the crime are not simply the descendants of the perpetrators, but are complicit in the crime. One must therefore address certain questions that arise in this regard: a) Is it that the territorial rights of the RA and the property rights of Armenians, as well as moral losses, could be restored only through the recognition of the Armenian Genocide, or is there any other way to do so?; b) What exactly is the scale of the rights and property in question?

1. Genocide is classified as a crime against humanity. Perhaps it is the worst kind of crime against humanity, but nevertheless, as far as responsibility is concerned, it is equivalent to other crimes against humanity. It is clearly codified by international law that, "… *extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war …*"[221] are considered to be crimes against humanity. It is an undeniable fact; the Turks, whereas denying the Armenian Genocide, do accept that their forebears deported the Armenian civil population of the Ottoman Empire. The *Tehcir Law*, which was the basis of the Armenian deportations, has been preserved. The law passed the Ottoman parliament on 27 May 1915 and came into force on 1 June 1915 upon its publication in the *Takvim-i Vekayi*, the official gazette. The official designation of the law was "*Regulation for the settlement of Armenians relocated to other places because of war conditions and emergency political requirements*". ⇨

It is necessary to point out here that any pretext or excuse does not free a state which has

[221] Article 6 (c) of the Charter of the International Military Tribunal, [Nurnberg Tribunal] annexed to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis ("London Agreement"), 8 August 1945.

carried out a deportation – and that too, through an authority which has acted criminally – from its responsibility and from its obligation of providing corresponding reparations to the victims. In the Armenian case, the crime of the Turkish state is additionally burdened by the clear policies of the state during the deportations designed to maximise deaths among the deportees.

2. There are three tiers to issue of the rights and property of the Armenians: national or state, community or organised groups, individuals or private. The first level is quite evident. There is an internationally binding decision in place, which lays out the frontier between the RA and Turkey. I have had the opportunity to discuss the territorial rights of the RA, primarily based on the arbitral award of US President Woodrow Wilson of 22 November 1920, and so I shall not discuss this matter at present. Without downplaying the political necessity of the recognition of the Armenian Genocide in as widespread a manner as possible, it is noteworthy that, from a legal perspective, as far as the title of the RA is concerned, that is to say, for the restoration of territorial rights, the recognition of the Armenian Genocide is not a required precondition at all. The territorial rights of the RA are recognised apart from the fact of the Genocide. Similarly, for the restoration of communal and individual property rights of Armenians as well the recognition of the Genocide is not a criterion. It is important to clarify this point: there is no statute of limitations on *property illegally seized* from Armenians, as *the violation of a law is continuous*. In all cases where property has been seized without *equivalent* compensation – that is, in violation of the law – current possession cannot serve as the basis of legal title.

An appraisal of the property illegally seized from Armenians is a complicated issue. Although some work has been carried out in this regard, our perceptions on this front are still very limited. For example, a majority, or perhaps even the entirety, of the 33 tonnes of gold (over a billion US dollars today) transferred in 1916 alone by the Ottoman Empire to the Reichsbank in Berlin was illegally seized from Armenians.[222] To this day, Turkey has not revealed the names and funds of Armenian-held accounts in various banks of the Ottoman Empire and also branches of foreign banks in Turkey.

It is as difficult at this stage to provide evidence for property, to estimate the costs of and pursue compensation for the losses individual assets, as it is easy to do so for the communal level. As the Ottoman Empire was structured on the basis of national/religious communities and the Apostolic Armenians were all included in one *Ermeni millet*, their churches, monas-

[222] Shavarch Toriguian, The Armenian Question and International Law, Beirut, 1973, p. 107-8.

teries and schools were documented by the Armenian Patriarchate of Constantinople. There are various accounts available today, including the statements issued by the Armenian delegation to the Paris Peace Conference in 1919. Perhaps the most comprehensive estimates are by Raymond Kevorkian and Paul Paboudjian,[223] as they used the unpublished archives of the Patriarchate. According to their figures, adherents of the Armenian Apostolic Church had 2,538 functioning churches, 451 monasteries and almost 2,000 schools. This does not include the houses of worship or schools of the Armenian Catholic or Armenian Protestant communities of the Ottoman Empire, nor the Armenian properties of the Kars, Surmalu and Batum regions of the Russian Empire.

In summing up the above, one can draw the following conclusions.

It is not at all necessary that there be a universal recognition of the Armenian Genocide in order to assert the rights of the Armenians. The deportation of the civilian Armenian population and the obligation to compensate the losses of the deportees or their heirs brings about as much of a responsibility for the Turkish state as does the fact of the Genocide.

The rights of Armenian community of the Ottoman Empire were codified as per the laws of the country in place at the time and all the subsequent illegal seizures by the Turkish state did not deprive the Armenians of those rights. Illegal occupation does not constitute a legal basis of the transfer of property rights. The laws and decrees of the Turkish Republic during 1926-1927 aimed at the occupation of the property of religious minorities cannot serve as a legal basis because they were in violation of the international obligation borne by the Turkish Republic by articles 38-45 of the Treaty of Lausanne. Those obligations were not subject and are not subject to change or dismissal, as they bear the status, as per Article 37 of the same treaty, of a fundamental law (like a constitution).

If Turkey views its future in the European Union, as it has so often declared, then it has to accept the values of the EU. Alongside other things, Turkey must be ready to bear responsibility for its own acts and those of its predecessor state. It must return the illegally seized property to its rightful owners. It must forego the occupation of the territory of other states. It must cease its coercive and threatening rhetoric.

5 April 2010

[223] Raymond H. Kevorkian and Paul B. Paboudjian, Les Armeniens dans L'Empire Ottoman a la veille du Genocide, Paris, 1992.

52. **Wikileaks before Wikileaks**
or
The Revelations of a British Spy on Atatürk

Turkish commentators cannot understand why a photograph of Atatürk was included in a drawer filled with incriminating documents. Some believe that it might have something to do with his involvement in the genocide of the Armenians and Greeks.
3 December, 2010; www.news.am

The world has many things to say about Wikileaks nowadays, because Wikileaks has much to say about the world. Numerous cables notwithstanding, the following is of note: a picture of Kemal Atatürk came up in a desktop wallpaper available for download from the website portraying various scandals. Some speculated that the photograph indicates that Wikileaks possesses incriminating evidence on Atatürk, ready to be made public. Some did not hesitate to proclaim that such material might have something to do with the involvement of Mustafa Kemal in the massacres of the Armenians and Greeks. Perhaps. But it has been a long time since that secret was out; it has simply been forgotten, or rather, it has been denied due to certain political and economic interests. However, this was not always the case.

As opposed to the current situation, journalists were much more independent in the past, and diplomats were much more straightforward. The press and diplomatic correspondence of the time is replete with information on the massacres of civilian Armenians by Kemalists in the territory of the RA (September, 1920 to April, 1921) and Cilicia (February 1920), as well as the massacres of Greeks and Armenians in Smyrna (September 1922). It is not without reason that in 1921, the body of Kemalist leadership – the Grand National Assembly of Turkey – granted the title of *ghazi*, the "Destroyer of Infidels"[224] or the "Destroyer of Christians"[225] to Mustafa Kemal. Of course, during that very time, he and his supporters were known in Europe under different names. The well-known journalist and author of many valuable books, John Gunther, wrote the following in 1936 about Mustafa Kemal: "*Atatürk is the roughneck of dictators. Beside him, Hitler is a milksop, Mussolini a perfumed dandy*".[226] And the Deputy Secretary to four cabinets of the British Empire (1916-1930), "*one of the six most important men in Europe*",[227] Thomas Jones, would refer to the Kemalists as "*Angora butchers*"[228] when left to his conscience alone.

[224] John Gunther, *Procession*, New York, 1965, p. 95.
[225] Harold C. Armstrong, *Gray Wolf, Mustafa Kemal: An Intimate Study of a Dictator*, New York, 1933, p. 152.
[226] John Gunther, *Inside Europe*, 1936, p. 96.
[227] http://en.wikipedia.org/wiki/Thomas_Jones_(T._J.)
[228] Thomas Jones, *Whitehall Diary*, (ed. by Keith Middlemas), Volume III, London, 1971, p. 55.

Nevertheless, I do not think that, if Wikileaks were to publish anything about Atatürk that it would refer to his policies on Christians.

The outpouring of information from Wikileaks is neither the first such instance, nor will it be the last. It is just that, if such phenomena occurred through the print media in the past – that is to say, it was slow to reach to the thousands, perhaps even to the tens of thousands – then today, through the internet, any information is instantly accessible by the tens of millions. Once upon a time, when Turkey did not have the clout to shut people up, and the Europeans were free to express themselves at home as they saw fit, European diplomats, to put it in modern terms, would leak information on a regular basis. Honest articles and books on the countries in which they were serving and the leadership of those countries would manifest this. Artificial piety had not yet reached the level of state policy at that time.

As for the issue of most interest to us – writings about Kemal Atatürk – perhaps the most remarkable and most reliable intelligence comes from one Harold Armstrong. After the WWI, from April 1919 to June 1922,[229] Armstrong was Acting Military Attaché to the High Commissioner of the British Empire in Constantinople,[230] a Special Service Officer in the War Office, as well as Supervisor of the Turkish Gendarmerie.[231] As someone who immediately oversaw the network of agents working within Turkey, he became well aware of the details of the lives of many political figures. He possessed the authority and the capacity to fulfill this role, besides being fluent in Turkish. After more than three years of service in Turkey, Harold Armstrong wrote two books of great value as primary sources on Turkey, based on the information he had collected in all that time – "Turkey in Travail: The Birth of a New Nation" (London, 1925) and "Gray Wolf, Mustafa Kemal: An Intimate Study of a Dictator" (New York, 1933). The second book is particularly of exceptional value.

Hundreds of books have been written about Kemal Atatürk up to the present. However, they are much more reminiscent of the books about Stalin written in Stalin's time, rather than serving as serious academic studies. There are a few reasons for this, one of which being that the criminal code of the RT (articles 301, 305, 306) allows for the prosecution of the author of any publication about Atatürk, the contents of which may be considered insulting by the authorities, even if, in reality, they are not. As the British diplomat and spy Harold Armstrong has been dead for a long time, there is no reason to be concerned about him getting arrested. Let

[229] Harold Armstrong, *Turkey in Travail, The Birth of a New Nation*, London, 1925, p. 66, 230.
[230] Until 1923, that is, until the restoration of Turkey's sovereignty, equivalent reciprocity in relations was not a possibility, and so high commissioners took the place of ambassadors, and there could only be acting military attachés, as opposed to full-fledged ones.
[231] Harold Armstrong, *Turkey in Travail: The Birth of a New Nation*, London, 1925, p. iii, 75.

us simply offer some citations from his book in order to shed light on the lesser-known aspects of the life of Atatürk.

In all probability, the material, which Wikileaks has on Atatürk, pertains to the secret side of his private life. That there is much documented in this regard is a fact. I have myself read many reports by diplomats about Atatürk dating from the 1920s and '30s which would be worthy of publication in *Playboy* or *Instinct*. I must emphasise the fact that the details of the private lives of public figures are, for that reason, not private at all in their essence. What is private sensibly conditions human thought, which, in turn, is the basis for making decisions, decisions upon which thousands of human lives and historical eras depend. The factor of the private for politicians is always a matter of import for societies in general and ends up having wide-ranging influence. As a result, a political figure does not and cannot have a private life. The lifestyle of a politician is a voluntary choice, which each individual consciously carries out. One's sexuality is one of the most important aspects of one's private life, and so, one's sexual practices can reveal a great deal and provide significant information on a person's internal state and thinking.

The first bit of information by Armstrong on Mustafa's initial sexual life and orientation takes place in his second year, in 1894, at the Military Cadet School at Salonika (Thessaloniki). It is here that Mustafa's mathematics teacher who shared his name, one Captain Mustafa, took the 13-14-year-old adolescent "under his wing": "*In his second year one of the masters, a Capitan Mustafa, took a fancy to him*".[232] The use of the phrase "to take a fancy" is an interesting move by Armstrong. That expression may have a number of meanings – to like, to be taken by, to be attracted to, to feel attached to, especially in sexual way.[233] Also, it is this very Captain Mustafa who bestowed the title "Kemal" – "perfect", "beautiful" – to the young, blue-eyed Mustafa.[234] Armstrong elaborates on what he means in the following passage: "*The friendship and protection of Captain Mustafa did him no good. The friendship was unhealthy. He developed overrapidly. Before he was fourteen he had passed the boy stage: the gropings after sex: the petty dirtiness: and he had started an affair with a neighbor's daughter*".[235]

In order to continue his education, Mustafa Kemal transferred from Salonika at first to Monastir in 1895, and then to Constantinople in 1899. The young Mustafa Kemal dove headlong into the nightlife of the big city:

"*At once he plunged wildly into the unclean life of the great metropolis of Constantinople. Night after night, he gambled and drank in the cafes and restaurants. With women, he was not fastidious. A figure, a*

[232] H. C. Armstrong, *Gray Wolf,* p. 7.
[233] Collins Cobuild on CD. Fourth Edition, 2003.
[234] H. C. Armstrong, *Gray Wolf*, p. 7.
[235] *Ibid*.

face in profile, a laugh, could set him on fire and reaching out to get the woman, whatever she was. Sometimes it would be with the Greek and Armenian harlots in the bawdy-houses in the garbage-stinking streets by Galata Bridge, where came the pimps and the homosexuals to cater for all the vices; then for a week or two a Levantine lady in her house in Pangaldi; or some Turkish girl who came veiled and by back-ways in fear of the police to some maison de rendez-vous in Pera or Stambul. He fell in love with none of them. He was never sentimental or romantic. Without a pang of conscience, he passed rapidly from one to next. He satisfied his appetite and was gone. He was completely Oriental in his mentality: women had no place in his life except to satisfy his sex. He plunged deep down into the lecherous life of the city."[236]

Armstrong's next bit of information on the private life of Mustafa Kemal refers to that time period when he was the military attaché of the Ottoman Empire in Sofia (27 October 1913 to 2 February 1915):

"*He learnt ball-room dancing, methodically with a teacher, and then danced whenever possible, but always as if he was on parade. He frequented the drawing-rooms and tried to become the society gallant, making love to the ladies of Sofia, but they found him excessively gauche.*"[237]

Mustafa Kemal fell in love in Sofia with Dimitrina, the daughter of General Stiliyan Kovachev, the former defence minister of Bulgaria. However, he was rejected by her,[238] "*And Mustafa Kemal, touchy and sensitive, became more lofty and aloof than ever. He began to hate society*".[239]

Avoiding high society, Mustafa Kemal was drawn more and more towards other circles.

"*With men – and especially men who were deferential – and with the loose women of the capital, Mustafa Kemal was far more at ease. With these, in the cafes and the brothels, he drank and reveled night after night far into the dawn. He gambled and diced for hours against any one who would sit against him. He heaped up all the indulgences and glutted himself with them. He tried all the vices. He paid the penalty in sex disease and damaged health. In the reaction he lost all belief in women and for the time being became enamored of his own sex.*"[240]

The WWI began in 1914. On 28 October 1914, Turkish battleships perfidiously bombed the Russian ports of the Black Sea, due to which war was declared on Turkey by Russia on November 3, followed by France and Britain on November 5. Turkey was facing war on two fronts.

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[236] *Ibid,* p. 11.
[237] *Ibid,* p. 43.
[238] *Ibid*.
[239] *Ibid,* p. 44.
[240] *Ibid*.

Little is known in general about the private life of Mustafa Kemal in the war years, and Armstrong does not convey much either, for his part. One thing is evident, that alcohol deteriorated his health to such a degree that he was forced to leave for Carlsbad (Karlovy Vary, in the Czech Republic today) for treatment from April to August 1918,[241] during the most heated time of the war. As Armstrong relates, he was seen by the celebrated Austrian physician, Otto Zuckerkandl, who warned him, "*If he did not stop drinking he would die in a year*".[242] It must be emphasised that the Austrian doctor was wrong; although Kemal continued to drink no less than what he used to, he lived for twenty more years nonetheless, until 1938.

After the defeat of the Ottoman Empire and the signing of the Treaty of Moudros (30 October 1918), Kemal returned to Constantinople from the Syrian front. Despite his many efforts, Kemal did not receive any offices in the new government. What is more, in staying unemployed, he rented a small house in the Şişli district of Constantinople and gave himself to the pleasures of life. His only friend in that period was one Colonel Arif:

"*He had few friends and only one intimate, a Colonel Arif.*[243]*Arif was a capable staff officer trained in Germany. He was a younger man than Mustafa Kemal was.*[244] *They had known each other since the days in Salonika and Monastir; they had served together in Syria, the Balkans and Gallipoli. After the Armistice, they struck up a close friendship. They had common tastes; both were absorbed in all military matters; both enjoyed the same loose talk, the heavy drinking and the wild nights with women. Mustafa Kemal's enemies said they were lovers, for Arif was the only person for whom Mustafa showed open affection, putting his arm round his shoulders and calling him endearing names.*"[245]

Mustafa Kemal kept his daring and indiscriminate sexual life in future years. Armstrong writes the following on Atatürk's private life during the years 1921-1922:

"*As long as there was work, it absorbed Mustafa Kemal's every minute: nothing could divert him. When work slackened, he grew irritable and restless and began to interfere with his subordinates. It was then that with Arif and one or two other men he would disappear on heavy drinking bouts which, with gambling, would last whole nights; or he went a whoring with the painted women of the poor brothels of the town.*"[246]

Naturally, such a lifestyle had its negative effects on Mustafa Kemal's health. A doctor advised him to "*work and drink less, and lead a regular*

[241] Erik Jan Zurcher, *The Unionist Factor*, Leiden, 1984, p. 60.
[242] John Gunther, *Inside Europe*, 1936, p. 97.
[243] Mehmet Arif Ayıcı (1883-1926) ("bear dancer"), whom Kemal had hanged in 1926 on baseless charges.
[244] Mustafa Kemal was born in 1880 or 1881.
[245] H. C. Armstrong, *Gray Wolf,* p. 95.
[246] *Ibid,* p. 139.

life with someone to look after him".[247] It was at that time that Fikriye Hanum came into his life:

"*From a break-down he was saved by Fikriye Hanum. She was a distant relative of his from Stambul*[248] *who had volunteered as an army nurse and come to Angora. As soon as he saw her, Mustafa Kemal took her to his house.*"[249]

Armstrong is mistaken here. Fikriye (1887-1924) was not a distant relative of Mustafa, but his own first cousin (his mother's brother's daughter), in whose house Mustafa lived for two years during his childhood. Fikriye had been married to a rich Egyptian Arab, but had long since been separated.[250]

"*She watched over all his needs. When he was ill, she nursed him. She was his mistress and his absolute slave, for she was Turkish and oriental.(…) For a while Mustafa Kemal was absorbed in her. But very soon he tired. He went back more and more to his painted women, his drinking companions and his cards.*"[251]

The life of Mustafa Kemal during the period 1922-1924 is reminiscent of a classic love triangle. In September 1922, Mustafa Kemal met Latife Uşakligil (1898-1975). The meeting changed his life for a while. Fikriye was suddenly rendered superfluous, a burden. Kemal had her sent to Munich "for treatment" in 1922. On January 14, 1923, the only close person to Mustafa Kemal, his mother Zübeyde, died. Barely 15 days after her death, had Kemal married Latife, with whom he lived for 2.5 years.[252] In 1924, Fikriye returned from Munich, met with Mustafa Kemal and tried to discuss what was to become of her. The next day, Fikriye was found dead in a ditch behind Mustafa Kemal's house.[253] The theory that she committed suicide is heavily questioned to this day.[254]

What else? Nothing more. I do not think there is any reason to laugh or to cry.

(the final lines of the 1924 work "Lenin and Ali",

by the celebrated Armenian poet, Yeghishe Charents)

Let us await the future revelations courtesy Wikileaks. If there is nothing new, then at least the older leaks would still be dripping.

After all, the new is nothing more than the old is, which has been well-forgotten.

12 December 2010

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[247] *Ibid,* p. 142.
[248] Partick Kinross, *Ataturk: The Rebirth of a Nation*, London, 1998, p. 97.
[249] H. C. Armstrong, *Gray Wolf,* p. 143.
[250] Partick Kinross, *Ataturk*, p. 141.
[251] H. C. Armstrong, *Gray Wolf,* p. 143-144.
[252] Kemal and Latife officially divorced on August 5, 1925, but they had already been separated for a year by that time.
[253] H. C. Armstrong, *Gray Wolf,* p. 212.
[254] Dagobert von Mikusch, *Mustapha Kemal*, (trans. from the German), New York, 1931, p. 334.

53. **Some Facts on the Origins of Mustafa Kemal Atatürk**

Information on Mustafa Kemal as a *dönmeh*[255] has always existed. Early publications about Kemal always make mention of it. For example, the very first serious work on the WWI – the landmark work *History of the War* by the renowned British daily *The Times*, published in 22 parts during 1915-1922 – did not circumvent that fact. It states in particular: "*Mustafa Kemal, reported by some to be of Salonika Jewish descent, only joined the Nationalist movement openly in June, 1919*".[256] Another well-known Western publication, the American *Literary Digest*, describes Mustafa Kemal in 1922 as "*[a] Spanish Jew by ancestry, an orthodox Moslem by birth and breeding*".[257]

The aforementioned do not reveal anything essentially new, but they merely give an indication of the numerous such statements made in the press at the time on Mustafa Kemal's *dönmeh* origins. Let us add one or two more.

The Associated Press news agency, citing the Grand Vizier of Turkey, mentions in an item of July 3, 1920: "*Mustafa Kemal, (the Turkish nationalist leader) whom the great vizier presents as a Jew, was born a Turk and his parents were from Saloniki and were Deonmes, that is converts, as were the parents of Talat*[258] *and Djavid*".[259]

One more informed source – a high-ranking Ottoman officer (*pasha*), and later author Achmed Abdullah, and also well-known businessman Leo Anavi (both Turkish spies in the British army, having met with Kemal on numerous occasions and very strong supporters of his) write that Kemal had Spanish-Jewish ancestry and his origins, as they say, was "*not even of Osmanli blood*". [260]

This fact was so widespread in the 1920s that no one thought of questioning it. It is not without reason that one of the greatest historians of the twentieth century, Arnold Toynbee, likewise believed Mustafa Kemal to have *dönmeh* origins.[261] The *dönmeh* roots of Mustafa Kemal are also to

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[255] It is interesting that the Jews refer to the *dönmeh*, or, more correctly, the Sabbateans, as cultists – *minim*. That is, they are not considered *goyim* (גוים or גויים), or gentiles, those professing other faiths, but simply followers of a distorted version of Judaism.

[256] The Break-up of Turkey, *The Times History of the War*, vol. XXI, London, 1920, p. 433.

[257] The Sort of Man Mustafa Kemal is, *The Literary Digest*, Oct 14, 1922, vol. 75, no. 2, p. 50-53.

[258] A noteworthy reference to Talaat's *dönmeh* origins is preserved in the marriage memoirs of the celebrated journalist Zekeriya Sertel (1890-1980). Describing how he had to overcome many difficulties in order to marry a *dönmeh*, Sabiha Dervish, he writes, "*At our engagement, the representative for the girl's side was then-Prime Minister Talat Pasha*". Rifat N. Bali, *A Scapegoat for All Seasons: The Donmes or Crypto-Jews of Turkey*, Istanbul, 2008, p. 161.

[259] *Takes Issue with Turk's Statement about Armenians*, by the Associated Press, *The Evening Progress*, Saturday, July 3, 1920, p. 5.

[260] Achmed Abdullah, Leo Anavi, *The Rise of Mustapha Kemal Pasha from Obscurity*, *The Bridgeport Telegram*, September 28, 1922, p. 4.

[261] John Gunther, *Procession*, New York, 1965, p. 98; John Gunther, *Inside Europe*, New York, 1938, p. 417.

be found in the works of such an informed figure when it comes to crypto-Jews as Joachim Prinze (1902-1988), who was president of the American Jewish Congress from 1958 to 1966. He writes: "*Among the leaders of the revolution which resulted in a more modern government in Turkey were Djavid Bey and Mustafa Kemal. Both were ardent doenmehs. Djavid Bey became minister of finance; Mustafa Kemal became the leader of the new regime and had adopted the name of Atatürk. His opponents tried to use his doenmeh background to unseat him, but without success. Too many of the Young Turks in the newly formed revolutionary Cabinet prayed to Allah, but had as their real prophet Shabtai Zvi, the Messiah of Smyrna*".[262]

That Mustafa Kemal was of Jewish descent was a widespread belief among the people of Turkey as well. Jews of Salonika (Thessaloniki) always held to the opinion that Mustafa Kemal was a *dönmeh*.[263] The Jews think so to this day. An entry on Mustafa Kemal can be found on the Jewish Virtual Library online, a website, which lists information on celebrated Jewish figures or those of Jewish background.[264]

The Turkish public had and continues to have this same opinion. An interesting report from 1933 of the US Embassy in Ankara has been preserved. A survey concluded that a majority of those asked believed that the cause of the natural disasters punishing the country had been its leader's Jewish roots. One in particular said, "*It is that Jew (meaning the President) who is pushing us into the abyss*".[265] It is evident that such talk went so far in Turkey that the authorities passed a *"Law on Crimes Committed against Atatürk"* (#5816, 31 July, 1951) to punish as a crime any public insult or dishonour on the memory of Atatürk.[266] According to the law, such a "*crime*" would be punishable by one to three years imprisonment, up to five years in some cases.[267] Let us recall that such racist attitudes prevail in Turkey to this day; Armenians and Jews are considered to be second-class beings. People are even punished in that country for calling anyone an Armenian or a Jew, as that is considered to be an insult.

It can be concluded from the above that it has always been well known that the Father of the Turks – Atatürk – was not a Turk, even though such information has always been glossed over. Now let us see what basis there is in considering Mustafa Kemal to be a *dönmeh*. First, the arguments, that is, indirect facts, which indicate the probability of Mustafa Kemal's *dönmeh* background.

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[262] Joachim Prinz, *The Secret Jews*, New York, 1973, p. 122.
[263] http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0005_0_05294.html.
[264] http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0012_0_11019.html.
[265] US Diplomatic Documents on Turkey, *Family life in the Turkish Republic of the 1930s*, ed. Rifat N. Bali, Istanbul, 2007, p. 57.
[266] Rifat N. Bali, *A Scapegoat for All Seasons: The Donmes or Crypto-Jews of Turkey*, Istanbul, 2008, p. 227.
[267] *Ibid*.

Scholars have firstly pointed out the fact that Mustafa was born and raised in a city, Salonika, the majority of the population of which was Jewish in the mid-nineteenth century. Actually, Salonika was the only city in the world at the time (until Tel-Aviv was founded in 1909) with a majority Jewish population. If we add to the city's Jews the *dönmeh* population, who were traditionally counted among the Muslims, then the Jews and converted Jews (the *dönmeh*) would make up an absolute majority of the population. This is why Salonika was called the Jerusalem of the Balkans then.[268] The British Ambassador in Constantinople, Sir Gerard Lowther (1858-1916), shares the information in his communiqué to the Foreign Office of May 29, 1910, that Salonika has a "*population of about 140,000, of whom 80,000 are Jews, and 20,000 of the sect of Sabatai Levi*[269] *or Crypto-Jews, who externally profess Islam*".[270] Greeks, Bulgarians, and Vlachs (Romanians) were also prominent communities in the city. There were at least 13,000 Christians.[271] There were very few Armenians, only about 45 individuals.[272] That is, in the time when Mustafa was born, only one out of seven of the inhabitants of Salonika was Muslim (and not just Turkish), while the Jews or the *dönmeh* comprised three-fourths of the population. The Turks, as a Turkish politician who lived in Salonika at the time said, were not many, simply "*more than a few*".[273]

It is also very significant to note that Mustafa's family lived in a non-Muslim district of Salonika: "*Mustafa Kemal lived [during his childhood in Salonika] in a quarter in which [non-Muslim] minorities lived*".[274] Considering the community-based *millet* system of the Ottoman Empire, where each member of a community would live alongside his co-religionists and fellow community members, then this fact certainly becomes very important indeed.

The next fact to which we shall turn also has to do with the Ottoman community system. Each community of the Empire had its own schools and other educational establishments, maintained by the community's means. The sole exception was the dominant Turkish element, for which there were state-sponsored schools. It is a well-known fact that Mustafa was first briefly sent to the Turkish *Hafiz Mehmet* school,[275] and then to

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[268] *Ibid*. p. 250.
[269] "Shavatai Tzvi" or "Shabtai Zvi"; … "Geyik" is simply the Turkish equivalent of "Zvi", meaning "deer" or "stag". Rifat N. Bali, *ibid*. p. 39.
[270] Elie Kedurie, *Young Turks, Freemasons and Jews*, Middle Eastern Studies, v. 7, #1 (Jan. 1971), p. 94.
[271] Marc Baer, *Globalization, Cosmopolitanism, and the Donme on Ottoman and Turkish Istanbul*, Journal of World History, vol. 18, # 2 (Jan. 2007), p. 150.
[272] Kazim Nami Duru (1876-1967), *Arnavutluk ve Makedonya Hatiralarim (1959). In*: Rifat N. Bali, *ibid*. p. 119.
[273] *Ibid*.
[274] *Ibid*. p. 244.
[275] Barbara K. Walker, Filiz Erol, and Mine Erol, *To Set Them Free, The Early Years of Mustafa Kemal Ataturk*, New Hampshire, 1981, p. 26.

the Shemsi Effendi (or Chemsi Effendi) school.[276] The Shemsi Effendi (the real name being "Shimon Zwi")[277] school was one of the schools of Salonika's *dönmeh* community. In Ottoman society, the schools were established not just according to community, but also to sub-communal divisions. As the *dönmehs* of Salonika were divided into three groups – *Yakubi, Karakash, Kapanchi* [278] – according to the question of who would succeed Sabata[279], each had its own school: the *Fryz-i Ati* for the *Yakubi*, the *Feyziye* for the *Karakash* (established in 1883-84), and the *Yadigar-i Terakki* for the *Kapanchi* (established in 1879).[280] As we know for sure that Mustafa Kemal attended the *Feyziye* school, about which he himself spoke in a 1922 interview,[281] then we can likely surmise that he was a *Karakash dönmeh*. Also, Mehmed Djavid Bey (Mehmet Cavit Bey) was a *Karakash* as well; he was the principal of the *Feyziye School* until he became the Finance Minister of the Ottoman Empire in 1908.[282]

It is very unlikely that Mustafa (later Kemal, and then, Atatürk) would have attended a *dönmeh* school as a Turk. Ottoman society, as has already been mentioned, was structured on its communities and the distinctions among them were strictly maintained. Thus, the families of each community would send their children to their community's schools alone. For example, although among the hundreds of Armenian schools of the Ottoman Empire there must have been at least a few of high renown, we do not have an example of even a single child of a Turkish family to have attended any one. As some would try to demonstrate nowadays, even if we admit to how progressive Mustafa's father Ali Riza may have been, wishing for a European education for his child – an assumption for which we have no basis – then consider that Salonika had more prominent French and Italian schools at the time.[283]

It must be emphasised at the same time that the *dönmeh* community was very self-contained. Aliens could not be a part of that community. The code of conduct of the *dönmeh* demanded that they not have any relations with other Muslims.[284] That is, if Mustafa were not *dönmeh*, then his attendance of a *dönmeh* school would have been unacceptable both for orthodox Muslims as well as for *dönmehs*.

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[276] H. C. Armstrong, *Gray Wolf: An Intimate Study of a Dictator*, New York, 1933, p. 5.
[277] Rifat N. Bali, *ibid.* p. 36-37.
[278] Cengiz Sisman, The History of naming the Ottoman / Turkish Sabbatians, p. 50; in *Studies on Istanbul and Beyond, The Freely Papers*, v. I, 2007, p. 37-53.
[279] The Donmes in the Memoirs of Fuat Andic, in Rifat N. Bali, *ibid.* p. 126.
[280] Rifat N. Bali, *ibid.* p. 126. Marc Baer, *ibid.* p. 154.
[281] Reported by A. Emin (Yalman), *"Buyuk Millet Meclisi Reisi Başkumandan Mustafa Kemal Paşa ile bir mulâkat [An Interview with Mustafa Kemal Pasha, President of the Grand National Assembly and Commander-in-Chief; in Turkish]"*, Vakit (Turkish Daily), 10 January, 1922.
[282] Rifat N. Bali, *ibid.* p. 120.
[283] *Ibid.* p. 126.
[284] Marc Baer, *ibid.* p. 143.

It must also be borne in mind that the schools of the Ottoman Empire did not have a single curriculum and that the children would not just receive a regular education in their community schools, but also be taught national or religious subjects. It is important to note that in the Ottoman Empire, as with elsewhere at the time, there were no secular schools as we would call them today. All schools, no matter how progressive they may have been, would include elements of religious education. The classes would begin, for the most part, with the chief prayers of the given religion or denomination. As the best scholars of the issue have stated, "*The Semsi Efendi School continued to teach and practice Donme religious rituals*".[285] The school simultaneously aimed at establishing relations among the *dönmeh*[286]: "*Unlike other Muslims, the Donme maintained a belief that Shabtai Tzvi was the messiah, practiced kabalistic rituals, and recited prayers in Ladino, the language of Ottoman Jewry*".[287]

Mustafa Kemal's belief in kabbalistic signs, in the power of the occult, was maintained throughout his life. According to one account, a green square cloth was to be found on his desk, with esoteric markings. The same account indicates that Kemal, an infidel from the Islamic point of view, believed in the virtue of those signs.[288] Ultimately, men believe in the things which they have been taught to believe since their childhood.

Accordingly, we may note that Mustafa Kemal received not just a general education at the Shemsi Effendi School, but also received religious upbringing. The education ran so deep that even decades later he would still recall the prayers he had learnt.

It is not without reason that the tombstone of Shemsi Effendi himself is marked as "*Muallim Şemsi Ef.[fendi] Atatürkün hocasi*", that is, "*the teacher of Atatürk*". What is noteworthy as well is that Shemsi Effendi (Shimon Zwi) is being referred to not just as Atatürk's "*muallim*", teacher, but his "*hoca*", mentor or preceptor, a religious guide.

Doubtless, all of the aforementioned are serious arguments in favour of Mustafa Kemal being a *dönmeh*. Now let us see if there are records of direct facts supporting the claim. Strange as though it may seem, some do indeed exist.

Among such accounts, the most important is, of course, that of the memoirs of Itamar Ben-Avi, who described a meeting with Mustafa Kemal in 1911 in the Hotel Kamenitz, as the latter was en route to Libya to take part in the Italo-Turkish War. Itamar Ben-Avi (1882-1943) was the son of the Father of Modern Hebrew, Eliezer Ben-Yehuda, being the first child to in modern times to speak Hebrew. He cites the following from what

[285] *Ibid.* p. 153.
[286] *Ibid.*
[287] *Ibid.* p. 143.
[288] H. C. Armstrong, *ibid.* p. 143.

Mustafa Kemal said: " *'… At home I have a very old Tenakh*[289] *printed in Venice, and if I remember correctly my father sent me to a Karaite*[290] *teacher who thought me to read it: a few words have remained with me, like …'. At that point he paused for a moment and his eyes [looked as if he was] searching the air. Then, just as suddenly, he remembered: 'Shma'a Israel, Adonai Eloheinu, Adonai Echad!'* [291] *'That's our greatest prayer, Captain Sir.' 'And also my secret prayer, Cher Monsieur,' he answered and poured us both another drink*".[292]

Some, with political implications in mind, have doubted the veracity of this account. As a main argument, they say that Captain Mustafa Kemal travelled by sea from Istanbul to Alexandria in Egypt to take part in the Italo-Turkish War (18 Dec, 1911 to 24 Oct, 1912), and so could not have been in Jerusalem at the time.[293] This is a distortion of the facts, if not an outright falsification. The facts undeniably state that Kemal took a land route to Libya, passing through Syria and Palestine. The following statement comes from the British spy Harold Armstrong, who was well aware of issues pertaining to the Middle East at the time: "*Except by the long route through Syria and Egypt, Turkey was cut off from North Africa. The Italians had control of the sea and had closed the Dardanelles. […] With two friends, Mustafa Kemal took the land route. They traveled across Asia Minor and down by Syria and Palestine, using the railway where it existed, but doing the rest on horseback or with carriage*".[294]

It is completely unreasonable to believe that Itamar Ben-Avi would have made up such a story in his memoirs, especially as the motivation for it would be unclear. Ben-Avi did not even know in writing his memoirs whether or not they would even be published. He died in 1943 and his memoirs were not published until 1961; the aforementioned section remained unnoticed for a very long time.

Mustafa Kemal himself once gave a very interesting answer to an almost direct question from one of his close friends, Nuri Conker, about his roots. Kemal replied, "*For me as well as some people want to say that I'm a Jew – because I was born in Salonica. But it must not be forgotten*

[289] The Tenakh or Tanakh is the word for the Hebrew Bible. It is an abbreviation, "TaNaKh", based on the initials of three words – Torah, Nevi'im, Ketuvim – referring to parts of the Bible as collections of Hebrew teaching.
[290] Karaites include Crimean Turkish Jews.
[291] *Hear, O Israel: The LORD our God, the LORD is one!* (Deuteronomy, 6:4)
[292] Itamar Ben-Avi, Im Shahar Atzmautenu: Zichronoto shel HaYeled Ha'lvri HaRishon (*At the Dawn of Our Independence: the Memoirs of the First Hebrew Child*), 1961, p. 213-218.
[293] Andrew Mango, *Ataturk*, London, 1999, p. 452.
[294] H. C. Armstrong, *ibid.* p. 31.

that Napoleon was an Italian from Corsica, yet he died a Frenchman and has passed into history as such".[295]

It is with confidence that one may say that, apart from his origins, Mustafa Kemal lived and died as a Turk, a real Turk. In the Armenian sense of the word – a Turk. In that case, a question may arise: what difference does it make where Mustafa Kemal's roots lay? For me, none whatsoever. However, as it is an important point for racist Turkish society, therefore it is for them that all of these facts have been put forth on display. Enjoy.

8 February 2011

[295] Rifat N. Bali, *A Scapegoat for All Seasons: The Donmes or Crypto-Jews of Turkey*, Istanbul, 2008, p. 248.

54. **The New Wine and the Old Wineskins**

After Sargsyan's and Erdoğan's visits to Washington (April 12-13, 2010) it is conclusively clear that the Turkish-Armenian protocols are dead. We – Armenians – have a lovely saying: *Մեռած ա, թաղած չի (Dead but not buried)*. This is the situation that we have with the infamous protocols currently. Nevertheless, if anyone will say that the protocols were abortive since the beginning of so called *"normalization process,"* I will not argue.

So what to do? I think that we need not only drastic modification of our foreign policy but there is a vital necessity for the revaluation of the basics – instead of *action oriented* policy we have to pursue *result oriented* policy. What does this mean in the real politics? This means creation of sufficient parameters for the security and prosperity of the RA. Overall – rectification all wrongs done to Armenia and Armenians. Simply there is no other choice. This is the only way that we will gain a chance to survive in the hastily changing world. We do not have the luxury of half-measures.

The first step towards the right direction is taken. There is a huge symbolism in President Sargsyan's visit to US President Woodrow Wilson's tomb. At this time, there are number of uncertainties but one thing is crystal clear – it is impossible to have the same oblivion situation in Turkish-Armenian relations as were before the protocols. By now, we have significantly new situation and new challenges, so we have to act accordingly. We need new foreign policy. As it said: *And no one pours new wine into old wineskins. [Mark, 2:22]. [Եւ ոչ ոք արկանէ գինի նոր ի տիկս հինս: (ըստ Մարկոսի, 2.22)]*

The resolution of the Armenian Question is a singular opportunity for the consolidation of Armenian statehood and the only path to the endurance of the Armenian people.

13 April 2010

55. **The Armenian Language is not Subject to Sacrifice**

Go to Yerablour (the national cemetery and memorial in Armenia to those fallen in war). The most noble among us are buried there. Perhaps many of them had less knowledge than us; perhaps they would stumble in speaking Russian and did not know English at all. But they were Armenian. They were Armenian, because they thought in Armenian. Language is first of all a mode of thought, and only subsequently speech. Pick a hundred names at random off the gravestones at Yerablour and then check to see how many had an Armenian education, and how many in another language. The numbers will not deceive.

I am ashamed at having to write such rudimentary things. Read the works by Ludwig Wittgenstein on the philosophy of language and everything will become clear. Isn't it already understandable, without reading Wittgenstein, that the Armenian հաց (*hats*) and the Russian хлеб (*khleb*) have the same meaning ("bread"), but they comprehend essentially different things? Isn't it clear that the Armenian child who grew up on Pushkin's fables and the one who was reared on Toumanyan's tales are different Armenians? The claim that a good quality education can only be acquired in a foreign language is false. The one who is willing to learn does learn, and the lazy one seeks excuses to justify his ignorance. If knowledge is not a concern for, say, the national assembly, why ought the student to learn anything? In truth, I am amazed that they yet learn so much. If there were the guarantee of a just competitiveness for knowledge in the market, then each Armenian would know at least three foreign languages.

It is not necessary to cover up the shortcomings of the educational system and the frailty of its leadership in *the Armenian World* (the copyright of this expression belongs to the prime minister) by relegating the status of the Armenian language to mere household use. It is always easier, of course, to veil one's ignorance with foreign words or complex terminology. I bear an Armenian education, but I started working by translating from one foreign language to another foreign language. That was what that period of my life demanded.

Armenia is first of all Armenian. Without the Armenian language, there would be no Armenia. There is no need to deny one's own Homeland, but simply to improve the teaching of foreign languages in all schools. I understand that this is a more challenging task than sacrificing the Armenian language itself.

Ara Papian
Citizen of the Republic of Armenia
13 May 2010

56. **David of Sassoon is Undefeated**
or
Once More on Foreign Language-medium Schools in Armenia

The changes proposed by the Government to the law on language has recently become subject to heated public debate. It is natural and good that society express many opinions. This implies that we are gradually surmounting the legacy of the not-too-distant past. It is unfortunate, however, that those in favour of the changes to the law are not putting forth reasonable counter-arguments to the political, legal, economic, psychological and cultural facts presented by their opponents, but are instead simply warping the essence of the issue in attempting to present the case as a manifestation of xenophobia and advocacy for self-imposed isolationism.

Let me first present my observations on certain thoughts expressed in these discussions, and then let me turn to the accusations directed at my person, particularly in the article "Язык твой – враг мой?" ("Your language – my enemy?") in the political section of 22 May 2010 edition of "Новое время" ("New Times", a Russian-language newspaper in Armenia).

The main argument for proponents of foreign language-medium public education is that it would benefit the growth of Armenia's competitiveness in the modern world, adding to our country's economic development. These are completely baseless claims. In most of the countries of sub-Saharan Africa, the language of education – from primary school up to universities, Ph.D. levels – is English or French. In Finland, Japan and the Netherlands they are respectively Finnish, Japanese and Dutch. Now tell me, honestly, which of these countries are more competitive and developed? So the issue is not the language of education, but the nature and quality of the education. The emphasis must therefore be placed on the improvement of the educational system in general, especially on modernising the teaching of foreign languages. I understand that major resources are required for this. However, if we can take on a debt of 500 million dollars to complete abandoned construction projects, why can't we do the same to improve an abandoned educational system from the ground up? Ultimately, any investment in the educational field will be returned tenfold in future.

Nevertheless, it is necessary to stress that even the best educational system cannot assist in the development of the country as long as there is no free and fair competitiveness of knowledge in the market. Who can na-

me any three wealthy people or three officials in high positions in Armenia who have achieved their success through their intelligence and knowledge?

The other argument of the proponents of foreign language-medium public education is that the choice of language is a human right and parents ought to have the right to decide for themselves in which language their child will receive his or her education. I should first like to know that since when they have been thinking so much about human rights. Next, let us not be more respectful of human rights than Canada. As you know, Canada has two official languages – English and French. But parents are not free to manoeuvre between two equivalent official languages or to choose between them. For example, by an official language act of 1974 in Québec, it is mandatory for all to enrol their children in French-language schools. There is an exception only for five groups, mainly for native anglophones and foreign citizens. Without delving too much into the legal details, let me say that if you are Québécois and live in Québec (in our case, if you are Armenian and live in Armenia), you cannot have your children attend an English-medium school. Any argumentation that an education in English would render your child more competitive in gaining employment in the US or Canada would not pass. Public schools in Québec are taken to be pillars of maintaining the francophone identity, and not employment offices. For specialisations, there are universities.

Let us now turn to the aforementioned article. My citing the fact that an overwhelming majority of those buried at Yerablour (the national cemetery and memorial in Armenia to those fallen in war) had an education in Armenian was found by the political section of the paper to be "очень бестактно" ("very tactless"). Now it is my turn to be astonished. What I said was simply the expression of a fact. Would you get upset if someone said that it is bright during the day and dark at night? These are simply facts, and one should not get upset at facts. Facts can be refuted. If, as I had said, you take a hundred names at random from Yerablour and prove that what I stated was incorrect, I would be willing to apologise in the pages of your newspaper itself. Until then, I insist upon what I said. Numbers do not deceive.

Dedication to one's country and people is not only and not so much conscious behaviour, as a sub-conscious choice, which is rooted in linguistic and cultural perceptions. Nevertheless, I have never claimed and do not claim that individuals cannot perform patriotic acts without knowing their mother tongue or without having a basic or deep familiarity with the culture. I would like to mention at least two more people to add to the ones mentioned by the paper – "Commando" (Arkady Ter-Tadevosyan), Kristapor Ivanyan and Monte Melkonyan – namely, Norat Ter-Grigoryants and

Anatoli Zinevich. Two great military figures, with absolute Russian-speaking background, whose names are rarely recalled today, but whose role in the liberation of one portion of the eastern part of the Armenian Homeland is undeniable. I bow my head to the memory of all the fallen, and before all the veterans. But it is clear that, by the fact alone that these people are named individually, they form exceptional cases, which confirms the necessity of a linguistic and cultural connection. In 1989, more than 6000 Armenians were serving as officers in the armed forces of the USSR, a vast majority of whom were absolutely russophone. How many came to provide their specialised skills in service of their homeland? Wouldn't you say that if their linguistic and cultural perceptions were more closely connected with their own homeland, that they would have come in greater numbers? Wouldn't you say that, out of the over one million Armenians in the US, of which a significant proportion have lost their ability to speak Armenian, many more would have showed an immediate participation in the liberation of our homeland if they spoke the language? If we compare these facts with the Armenian communities of Lebanon and Iran – communities ten times as small – what was said would not need any additional backing. In that very US, when the country entered the WWI (in 1917), thousands of Armenian-Americans from what was then a small community conscripted as volunteers to liberate their homeland. Wouldn't you say that it had something to do with the fact that they spoke Armenian? I repeat that exceptions do and will always be found, but the big picture is clear: speaking and thinking in one's language significantly affects one's conduct vis-à-vis the nation.

One more point. The columnist asked in which language I have read Ludwig Wittgenstein's work. Let me answer: in Russian. If I, an alumnus of an Armenian school, have the capacity to read philosophical works in Russian, then why can't others do so? If my armenophone friends and I have it in us to win prizes in academic competitions held throughout the USSR in linguistics, philosophy, political science and history, why can't others do so now, when opportunities to study languages are incomparably greater? We arrive at the same conclusion that there is nothing in the medium of instruction; what makes a difference is the quality of education and the level of teaching languages in schools. If the teaching of languages is not being improved in public schools, then there must be no public demand for it. And that demand does not exist, because academics in our country has the status of a servant to the bureaucracy. Also, as long as the discussion is about my person, let me bring in another example. When I was admitted to the Faculty of Oriental Studies of Yerevan State University, I did not know a word of Persian (Farsi). But

three years later, I was already employed as a translator of Persian to and from Russian. I would like to emphasise that I was no exceptional case; there were those who did even better. I mean to say that, if the instruction is good and the desire exists, one's college years are sufficient alone to learn foreign languages.

One more factor, and let us limit ourselves with this much for now. I have never been against, nor am I now against teaching foreign languages in Armenia, I am against instruction in foreign languages in Armenia in public schools, and at the expense of the Armenian tax-payer. This has always been my position. I remember well all of our excitement in the '80s when the first Persian-medium school was opened in Armenia. I was for it, and I am even for having a few schools teaching Turkish, as there is political, economic, strategic and cultural necessity for it.

I graduated from Armenian school #114 in Yerevan (now named after Khachik Dashtents). Apart from the Armenian language, we studied two foreign languages – Russian and English. We had one period each of English every day and, after a certain age, a weekly period every year of history, geography, grammar and technical translation in English. This means that there have been cases of adequate teaching of two foreign languages in Armenian schools, and so it could be possible to expand on it. It is another matter that it would be laborious and expensive, also demanding professional knowledge and dedication to the homeland, which it seems that the proponents of the changes to the law on language do not possess. They are taking the easy route, but the easy route is not always the right one.

The hero of our national epic, David of Sassoon, was undefeated. He was undefeated, that is, until his own nephew brought him down. Are we to be so shortsighted as to be defeated by our own selves?

22 May 2010

57. On the Principles of Self-Determination and so-called "Territorial Integrity" in Public International Law
/*The Case of Nagorno-Karabakh*/

We are not going to negotiate over the right of the people of Artsakh (Karabakh) to self-determination. – Serzh Sargsyan, President of the Republic of Armenia, June 1, 2010

It is for the people to determine the destiny of the territory and not the territory the destiny of the people. – Judge Hardy Dillard, International Court of Justice, October 16, 1975

The notions of *"self-determination"* and *"territorial integrity"* are often used with regard to the Nagorno-Karabakh conflict. Unfortunately, these legal terms are largely misused mostly due to political motives. One of the grave misinterpretations of the said notions was by Ambassador-to-be (or not to be) Matthew Bryza when he declared: *"There's a legal principle of territorial integrity of states, there's a political principle of self-determination of peoples."* As a matter of fact, it is just the opposite. There is a legal principle of *self-determination* and there is no such principle of *territorial integrity*. Article 2(4) of the UN Charter declares merely: *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"*. Thus this has nothing to do with absolute *"territorial integrity"*, (*i.e.* preservation of the territory of a state intact) but, according to authoritative interpretation of the US Foreign Relations Law, it is simply the rule against intervention, a *"prohibition of use of force"*[296] and purely calls to refrain from *"the use of force by one state to conquer another state or overthrow its government."*[297]

In order to have adequate understanding of the status, scope and content of the principles of *"self-determination"* and so-called *"territorial integrity"* in contemporary international law, we need to elaborate more on the issue.

SELF-DETERMINATION

Self-determination: Historical Background

Self-determination is an ancient political right that is cherished by every people. The world *"self-determination"* is derived from the German world *"selbstbestimmungsrecht"* and was frequently used by German radical philosophers in the middle of the nineteenth century. The political origins of the concept of self-determination can be traced back to the American Declaration of Independence of July 4, 1776. The American

[296] Restatement of the Law (Third), The Foreign Relations Law of the United States, The American Law Institute, Washington, 1987, v. 2, § 905(7), p. 389.
[297] *Ibid,* p. 383.

Revolution is considered to be *"an outstanding example of the principle of self-determination."*[298] The principle of self-determination was further shaped by the leaders of the French Revolution. During the nineteenth century and the beginning of the twentieth, the principle of self-determination was interpreted by nationalist movements as meaning that each nation had the right to constitute an independent State and that only nationally-homogeneous States were legitimate.[299] During WWI, President Wilson championed the principle of self-determination as it became crystallized in Wilson's 14 Points (January 8, 1918) and consequently was discussed in the early days of the League on Nations. The Mandate system was to some degree a compromise between outright colonialism and principles of self-determination.

While discussion of the political right and principle of self-determination has a long history, the process of establishing it as a principle of international law is of more recent origin. Since the codification of International Law is today mostly achieved through an international convention drown up in a diplomatic conference or, occasionally, in the UN General Assembly or similar forum on the basis of a draft with commentary prepared by the International Law Commission or some other expert body,[300] we must follow the development of the discussed notions through international instruments. It must be stressed that if the rules, incorporated in the form of articles in the conventions, reflect existing customary international law, they are binding on states regardless of their participation in the conventions.[301]

Self-determination: Development under the Aegis of the UN

1. Incorporation into the UN Charter

The principle of self-determination was invoked on many occasions during World War II. It was proclaimed in the *Atlantic Charter* (14 August 1941). The provisions of the *Atlantic Charter* were restated in the *Washington Declaration* of 1942, in the *Moscow Declaration* of 1943 and in other important instruments of the time. Owing to these declarations already at the days of establishment of the UN, the notion of self-determinations was seen as a principle of international law.

Ultimately, *"the principle of equal rights and self-determination of peoples"* was incorporated into the UN Charter. The Charter [Article 1(2)] clearly enunciated the principle of self-determination: *"The purposes of the UN are: To develop friendly relations among nations based on respect for the principle of equal rights and self-determinations of peoples" and* self-determination is conceived as one among several possible *"measures*

[298] O. U. Umozurike, Self-Determination in International Law, 1972, Connecticut, 1972, p. 8.
[299] D. Thurer, Self-Determination, in R. Bernhardt (ed.), Encyclopaedia of Public International Law, vol. IV, Amsterdam, 2000, p. 364.
[300] Sh. Rosenne, Codification of International Law, in R. Bernhardt (ed.), Encyclopaedia of Public International Law, v. I, Amsterdam, 1992, p. 633.
[301] *Ibid.*

to strengthen universal peace."[302] Chapter IX *(International Economic and Social Co-operation, Article 55)* lists several goals the organization should promote: "*With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people."* Under Article 56, *"all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."*

The principle of self-determination, as it follows from Article 55 of the UN Charter, is one of the fundamentals of peaceful and friendly international relations. In other words, there can be no such relations without the observance of this principle. The same article says it is the duty of the UN to promote respect for fundamental human rights (§ c) and, consequently, for the nations' right to self-determination. And since the establishment of friendly relations between peoples and the promotion of respect for human rights figure among the United Nation's most important tasks, it is obvious that this organization is entitled to raise the question of a people's self-determination.[303]

The Charter is dominant over all the other international documents. This provision is set down in Article 103 of the Charter, and is accepted by all the members of the UN. It is clear that the UN considers the self-determination of peoples (self-determination, not just the right of people for self-determination, *i.e.* the application of this right) as not only one of its basic principles but also as a basis for friendly relations and universal peace. Hence, rejection of self-determination hinders friendship and universal peace. In addition, Article 24, Point 2 holds: *"In discharging these duties [the maintenance of international peace and security] the Security Council shall act in accordance with the Purposes and Principles of the United Nations."* It means that, in the maintenance of international peace and security, the Security Council must be guided by self-determination of peoples because it is one of its principles.

2. Development through UN Practice

The concept of self-determination was further developed by the UN. Through its resolutions, the UN has expounded and developed the principle of self-determination. In Resolution 637A(VII) of December 16, 1952 the General Assembly declared that: *"the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights."* The General Assembly recommended, *inter alia,* that *"the States Members of the United Nations shall uphold the principle of self-determination of all peoples and nations."*

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[302] D. Thurer, *op. cit.,* p. 365.
[303] G. Starushenko, The Principle of Self-determination in Soviet Foreign Policy, Moscow, 1963, p. 221.

In 1960, the General Assembly adopted Resolution 1514(XV) entitled *Declaration on the Granting of Independence to Colonial Countries and Peoples* which declares that: [§2]. *"All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."* The Declaration regards the principle of self-determination as a part of the obligations stemming from the Charter, and is not a *"recommendation",* but is in the form of an authoritative interpretation of the Charter.[304]

Later on, the principle was incorporated in a number of international instruments. In 1966 two conventions on human rights entered into force – the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. The Covenants have a common Article 1, which states: *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*

Consequently the *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among the States in accordance with the Charter of the United Nations* [General assembly Resolution 2625 (XXV), 1970] confirmed the principle that self-determination is a right belonging to all peoples and that its implementation is required by the UN Charter: *"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference , their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter."*

M. Zahovic, *rapporteur* for the *Special Committee on Principles of International Relations concerning Friendly Relations and Co-operation among the Nations,* remarked: "*Nearly all representatives who participated in the debate emphasised that the principle was no longer to be considered a mere moral or political postulate; it was rather settled principle of modern international law. Full recognition of the principle was a prerequisite for the maintenance of international peace and security, the development of friendly relations and cooperation among the States, and the promotion of economic, social and cultural progress throughout the world."*[305]

Self-Determination: The Principle and Human Rights

The principle of self-determination developed from a philosophical to political concept in international relations and has now matured into a fundamental principle of positive international law. It has developed recently as an aspect of human rights belonging to the group rather than

[304] *Recueil des cours de l'Academie de droit international*, The Hague, 1962, II, p. 33. Annual Report of the Secretary-General, 1960, 2. Chief Judge Moreno Quintana, ICJ Reports, 1960, p. 95-96.
[305] O.U., Umozurike, *op. cit.,* p. 192.

to the individual[306] and therefore rightly belongs to both Covenants of Human Rights, as it was mentioned.

On 25 June 1993, representatives of 171 States adopted by consensus the *Vienna Declaration and Programme of Action of the World Conference on Human Rights (June 14-25, 1993)*. The final document agreed to in Vienna, which was endorsed by the 48th session of the General Assembly (resolution 48/121, of 1993), reaffirms the principles that have evolved during the past 45 years and further strengthens the foundation for additional progress in the area of human rights. The document recognizes interdependence between democracy, development and human rights, including the right to self-determination. The final document emphasizes that the Conference considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right[307] [§2]: "*The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right".*[308] Armenia, Azerbaijan, Turkey, and co-sponsors of the OSCE Minsk group as well (RF, USA, France) are parties to this convention.

International organizations, which are concerned with human rights and world peace, have given full recognition to the fact that respect for self-determination is a condition for world peace. Fundamental human rights are meaningful in the context of a people enjoying self-determination.[309]

The *raison d'être* for the principle of self-determination is the enjoyment by all peoples, regardless of race, religion, or sex, of full democratic rights within the law, free from internal or external domination. It seeks to provide the opportunities for the political, economic, social, and cultural development of all peoples. The basic objective of the principle is to guarantee that all peoples have a government to their choice that responds to their political, economic, and cultural needs.[310] Thus, denial of the right to self-determination is a human rights violation and constitutes a breach of international law.

Self-determination: Development of the Principle Through Other Organizations

The International Commission of Jurists (affiliated to the ICJ) has held numerous conferences on the rule of law attempting to provide a clear and comprehensive definition of rule of law and better measures of imple-

[306] *Ibid,* p. 271.
[307] T. Hillier, Sourcebook on Public International Law, London-Sydney, 1998, p. 192.
[308] Documents, UN General Assembly, A/CONF.157/23; 12 July 1993.
[309] O.U., Umozurike, *op. cit.,* p. 188.
[310] *Ibid,* p. 273.

mentation in the context of protecting human rights. Its first congress was held in Athens in 1955, where the participants gave effect to the *Act of Athens* which resolved: " *(9) The recognition of the right to self-determination being one of the great achievements of our era and one of the fundamental principles of international law, its non-application is emphatically condemned. (10) Justice demands that a people or an ethnic or political minority be not deprived of their natural rights and especially of the fundamental rights of man and citizens or of equal treatment for reasons of race, colour, class, political conviction, caste or creed".*[311]

The First World Conference of Lawyers on World Peace through Law, in their *Declaration of General Principles for a World Rule of Law* (Athens, July 6, 1963), adopted a resolution which stated*: "In order to establish an effective international legal system under the rule of law which precludes resort to force, we declare that: (…) (6) A fundamental principle of the international rule of law is that of the right of self-determination of the peoples of the world, as proclaimed in the Charter of the United Nations."*[312]

Self-determination: Development of the Principle Through the ICJ

The principle of self-determination is exemplified in the decisions by the ICJ. For example, in the *South-West Africa Cases* (December 26, 1961, and July 18, 1966) Judge Nervo, dissenting, expressed the belief that the concept of equality and freedom *"will inspire the vision and the conduct of peoples the world over until the goal of self-determination and independence is reached."*[313]

The Advisory Opinion of the International Court relating to the *Western Sahara Case* (October 16, 1975) reconfirmed as well *"the validity of the principle of self-determination"* in the context of international law.[314]

Also in the decision of June 30, 1995, concerning the *East Timor Case* (Portugal v. Australia), the International Court reaffirmed that the principle of self-determination of peoples is recognized by the UN Charter and by its own jurisprudence as being *"one of the essential principles of contemporary international law."[§29]*[315]

Self-Determination: Status, Scope and Content in Contemporary International Law.

Both the UN and the majority of authors are alike in maintaining that the principle of self-determination is part of modern international law. Due to developments in the UN since 1945, jurists now generally admit

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[311] *Ibid,* p. 185.
[312] Declaration of General Principles for a World Rule of Law, American Journal of International Law, 58, (1964) p. 138-151, at 143.
[313] International Court of Justice, Reports, 1966, v. IV, p. 465.
[314] ICJ Reports (1975) 12 at 31-33. See also the Namibia Opinion, *ibid.* (1971), 16 at 31; Geog K. v. Ministry of Interior, ILR 71, at 284; and the Case Concerning East Timor, ICJ Reports (1995) at 102.
[315] D. Thurer, *op. cit.*, p. 370.

that self-determination is a legal principle.[316] The principle has been confirmed, developed and given more tangible form by a consistent body of State practice and has been embodied among *"the basic principles of international law"* in the Friendly Relations Resolutions.[317] The generality and political aspect of the principle do not deprive it of legal content.[318] Furthermore, having no doubts that the principle of the self-determination of peoples is a legal principle, currently many declare self-determination to be a *jus cogens* (peremptory) norm of international law.[319] Accordingly, no derogation is admissible from the principle of self-determination by means of a treaty or any similar international transaction.[320]

It must be underlined that the right of self-determination is the right to choose a form of political organization and relations with other groups. The choice may be independence as a state, association with other groups in a federal state, or autonomy or assimilation in a unitary (non-federal) state.[321] A situation involving the international legal principle of self-determination cannot be excluded from the jurisdiction of the UN by a claim of domestic jurisdiction. International customary law is binding on all states regardless of consent; and in any event, states have bound themselves under the Charter to respect the principle.[322] The claims of the states that the implementation of the principle of self-determination infringes on their rights or is contrary to their *"constitutional processes"* cannot be made a pretext for depriving other peoples of their right to self-determination.[323] Presently self-determination as a principle is truly universal in scope.[324] It is also unconditional because most of the UN members also hold that realization of the right to self-determination should not have any strings attached to it.[325]

All these conceptions were summarized in the statement by Hans Brunhart, Head of Government and Minister of Foreign Affairs of the Principality of Liechtenstein, during the Forty-Seventh Session of the General Assembly of the UN (September 23, 1992, UN Doc. A/47/PV.9) [§6]: *"The right to self-determination as principle is now universally*

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[316] I. Brownlie, Principles of Public International Law, Oxford, 1998 (5th ed.), p. 600.
[317] D. Thurer, *op. cit.*, p. 366.
[318] I. Brownlie, *op. cit.*, p. 600.
[319] T. Hillier, *op. cit.*, p. 191. Supporters of the view that the right of self-determination is part of *jus cogens* include: I. Brownlie, *op. cit.,* (4th ed.), Oxford, 1991, p. 513. A. Cassese, International Law in a Divided World, Oxford, 1989, p. 136; J. Craword, "The Rights of Peoples: Some Conclusions", in J. Crawford, (ed.), The Rights of Peoples, Oxford, 1988, p. 159-175, at p. 166; H. Gros Espiell, The Right to Self-Determination, Implementation of United Nations Resolutions (1978), § 85; and the UK's and Argentina's statements in the context of the Falklands/Malvinas dispute (1982) 53 British Yearbook of International Law, p. 366-379.
[320] A. Cassese, Self-determination of Peoples, Cambridge, 1995, p. 134-35.
[321] I. Brownlie, *op. cit.*, p. 599.
[322] O. U. Umozurike, *op. cit.*, p. 196.
[323] G. Starushenko, *op. cit.*, p. 209.
[324] D. Thurer, *op. cit.*, p. 369.
[325] G. Starushenko, *op. cit.*, p. 210.

accepted. I would recall not only that self-determination is one of the foundations of the Charter, but also that most States represented in this Assembly are already under certain specific legal obligations in this area by virtue of Article 1 of each of the great human rights conventions of 1966. [*i.e.* the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.] *There it is formally and with legally binding effect acknowledged that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*[326]

Despite all this, and with some notable exceptions, the practical and peaceful application of the principle of self-determination has often been lacking. Time and again have dominant powers hindered oppressed peoples from availing themselves of their right to self-determination despite the obligations assumed in signing the UN Charter. So how is one to establish that a people wants to be the master of its own destiny?

There are different ways of establishing the will of the people demanding self-determination. The will of the people may be determined by a plebiscite. A plebiscite or, what amounts to the same thing, a referendum means the right of the majority of the population to determine the political and legal status of the territory it inhabits.[327] The will of people may be expressed by parliament or by any other representative institutions elected by the self-determining people.[328]

Largely there are plebiscites without a popular vote on the questions concerned. In such cases, the population of the self-determining territory elects a representative organ, which then expresses the people's will. If the elections to these organs and the vote in them are conducted on a democratic basis, this method of expressing the people's will is quite legitimate.[329] This is the situation that we had lately (May 23, 2010) in Nagorno-Karabakh during the elections of the Parliament of the Republic of Nagorno-Karabakh (Artsakh).

The will of the people may also be expressed in the form of mass protests (civil disobedience, demonstrations, rallies, newspaper articles, etc.). Lastly, it may find expression in armed uprisings or wars for national liberation. The latter is an extreme measure and people resorts to it only if forced to do so. A rule of customary international law has emerged, according to which the principle of self-determination includes a right of secession and, as a consequence, the legality of wars of national liberation and

[326] Self-Determination and Self-Administration, A Sourcebook, (ed. W. Danspeckgruber and A. Watts), London, 1997, Appendix 2, The Liechtenstein Initiative at the UN, p. 405.
[327] G. Starushenko, *op. cit.*, p. 214.
[328] *Ibid,* p. 213.
[329] *Ibid,* p. 215-6.

third party interventions on behalf of the secessionist movements.[330] The use of force to achieve self-determination and for the assistance of national liberation movements has increasingly been claimed as legitimate in recent years, on the ground that it furthers the principles of the UN Charter.[331]

There is no rule of international law forbidding revolutions within a state, and the United Nation's Charter favors the self-determination of peoples. Self-determination may take the forms of rebellion to oust an unpopular government, of colonial revolt, of an irredentist movement to transfer territory, or of a movement for the unification or federation of independent states.[332] It should be especially stressed that whatever way is chosen, no *"central authority"* or any other people can solve the problem for the self-determining people, for that would be contrary to the very principle of self-determination.[333]

While establishing the scope of self-determination, a question must be answered: Are the peoples and nations, which have already implemented their right to self-determination subjects of this right? The answer is *"Yes"*, inasmuch as the UN Charter recognizes the right to self-determination of all peoples and nations, without distinguishing between those, which have attained statehood, and those, which have not. The question is answered analogically in the General Assembly resolution on the inclusion of the clause on human rights in the International Covenant on Human Rights.[334] It has been strongly advocated that a nation, which has been divided into States by outside interference and without the clear consent of the population, still possess the inherent right of self-determination including the right of reunification.[335]

Furthermore, the European Community has used infringement of the right to self-determination as a potential ground for withholding recognition of an entity as a State and hence to deny the legitimacy of a government or a State which does not protect the right of self-determination. In the EC Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the USSR (Dec 16, 1991), there is the requirement that a potential new State has constitutional guarantees of democracy and of *"the rights of ethnic and national groups and minorities"* before recognition by the EC States would be granted. Moreover, a new rule of international law holds that a State established in violation of the right of self-determination is a nullity in international law.[336]

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[330] D. Thurer, *op. cit.*, p. 368.
[331] T. Hillier, *op. cit.*, p. 612.
[332] Self-Determination, Digest of International Law (ed. M. Whiteman), Washington, 1974, v.5, #4, p. 39.
[333] G. Starushenko, *op. cit.*, p. 214.
[334] Resolution 545 (VI) of February 5, 1952.
[335] D. Thurer, *op. cit.*, p. 368.
[336] D. Thurer, *op. cit.*, p. 369.

Another question, which concerns the self-determination of peoples, is: Can the right of self-determination be applied to non-colonial entities? Certainly the main objective of the right of self-determination was to bring a speedy end to colonialism. However, since codification of that principle in the UN Charter, not one of the major international instruments, which have dealt with the right of self-determination, has limited the application of the right to colonial situations. For example, the common Article 1 of the two International Human Rights Conventions of 1966 (*International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights)* applies the right to *"all peoples"* without any restriction as to their status, and the obligation rests on all States. Likewise, principle VIII of the Final Act of the Helsinki Conference 1975 includes: *"by virtue of the principle of equal rights and self-determination of peoples, all peoples have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development".* State practice also supports a broader application of the right of self-determination beyond strictly colonial confines. Indeed, the international Commission of Jurists, in its report on Bangladesh's secession, stated: *"if one of the constituent peoples of a State is denied equal rights and is discriminated against, it is submitted that their full right of self-determination will revive".*[337] In the Treaty on the Final Settlement with Respect to Germany (September 12, 1990), which was signed by four of the five Permanent Members of the Security Council, it was expressly mentioned that the *"German people, freely exercising their right of self-determination, have expressed their will to bring about the unity of Germany as a State*", [Preamble, § 11], despite the fact that neither East nor West Germany was a colony. It was also been applied by States in the context of the break-up of the former Soviet Union and former Yugoslavia.[338]

TERRITORIAL INTEGRITY AND POLITICAL INDEPENDENCE

"Territorial Integrity": Evaluation and Content

The notion of *"territorial integrity"* has been employed only three times in international instruments. All other cases are only references to these said documents.

The concepts of territorial integrity and political independence emerged during the years immediately following the end of World War I. Article 10 of the Covenant of the League of Nations stipulated that: *"the Members of the League undertake to respect and preserve as against*

[337] The Secretariat of the International Commission of Jurists, Report on "Events in East Pakistan, (1971)", Geneva, p. 69.
[338] R. McCorquodale, Self-Determination: Human Rights Approach, The International and Comparative Law Quarterly, vol. 43, # 4 (Oct. 1994), p. 861.

external aggression the territorial integrity and existing political independence of all Members of the League".[339] The same understanding of *"territorial integrity"* was reaffirmed in the UN Charter: "*2(4). All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN."* The other important international instrument which is often referred to is the Helsinki Final Act (adopted on August 1, 1975) which requires the following: *"The participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State ..."*

It is obvious that the Helsinki Final Act, likewise the UN Charter and League of Nations Covenant earlier, condemns merely the use of force against territorial integrity and does not unconditionally advocate for the absolute maintenance of territorial integrity. It makes clear that use of external force or threat of use against territorial integrity and political independence is unacceptable. Meanwhile, the Helsinki Final Act (Chapter 1) specifically holds that: *" frontiers can be changed, in accordance with international law, by peaceful means and by agreement."*

It is apparent that ever since the first time that the notion of *"territorial integrity"* appeared within the domain of international law, it has been closely intertwined with the question of the use of external force. In other words, the principle of *"territorial integrity"* is traditionally interwoven with the fundamental principle of the prohibition of the threat or use of force[340] and not with the absolute preservation of the territory of a state intact. As it was mentioned above, it is just the *"prohibition of use of* [external] *force"*[341] and the renunciation of *"the use of force by one state to conquer another state or overthrow its government."*[342]

"Territorial Integrity": Scope, Limitation and Status under International Law.

In modern political life there are repeated wrongful attempts to present *"territorial integrity"* as a general limitation on the right to self-determination. The basis for such limitation is false because the government of a State, which does not represent the whole population on its territory without discrimination, cannot succeed in limiting the right of self-determination on the basis that it would infringe that State's territorial integrity.[343]

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[339] Ch. Rozakis, Territorial Integrity and Political Independence, in R. Bernhardt (ed.), Encyclopaedia of Public International Law, v. IV, Amsterdam, 2000, p. 813.
[340] *Ibid,* p. 812-13.
[341] Restatement of the Law (Third), *op. cit.*, p. 389.
[342] *Ibid,* p. 383.
[343] R. McCorquodale, *op. cit.*, p. 880.

Moreover, state practice shows that territorial integrity limitations on the right of self-determination are often ignored, as seen in the recognition of the independence of Bangladesh (from Pakistan), Singapore (from Malaysia) and Belize, *"despite the claims of Guatemala"*.[344] In addition, after the recognition by the international community of the disintegration of the Soviet Union and Yugoslavia, recognition of East Timor and Eritrea, recognition to a certain extent of Kosovo, Abkhazia and South Ossetia, it could now be the case that any government which is oppressive to peoples within its territory may no longer be able to rely on the general interest of territorial integrity as a limitation on the right of self-determination.

Therefore, there is a clear-cut understanding: only a government of a State which allows all its peoples to decide their political status and economic, social and cultural development freely has an interest of territorial integrity which can possibly, only possibly, limit the exercise of a right of self-determination. So territorial integrity, as a limitation on the exercise of the right of self-determination, can apply only to those States in which the government represents the whole population in accordance with the exercise of internal self-determination.[345] Thus, there is an apparent conceptual link between democracy and self-determination. Democracy is often viewed as internal self-determination, and secession as external self-determination, that is, as the right of a people to govern itself, rather than be governed by another people.[346]

Moreover, it is clear that those deprived of the right of self-determination can seek forcible international support to uphold their right of self-determination and no State can use force against such groups. As it was referred above, the Declaration on Principles of International Law provides that *"every State has the duty to refrain from any forcible action which deprives peoples … of their right of self determination and freedom and independence"*. The increase in actions by the international community which could be classed as humanitarian intervention, such as in Somalia and with the creation of *"safe havens"* for the Kurds North of the 36th parallel in Iraq[347] (1991-2003), indicates the reduced importance given by the international community to the territorial integrity of a State when human rights, including the right of self-determination, are grossly and systematically violated.[348] The right of self-determination applies to all situations where peoples are subject to oppression by subjugation, domination and exploitation by others. It is applicable to all territories, colonial

[344] J.Maguie, "The Decolonization of Belize: Self-Determination v. Territorial Integrity" (1982) 22 Virginia Journal of International Law, p. 849.
[345] R. McCorquodale, *op. cit.*, p. 880.
[346] M. Moore, National Self-Determination, Oxford, 1998, p. 10.
[347] Security Council Resolution 688 (April 5 1991).
[348] R. McCorquodale, *op. cit.*, p. 882.

or not, and to all peoples.[349] Indeed, many of the claims for self-determination arose because of unjust, State-based policies of discrimination and when the international legal order failed to respond to the legitimate aspirations of peoples.

Self-Determination: Human Rights and the Right to Secession

One of the supposed dangers of self-determination is that it might encourage secession. First of all, there is no rule of international law that condemns all secessions under all circumstances. Self-determination includes the right to secede.[350] In a situation when the principle of territorial integrity is clearly incompatible with that of self-determination, the former must, under present international law, give way to the latter.[351] For instance, if a majority or minority insists on committing an international crime, such as genocide, or enforces a wholesale denial of human rights as a deliberate policy against the other part, it is submitted that the oppressed party, minority or majority, may have recourse to the right of self-determination up to the point of secession.[352]

As Azerbaijan used force in answer to the free and peaceful expression of the will of the people of Nagorno-Karabakh (rallies, referendums, claims, appeals), took inadequate means of punishment, perpetrated massacres of the Armenian citizens of Azerbaijan in Sumgait, Baku, Kirovabad, and waged a ruthless war with Ukrainian, Afghan, Russian mercenaries and sustained defeat, it cannot expect that the people of Nagorno-Karabakh will renounce their lawful right and will not exercise their right of self-determination.

Actually, the world community is under legal and moral obligation to recognize the political self-determination of the people of Nagorno-Karabakh, *i.e.* to recognize the Nagorno-Karabakh Republic; if a *de facto state* has crystallized, refusal to recognize it may be tantamount to a denial of self-determination. Moreover, there is a clear understanding in international law: after the international requirements for the recognition of belligerency have been fulfilled (as it was done with regard to Nagorno-Karabakh by the Bishkek Protocol (May 5, 1994), and by the Cease-fire Agreement, (May 12, 1994)), a duty of recognition of belligerency necessarily follows, and refusal of recognition is interference with the right of political self-determination of the people of a State, and therefore constitutes illegal intervention.[353] This obligation arises from the understanding that the principle and rules on self-determination are *erga omnes*, that is, they belong to that class of international legal obligations

[349] *Ibid,* p. 883.
[350] M. Moore, *op. cit.*, p. 23.
[351] O.U. Umozurike, *op. cit.*, p. 187.
[352] *Ibid,* p. 199.
[353] A.V.W. Thomas and A.J. Thomas, Non-Intervention: The Law and its Import in the Americas, Dallas, 1956, p. 220.

which are not *"bilateral"* or reciprocal, but are in favor of all members of the international community.[354]

In the *Loizidou v. Turkey Case,* a 1996 judgment of the European Court of Human Rights, Judge Wildhaber identifies an emerging consensus that the right of self-determination, more specifically secession, should be interpreted as remedial for certain human rights abuses: "*Until recently in international practice the right to self-determination was in practical terms identical to, and indeed restricted to, a right to decolonisation. In recent years, consensuses has seemed to emerge that peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively underrepresented in an undemocratic and discriminatory way. If this description is correct then the right to self-determination is a tool which may be used to re-establish international standards of human rights and democracy".*[355] As Judge Wildhaber attests, there is increasing agreement among authors that the right of self-determination provides the remedy of secession to a group whose rights have been consistently and severely abused by the state.[356] The self-determination of the people of Nagorno-Karabakh must certainly be assessed as an act of corrective justice as well.

So a minority's entitlement to self-determination can and must be judged within a human rights framework. Self-determination postulates the right of a people organized in an established territory to determine its collective political destiny in a democratic fashion.[357]

It is legal nonsense to presume that self-determination should take place within previous administrative borders, without regard for the cultural, linguistic or ethnic identity of the people there. Internal boundaries in the former Soviet Union were often drawn in a way, which ensured that many members of the titular nation were outside the boundaries of their (titular) republic, as it was with Nagorno-Karabakh.[358] A politically disempowered distinct group in a specific region has the right to independence,[359] regardless of whether or not they are organized in an administrative unit. There is no doubt that the people of Nagorno-Karabakh (not only the people of the Nagorno-Karabakh Autonomous Region) are entitled to independence as their choice of self-determination due to the extreme discrimination that they faced under Azerbaijan.

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[354] A. Cassese, *op. cit.*, p. 134.
[355] *Loizidou v. Turkey (Merits), European Court of Human Rights, 18 December, 1996, (1997) 18 Human Rights Law Journal 50 at p. 59.*
[356] K. Knop, Diversity and Self-Determination in International Law, Cambridge, 2002, p. 74.
[357] *Ibid,* p. 85.
[358] M. Moore, *op. cit.*, p. 140.
[359] T.M. Frank, The Power of Legitimacy among the Nations, New York, 1990, p. 171.

SUMMARY:

- Self-determination is an ancient political right. Presently the right to self-determination is a well-established principle in public international law. The principle has been confirmed, developed, given form that is more tangible by a consistent body of State practice, and has been embodied in various international instruments.
- The ICJ decisions exemplify the principle of self-determination.
- The principle of self-determination is one of the fundamentals of peaceful and friendly international relations. Respect for self-determination is a condition for world peace. Those deprived of the right of self-determination can seek forcible international support to uphold their right of self-determination.
- Self-determination as a principle of international law is universal in scope. The right of self-determination applies to all situations where peoples are subject to oppression by subjugation, domination and exploitation by others – all peoples and nations, without distinguishing between those, which have attained statehood, and those, which have not.
- The principle of the self-determination of peoples is a legal principle and is a *jus cogens* (peremptory) norm of international law.
- The right of self-determination is the right to choose a form of political organization and relations with other groups. Denial of the right of to self-determination is a human rights violation and constitutes a breach of international law.
- The right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights. The General Assembly recommended that the member states of the UN uphold the principle of self-determination of all peoples and nations.
- Article 2(4) of the UN Charter has nothing to do with absolute *"territorial integrity",* but is simply the rule against intervention, a *"prohibition of use of force"* and purely calls to refrain from *"the use of force by one state to conquer another state or overthrow its government."*
- Self-determination includes the right to secede. The people of Nagorno-Karabakh (not only the people of the Nagorno-Karabakh Autonomous Region) are entitled to independence as their choice of self-determination.
- Self-determination postulates the right of a people organized in an established territory to determine its collective political destiny in a democratic fashion.

1-7 June 2010

58. **The Woodrow Wilson Center has Violated the Legacy of President Wilson and the Dignity of America**

They [Turks] had exhibited complete absence of common sense and a total misunderstanding of the West. They had imagined that the [Paris Peace] Conference knew no history and was ready to swallow enormous falsehoods.
President Woodrow Wilson, June 26, 1919, Paris[360]

In spite of numerous complaints and protests, Turkey's Foreign Minister Ahmet Davutoğlu nevertheless received the Woodrow Wilson Award for Public Service from the Washington, DC-based think tank, the Woodrow Wilson International Center for Scholars. Whereas this turn of events can be qualified as merely an incident for us Armenians, a painful and undesirable one, but just an incident all the same, this is a serious blow, on the other hand, to the credibility of American think tanks. The principle value of a think tank is in its freedom, that is, in its ability to carry out independent analysis and present an objective outlook. To be on someone else's payroll would be the worst kind of reputation for any think tank. By presenting an award to Davutoğlu, the Woodrow Wilson Center brought to light the fact that it has simply auctioned off the prize, or, as they themselves worded beautifully, "*The Wilson Center said in an e-mailed statement that the award is part of its fund-raising effort*."

Of course, the Woodrow Wilson Center has no legal obligation in terms of upholding the views and policies of the 28th President of the US. Still, the very name places certain moral responsibilities on the center. Wilson was the first among heads of state to raise the issue of the self-determination of peoples to the international stage. How does one justify bestowing an award to the foreign minister of a country which, for decades now, has been drowning the right to self-determination of the Kurdish people in blood? By violating the right to self-determination of the Kurds, Turkey is violating Wilson's political legacy as well. It is most unfortunate that among those with a part to play in violating the legacy of Woodrow Wilson and the dignity of America is the think tank bearing the name of the just president of the US, Woodrow Wilson.

18 June 2010

[360] The Papers of Woodrow Wilson, v. 61, June 18 – July 25, 1919, New Jersey, 1989, p. 210.

59. **On the Possibility of War in Artsakh**

I agree with the opinion expressed many times that, when it comes to Nagorno-Karabakh (Artsakh), the policies which Ilham Aliyev follows are based largely on domestic factors. Ilham, as his father, belongs to that school of politicians for which only power is sacrosanct, bringing about possibilities of pocketing immense sums with such status. Accordingly, it is from this perspective that one must examine the possibility of Aliyev unleashing war on the Artsakh front. Any war comprises of serious and unpredictable consequences for the authorities in power. Ilham Aliyev, I believe, has not forgotten that power has changed hands in Azerbaijan as a result of military defeat in Artsakh. Does Aliyev currently have any guarantees of bringing the Armenian side to its knees through a war? I am convinced that that is not the case. What is more, the probability that Azerbaijan would have more territorial losses in a war is much greater.

Let us also try to understand at what cost Azerbaijan would gain a hypothetical victory over Artsakh. If we go so far as to imagine the impossible, say, that the Azerbaijani armed forces manage to destroy the Armenian army (something which cannot occur with regards to an army entrenched in defensive positions) and get rid of all the Armenians of Artsakh (it is a reality that this war is not just between two armies, but also between two peoples), what would be the situation in Azerbaijan then? Adding to the tens of thousands of those killed in the war, Azerbaijan would find itself at the edge of utter economic collapse. As a state, Azerbaijan survives today solely due to the export of oil and natural gas. It is through their sale that Azerbaijan arms itself now and regularly swaggers against Artsakh and Armenia. That is, oil wells, oil and gas pipelines and other such infrastructure are objects of strategic importance and consequently legitimate targets. Is it not evident that, at the very first hours of the war, there shall remain but smoking metal scrap where they used to be? It is also important to emphasise that Azerbaijan cannot carry out similar counter-measures, as the Armenian economy, even with all its shortcomings, is incomparably less vulnerable, since we do not have two or three structures whose destruction would result in the cessation of our exports, and thus 90% of our actual income. Besides which, Aliyev has to answer not just to his own people, but to all the foreign companies that have made immense investments in this sphere and of which many have not yet broken even. What does Aliyev need a war for? The Emir of Baku is quite content by himself, milking the mineral wealth of an entire country and keeping the majority of the people of that country, the legal owners of the vast wealth of that country, in extreme poverty. Aliyev uses fanatic anti-

Armenianism in order to sustain his stolen power and to maintain his stolen wealth.

Aliyev is a straight-up thief – those who rob power are robbers still – and so his heart is always in straits. Consequentially, although I find war highly improbable, it still cannot be completely ruled out. In tense situations, wars may also arise by themselves. However, as a planned political move, I believe that Aliyev would go for such an adventure (there would be no other word for it) in one case alone, that is, when Aliyev's own standing in Azerbaijan be so weakened, that it would be difficult to ensure the possibility for Aliyev to yet again acquire power through cheating and falsifications. That is to say, one must view all political developments of the Emirate of Baku through the perspective of maintaining the Aliyevs' wealth and position. When war remains the sole path for Ilham Aliyev to maintain his hold on power, he will go for it.

However, as there is almost no real opposition currently in Azerbaijan, I do not think that the Emir feels directly threatened by anyone. Ilham Aliyev is not himself interested in either the victory or even the defeat of the Azerbaijani army today. People are unforgiving towards defeated emirs in the Orient; at the same time, nothing is as dangerous for a tyrant of the Orient as the soldiers are and general of a victorious army.

21 June 2010

60. **Gratitude Fortifies the Foundations of the State**

The Head of State (Bako Sahakyan) handed gifts of some value and monetary prizes to the heads of police and national security under the Government, as well as to some of the staff.

Armenia Today, 23 June 2010

It is incomprehensible. It is first of all incomprehensible as to why some people are receiving "*gifts of some value and monetary prizes*" for carrying out their duties as part of their service. Their salaries are the remuneration for that. Further, if anyone was to receive monetary premiums, it would have to be a villager living in some rural border region of Artsakh, as, firstly, he has need of it and, secondly, his dedication and merit incomparably exceed the actions of a city-dwelling official.

But that is not my real point. If there were to be any people these past few days who were to receive honours by the president of Artsakh, it would have to be those four killed and further four wounded soldiers, casualties in the defence of Artsakh. I bear in mind primarily military decorations because, as the Nagorno-Karabakh defence ministry stated, they were victims of a battle. Apart from what will be revealed by the future objective examination (let us hope that it will be so) to determine how it came about that the enemy managed to suddenly overrun our defensive positions, all the same, these men gave their lives or their blood, and they are therefore worthy of the gratitude of Artsakh. There cannot be heartfelt dedication without gratitude. Gratitude bears great significance, which is necessary for those now living and for soldiers of the future. Gratitude is a value, which fortifies the foundations of the state.

23 June 2010

61. **What Occupation are We Talking About?**

The Tatars of Baku and their overlords, the Turks of Istanbul, regularly bring up the so-called occupation of a part of the Republic of Azerbaijan by the RA. These claims are completely baseless. Proper foundations are necessary to allege such a thing. One of the bases would be the prevalence of the title to the territories in question codified by international law. That is, for any part of any territory of Azerbaijan to be considered occupied by anyone, it is necessary that Azerbaijan possess and present the international document by which the title of the Republic of Azerbaijan be recognised to that allegedly occupied territory. This is a basic principle of international law, and it is clear. The rightful possession of any territory by any state is based on the title codified by a legal international document and by the sovereignty established over that territory.

Let us briefly take up the title to Nagorno-Karabakh over the course of the last few centuries. The Turkish-Persian Treaty of Amasia internationally codified the title to Nagorno-Karabakh to Persia in 1555. At the beginning of the 19th century, the eastern part of the South Caucasus ended up as part of the Russian Empire; accordingly, the Treaty of Gyulistan of 1813 codified the Russian title to Nagorno-Karabakh. It is indisputable that from 1813 to 1918 the title and sovereignty of the Russian Empire was unquestionably established over Karabakh (I include the mountainous parts – Nagorno-Karabakh or "Highland Karabakh" – as well as the valleys – "Lowland Karabakh"). Due to the Bolshevik Revolution of 1917, although uncertain circumstances arose in the South Caucasus with to the collapse of the Russian Empire, things were quite clear until January of 1920 from the perspective of international law and territorial title, as, until January of 1920, the international community refused to recognise the three newly-established states of the South Caucasus, consequently continuing to recognise the title of the Russian Empire. It was only in January of 1920 that, by the countries of the Supreme Council of the Paris Peace Conference – Great Britain, France, and Italy – the independence of the countries of the South Caucasus was recognised. So, until then, from May of 1918 to January of 1920, the republics of Georgia, Armenia and Azerbaijan remained essentially, as the contemporary expression goes, merely self-declared republics. It is important to emphasise that the recognition by the Paris Peace Conference clearly included a criterion – the borders of the South Caucasus countries were to be determined in future by the Paris Peace Conference. It is necessary to stress here that,

between the declaration in May of 1918 to the recognition in January of 1920 of the republics of Armenia and Azerbaijan, not only was there no recognition of any title of the Republic of Azerbaijan to Nagorno-Karabakh, the Republic of Azerbaijan did not exercise any manner of effective control over Nagorno-Karabakh either. What is more, Karabakh was much more effectively under control of the locally established Armenian authorities and forces.

One month after the recognition by the Paris Peace Conference, on February 24, 1920, the Commission for the Delimitation of the Boundaries of Armenia – with the participation of representatives from Great Britain, France, Italy, and Japan, and now already on behalf of the League of Nations – the principles of delimitation of boundaries in the South Caucasus were clarified with a joint report. That is, the boundaries of Armenia and Georgia, and Armenia and Azerbaijan would be drawn '*taking into account, in principle, ethnographic data*'.[361] As it happens, the massacres of Shoushi of March 1920 were based mostly on this decision; the Tatars of the Caucasus attempted to alter, in the style of the Turks, the demographic picture of Nagorno-Karabakh. However, this decision was not fated to be realised, as the Bolshevik 11th Army already occupied Azerbaijan, by April 1920, and Armenia, by December 1920, and those states ceased to exist. What happened next is better known, that the newly established Soviet authorities carried out administrative divisions by party decisions and vast territories with Armenian populations – which, by the application of the principle of the Paris Peace Conference, would indisputably have been part of Armenia – were made administratively subject to Baku. Naturally, there can be no talk of any internationally codified title here. No decisions by a political party can create any legal precedent in international law and codify any title to any territory. The formerly independent Georgia, Armenia and Azerbaijan themselves bore the status of occupied countries from 1920/21 to 1924. Later on, from February of 1924, by the recognition of the Soviet Union, the annexation of those countries was recognised in turn. Accordingly, from 1924, the title and sovereignty of the Soviet Union to the entire South Caucasus, including Nagorno-Karabakh, was unquestionably recognised.

In 1991, when Azerbaijan declared itself independent of the Soviet Union, Nagorno-Karabakh was already, *de facto,* independent. That is to say, ever since the re-establishment of its independence, the Republic of Azerbaijan has not held effective control over the territory of the Republic

[361] United States National Archives, Records of the Department of State Relating to Political Relations between Armenia and other States, 1910-1929, 760J.6715/60-760J.90C/7.

of Nagorno-Karabakh for even a single day. What is more, as Azerbaijan declared itself the direct successor state of the first Republic of Azerbaijan of 1918-1920 on October 18, 1991 by the *Constitutional Act of the Restoration of State Independence*, it essentially nullified by a legal document the administrative ties that had existed between the Azerbaijani Soviet Socialist Republic and the Nagorno-Karabakh Autonomous Oblast.

So, whereas, upon the collapse of the USSR, the territory of most former Soviet Socialist Republics saw the establishment of one independent country each, two states were established on the territory of the administrative unit of the USSR known as the Azerbaijani Soviet Socialist Republic – the Republic of Azerbaijan and the Republic of Nagorno-Karabakh. The Republic of Azerbaijan, having disregarded the obligation to uphold the principle of self-determination borne by the Charter of the UN, unleashed a ruthless war on its newly independent neighbour and suffered ignominious defeat.

By the Declaration on the "*Guidelines on the Recognition of New States in Eastern Europe and in the [territory of the] Soviet Union*" of the 16th of December, 1991 by the foreign ministers of the countries of the European Community (now the European Union), respect for "*the inviolability of all frontiers*" would be based on upholding "*the rule of law, democracy and human rights*", as well as "*guarantees for the rights of ethnic and national groups and minorities*". None of these criteria has been fulfilled by the Azerbaijani state.

Consequently, when our neighbours talk about "*occupation*", let them be so kind as to state in which time in history the Republic of Azerbaijan has exercised effective control over Nagorno-Karabakh and by which international document Azerbaijan's title to Nagorno-Karabakh has been recognised. If that has never been the case and there is no document in support of the claim – and they evidently do not exist – then what "*occupation*" are we talking about?

24 June 2010

62. **Wishful Thinking versus Reality**

The minister of foreign affairs of the RA, citing the statement made by the heads of the states of the OSCE Minsk Group, said the following: '*The final status of Karabakh must be decided by a legally-binding expression of will by the people of Nagorno-Karabakh*'. (Iragir.am, 27 June 2010)

There is no such phrase in the actual statement. The statement does not clearly outline who is included in those expressing their will, whether it is the population of the former Nagorno-Karabakh Autonomous Oblast, the current Republic of Nagorno-Karabakh, or the Azerbaijani Republic. It is not clear as such as to who is expressing any will; perhaps those in charge in Baku, perhaps some group clumped together in Baku today or tomorrow proclaiming itself to be the legal representatives of Nagorno-Karabakh. I believe that the minister has gotten confused over the (working) Russian version: "*определение будущего, окончательного правового статуса Нагорного Карабаха путем имеющего обязательную юридическую силу волеизъявления его населения*" ("*determining the future, final legal status of Nagorno-Karabakh by having a legally-binding expression of will of its population*"). The official English text of this phrase is as follows: "*final status of Nagorno-Karabakh to be determined in the future by a legally-binding expression of will*". The expression "*его населения*" ("*of its population*") is missing in the official English version. There is also another important difference between this paragraph as it appears officially and in the Russian version. The Russian refers to the determination of a legal status ("*определение … правового статуса*"), whereas the word *"legal"* does not appear in the official text.

In logical terms as well as from the perspective of international law, the fate of any territory ought to be determined by the people of that territory. That is the real essence of self-determination. If someone else is to determine your future, then what kind of self-determination is that? However, are we seeing much of anything reasonable in the leadership of Azerbaijan and, what is worse, in the steps taken by the OSCE Minsk Group co-chairs?

27 June 2010

P.S. This analysis of details does not at all imply that I accept the rationale presented to resolve the issue over Artsakh, when Nagorno-Karabakh is *a priori* viewed as part

of Azerbaijan without any legal basis, and the attempts are being made to come up with some solution or other given that condition.
When I was a child, in order that there be peace in our region – which was the playground at that time – the grown-ups would tell us, "*There is blood in rocks*". Now we must tell our grown-ups (we are forced to admit today that the co-chairs are in that position), "*There is blood in what you propose*".

63. **Once More on the Troubled Question of "Occupation"**

Neither the presidential triumvirate of Obama, Sarkozy, Medvedev, nor officials of our neighbouring or our own republic are authorised to make decisions or declare rulings on questions of international law. They are solely officials carrying out political activities in the field of international law, which exists separately. Of course, officials may express their own opinions and pass judgements, but interpreting matters of international law does not fall to them in the least, neither by their own countries' legislation and certainly nor by international law itself.

As the conflict over Artsakh has begun to be viewed progressively through the lens of international law, the parties to the conflict as well as the mediators must appeal to bodies empowered correspondingly, instead of passing their own judgements and in order to receive legal input. The only establishment in the current international system, which has the authority to make rulings on questions of international law and to determine the violation of international law, is the ICJ, an arm of the UN. The second part of Article 36 of the Statute of the ICJ codifies that authority. As, according to Article 92 of the UN Charter – *The International Court of Justice shall be the principle judicial organ of the UN* – it follows that all member-states of the UN, *ipso facto*, have recognised the aforementioned authority of that court.

I have already had the opportunity to write that, in order for any situation to be categorised as "occupation", the circumstances must correspond to a number of characteristics. The so-called wronged party must demonstrate that, until the current conditions arose, the title to the territory in question was indisputably of that state and that state had carried out effective control over the territory. In our case, before throwing about accusations, Azerbaijan must affirm through the court that, until the existing circumstances over the territories currently under control of the Nagorno-Karabakh Republic were established, the title to that territory belonged unquestionably to the Azerbaijani Republic (AR) and that Azerbaijan fulfilled effective control over that territory. If not, without having established these two facts, all claims that the territory of Artsakh ever belonged to the AR are laid bare and rendered baseless, in turn nullifying any allegation of occupation.

I believe that, instead of making naïve statements, the presidents of the countries of the OSCE Minsk Group co-chairs ought to call on the leadership of the RA and the AR to appeal to the ICJ to answer the following question:

Does the Republic of Azerbaijan bear the title under international law to the lands currently under the control of the Republic of Nagorno-Karabakh?

If one of the parties should decline, the countries of the three co-chairs can appeal to the ICJ on behalf of the UN Security Council to request an advisory opinion on the matter, as per Article 65 of the ICJ Statute.

Without an answer to the question above, any mention of "occupied territories" or any such thing have no meaning. Without a legal ruling by a competent authority, the Republic of Azerbaijan cannot accuse anyone of occupation. I can accuse Azerbaijan in the same vein for my part of occupying territories of the RA in April-December, 1920 with the help of the Bolshevik 11th Army, still continuing to occupy some of it. Or did people think that what Lenin and Stalin did legitimised or could possibly legitimise the Bolshevik occupation of territories belonging to the RA? If yes, then open up the roads; the Russian army is advancing to take its position in the heart of Germany.

30 June 2010

64. **Turkey is Playing with Fire**

Some analysts have recently pointed out that tense relations with Israel would benefit Turkey by fortifying its position in the Middle East. Perhaps that would happen as far as the Middle East is concerned, or rather; the Arab world, but it would diminish its standing on the world stage. And, as they say in Odessa, those are two really different things. That which the Arab world has the capacity to provide for Turkey is readily available, namely, oil and a market. It is true that one might see more Turkish flags in Arab cities, Erdoğan might be declared man of the year by some organisations, Armenian communities might have less ease to speak about the Armenian Genocide, and so on. However, such manifestations cannot be transformed into significant and tangible political advantages, to say nothing of military gains.

That which Israel was able to provide for Turkey, and still partially does so, cannot be replaced by anyone upon its cessation. This refers to state-of-the-art military hardware, intelligence equipment and intelligence itself, as well as cordial relations with the American public and press. In losing these resources, Turkey cannot find others to replace them. Of course, relations with the Arab public are important, but, when it comes to global political processes, it falls behind qualitatively in significance to Western public opinion. What Americans and Europeans think are decisive, and not the opinions of Arabs or Armenians. This is perhaps unfair, but it is the reality.

There is yet another dangerous development for Turkey. If Israel were to lose Turkey forever, then it would have no ally in the Middle East (except perhaps for Azerbaijan, which is a small player). Consequently, Israel will be simply forced to create a new ally for itself. That ally to be established would be an independent Kurdistan, the heart of which is in northern Iraq, but the borders of which – or rather, the aspirations for frontiers – will not be limited to that territory. Today, the Turkish Air Force is bombing its sovereign neighbour, Iraq, without any objections from the mass media and consequently from public opinion. All are turning a blind eye to it. This can soon change. The political vistas of many, as well as political memories, can soon improve immensely.

5 July 2010

65. **International Law is not Up for Auction**

It was absolutely within the law for the highest tribunal of the UN – the ICJ – to conclude on 22 July 2010, *"the unilateral declaration of independence of Kosovo does not violate international law"*. It was within the law first of all because the right to direct one's own political affairs, through the establishment of self-determination, is included in the UN Charter [Article 1(2)] as one of the main goals of the organisation. It is also within the law, as there is no limitation set on declaring independence in international law. That is to say, international law does not consist of any criterion by which the right to independence is reserved for, say, Serbs, Georgians or Caucasian Tatars, but that very right is denied to Albanians, Megrelians or the Talysh.

Naturally, declarations of independence are always unilateral. When, for example, the US and the RF declared their independence from the British Empire and the USSR respectively, they did so without, as it were, approval by "the central authorities". It is another matter whether "the central authorities" calmly come to terms with the fact, without unnecessary military frustrations, or whether they try to drown the will of others in blood.

This decision by the ICJ of the UN is encouraging in terms of the developments of democratisation of international law. The decision demonstrated that the segregation of peoples as accepted and rejected is inconsistent with the thinking of the twenty first century.

The decision is encouraging when it comes to a democratic solution to the Artsakh conflict as well (the issue of Nagorno-Karabakh). That is, just as no one has the right to make decisions in place of an individual in a democratic society, similarly in current international relations, no one has the right to make decisions in place of the organised public of such individuals.

International law is not up for auction in the 21st century. International law is not for sale as an oil derrick.

23 July 2010

66. **On the Treaty of Sèvres – the Need for Clarification**

The ninetieth anniversary of the Treaty of Sèvres is an important event for the RA, as well as for all Armenians. There is a widespread opinion, however, which needs to be clarified. Armenian territorial rights are not entirely based on the Treaty of Sèvres. The Treaty of Sèvres did not itself declare the border between Armenia and Turkey. By Article 89 of the Treaty of Sèvres, the parties to the treaty appealed to the US President, for him to carry out the arbitration, which would decide that frontier. Even if the Treaty of Sèvres were not to exist, it would not make any difference; Armenia would have still maintained unquestionable territorial rights, as, on behalf of the Allied Powers (the British Empire, France and Italy), the San Remo Conference had appealed to US President Woodrow Wilson on 26 Apr 1920 to delimit the Armenia-Turkey frontier, a request which the US President accepted on 17 May 1920. This took place almost 3 months before the Treaty of Sèvres was signed. (The Treaty of Sèvres was signed on 10 Aug 1920.) The importance of the signing of the Treaty of Sèvres in terms of territorial rights lies in the fact that, by accepting the document, Turkey acceded to the arbitration compromise, and in so doing, the country reconfirmed its obligation to carry out any arbitral award by the US President. I emphasize that it reconfirmed the obligation, as, by signing the Armistice of Moudros (30 Oct 1918), which was without question a capitulation in legal terms, Turkey had handed over its sovereignty to the victorious powers and it was they who had the right to decide which part of the territory of the Ottoman Empire would form a new Turkish state. Consequently, our struggle on the legal front must be based on 2 documents – the Treaty of Sèvres (10 Aug 1920) and, in particular, the arbitral award of the US President Woodrow Wilson (22 Nov 1920) derived from that treaty. As to the first, it must be noted that, although it has not been ratified, it is nevertheless a binding document, as it has been signed 'between the contracting parties' (*vide* Vienna Convention on Law of Treaties, Article 2 (f)). As to the second, it is necessary to emphasise the following: (a) the arbitral award is inviolable, it has no time limits and it is a legally-binding decision; (b) although the arbitral award was carried out by the US President, it is nevertheless a binding document for 142 of the 192 current members of the UN. (Due to paucity of space, the details cannot be provided here, but this point has been fully discussed in my strategy paper for a solution to the Armenian Question.)

In sum: The clauses of the Treaty of Sèvres having to do with the territorial rights of the RA are still absolutely valid due to the aforementioned documents and, with the corresponding efforts and in the right political climate, they can be put into effect.

10 August 2010

67. **Our Rights Cannot Be Bestowed upon Us as Gifts**

In order to understand any act correctly, it is necessary to bear in mind a series of factors. One of the most important factors would be the motivation behind the given act, in other words, what prompted it. When we view the planned mass to be celebrated at the Sourp Khatch (Holy Cross) Church on Aghtamar and all the noise it is inciting, the inappropriate inducement, to put it mildly, becomes abundantly clear. It is absolutely evident that the mass and the entire enterprise has nothing to do with the glorification of God. It is an illusory event organised by Turkish special services, the only end of which being, as the subtle term goes in political science, positive image projection.

The Turks are doing well to yet again fool the world. That is their nature, and their prerogative. I do not understand, however, the point of the exultant participation of the Armenians in this game. So the world will know that Aghtamar has an Armenian church! Firstly, those who need to know this fact are well aware of it already. And then, those who do not wish to know it, don't. I can assure you in any case that this will not be the main message of the world's media that day. The thrust of the news stories are going to be plaudits for the tolerance of the Turks. Do not let the Turks humiliate us yet again. The abasement of the protocols signed in Zurich is sufficient for us for a few decades. Why do you all wish to rub salt on our wounds once more?

The opinion is completely unacceptable that, "We don't have many people there, what are we to do with the churches? A single mass once a year is enough". Let them first answer the question: what happened to the Armenians who made those churches? Further, the issue is not the celebration of mass itself, but the right, the very right to celebrate mass. Perhaps the Armenians would celebrate mass in those churches once every 5 years, or perhaps 10; regardless, they have to have the right to celebrate mass in any of those churches, as deemed by the Church. The Turks are bestowing our own rights upon us as a gift, and we are acting quite pleased. We are like a little child, whose family has been killed, whose entire legacy has been stolen and then, with a shiny toy thrown before him, he goes wild with joy over it. In 1912, by official Turkish data, there were more than two thousand functioning – let me stress that, *functioning* – churches and monasteries within the Ottoman Empire. The RT has illegally occupied them. Let them first return or provide compensation for the property

to its rightful owner, the Church, that is, the community, which is to say that it belongs to all of us.

And then, let them faithfully carry out the international obligations they themselves have borne. The basis of relations with the Kemalist movement overseeing Turkey was founded on certain preconditions, which were codified by the Treaty of Lausanne (24 July 1923). By the second clause of Article 38 of the Treaty of Lausanne, "*All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief*". And Article 40 provides for them to establish, manage and control religious institutions.

What is more, by the third clause of Article 42, "*The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities*". Naturally, "*full protection*" involves not just not actively destroying and not razing churches to the ground, but also their preservation and renovation.

Consequently, the partial renovation of the Sourp Khatch (Holy Cross) Church and the right to celebrate mass there once a year is not "*an expression of goodwill*", but the very improper and late fulfillment by Turkey of an international obligation rendered a fundamental law, with the prospects of certain political exploitation. And so, it does not fall within our interests in the least to give any leeway to such exploitation.

14 August 2010

68. Interview to 7or.am

– How does one account for the Azerbaijani instigations, which took place on the 18th of June at the NKR-Azerbaijan line of control?

– Diplomacy is not just a process of negotiations, but also the usage of all possible kinds of leverage on the opposing side. From this perspective, Azerbaijan views the use of armed skirmishes as additional leverage on Armenia. And why is Azerbaijan resorting to such acts now? Because there has been a qualitative shift in the circumstances. Firstly, in terms of foreign policy, it is Turkey's ever-growing involvement in the South Caucasus. This is one of the consequences of those unfortunate Armenia-Turkey protocols, about which many had forewarned. Secondly, in terms of domestic policy, with its reflection again in foreign policy: as the Armenian authorities do not have popular support, it is natural that they are very vulnerable to external forces. Of course, Armenia has never excelled at democracy, even during the time when some people referred to it as an "*island of democracy*" in the region. The absence of democracy is a political illness. Just as with diseases, it might not be much of a bother in ordinary days, but it can come to the fore under extreme circumstances.

– Do you agree that, as a result of the "football diplomacy" initiated by the Armenian President Serzh Sargsyan, Turkey has become actively involved in and is dictating its will with regards to resolving the Nagorno-Karabakh issue?

– Today's hazardous reality is indeed a result of that very short-sighted, politically baseless and naïve initiative. Some years ago I presented a plan to the highest authorities in Armenia, the real aim of which was to isolate Turkey as much as possible from our region through various legal and political issues directed against the country, as I am convinced that *the collective security of the Republic of Armenia and the Republic of Nagorno-Karabakh depends on Armenia-Turkey and not Armenia-Azerbaijan relations*. Today, and I say this with regret, the exact opposite policies are being carried out. Let us not forget that president Sargsyan himself requested Turkey's president Gül in Yerevan to participate in resolving the Nagorno-Karabakh issue.

– How would you assess the Sarkozy-Medvedev-Obama statement on resolving the Nagorno-Karabakh issue made during the G8 summit? Was the response by the foreign minister of the Republic of Armenia to that statement appropriate?

– There is an old joke. A doctor tries hard to cure a patient, but the patient dies. The doctor asks the bereaved family, "Did he sweat before dying?". They reply, "Yes". "That's good," the doctor says. And so it is with the comments by our foreign minister. What could possibly have been worse than it, that we would not welcome such a statement? One can skip reading what comes after the first point, since, if the first point were to be realised, the rest of what is presented could never come to pass. The big three are solving their own problems. They have their own deals to cut. They are lead by their own interests, and their proposals are so reflected. This does not mean that we are obliged to accept the proposals by the mediators. The ones who decide are, first of all, the people of Nagorno-Karabakh and, secondly, those of the RA. However, in order for the people to truly be rendered decision-makers, they must have all their civil rights returned. If the people cannot maintain their rights in the centre of Yerevan, how can one expect that same people to resolve issues at the frontiers?

– What effect do you foresee in the Nagorno-Karabakh issue by the visit to the region of US secretary of state Hillary Clinton?

– Clinton has one item to take care of: bringing the dead Armenia-Turkey protocols back to life, so that president Obama can easily forget the promise given to his constituency without actually reneging on his promise. As the Turkish party explains the stalled process of ratifying the Armenia-Turkey protocols on the absence of progress on the Nagorno-Karabakh issue, Clinton must then assure such "progress", so that Turkey loses its excuse. I hope that our authorities do not succumb to Clinton's pressure or do not give in to various tempting offers.

President Sargsyan has one way to bring Armenia out of the current circumstances. He must dissolve parliament, carry out truly fair elections for the National Assembly, and also declare presidential elections within six months. This is the only way that the people will be able to participate in the process of making political decisions, and consequently, to assure complete and utter devotion to the homeland. Perhaps some other countries with immense mineral resources can sustain themselves and develop even in tyrannical circumstances, but Armenia, and of course along with Nagorno-Karabakh, does not have any alternative to democracy.

Interviewed by *Areknaz Manoukyan*

4 July 2010

69. **Vulnera Armeniae – The Wounds of Armenia**
or
Why the Armenian Question Must be Resolved?

International law often anthropomorphises states. In terms of law, the chief characteristic of a state is its international legal personality,[362] that is, the capacity to enter into individual relations in the international political arena. Accordingly, inter-state relations are very similar in many ways to relations between individuals, as, generally speaking, the interests of a state – a well-ordered state – is derived from the collective interests of its individual citizens.

And so, depicting a state as an individual, vocabulary pertaining to individuals is used by international law to describe political and legal phenomena. For example, there is a concept of the "*injured state*" in the international law. International law clearly defines injured states: *An injured state is a state whose right has been infringed through a breach of obligation by another state's internationally wrongful act.*[363]

When we glance at our not-too-distant past, it becomes evident that, in the years 1920-1921, deep wounds were indeed inflicted upon the body of the Armenian state as a consequence of Bolshevik and Kemalist intrigues. Disregarding the international obligations it bore, with the encouragement of the Bolsheviks and the *carte blanche* of the West, Turkey violated our rights and denied the minimal resources necessary to maintain our statehood. That is, the injury caused to our statehood rendered a qualitative decline in the viability of our state. It is important to clearly distinguish between a simple territorial loss and the loss of viability. For example, the occupation of the northern part of Cyprus by Turkey is a loss of territory and wealth, but it does not cause any qualitative shifts. Even though it has lost 37% of its territory, Cyprus has not lost the ability to freely communicate with the world, and has thus maintained its ability to develop. The RA, however, in losing the region of Kars (even putting aside for the moment the territory granted to the RA by the arbitral award of Woodrow Wilson), at the very least lost its ability to interact with the rest of the world, to defend its own capital, along with some leverage over Georgia. In order to come up with solutions to such circumstances, one must bear a sober outlook on the current reality; with such frontiers, in such a

[362] For further details, see Boczek B.A. *The A to Z of International Law*, Toronto, 2010, p. 37-144; Chapter II, International Legal Personality, States: Recognition, Jurisdiction, Responsibility, Succession.
[363] *Ibid,* p. 70.

geo-political position, and with such neighbours, today's RA has no future. The injuries caused to our statehood are incompatible with the functioning of our state. As long as those injuries have not been addressed, it is at the most a form of late mediaeval romanticism to hope that it would be possible to have a safe and prosperous country. If I were a poet, I would say that the marks of the nails are still crying in our palms and our wounds are yet flowing with blood.

I would like to emphasise something very important here. There is no alternative to the establishment of democracy and rule of law in Armenia. What is more, in terms of time, I would prioritise them foremost. Without them, nothing would be possible, nothing at all. For the existence of our statehood itself, democracy and rule of law are vitally important conditions. But the real problem is that they are necessary, but still insufficient conditions. Armenia needs the minimal resources for its viability, that is, the resolution to the Armenian Question, as it has been referred to by the international community for a century and more. What was the Armenian Question finally about? It was the guarantee of the minimal necessities for the dignified existence of the Armenian people. At the current stage, the approach to a resolution to the Armenian Question has changed. It is now the restoration of territorial, material and moral rights accorded to or reserved by the RA as per international law. The approach may have changed, but it remains essentially the same – the minimal resources of viability are necessary for the existence of the RA, which can be achieved only through a resolution to the Armenian Question.

We must make ourselves aware of this, so that we may clearly imagine that which we ought to do and avoid any wrong steps. Ultimately, the destructive Damoclean Sword of the Armenia-Turkey protocols is hanging over our heads.

9 November 2010

70. **On National Tolerance and Azerbaijani Films**

I am among those who joined the Facebook group against the showing of Azerbaijani films in Armenia recently. Am I really that narrow-minded of a patriot that I would go against cultural interactions? Not at all. A few years ago when – as always, with foreign financing – a survey was being undertaken among Armenian social and political circles on the future of Armenia-Turkey and Armenia-Azerbaijan relations, I myself proposed establishing and developing mutual cultural ties.

What has changed now, for me to be against such a thing? A very important factor. Justice has been violated, that is, the principle of reciprocity has been broken. If there is an intention of showcasing Azerbaijani films in Yerevan, apparently with American money, then a similar event must be organised in Baku as well, that is, a screening of Armenian films. If that is not taking place, then an incorrect message is being broadcast to the entire world; people would think that there is a need of encouraging tolerance only among Armenians.

I cannot claim that we are a tolerant society in the Western sense. Without a doubt, we ourselves have a lack of tolerance with regards to certain minorities even in our own society. We have yet a long way to go. However, the level of tolerance in Armenian society is quite a few rungs higher than the tolerance of Azerbaijani society. And this refers not only to interactions between our peoples.

The principle of reciprocity is a most important principle in inter-state relations. Its preservation is imperative. When it comes to international relations, any unjust compromise in our region is perceived as a sign of weakness and could lead to very dangerous consequences indeed.

One must not forget that the latest Azerbaijani film viewed by our society starred a citizen of the RA, Manvel Saribekyan.

12 November 2010

71. The Gospel of Armenian Rights
Or
The Only Way to Create a Prosperous and Secure Future for the Republic of Armenia

/on the threshold of the 90th anniversary of the Arbitral Award of Woodrow Wilson/

> *The time has come that Armenia, anointed with the blood of her scions, demand reparations for the suffering and misfortune she has borne throughout the course of her history, become the master of her own destiny.*
>
> Nikoghayos Adonts, 1919
> Armenian historian (1871-1942)

Almost a century after these words were published in an epigraph, the ship of the fate of the Armenian people has not yet cast its anchors in the port of reparations. At the cost of the collective efforts of us all, centuries' worth of sacrifice and decades of staunch struggles, the ship of our fate approached the edge of reparations for a short time ninety years ago; it appeared, just for a moment that the haven of reparations was within reach. But the political winds suddenly switched direction at the last second and hurled us towards the conspiratorial Kemalist-Bolshevik whirlpool.

And, to this day, the ship of our fate is being knocked about in the tempestuous political sea. It is a sea with innumerable visible and hidden reefs, a sea teeming with pirates, a sea where our ship is wandering aimlessly, because the captain, instead of navigating towards a blessed asylum, is trying to come to terms with those very pirates by legitimising their loot: an absolutely wrong and shortsighted act.

There are decisive eras in the lives of peoples, when the entire future of that people is set on its course. We Armenians are currently at such a stage. The unfortunate pair of Armenia-Turkey protocols has upset the social and political life of all Armenians; they have sharpened the memory of national dispossession, and consolidated the desire to form a pan-national opposition against them. We are at a decisive state today, as the protocols are simply unacceptable. They are unacceptable from the point of view of the supreme and lasting interests of our people. The past of a people, the security of a nation, and the future of a state must not be sacrificed for the sake of temporary or factional interests.

Ninety years ago, around this very time – on November 22, 1920 – the President of the US, Woodrow Wilson, declared his arbitral award. The Wilsonian Arbitral Award, as I have had the opportunity to discuss, is the gospel of our rights, the basis of our demands, and the only way to create a prosperous and secure future for the RA.

Let me very briefly turn to that extremely important document and point out just a few main clauses. Since the arbitral award was declared on the basis of the *compromis* of the Allied Powers at San Remo on April 26, 1920, as well as in the Treaty of Sèvres (10 August 1920), being enforced upon signing, that is, since November 22, 1920, therefore this award is a binding, inviolable and perpetual decision for all the Allied Powers of the WWI (which comprise more than a hundred countries today) and for all the states party to the Treaty of Sèvres (currently over twenty countries). It is also binding, inviolable and perpetual for the USA, as the arbitral award bears the Great Seal of the US, signed by the US President and co-signed by the Secretary of State. In accordance with the prior written directive, the Wilsonian Arbitral Award is binding for the defeated countries of the WWI as well.

As per the basic principles of international law, which are codified in the documents of the Hague Conventions of 1899 and 1907, the realisation of the arbitral award is the non-negotiable obligation and imperative duty of the parties to that document, that is, of all the countries signatory to the *compromis*. Therefore,, our pan-national quest must be to demand of those countries on each 22nd of November to bear the responsibility of their obligation which stems from international law, and to do so not as some favour, but as a forgotten, partly denied, but nevertheless irrefutable and inviolable international obligation.

It has been a few decades now that the 24th of April is marked as an important date on the Armenian calendar, a day which showcases perhaps the greatest manifestation of united Armenian political will. That day was initially a day of requiems, of a holy remembrance for the Armenian people, but then gradually grew to become a day of commemoration and of demanding the recognition of the Armenian Genocide. Regardless, that is a day of loss, or, at the most, a day of recognising the dispossession.

As a nation, however, and as a community in pursuit of justice, we are in need of a day of victory and reparation, of the realisation of justice and

the establishment of our rights. We do have such a day: the 22nd of November maintains that inexhaustible fire of triumph, the day the arbitral award by the US President Woodrow Wilson deciding the border between Armenia and Turkey was declared. By the arbitral award, the RA got to include a part of our patrimony, the north-eastern part. That day, a ruling was made on the basis of international law and enforced once and for all, mandatory to be carried out, legally inviolable and perpetual in terms of the existence of our rights.

The 22nd of November must become a day of restoration of violated justice, of national demands, and of the re-establishment of the rights that have been taken away from us; in a word, a Day of Reclaiming the Homeland – *Hayrenatirutyan Day*.

I call upon us all to appropriately mark such a day on the 22nd of November each year – with rallies, marches, pickets, conferences, publications, speeches – as it is only through Hayrenatirutyun, that we shall be able to build tomorrow's Armenia.

19 November 2010

72. Ninety Years of Delusion
or
How It Came to Pass ? – 1

/on the occasion of the 90th anniversary of the Treaty of Alexandropol/

The study of history, particularly of the history of international relations, is not an end in itself. In studying history, man tries to learn from the past, so as to avoid making the same mistakes in the future. It seems, then, that we are continually rejecting the lessons of history and directing ourselves with the delusion of perceiving what is desirable instead of what is real. If this were not the case, then we would not have signed the humiliating Armenia-Turkey protocols in Zurich, protocols which provided a temporary sense of relief, but which remained fruitless and barren, thereby rendering themselves exemplars of political onanism.

During these very days ninety years ago, the Armenians and Turks were carrying out negotiations in the ill-fated city of Alexandropol (now Gyumri), perhaps the most difficult negotiations in our brief political history. The negotiations ended with the signing of that most burdensome Treaty of Alexandropol, on December 3, 1920. I shall relate a comparative analysis of the negotiations process, the legal status of the treaty itself and its contents in a future article. At present, a few words on what lead up to the treaty.

Of course, the signing of the Treaty of Alexandropol was not some isolated incident. It was a consequence, in particular, of the military and political situation in Armenia after the havoc caused by the May, 1920 uprising, the ever-increasing Bolshevik-Kemalist co-operation, as well as the immense gap that had been formed between the authorities of Armenia and the people. As the current state of Armenia mirrors the Armenia of May-November, 1920 in many ways, I thought it helpful to discuss certain key points.

One question has always bothered me, as I am sure, it has others. How did it come to pass that, in almost the absence of an army, the Armenian people managed to defeat or at least provide an adequate defence to the Ottoman forces in open battle in May of 1918, and just two and a half years later, in September-November, 1920, with more weapons, ammunitions and soldiers than in 1918, it suffered ignominious defeat at the hands of the remnants of the very same Ottoman army in the well-bastioned fortress of Kars? When one studies the documents, press and memoirs of the time, one thing becomes clear: the roots of the defeat rested more on morale than on the military or the political. Yes, costly mistakes were allowed in organising the defence; yes, there were many

unfavourable circumstances, even accidental ones. And, what, were there none in May of 1918? Of course there were! But in May of 1918, the Armenian man and soldier was certain that the Ottoman army was advancing towards the southern Caucasus to finish what it had started with the Armenian Genocide. Therefore, there were no alternatives to facing and struggling against the enemy; the willingness to fight was borne by the entire people. And also, the real reason for the victory of the first battle over Artsakh (Karabakh) was its own characteristic of being national, aimed at liberation and the fact that its essence was shared among the people. But when one casts a glance at the circumstances in September-November, 1920, then it becomes clear that the Armenian soldier had simply given up on fighting, and the Armenian man, on showcasing any resistance. The most revealing testimony to that fact are the Turkish casualties. According to Kâzim Karabekir, commander of the eastern front of the Kemalist forces, in the course of three days of battle (from October 31 to November 2, 1920), including the taking of Kars, the Turks lost only nine and had 42 wounded.[364] This served as a realisation of the Bolshevik calls of "*the times have changed*", "*these are different Turks*". And upon the withdrawal of "*the Turks new and made anew*", the local authorities had to bury 4,386 bodies – 90% of which were women and children – in but three villages of Shirak (Ghaltaghchi, Aghboulagh and Barapol, as they were then called).[365] This, too, was a manifestation of the policy of brotherhood towards "*the new and made anew*" Turks. Most unfortunately, it is the same song being sung today, the same old story; only the Bolsheviks getting assistance from abroad have been replaced by numerous grant-gulping organisations and so-called political scientists.

As the Bolsheviks were unsure whether it would be possible "*to destroy Imperialist Armenia*" solely by deluding the Armenians and breaking their spirit of resistance, they combined other steps with that of propaganda. Starting in May-June, 1919, when Semyon Budyonny met with Mustafa Kemal, the Bolsheviks provided immense military and material support to the Kemalists under the sway of the dream of a global revolution. And those relations were particularly deepened with the signing of a secret treaty of co-operation between the Kemalists and Bolsheviks on the 24th of August, 1920. In fact, one of the signatories to the treaty on behalf of the Turkish party was that war criminal, former Minister of War for the Ottoman Empire, Enver Pasha, something that testifies to the following: although Kemal and Enver despised one another for years, all Turks found common ground in their efforts against the Armenians. Immediately following the secret treaty of August 24, 1920,

[364] *Harb Tarihi Vesikalari Dergisi* (Journal of Documents pertaining to Military History), September, 1964, doc #1146.
[365] R. Hovannisian, *The Republic of Armenia*, v. IV, Berkeley, 1996. p. 286.

the Bolsheviks transferred over 200kg of gold[366] and much arms and ammunition to the Kemalists. The provision of military assistance is a relatively well-known fact, but few are aware that the Bolsheviks supported the Kemalists by directly fighting within their ranks against "*Armenian Imperialists*". At the end of August 1920, the first detachment of Bolsheviks, 7,000 soldiers, arrived in Karin (Erzurum). Some time later, another detachment of 10,000 arrived in aid of the Kemalists.[367] Whereas the orders of the first detachment were to participate in the military actions against Armenia, the second was to be involved in maintaining the Mesopotamian front, so that the British forces stationed there would not be able to strike at the Kemalists from the rear and come to the assistance of Armenia in that way.

And so, under these circumstances – deserted by allies Britain and France, betrayed by ally Russia, internally weakened and militarily brought to her knees – the delegation of the RA arrived at Alexandropol (Gyumri) on November 24, 1920, in order to commence negotiations with the so-called new, self-declared revolutionary Turkey.

(to be continued)

28 November 2010

[366] Embassy of the Russian Federation in Turkey – http://www.turkey.mid.ru/20-30gg.html.
[367] M. J. Somakian, *Empires in Conflict: Armenia and the Great Powers, 1895-1920*, London, 1995, p. 229.

73. A Small, But Significant Clarification
or
When was the Treaty of Alexandropol Signed?

/on the occasion of the 90th anniversary of the Treaty of Alexandropol/

The exact day and time of the signing of the Treaty of Alexandropol is of extreme significance, as it depends directly on the full powers of the Armenian delegation at Alexandropol, and accordingly with the legal status of the treaty. Because any act, including the signing of international documents, which is carried out by a representative of a state while being beyond his authority or time-frame is considered to be an *ultra vires* act and, as such, it does not create any legal obligations for the state in question,[368] and so the simple historical fact of the date of signing of the Treaty of Alexandropol has been rendered a fact with legal bearing in this case.

That is to say, the big question here is the following: did the Armenian delegation possess the relevant authority when the Treaty of Alexandropol was signed, or not? I must strongly emphasise that a negative answer would be only *one* reason for the invalidity of this treaty. The Treaty of Alexandropol is invalid for a number of other reasons, including not being ratified or enforced, as well as the fact of the sovereign of the Turkish state, Sultan Mehmed VI, not having bestowed, for his part, the corresponding authority on the Kemalists. It is necessary to emphasise as well that, until November 1, 1922, no one – neither the international community, nor even the Kemalists – doubted the *de jure* sovereignty of the sultan, his constitutional authority and his legal supremacy.[369]

The change in regime in Armenia in 1920 is a documented turn of events, and consequently its date and time is an unquestionable fact. The change in regime in the RA took place with the signing of a pertinent agreement between the authorities of the RA and Boris Legran, representative of the RSFSR (Russian Soviet Federative Socialist Republic). That agreement was signed on 2 December 1920, in the morning, and was enforced the same day, at 6 pm.[370]

As the issue of the change in regime is once and for all clear, it remains to be discovered when the Treaty of Alexandropol was signed, whether before the change in regime, or after.

Most often, and traditionally, the date of the signing of the Treaty of Alexandropol is given as December 2, 1920. This date is incorrect, since the facts bear witness otherwise. I believe that this mistake has been

[368] Luzius Wildhaber, *Treaty Making Power and Constitution*, Basel and Stuttgart, 1971, p. 150.
[369] Eliot G. Mears, *Modern Turkey*, New York, 1924, p. 604.
[370] R. Hovannisian, *The Republic of Armenia*, v. IV, Berkeley, 1996, p. 387.

widespread as, although the treaty was signed on December 3, a previous date of "*December 2, 1920*" (or rather, by the Turkish calendar, "*2 Aralik 1336*") remained on the document.

Let us take a look at what the direct and indirect participants of the signing of the Treaty of Alexandropol have to say. The head of the delegation of the RA, Alexander Khatisian, notes the following in his memoirs: "*The fourth and final session of the peace conference took place at eight o'clock in the evening. … At two o'clock at night (past midnight, into the 3rd of December), the treaty was signed by the two delegations*".[371] The head of the Turkish nationalists and future president of Turkey, Mustafa Kemal, said the following in his famous speech of 1927 when speaking of the Treaty of Alexandropol: "*Peace negotiations began on the 26th November and ended on the 2nd December; during that night the treaty was signed at Gumru*".[372]

There are many sources and studies, which correctly indicate the date of the signing of the Treaty of Alexandropol as the 3rd of December, 1920.[373] I shall not burden the reader with too many citations in this article. I shall only quote perhaps the most informed man of the time, Horace Rumbold, minister plenipotentiary of Great Britain at Constantinople, who mentioned in an intelligence briefing of the 16th of December, 1920 to foreign minister George Curzon, "*Peace between the Turks and Armenians was actually signed at Alexandropol on the 3rd December*".[374]

In sum, the following conclusion can be drawn. The Treaty of Alexandropol is invalid on a number of bases, one of which being the absence of the relevant authority of the delegations. When the Treaty of Alexandropol was signed, on December 3, 1920, neither delegation possessed the authority to represent their countries. The Armenian delegation was already no longer sent on behalf of the country's leadership, and the Turkish (Kemalist) delegation was not representing the country's leadership.

30 November 2010

[371] Ալ. Խատիսեան, Հայաստանի Հանրապետութեան ծագումն ու զարգացումը, Աթէնք, 1930, էջ 271: (A. Khatisian, *The Origin and Development of the Republic of Armenia*, Athens, 1930, p. 271.)
[372] Mustafa Kemal Atatürk, *A speech delivered by Mustafa Kemal Ataturk in 1927*, Istanbul, 1963, p. 418.
[373] Justin McCarthy, *The Ottoman Turks: An Introductory History to 1923*, London, 1997, p. 381; G. Lenczowski, *Middle East in World Affairs*, New York, 1952, p. 105.; Von Gotthard Jäschke, Erich Pritsch, *Die Turkei seit dem Weltkriege, Geschichtskalender 1918-1928, Die Welt des Islams*, Bd. 10, p. 42. Eliot G. Mears, *Modern Turkey*, New York, 1924, p. 600; *The New York Times*, December 10, 1920, p. 1.
[374] Summary of Intelligence Reports issued by S.I.S. (Constantinople Branch) for week ending December 16, 1920. *British Documents on Ataturk, (1919-1938)*, v. 2, April-December 1920, Ankara, 1975, p. 515.

74. **On Communist Morals and the Truth of the Bible**

Sixty-five bodies were being collected every day in Yerevan, with similar situations in all parts of the country. Upon a ridiculous war and the deliverance of independence, with the treaties of Batumi and Alexandropol destroying the nation, Armenia ended up with just nine thousand square kilometres of bleak territory.

excerpt from the fiery speech delivered by Comrade Tovmasyan,
at the 38th Congress of the Communist Party of Armenia
(*Aravot* daily, 1 December 2010)

I shall not ask Comrade Tovmasyan how many died daily of hunger during those blessed years of communist, namely during the Holodomor, as I have not myself studied that issue and could not argue about it as a specialist. I can refer to one question in particular, which I have investigated in accordance with my specialisation and by public demand for many years, which is, the size of the territory of the RA.

One can speak of the size of the territory of any country if at least general delineations have been carried out on all the borders of that country. The Treaty of Alexandropol defines only the Armenia-Turkey border (Article 2; I am putting aside the question of the legal status of that treaty for the moment). Naturally, the treaty does not take up the remaining three frontiers of the RA, with Iran, Azerbaijan and Georgia. Naturally, as two countries cannot decide on the borders with a third country in the absence of the third country. Of course, only the Bolsheviks could allow themselves to do such a thing, as they did with the Treaty of Moscow (16 March1921). Whereas, out of the above three, there were no disputes on the Armenia-Iran border, there were disputes of immense magnitude, by our scale, on the Armenia-Georgia and Armenia-Azerbaijan frontiers.

What is more, the Treaty of Alexandropol did not clarify the final status of even Nakhijevan. That was to be decided later, with a referendum (Article 2), as opposed to the Treaty of Kars (13 October 1921), by which the communists panegyrised by Comrade Tovmasyan handed it over with nothing in return to Azerbaijani rule.

And also, whereas the Treaty of Alexandropol had provisions on the possibility of a referendum on the final status of even the Kars region (Article 3), the Treaty of Kars between the communists and the Kemalists did not take even that into consideration.

I would like to end by quoting a book the communists do not like, the Bible: "*Why do you look at the speck of sawdust in your brother's eye and pay no attention to the plank in your own eye?*" (Matthew 7:3, New International Version).

1 December 2010

75. Ninety Years of Delusion
or
How It Came to Pass ? – 2
/on the occasion of the 90th anniversary of the Treaty of Alexandropol/

On 24 November 1920, the delegation of the RA arrived at Alexandropol. Peace negotiations between the Kemalist and Armenian delegations officially commenced the following day. The head of the Armenian delegation was the former premier, Alexander Khatisian. Authorised members of the delegation also included former finance minister Abraham Gyulkhandanian, and the former governor of the Kars region, Stepan Ghorghanian. The delegation consisted of sixteen people in all.

I have already written about the extent of authorisation of the delegation of the RA – or rather, the lack thereof – at the moment of the signing of the Treaty of Alexandropol (3 December 1920). It is necessary now to turn to the status of those claiming to act on behalf of Turkey and to see whether that delegation had any authority to carry out negotiations or to sign any documents as per international law and the constitution of the Turkish state.

One clarification before discussing the so-called Turkish delegation. It is necessary to emphasise that the word "Turkish" here is used solely as an ethnic indicator, and not with any political meaning, because even the very members of that delegation did not consider themselves representatives of the state, Turkey, and rightfully so. In the preamble to the document, the delegation in question is not called "the Ottoman Empire" or "Turkey" or a delegation from the government of either, but simply "the Government of the Grand National Assembly of Turkey" ("*Türkiye Büyük Millet Meclisi Hükümeti*" in Turkish, "*Le Gouvernement de la Grande Assemblée Nationale de Turquie*", as in the French version of the document). This was a group created in Ankara on the 23rd of April, 1920 by joining together "*Karakol*", a group created by the Turkish military command (headed in 1912-1914 by Kâzim Karabekir), along with the various groups under "*Müdafaa-i Milliye*" ("*National Defence Group*"), also formed with the encouragement and support of the same group.[375] Naturally, the activities of *Karakol* and other such groups cannot be considered legal as, in accordance with international law, upon the signing of the armistice, any acts aimed at violating the terms of the armistice – namely, peace – is illegal and condemned. The activities of the Kemalists were also in utter violation of the constitution of Turkey, and thus the legitimate authorities of Turkey had declared death penalties on certain Kemalists as early as April-May,

[375] Nur Bilge Criss, *Istanbul under Allied Occupation, 1918-1923*, Leiden, 1999, p. 5.

1920. So, for example, on April 11, 1920, the highest clergyman of the empire, the Sheikh-ul-Islam, had outlawed the rebels by a *fatwa* and declared divine approval to the act of killing them.[376] The ringleader of the rebels, Mustafa Kemal, was stripped of all his titles and offices on July 11, 1919, and, on May 11, 1920, in addition to the religious ruling, the Turkish military court had passed the death penalty on him as well. The Sultan confirmed that sentence on May 24, 1920. Thus, the delegation, which had arrived in November-December, 1920 to Alexandropol, was not representing Turkey, the state, but it was a group of criminals on the run, including some sentenced to death for war crimes. As almost all the so-called Kemalists (including Mustafa Kemal) were former Young Turks – members of the Committee of Union and Progress party, bearing the same extreme nationalist ideology – the British rightfully considered them one and the same.[377] Yes, the Kemalist groups were militarily powerful, as they possessed the fifteenth army of the Ottoman Empire (around 30,000 people)[378] alongside other forces (of the second, sixth and ninth armies), being additionally boosted by Bolshevik support. Regardless, however, none of that changed their legal status. It is not the number of soldiers, which has a bearing on the legality of documents, but the legality of the authority of the delegations. International law makes clear demands on the legality of any international document. Those demands may be partly defined by a triad of criteria, that any treaty may be considered legal if the authorised representative of the legal authorities of a recognised state sign it.

It is evident that that the Kemalist delegation was not authorised and was not representing the legal authorities of the recognised state in question. Their authorities derived from the group known as the "*Grand National Assembly*" ("*Büyük Millet Meclisi*") alone. What was this group and what legal status did it have in 1920-21? This is an important question for the validity of the treaties of Moscow (16 March 1921) and Kars (13 October 1921) as well, as those two so-called treaties were signed by the representatives from the same group as well.

Despite the widespread misunderstanding, the "*Grand National Assembly*" was not, in fact, the parliament of Turkey from 1920 to 1923. It was not and could not have been so from the point of view of international law, as well as in accordance with the constitution current in the country at the time. A country's legislative and executive bodies do not function upon capitulation and during the course of military occupation. Supreme authority is handed over to the victorious powers and that legal condition is preserved until a peace treaty is signed and comes into force. Such a state of affairs and conditions are indisputably codified in

[376] Erik J. Zurcher, *Turkey: A Modern History*, New York, 1998, p. 158.
[377] Nur Bilge Criss, *Ibid,* p. 5.
[378] Erik J. Zurcher, *Ibid,* p. 155.

international law, consolidated with numerous examples.[379] In Turkey's case, from the 30th of October, 1918 (when the Armistice of Moudros was signed) up to at least the 24th of July, 1923 (when the Treaty of Lausanne was signed), authority belonged to the victorious *Supreme Council of the Allied Powers* in Turkey, according to international law. That council, which consisted of the highest officials of Britain, France, Italy and the US, carried out its authority in Turkey first by simple representatives (November, 1918 to March, 1919), and then through High Commissioners (March, 1919 to September, 1923).[380] The body, which united the latter, which carried out supreme authority in the territory of the former Ottoman Empire, was called the "*Inter-Allied Commissions of Control and Organisation*", with a number of sub-commissions.[381]

The Treaty of Lausanne confirms the aforementioned. The careful reader of that treaty will note that it does not lay out those territories to be separated from Turkey, but mentions those territories of the former Ottoman Empire over which Turkish sovereignty would be re-instated.

The first session of the group known as the "*Grand National Assembly*" took place on April 23, 1920. It had 327 participants, of which at most 92 (less than a third) were former members of the former Ottoman parliament. They were "doubly former" since the last legal elections for the parliament took place in 1912, and the term of those elected that year had come to an end 1916, in accordance with Article 70 of the then-current constitution. The so-called elections in the final months of 1919, mentioned in historical accounts, and the sessions held in their wake from January to April, 1920 cannot be considered elections and viewed as parliamentary sessions, even with great wishful thinking, as all of them took place in the absence of Turkish sovereignty, being carried out in violation of the constitution and laws of the country. In particular, articles 7, 17, 41, 42, 43, 45, 46, 60, 72, 77, and 120 were violated; all non-Turks were illegally denied their right to vote. Consequently, the only recognised authority of Turkey at the time, the Sultan, had dissolved the functioning of that illegal gathering on April 12, 1920 as per his own constitutional right (Article 7).[382] This is what "*members of the former parliament*" meant. Even if the aforementioned 92 were to be considered legally authorised, which, as was shown, is highly questionable, it would make no difference, as that figure would be insufficient to call quorum. The remaining 232 were representatives of branches of the so-called rights' defence groups, functioning illegally in the country.[383] After the

[379] I. Paenson, *Manual of the Terminology of the Law of Armed Conflicts and International Humanitarian Law*, Brussels, 1989, p. 46.
[380] Nur Bilge Criss, *Ibid,* p. 61.
[381] Nur Bilge Criss, *Ibid,* p. 158.
[382] *Modern Turkey*, (edited by E.G. Mears), New York, 1924, p. 598.
[383] Erik J. Zurcher, *Ibid,* p. 158.

defeat of the Ottoman Empire, from December, 1918 until October, 1920, 28 branches of such rights' defence groups were formed, in which the majority of the representatives were from the local party membership of the criminal and outlawed Union and Progress, along with *muftis* (Muslim clerics), Muslim landlords and non-Christian merchants.[384] The branches met in Karin (Erzurum, July 23 to August 17, 1919), where a united leadership group was formed, the "*Representative Committee*" ("*Heyet-i Temsiliye*"), headed by Mustafa Kemal. A second gathering took place in Sebastia, from September 4 to 11, 1919. Although only 31 provincial representatives took part, the gathering gave itself an impressive name – "*Association for the Defence of the Rights of Anatolia and Rumelia*" ("*Anadolu ve Rumeli Müdafaa-i Hukuk-i Milliye Cemiyeti*").[385] This group moved to Ankara on December 27, 1919 where, in April 1920, admitting to its ranks former parliamentarians and officials on the run from the law, it gave itself an even more impressive name. It was renamed the "*Grand National Assembly of Turkey*", with the executive group, the "*Representative Committee*", henceforth the "*Government of the Grand National Assembly of Turkey*". That is to say, the group formed in September 1919 and its executive was formed again and renamed,[386] but its legal status did not change as a result.

And so, it was on behalf of the executive of this group, the "government", that the Turkish delegation was negotiating at Alexandropol. Naturally, it is not the name of the group, which decides its authority, but the legal and legislative basis upon which a given body is formed and within the framework of which it is established. A group's name *per se* does not define its jurisdiction, much less act as a basis for the authorised signing of international legal documents.

(to be continued)

4 December 2010

[384] *Ibid,* p. 154.
[385] *Ibid,* p. 157.
[386] Elaine D. Smith, *Turkey: Origins of the Kemalist Movement and the Government of the Grand National Assembly (1919-1923)*, Washington, 1959, p. 9.

76. Once More on the Necessity of Shifting the Emphasis in the Struggle for Armenian Rights

That which had to occur came to pass. Despite the Armenian-American lobby groups and, in general, the exceptional work undertaken by Armenian-Americans, the US House of Representatives did not bring up the resolution on recognising the Armenian Genocide. Of course, the resolution was not rejected, but it was not adopted either. I believe it wrong to expect the near impossible from the Armenian-American community. In the current political situation, the efforts and calls of the Armenian-Americans cannot have a greater effect than the interests of the US in the Middle East can. America is not a country today, which would sacrifice its tangible interests for the sake of sublime ideas. The Armenian-Americans have the right to be upset at the promises reneged upon by their Congressmen. And the authorities in Armenia have no right to speak whatsoever, I believe, as they denied the violated rights of their own country for those very interests one year ago; they were ready then, as they are now – since the protocols are still in flux – to hand over to the Turks vast swathes of territory legally belonging to the RA. I believe that that was the reason that they did not have the nerve, as their Turkish counterparts did, to appeal to the American leadership verbally or in writing. Unfortunately, the same applies to the National Assembly, which was busy at the time with auctioning off our mother tongue. Silence is generally not a policy option. Each public figure must clarify his position on the most important issues pertinent to his office. We, the taxpayers and voting public of this country, must know where each relevant body and political party stands on the most important issues so as to draw our own conclusions. Is there not "*a time to cast away stones, and a time to gather stones together*" (Ecclesiastes 3:5)? The time to cast stones will surely come.

In any case, the focus of my article is not the discussions, which took place yesterday. What happened yesterday was essentially a political occurrence, nothing more. It is more important to tackle certain rudimentary questions: what need do we have for the executive and legislative branches of the US to recognise the Armenian Genocide? If that is an end in itself, then it has no meaning. If that is being done in order to acquire reparations, then a second, no less important question needs to be answered: how is a resolution in a parliament, that too, a non-binding one, merely the expression of the position of a national legislature, to be rendered into reparations? Were the policies of Canada with regards to RT changed when both their legislative and executive bodies recognised the Armenian Genocide? Naturally not. So, if we desire just reparations – something which I believe to be an absolutely legitimate and feasible aim – then that

has to take place through a body whose rulings: a) are international in nature, that is, which the RT is subject to accept as well, b) are binding, that is, which are not subject to domestic discussion within RT. That is to say, such rulings must not only be binding, but they must also point out, even if completely in theory, a clear way to fulfill them.

There are two bodies, which have such a status and such authority in international affairs today, being the supreme political and juridical bodies of the same organisation, the UN, namely the Security Council and the ICJ. The actual responsibility of the first is the "*maintenance of international peace and security*" (UN Charter, Article 24). I do not believe that anyone thinks that the ninety-year violation of the rights and territorial integrity of the RA by Turkey is considered today by any member of the Security Council as a serious threat to "*international peace and security*". The issues of concern to us clearly find their place in the second aforementioned body, within the authority of the ICJ. It falls under the jurisdiction of this court to take up the issue of the Armenian Genocide, because the genocide is not just some historical event, as our Turkish colleagues try to present it. Genocide is an international crime, and as a question of international law and the violation of international law, it is subject to the ICJ (Statute of the ICJ; articles 36.2 (b, c, d)).

The shift of the issues of concern to us from the political field to the legal would generally be in our favour, if only for the reason that we would not be forced to face up to the Turkish state, which is incomparably a greater political force than us, but that we would be on an equal footing. I must underscore that this shift ought not take place in a hurry, but gradually, and in a consistent manner. We must be ready for it, but, unfortunately, we are not. A Chinaman is asked when it would be a good time to plant a tree. He answers – twenty years ago. We gained our independence almost twenty years ago. If we started to build our expertise then, we would have had a whole generation's worth by now.

History testifies to the fact that the probability for success in the legal field is greater. If one were to study the progress of the issue of the Armenian Genocide, which is but one aspect of the Armenian Question, its success in the legal field would become immediately clear. There has never been a legal body or a legal decision on the Armenian Genocide, which doubted the status of the Armenian Genocide as a genocide. That has been the case starting with the Turkish military tribunals[387] (even though the term "genocide" did not exist then, the tribunal includes its description in its rulings), and ending with the legal analysis and conclusion by Geoff-

[387] The Turkish military tribunal functioned with varying authority from 16 December 1918 until 13 January 1921 (Vahakn Dadrian, *The History of Armenian Genocide*, New York, 2008, p. 321, 333).

rey Robertson,[388] counsel for Julian Assange of WikiLeaks. American legal opinions have likewise never doubted that the Armenian Genocide qualifies as a genocide. Lawrence LeBlanc, who was highly instrumental in the establishment and development of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), and the role of the US in guaranteeing its legal obligation, while bearing reservations with regards to many instances of massacres, considered the "*wholesale slaughter of Jews and Armenians*" to be outright "*prominent cases of genocide*".[389]

As far as I understand, we wish the US Congress to pass the resolution on the Armenian Genocide so that Turkey would follow in its example. I am not convinced of that correlation. Racial discrimination has long since disappeared in America, but national and religious minorities in Turkey are perceived until today as base entities. If you do not believe me, ask the Kurds and Zazas. For me, personally, I do not care whether Turkey recognises the Armenian Genocide; I wish for that country to make reparations. Those are two different things. Turkey may recognise something, but not make reparations for it. And it can avoid recognising anything, but still make the reparations. Ultimately, we have moral, material, and territorial rights not because a genocide was carried out, but because there are international documents codifying our rights. The documents, the instruments are available. How effectively we use them depends on us alone. In the same game of chess, one player may win and another may lose, although the rules of the game apply in exactly the same manner to both.

Now let us return to yesterday's discussion on the Armenian Genocide resolution. I wish to clarify my position yet again. I am not against the US Congress, including both houses, as well as the president, recognising the Armenian Genocide. But everything has a price in this world. If this process – being more on the emotional side and also more prominent – is taking away the entire potential of our struggle, and is consequently hindering the other paths of our struggle, I begin to doubt the efficiency of that path. It seems to me at times that the Turks oppose the passage of the Armenian Genocide resolution not because they perceive a real threat in it, but because they want to keep us occupied, so that we do not go on the paths that are more dangerous for them.

Let us also recall that the US has already recognised the Armenian Genocide. In fact, the US was the very first state, which recognised the Armenian Genocide. The US did so fourteen years before Uruguay or Argentina did, in 1951, just three years after signing the Genocide Convention. The US government, in a declaration to the ICJ of the UN in January 1951,

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[388] *Was there an Armenian Genocide? : Geoffry Robertson QC's Opinion*. Doughty Street Chambers, 9 October, 2009.
[389] Lawrence J. LeBlanc, *The United States and the Genocide Convention*, Duke University, Durham and London, 1991, p. 87.

asserted the following, word-for-word: "*The Roman persecutions 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. This was the background when the General Assembly of the United Nations considered the problem of genocide*".[390]

It is clear from the above that *the Turkish massacres of Armenians* was considered by the US government without question as an *outstanding example of the crime of Genocide*. What is more, this declaration unassailably proves that the UN Security Council, in adopting the Genocide Convention (9 December 1948), had the Armenian Genocide in mind.

The Genocide Convention was ratified by the US on 25 November 1988. Accordingly, the document was rendered a "supreme Law of the Land", as per the second clause of Article 6 of the US Constitution.

Thirty years after the aforementioned written declaration by the US government, President Ronald Reagan once again reaffirmed the position of his country with regards to the Armenian Genocide, in 1981: "*Like the genocide of the Armenians before it, and the genocide of the Cambodians which followed it – and like too many other such persecutions of too many other peoples – the lessons of the Holocaust must never be forgotten*".[391]

It is clear that the current legislative and executive branches of the US are not ready to once again assert that "*the Turkish massacres of Armenians*" was a genocide. I do not see any need for it myself. For me, the aim is not to get the Armenian Genocide recognised, but to eliminate the consequences of the genocide. That is to say – the restoration of the moral, material, and territorial rights of the Armenians.

It is pertinent to recall the words of Armenian poet Paruyr Sevak here:

Խոսք առնում եմ բաց ճակատով զուր չխփվել հասար պատերին:
Ինչի՞ համար. էլի պատը կմնա պատ, կպակասի մի լավ ճակատ:

I promise not to ram my bare head onto hard walls in futility.
For what? The wall will stay a wall, only a good head will be lost.

If the wall is a hindrance on our path, then we must seek out ways to circumvent it. It is not right to expend all of our human and material potential on shortsighted efforts. What is important is to achieve our goals. And in what ways we will end up doing so is not an essential matter.

23 December 2010

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[390] *International Court of Justice: pleadings, oral arguments, documents*; *Reservations on the Convention on the Prevention and Punishment of the Crime of Genocide*, p. 25.
[391] Ronald Reagan, *Proclamation 4838 of April 22, 1981: Days of Remembrance of Victims of the Holocaust by the President of the United States of America*.

77. On the Question of Recognising the Republic of Nagorno-Karabakh: Hopes and Illusions

Talk on the recognition of the Nagorno-Karabakh Republic (NKR) in general and, specifically, recognition by the RA has become more prevalent of late. The discussions have been of a political nature, although the recognition of a state is first and foremost a legal matter. The debate can be divided into two camps. The first finds that the recognition of the NKR would amount to nothing. As for the second, it seems that recognition of the NKR is the ultimate end for them. I shall abstain from evaluating these approaches. Instead, I shall stress the legal aspects of this issue in trying to demonstrate that the question is much more complicated than what it appears at first glance.

The recognition of any state – regardless of to what extent that act would have a political basis – is a legal phenomenon. Accordingly, then, it is necessary to examine the premises and the legal consequences that have to do with the recognition of states.

The first recognition by treaty in modern times took place in 1648, when the Eighty Years' War (1568-1648) between the Spanish and the Dutch was put to an end and Spain recognised the independence of the United Netherlands that had broken away sixty-seven years earlier, having declared sovereignty in 1581.

To comprehend more fully the matter of recognising newly established states, it is necessary to note what kinds of criteria are put forth by international law to acknowledge the independence of countries. As per international law, there are three such criteria: a fixed territory, a population, and an effective government.[392] I find it necessary to emphasise that international law does not place any minimal thresholds for territory or population.

In this regard, it is important that the territory be specified and the population is permanent, and that is all. E.g., there are 2 areas between northern Sudan and South Sudan, currently in the process of establishing its independence – Abyei and South Kurdufan (the former with 10 460 sq.km and 60 000 inhabitants; the latter at 158 355 sq.km and a population of 1 100 000) – a total of 1 160 000 people and 168 815 sq.km, the fate of which is to be decided in future. As you can see, such an indecisive circumstance does not hinder the process of establishing independence. Let me also stress that the territory of NKR is marked with accuracy up to the metre, as separate from Azerbaijan.

[392] Jochen Abr. Frowein, Recognition, p. 34, Encyclopedia of Public International Law, [ed. Rudolf Berhardt], v. IV, North-Holland, 2000.

As for effective government, then it is absolutely clear that, at the very least from May 1994, the elected officials of NKR have been fulfilling the duties of government throughout the entire territory of NKR. I would like to underscore in particular that the Republic of Azerbaijan has never maintained an effective government over any part of the territory of NKR, and it had not ever carried out any kind of governance over the territory of the Nagorno-Karabakh Autonomous Oblast.

The aforementioned were the three criteria for recognition. Let us now turn to what bases exist not to recognise. International law points to 2 conditions because of which recognition can be obstructed. The first is insufficient independence. The NKR's position is quite weak in this case. We are forgetting an important factor – independence means independence not only from Azerbaijan, but also from Armenia. Therefore, as long as the NKR remains outside the negotiations process, it would be naïve to expect that any state would recognise the NKR's independence.

The second condition hindering recognition is the violation of any component of the principle of self-determination, for example, if there is inadequate representation of a given ethnic or religious group in the local authorities. In this case, the circumstances of the NKR authorities are completely in line with the current population of the country.

The conduct and order prevalent in a state seeking recognition is also an important factor. From a purely legal perspective, a democratic regime is not a prerequisite for independence to be recognised. Nevertheless, the retrogression of the NKR from "Partly Free" to "Not Free" as per the index prepared annually by Freedom House is a serious step backwards on the NKR's path to recognition.

Objections could be made to this argument: after all, if anyone wanted to recognise anything, these circumstances would be recognised as well. I agree. However, the trouble is indeed that they do not wish to recognise, and so in such a case the only prudent policies would be to eliminate all possible conditions and excuses not to recognise.

Now let us turn to another important question. What legal consequences could be brought about by recognition of the NKR, or, put more simply, why do some people insist that the Nagorno-Karabakh Republic be recognised?

This question has two sides. One is the recognition of the NKR by the RA, and the second is recognition by other countries. Recognition by Armenia would have more than one manifestation. Many are motivated by political considerations.

However, the issue has serious legal complexities, which are always ignored. According to the Declaration of Independence of Armenia, which forms part of the Constitution of the RA, the establishment of RA is based, among other things, on "*the December 1, 1989, joint decision of the*

Armenian SSR Supreme Council and the Artsakh National Council on the 'Reunification of the Armenian SSR and the Mountainous Region of Karabakh'", that is, it recognises the legality of that document. The third clause of that joint decision declared "*the reunification of the Armenian SSR and Mountainous Karabakh*".

How could the RA, then, recognise part of its own territory as independent? I would like to underscore that the fact that Nagorno-Karabakh is a part of the RA is not only codified *de jure* in the Constitution of the RA, but is also *de facto* the reality in our everyday life. If that were not the case, then the military service of the conscript from Armenia in the NKR would be illegal, the people of Nagorno-Karabakh could never carry passports of the RA, and Robert Kocharian could not participate in the presidential elections of the RA.

Those seeking recognition of the NKR believe that recognition would add to the security of the NKR. If we set aside the apparent anti-constitutional nature of such a decision, perhaps they would be correct. Nevertheless, let us recall that a recognised state would be in no less danger from external aggression.

There are numerous recent examples to support this: regular Turkish incursions into Iraq, the invasion by that same Iraq into Kuwait, the assault by Israel into Lebanon before that, or Turkey's invasion of Cyprus, and so on. Thus, taking into account the experiences of the not-too-distant past, we may summarise that, yes, international recognition would benefit the level of security of the Nagorno-Karabakh Republic, but it would be no guarantee for the secure existence of the NKR.

Now for the most important question: what to do? History attests to the fact that states exist as long as that state and its likely adversaries maintain a balance of power. The response, then, is very simple: the balance of power must be maintained. I would like to especially stress that power and military might are not the same thing. Coercive force is an important component of power, but it is only one component.

The most difficult question arises out of this: how to maintain the balance of power with the NKR and the RA on the one hand, and Azerbaijan and Turkey on the other, when the elements that make up the power of the parties are based on essentially different things. To put it simply, we are behind our potential adversaries in terms of politics, the economy, territory, geographic positioning, population, resources, military output, etc.

This question, which appears so difficult at first glance, has a very simple answer. As balance is a relative concept, that is, it is the comparison of power of the sides, then if one cannot maintain a balance by becoming more powerful one's self, then another approach must be adopted, that of weakening one's opponent. There are many ways to do so. I shall refer to only a few. Native peoples of Azerbaijan today, whose numbers are at least

two and a half to three million – the Lezgin, Avar, Tsakhur, Talysh, Tat, Udi, and others – are suffering under the yoke of Azerbaijani nationalism.

Yes, the identities of many are repressed or forcibly concealed, but pointed efforts in the information realm would encourage the awakening of national consciousness among them. Our delegations in various European bodies and our embassies in the entire civilised world must always bring up facts of the discrimination and sufferings in place concerning the ethnic and other minorities in Azerbaijan. In practice, it would be necessary to broadcast radio and television programming from the NKR in Russian, in Turkish, and in the languages of those peoples, and also to set up websites for them.

I imagine that people would object, saying that there is no expertise or no funding for any of this. First, about the funding. If the maintenance costs for former officials of the NKR were to be reduced or eliminated from the NKR's budget, then even that amount is sufficient to carry out the plan I mentioned. And when there is funding, the expertise will appear too. There are still individuals in the native peoples of Azerbaijan who wish to struggle for the future of their own people.

And I also believe at the same time that it would be better if the Armenia Fund would renovate one or two fewer schools or perhaps not construct a windsurfing club on the shores of Lake Sevan, and instead implement the plan I put forth. If the powers were to be put finally out of balance, war would be inevitable, in which case all of the renovations and such would be rendered into ruins. Therefore, maintaining an external balance through internal counter-balances must be one of the foundations of policy for the RA and the NKR.

The above applies to Turkey as well. In Turkey today, there is a profound process of identity seeking underway. The best example is the target group of the Zazas, which, according to some estimates, could be up to three million in Turkey. Relations with the Kurds are very important and, taking into account the ongoing processes in our region, they could be decisive for Armenia's future. Armenia must carry out much more mature and far-sighted policies now, nearing its twentieth year.

We have to understand that, if not the restoration of our rights, and then at least the establishment of an intermediary state between Turkey and us would match our core interests. If not, then our being recognised will not save us. I would like to recall that our first republic had complete recognition by the international community, including Turkey and Russia, but that did not hinder them from attacking the RA and dividing it between themselves.

The other way to guarantee the security of the NKR is to keep Turkey as far away as possible from the region. Regrettably, the unfortunate

Armenia-Turkey protocols acted as a Trojan horse and helped Turkey to stick its nose into the Nagorno-Karabakh business.

It is clear that, in essence, any negotiation, including an inter-state one, is a process of the applications of leverages and counter-leverages. Negotiations can be of benefit to one, if one's leverages over one's interlocutors have more influences, than those of the interlocutors have over one. When, years ago, I proposed my plan to the president of the republic, the plan being for the most part based on the revival of the Wilson's arbitral award, I had in mind then security guarantees for the RA and the NKR.

I find today as well that if the Wilson arbitral award were to receive corresponding weight and if it were to be given enough attention by influential juridical bodies and experts, then it could act as a serious piece of leverage for us as a guarantor of Turkish neutrality on essential issues. I find today still that the creation of leverages of influence on Turkey must be the most important foreign policy goals for us and that Wilson's arbitral award could serve to guide us well in that regard. Most unfortunately, in spite of all my efforts, I could not achieve anything over the course of five years, otherwise I would not continue my struggle alone and would at least have an establishment to assist and support me.

In sum, the following conclusions can be drawn:

1. The recognition of NKR would be very inopportune politically, and it is full of undesirable consequences legally.
2. Without constitutional amendments, recognition of the NKR by RA would be anti-constitutional.
3. The recognition of NKR by any country would violate the territorial integrity of RA.
4. The recognition of NKR by any country without its recognition by RA would place conscripts from Armenia serving in NKR in a very vulnerable legal position.
5. Our efforts should be mainly directed towards maintaining the balance of powers. Azerbaijan must be weakened internally in order to do so, and leverage ought to be set up with regards to Turkey.
6. The issue of the recognition of NKR must be stricken from the Armenian political agenda as a matter unfeasible in practice, and an objective that would not have any real outcome.

Some years ago, I had the opportunity to meet one of the former co-chairs of the OSCE Minsk Group. Our conversation was candid, as both of us were former officials. In answering my question, as to what is the fate of Nagorno-Karabakh, he said the following: "*What would it be? If you can keep it, it is yours. If you can't keep it, then it will belong to the Azerbaijanis.*" The response is of course rather cynical, but that is the only truth.

Beirut, 21 January 2011

78. Is There a Principle of "Preservation of Territorial Integrity" in International Law?
or
As Always – What to Do?

Let us state at once that there is no principle of "preservation of territorial integrity" in international law. The fourth clause of Article 2 of the Charter of the UN declares only the following: "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*". This clause does not have anything to do with the preservation of "*territorial integrity*", that is, the inviolability of the territory of any state. According to an authoritative commentary on the law on foreign relations of the US, it is simply a clause against invasion, a "*prohibition of use of force*",[393] and it merely calls upon refraining from "*the use of force by one state to conquer another state or overthrow its government*".[394] The phrasing "*against the territorial integrity or political independence of any state*" found its way into the UN Charter upon the request of certain smaller states, as a certain guarantee that "*force could not be used by the more powerful states in violation of the 'territorial integrity or political independence' of weaker states*".[395] It is evident that this clause does not contradict the principle of self-determination of peoples and has absolutely nothing to do with the contrived, so-called principle of "*preservation of territorial integrity*" which does not exist in international law, but is thrown about due to political considerations.[396]

A legitimate question may arise, then: what to do? What to do when there are differences of opinion on a point of international law or its interpretation? The response is simple and clear – one must appeal to a body that has the corresponding authority and competence to interpret the given issue and, more significantly, to make a ruling on it. That very body for international law is the ICJ, which, in accordance with clause 2(b) of Article 36 of its Statute, has jurisdiction over discussing and deciding on "*any question of international law*".

It has become clear today that, when it comes to the Nagorno-Karabakh conflict, the supposed contradiction between the principle of "*self-*

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[393] Restatement of the Law (3rd). The Foreign Relations Law of the United States, The American Law Institute, Washington, 1987; v. 2, § 905 (7), p. 389.
[394] *Ibid,* p. 383.
[395] Leland M. Goodrich, Edward Hambro, Charter of The United Nations, Commentary and Documents, [second and revised edition], Boston, 1949, p. 103.
[396] Ara Papian, On the Principles of Self-Determination and so-called "Territorial Integrity" in Public International Law, (The Case of Nagorno-Karabagh), Noravank Foundation, "21st Century", # 2, 2010 http://www.noravank.am/arm/jurnals/details.php?ELEMENT_ID=5189

determination of peoples", its manifestations and complexities, and the invocation of the so-called "*preservation of territorial integrity*", has ceased to be a purely legal issue. The question of life and death for thousands of people are at stake. Without rendering similar the understanding of the principle of "*self-determination of peoples*", it would be impossible to deal with these issues. Without making clear what is meant by "*territorial integrity*", and from what it may be preserved to what degree, it would be impossible to come up with a solution to the Nagorno-Karabakh conflict.

Accordingly, the RA and the Azerbaijani Republic, as member-states of the UN, must jointly appeal to the court of the UN, namely the ICJ, with more or less the following questions:

1. Does international law contain a "*principle of self-determination of peoples*"? If yes, then, does the "*principle of self-determination of peoples*" apply to collective unit of a people who are found outside of a nation-state of that people already existing? If yes, then are there any limitations to that self-determination?
2. Does international law contain a "*principle of preservation of territorial integrity*"? If yes, then does that principle limit a "*principle of self-determination of peoples*", denying the collective unit in question the right to political self-determination?

Both the Armenian parties and the Azerbaijani side have on numerous occasions expressed with confidence that their positions are based on international law. But they are not the ones who decide such matters. Even the mediators do not possess the authority to do so. There is a competent body in international law with jurisdiction over such questions.

I believe that the time has come for the mediators to approach the sides with the request to present such appeals to the ICJ. They should then be combined and put forth at the ICJ as per its procedures. If one of the sides should decline, then it would imply that its rhetoric on how its position is based on international law is meaningless. The international community should pursue the matter accordingly. In that case, the mediators should themselves, on behalf of the UN Security Council and as per Article 65 of the ICJ Statute, approach the ICJ for a clarification and advisory opinion on the aforementioned questions.

As difficult as it would be to come to a decision for a solution to the Nagorno-Karabakh conflict, it would doubtless be twice as difficult to actually implement it. And so, a clarification by the ICJ on certain basic points of the conflict and a decision on them would create a legal and beneficial basis for a solution to the conflict, as it would eliminate the differences of opinion on principles of fundamental legal issues as presently borne by the parties to the conflict.

28 January 2011

79. **On Borders and Sovereignty or, One More Necessary Clarification**

According to information from the defence forces, in the period ranging from the 27th of February to the 5th of March, the cease fire was violated on the Karabakh-Azerbaijan line of contact between the opposing forces around 240 times by the other side, during the course of which more than 1200 shots were fired.

NKR Defence Forces Press Service, 5 March 2011

For diplomats, politicians, and bureaucrats, words are one of the main tools used in their work. They convey their interests and they communicate with society with the means of words. Accordingly, then, any negligence or outright mistakes are unacceptable. The Nagorno-Karabakh Republic (NKR) considers itself an independent state. Let it be so, even though I, for my part – taking into account the Preamble to the Constitution of the RA as well as the clauses in Armenia's Declaration of Independence – consider it to be a part of Armenia. But that's not what this is about. In either case, official statements must utilise different phrasing than what they have today. Whether the NKR is an independent country or part of the RA, then it does not have a line of contact with Azerbaijan but state borders. Consequently, the shots fired from Azerbaijan towards the NKR were not in violation of the cease-fire at the *"line of contact between the opposing forces"* but were attacks on the state borders of the NKR through the means of violating a cease-fire agreement. Let us recall that, as per international law, a border is *"a line which determines the limit of the territorial sphere of jurisdiction of States or other entities having an international status"* [M. Bothe, Boundaries, Encyclopedia of Public International Law, ed. R. Berhardt, v. 1, Amsterdam, 1992, p. 443). That is to say, if we are to utilise the wording *"line of contact between opposing forces or armies"*, then we are accepting that the line runs between two opposing territories within the same sovereignty, which happen to be under the control of two separate armed groups, as, for example, one finds today a *"line of contact between opposing forces"* in Libya between the pro- and anti-Gaddafi forces.

5 March 2011

80. **The Co-chairs are Simply the Mediators**
or
An Attempt at Resurrecting Stalinism in a Single Region Alone

One of the most important fundaments of maintaining order is functioning within one's own mandate, within one's own area of authority. This applies as well, without any qualifications, to bodies established as per international law and working in the realm of international relations.

Nevertheless, it appears that this simple truth is being dismissed ever increasingly by the co-chairs of the OSCE Minsk Group. The latest testament to such an approach is the expression "*the seven occupied territories of Azerbaijan surrounding Nagorno-Karabakh*" found in the report of the co-chairs of March 24, 2011. It is evident that, by such phrasing, this group has clearly functioned outside of its authority and violated its own mandate.

No one has authorised this group of co-chairs to decide the status or fate of any piece of territory. Who has given that group the right to even equate what they refer to as "Nagorno-Karabakh" with the former Autonomous Oblast of Mountainous Karabakh of the erstwhile USSR? That is to be decided by the parties in dispute. The authority of the co-chairs is limited to mediation, that is, to benefit the process of negotiations founded on the exclusion of the use of force. That is absolutely and clearly codified in the mandate of the co-chairs of the Minsk Group: "*Promoting a resolution of the conflict without the use of force and in particular facilitating negotiations for a peaceful and comprehensive settlement*" [*Mandate of the Co-Chairmen of the Conference on Nagorno-Karabakh under the auspices of OSCE* ("*Minsk Group*", *Vienna, 23 March 1995, DOC.525/95*)]". None of the fifteen clauses of this mandate provide for the co-chairs to come to some final decision or to make any sort of ruling on anything.

It is even more extraordinary and perfectly baseless to refer to territories surrounding the former Autonomous Oblast of Mountainous Karabakh as "*territories of Azerbaijan*". I imagine that the co-chairs, as high-ranking and experienced diplomats, are more aware than I am that the *legal possession* of any territory in international law is decided by the *title to territory* and not by administrative boundaries. If they or anyone

else could cite any international legal document – again, any ***international***, and, again, any ***legal*** document, as opposed to the decision of some political party – that the title to even a square inch of the current territory of the NKR has ever been recognised as belonging to the Azerbaijani Republic, I would publicly apologise for my ignorance. And if that cannot be done, then I am correct and consequently no one, and certainly not any mediating group, has the right to make use of such baseless wording.

A question may arise: what kind of phrasing to use, then? I believe it would be most appropriate to say, "*the territories adjacent to former the Autonomous Oblast of Mountainous Karabakh*", without mentioning "*Azerbaijan*", as the AOMK (or NKAO, to use its Russian abbreviation) was an autonomous unit within the Soviet Union, which was subject to the entire country's authority in an indirect manner; that is to say, it was an administrative unit of the USSR through yet another administrative unit of the USSR. As a reminder, the Soviet Union had a four-tier administrative organisation and, independent of the tier level of the administrative unit, each administrative unit was considered the same in terms of title: all of those administrative units were subject to one and the same authority, namely, the sovereignty of the USSR.

Let me also emphasise that the administrative boundaries set by Stalin could never act as legal bases for the delimitation of frontiers of states, as international law makes clear, that *ex injuria jus non oritur*, that is, law does not arise out of injustice. And let me remind the forgetful that the very OSCE which authorised the co-chairs equated Stalinism with Nazism in its resolution "*Divided Europe Reunited*" at Vilnius on July 3, 2009. Is anyone in Europe ready today to return to the boundaries set by Hitler? So why would one think that it is acceptable to resurrect the crimes carried out by Stalin in the southern Caucasus?

24 March 2011

81. **On Human Rights, the State Department Report, and our Future**

The US State Department's report on human rights in Armenia was published recently, 63 pages in all. As an aside, the section on Turkey was only 46 pages long, which implies that there were fewer things to write about. This is a case wherein the less they have to say, the better. A general glance at the report indicates that what the Americans have written is correct.

Perhaps others would have emphasised other sorts of things than what the Americans have; nevertheless, the facts and evaluations presented in the report are accurate. And now, some have once again started to display expressions of surprise on their faces. Why? What, is it that we have no idea what is going on in our police or army, with regards to our freedom of expression, or in business? We knew it and know it better than the Americans know. It's just that their word weighs heavier and, naturally, their influence is felt more strongly. This is a reality which no leadership in the modern world can disregard.

Now I would like to turn to certain related issues, which are in fact essential for understanding the report. Objections are being raised that no state has the right to interfere in the internal matters of any other state. I agree, but human rights have long since ceased being domestic issues of states. Human rights are currently global in their reach and in their nature. It is not for no reason that those rights are referred to as "Universal Human Rights".

Besides which, almost all countries of the world, including Armenia, have signed on to numerous conventions pertaining to human rights, and have accordingly given legal expression to their obligations and have borne unquestionable responsibilities. Even if there are countries that have not acceded to such treaties – although I know of no such place – it makes no difference, as they are all bound to follow human rights anyway, as human rights are considered to be *jus cogens*, a peremptory norm, a fundamental principle of international law.

The other objection is that they are starting to compare our country with our neighbours or that they are generally comparing among various countries. Firstly, human rights are not comparative in nature, but are absolute values in and of themselves. And then, if it seems to some that they are being strict with us and if that is true, then the complaint ought not to be against the strictness, but in order to demand that the same level of strictness be maintained with regards to other countries as well.

And now for the most important part. It is unfortunate that we do not consider the issue of human rights in Armenia, perhaps even more so

than in many other countries, as an issue of vital importance. Let me elaborate. The conditions of human rights in Somalia, for example, or in Chad, are doubtless much worse. However, there is an immense difference between us and them, as the challenges we have to face are different.

The countries I have named could last another fifty years this way, in the hope that, ultimately, things will get better. We do not have fifty years. We do not even have thirty years. Our country is fast losing its population, the elderly demographic is increasing, the outflow of people and of capital from the country is becoming more severe, all of our infrastructure is extremely deteriorated, the lack of confidence in the authorities is deepening, people are being alienated from their own land, etc., etc. In the course of twenty years, we have managed to exhaust our legacy.

Being in the geopolitical condition that we are and facing a *de facto* wartime situation, all of this could affect not only the future of our state, but also the collective survival of the Armenian people.

There are a number of authoritarian countries, which can maintain states by selling oil or gas. We do not have that possibility. Our only path is to preserve our state by the inflow of people and capital through the rule of law and consolidated democracy, through establishing conditions for the manifestation of creative business by people. Perhaps then, we would be able to withstand the escalating dangers.

However, as long as our authorities and society in general do not consider human rights to be a means for our livelihood and the best method of governing the country, but as Western capriciousness or a bludgeon raised by dark forces against us, we shall not be able to achieve progress.

Why should I deny my own faults? I have myself not arrived easily at this conclusion. I used to think that, at a certain stage of development of a society, it would be worthwhile to limit the rights of a single individual for the sake of the common good. But experience has shown that not to be the case. As society is comprised of individuals, therefore the violation of the rights of even one individual would ultimately bring about the violation of the rights of society as a whole.

The firm establishment of human rights is the unshakable foundation of the realisation of all of our national and social aspirations, of the centuries-long dreams of our people. We simply do not have any other alternative, as, without the preservation of human rights, we simply do not have a future.

10 April 2011

82. **Turkey Desires to Deprive the Armenians of Even the Right to Dream**

The Turks are openly speaking today of the restoration of the Ottoman Empire. Of course, they wish to do so with a different sort of packaging; however, it is essentially not a different thing. And this is not simply a case of mere discussions, but there is in fact a clear state policy that is being planned and implemented. If Lenin once referred to the Russian Empire as a "prison of peoples", then the Ottoman Empire can certainly be called an "abattoir of peoples". The discussions are about restoring that very slaughterhouse. There has been no other state in the world – at least for the past five hundred years – where people of minority ethnicities or religions have been subject to such diverse forms of discrimination, ruthless massacres, and, ultimately, unprecedented genocide, all at the level of the state and national legislation. Can you imagine what would occur if the Germans spoke of restoring the Third Reich or its influence? And we remained and are remaining silent when it comes to similar calls by the Turks, instead of protesting against it at every available political opportunity as a people and state that has been subject to genocide and national dispossession by that very empire and its successor state. Perhaps our expectation is that the Turks will repay our reticence with gratitude: a blissful naïveté, which can only be borne by one who does not know the Turks. Is it not clear enough already that the restoration of the Ottoman Empire, regardless of how such a thing would manifest itself, would imply the end of the RA?

A few days ago, in response to a simple question by a school student on future borders of Armenia, Serzh Sargsyan gave quite a mild, very general, and, I would even say an evasive answer. What is more, he essentially said that he himself did not intend to present any demands to Turkey, as he considered the work of his own generation at an end. He did not say that, as President of the RA, he will do all in his power to end the illegal occupation by Turkey of the rightful territories – I repeat, those rightful territories, and not some abstract Armenian lands – of the RA.

This incident would probably have gone unnoticed if there were not such a clamour raised by Turkey in turn. And what is Turkey's intention in this case? I believe it is yet another attempt at receiving assurances from Armenia (that have already been once laid out in those protocols), that Armenia has no demands from Turkey, that is, yet another act of humiliating Armenia in international circles through the means of denial. Turkey's conduct today is also informed by the secret of the infamous Armenia-Turkey protocols. Many ask why would Turkey have pursued having those protocols signed, if it was already known that they would not

be ratified? But what kind of a question is that, if they did not serve to publicly humiliate the Armenian state? Turkey showcased to the world that the Armenians are ready to go to almost any length – to deny everything – in order to establish relations.

This as a practical matter. And as far as the more far-reaching matters go, the intentions of Turkey are much more dangerous. The Turks desire to deprive the Armenians of even the right to dream. The Turks have deprived us of almost everything, and now they wish to imprison our spirits and shackle our minds. If a nation lets go of its capacity to dream, then it is rendered into a consumer-driven marketplace. Dreaming, even dreaming of things that seem impossible, is the salt of the spirit of a nation, which preserves the nation from decay.

28 July 2011

83. On the Legal Implications and Related Matters of the Discussions by the US Senate on the Mandate for Armenia

"Why did Wilson, who knew that his Senate would never accept the mandate, say yes, I shall try?"

Richard Hovannisian, Yerevan State University, 18 November 2011

Yes, that the Senate of the USA would reject the mandate for Armenia was obvious to everyone, perhaps most of all to the US President Woodrow Wilson. It was clear to Wilson, an experienced and adept lawyer, that even if the political will were present, the legal basis that would allow the US to take on the mandate for Armenia would be lacking, as the system of mandates arose from Article 22 of the Covenant of the League of Nations. That is, only the states that had acceded to the Covenant, or were in the process of so doing, could adopt mandates. Accordingly, as the US Senate had not given its consent in the meantime to the Covenant of the League of Nations (which is to say the same thing as the Treaty of Versailles, the inseparable first part of which [articles 1-30] was this very covenant in question), even if one desired, due to the absence of a legal basis, a mandate for Armenia could not be accepted.

Consequently, then, why did Wilson raise the issue of the mandate for Armenia in May, 1920? Why was he putting his own credibility at risk? To explain such a step with the notion of "*leaving behind a good name in the annals of history*" is not convincing to say the least. Wilson was not relying on the Armenians to make his mark on world history in any case, since he had already received the Nobel Peace Prize in 1919 for his pioneering advocacy for the League of Nations.

Before turning to the immediate answer, it is necessary to make one more clarification. The rejection of the mandate would have a negative effect on Wilson's reputation, but not on the security of the Armenians, as some would claim. The US had not been at war with the Ottoman Empire during the WWI. Therefore, in order to protect the Armenians, the Senate would have to declare war on the Ottoman Empire first, as per Article 1, Section 8, Clause 11 of the US Constitution, something that was in principle ruled out. Everyone knew that – both the Armenians, and the Turks – and so, the rejection of the mandate would not have changed anything. This conclusion is also supported by the fact that the Kemalists commenced their assault on the RA not as soon as they heard about the rejection of the mandate (which took place on 1 June 1920),[397] but only

[397] Rayford W. Logan, The Senate and the Versailles Mandate System, Washington, 1945, p. 100-2.

upon signing a secret treaty of co-operation with the Bolsheviks on 24 August 1920.[398]

Now let us turn to the question at hand: why, finally, did Woodrow Wilson, who was continually losing his political clout due to poor health, put his credibility at an unjust risk? Or was such a step perhaps justified, the point being not the adoption of a mandate, but the very discussion of the issue?

Let us recall the state of affairs in the southern Caucasus during May 1920. The Eleventh Army of the Bolsheviks had already occupied Azerbaijan by the end of April 1920. The first attempt at a regime change took place in Armenia in May. The days of independent Armenia were numbered. The American diplomatic correspondence of the time reveals without a doubt that the Americans were fully aware of the situation. There was no power that could withstand the attacks on the RA by the Bolshevik-Kemalist alliance. It was only unexpected developments on the Polish front that delayed the invasion of Armenia; the Polish counter-attack in April-May, 1920, forced the Bolsheviks to move their main forces to the western front. And the Kemalists did not dare to attack Armenia alone, as there had not yet been a critical mass of defecting soldiers from the Armenian army under the influence of corrupting Bolshevik propaganda during April-May.

Woodrow Wilson was a realistic politician and, given the circumstances, his actions were pursuing one goal: to set up and consolidate as much as possible unshakeable legal bases for the rights of the RA, in the hopes that, one day, the RA would re-establish itself as an independent state and would be able to restore its rights supported by those legal bases. One must view as well in this very light the Arbitral Award deciding the border between the RA and Turkey, even as it was during the very last days of Armenian statehood (22 November 1920), and the mark of the Great Seal of the US on that ruling.

Before being president, Woodrow Wilson was – literally and figuratively – a man of jurisprudence. He is the only US President with an academic degree, that too, a doctorate in law. As a man of legal affairs, Wilson understood well that the Senate taking up the issue of a mandate for Armenia and discussing it would make as a matter of record at the senatorial level and by the Senate itself the points upon which the system of mandates was based and based upon which the question of a mandate could be subject to discussion. As mentioned, Article 22 of the Covenant of the League of Nations served as the basis for mandates generally. The article codifies in particular that the mandates would be established for

[398] Vemian V., Two Little Known Letters of Enver Pasha, Written from Moscow, The Armenian Review, vol. I, No. 3, Summer, July, 1948, p. 57.

"*those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them*" (emphasis added).

That is to say, mandates would be established only on those "*colonies and territories*", from which the former ruling powers had been removed. That is, by taking on the issue of a mandate for Armenia in May, 1920, the US Senate – by that very act, regardless of the outcome of a vote – was affirming the legal fact that the territory under question was no longer under Turkish sovereignty. If that were not the case, the Senate would have no jurisdiction to even discuss the status of any territory under the sovereignty of any state. The fourth paragraph of Article 22 cited above elaborates that the system of mandates pertains to "*[c]ertain communities formerly belonging to the Turkish Empire*". That is, two details have been made clear. First, that the systems of mandates applies to "*the Turkish Empire*" as well, and second, that as soon as the Covenant of the League of Nations entered into force (10 January 1920) and as a consequence of it, the title and sovereignty of "*the Turkish Empire*" ceased to exist on those territories in question, as they were "*formerly belonging to the Turkish Empire*".

In sum, the proposal of the mandate for Armenia by US President Woodrow Wilson, and the subsequent discussion and voting on it in the US Senate, regardless of the outcome of the voting, served to record by the US Senate the fact of the absence of Turkish sovereignty over the territory in question.

21 November 2011

84. **On the Criminalisation of Genocides Denial**

There was a saying in my youth, "to swallow a Danish pill", which implied to willfully accede to a position beneficial to another. Honestly speaking, I still do not know to this day, why it is referred to as "Danish" specifically. However, that some people have swallowed the Turkish pill today is quite clear. And what that Turkish pill comprises is something I do know, as, over the course of these recent discussions in the National Assembly of France, some have written and continue to write – among them even Armenians – that the criminalisation of the public denial of genocides is wrong, as that would mean limiting free speech and the right to have one's own opinion. Since when has the protection of a criminal act been "freedom of speech" or "holding an opinion"? Go to Canada, for example, and publicly "express your opinion" that, say, black people or Armenians are filthy or lazy. You do know what they would do to you, right? You would end up in jail or be penalised in some other fashion for inciting "hate speech". Declare in Germany that Hitler had his reasons for massacring Jews. Do not deny the Holocaust; simply try to bring up some justification or basis for it. I believe you would know the consequences better than I do. Well, where is that "freedom of speech", then? Or is that some people consider us Armenians more democratic than Canadians or Germans?

It is important to underscore a few key points in order to understand these current events. Genocide, including and especially that of the Armenians, is not simply something that happened in the past, a mere historical occurrence. It is the worst crime, "the crime of the crimes", as juridical scholars put it, as it consists of a series of the most reprehensible criminal acts – murder, rape, child molestation, slavery, illegally depriving people of their freedom, pillaging or the destruction of the property of others, the annihilation or acquisition of objects of cultural value, etc. This crime brings up essentially the whole gamut of the penal code. Consequently, the public denial of a genocide is an attempt at the justification of a crime. It is, in fact, the encouragement of a crime, and that does not just imply being an accomplice to a crime, but committing a crime itself. I repeat: genocide is not a historical event, about which there could be differing opinions. It is a crime, and crimes can have only one response – punishment. And if it is impossible to punish, then one must condemn, one of the reasons behind which is to prevent the crime in future. Nothing encourages a criminal and motivates him to repeat a crime more than a crime that went unpunished.

I mentioned above that, "Genocide, including and especially that of the Armenians, is not simply something that happened in the past, a mere

historical occurrence". Why "especially that of the Armenians"? For the simple reason that the Armenian Genocide is the only genocide that is continuing, as the consequences of that criminal act have an ongoing nature. Let me explain. The perpetrators of all previous genocides have been punished one way or another, the victims have been compensated in whole or in part, and they continue to receive compensation, that is, the consequences of those genocides have been overcome to some degree. The Armenian Genocide is the only one where not only have the perpetrators not been punished or even at least condemned internationally (the acts of retribution carried out by Armenians cannot be viewed as "international"), but the genocide is still happening, as the consequences of the genocide are still in place. Armenia today has become subject to a blockade due to genocide. The RA has lost a significant part of its territory due to genocide, losing as well its access to the sea – so essential to the country's development – and further living space, while also being rendered strategically far more vulnerable. A major part of the citizenry of the RA has a low standard of living today. There are numerous reasons for this, including domestic ones. But the external reasons are central to this matter, if not being essential to it. And the most important of those external reasons are the continuing consequences in place of the Armenian Genocide. And so, as long as the consequences of that genocide have not been eliminated, the citizens of the RA cannot enjoy a secure and prosperous life. Of course, some improvement can be achieved with proper management, but any such development would be very limited, unstable, and vulnerable. Any other discussions on the matter are either blatant propaganda for achieving power in the country or honest self-deception. The strength of the country – that is, the prosperity of its citizens – is a very material concept and it finds its basis on just as material concepts. Of course, the regime is very important, and even has significance in the day-to-day, without which normal life would not be possible. It is like the yeast, without which one cannot have one's daily bread. But if one does not even have the grain or the land on which one is to grow the grain, then the yeast becomes a luxury that soon grows rancid.

It must be understood that the recognition, condemnation, and the criminalisation of the denial of the Armenian Genocide are steps aimed at eliminating the consequences of the Armenian Genocide. And that is the case even more so now, where in France the attempt is a first to place the Armenian Genocide side-by-side with the Holocaust, with all the legal consequences that that would entail.

22 December 2011

85. From Genghis Khan to Friedrich Martens
or
Why Not Every Massacre is a Crime against Humanity, Much Less a Genocide

After the French National Assembly adopted the bill criminalising the denial of genocides, discussions have become more frequent around an idea that was anyway prevalent beforehand, that, if the massacres of the Armenians are to be considered a genocide, then why cannot one do the same with, say, the annihilation of the American Indians or the raids by Genghis Khan? Such a comparison might seem reasonable at first glance, but the claim is absolutely baseless.

An act may be considered a crime in any given society if that act violates a principle codified by that society, the violation of which is considered a crime by that given social order. It is clear that the selfsame act may be viewed as a crime and punishable in one society – for example, the consumption of alcohol in Saudi Arabia – while being completely legal and even widespread in some other society – say, Russia. Or, the very same act may be legal at one stage in development of a given society, but completely illegal at some other point in time – for example, slavery and human trafficking in the US, or Nazi ideology in Germany. Consequently, what is criminal changes over time and space. If we oversimplify the issue and present it, for example, from the point of view of criminal law, then we can say the following: if the penal code does not contain an article on a given act, qualifying it as a crime with provisions of punishment, then that act does not constitute a crime for that society in that given point of time. This clause applies in principle to international relations and international law as well.

Since antiquity, the massacring or elimination by other means of peaceful populations in times of war had been almost entirely the case. For centuries, unfortunately, it was considered natural to kill or subject to slavery prisoners of war or the inhabitants of conquered territories. That has been the tragic and even reprehensible course of history; however, these occurrences were never seen as illegal, much less criminal, because there were no internationally-recognised legal agreements or obligations declaring such acts and similar ones to be outside the law. Until 1899 – that is, until the First Hague Conference – the subject of peaceful populations in times of war, as well as military ones, was considered a matter between the belligerent parties or an internal issue within the country in question. These matters would receive legal

considerations only through domestic legislation or through bilateral documents or agreements, if, of course, there were any. And it was only on the 28th of July, 1899 that the Convention (II) with Respect to the Laws and Customs of War on Land was signed, entering into force on the 4th of September, 1900,[399] that "*populations and belligerents*" were placed under the protection and jurisdiction of international law.

The preface of the aforementioned convention of 1899 states the following: "*Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience*".

This legal clause arising from the Hague Conference is known in international law as the Martens Clause.[400] It is so known in honour of the author of the clause, a Russian jurist of German descent, the plenipotentiary of the Russian Empire to Hague Conference, Friedrich Fromhold Martens, also known in Russian as Fyodor Fyodorovich Martens (1845-1909).

It is important to emphasise that Turkey was one of the original signatories to this convention, ratifying the document on the 12th of July, 1907.[401] In fact, it was on the basis of this very convention and on the fact that Turkey ratified it, that the Allied Powers (France, the British Empire, and Russia) accused Turkey of "*crimes against humanity and civilization*".[402] Unfortunately, for us, this was the very first time this phrase of international law was used in international affairs.[403]

Accordingly then, although until 1900 history was replete with events that are described nowadays as manifestations of crimes against humanity, perhaps even of genocide, they cannot be considered as such under international law, as it was only in 1900 that an international document took effect that provided such a legal qualification and condemnation.

25 December 2011

[399] The Laws of Armed Conflicts, A Collection of Conventions, Resolutions and Other Documents, [ed. D. Schindler & J. Toman], Leiden/Boston, 2004, p. 56.
[400] Manual of the Terminology of the Armed Conflicts and International Humanitarian Organizations, [ed. by I. Paenson] Brussels, 1989, p. 126-127.
[401] The Hague Court Reports, [ed. James Brown Scott], New York, 1916, p. CII.
[402] United Nations War Crimes Commission, History of the United Nations War Crimes Commission and the Development of the Laws of War, London: His Majesty's Stationary Office, 1948, p. 35.
[403] Benjamin B. Ferencz, Crimes Against Humanity, Encyclopedia of Public International Law, [ed. Rudolf Berhardt] v. I, Amsterdam, 1992, p. 870.

86. It is Time that Azerbaijan Cease its Occupation of Territories Belonging to the Republic of Armenia and that the Prevailing Arbitration be Implemented

Various ways have been proposed to resolve the Nagorno-Karabakh conflict over the years. Lately, on the 5th of June, 2012, a discussion was held at the Woodrow Wilson Center in Washington with the participation of four experts entitled, "*Nagorno-Karabakh: Will the Frozen Conflict Turn Hot?*". It is worth noting, by the way, the coincidence of the event's date and content with the attacks carried out by Azerbaijan on the RA on the night of the 4th-5th of June. However, let us turn to the actual matter at hand.

Unfortunately, I was not present at that discussion and am not familiar with its details. Regardless, one point in particular among the issues raised drew my attention, and I would like to turn to it. Wayne Merry, a senior fellow at the American Foreign Policy Council, Washington, spoke of resolving the Nagorno-Karabakh conflict through **forceful arbitration**. According to news sources, he said, "*Mediators don't negotiate: both sides – Azerbaijan and Armenia don't let their job work. Now, in this case, it's time to move from mediation to forceful arbitration*".[404]

This idea differs in essence from other ones that have been expressed with regards to resolving the Nagorno-Karabakh conflict until now. Whereas the basic principle till today was that the parties to the conflict must themselves arrive at a mutually-acceptable conclusion, and the mediator states – in this case, the Minsk Group and its three co-chairs – would assist in that process and serve as the guarantors of the implementation of any agreement, now for the first time the idea has been expressed of a resolution without the agreement of the parties, and perhaps even one that could go against their will.

Considering the fact that American foreign policy is customarily developed first at the level of experts who express the ideas and get them into circulation, after which, given some circumstances, they get carried out as real policy, this idea is worth analysing in some detail, even more so given that the organisation Wayne Merry represents, the American Foreign Policy Council, has great influence on new approaches being developed in US policy. Wayne Merry himself is a seasoned diplomat, with a decades-long career spanning the State Department and the Department of Defense. It is important to emphasise that any enforcement – and, in this case, that applies to the implementation of a forceful arbitration in a war zone – will require the presence of a large number of

[404] http://www.arminfo.info/index.cfm?objectid=4486A610-AFD7-11E1-B1D8F6327207157C

"peacekeepers". It is also clear that many states would have interest in placing a large number of "peacekeepers" in Nagorno-Karabakh, that is, on the northern border of Iran.

Now let us take a look at just how new this innovative-sounding idea by Wayne Merry is. When it comes down to it, this idea is not new at all. In principle, the arbitration as a resolution to this conflict was first adopted by the Paris Peace Conference (1919-1920), and then by the League of Nations that arose from it and followed it (1920-1946), and, naturally, it was passed on to the legal successor of the latter, the UN.

Diplomats, politicians and other public figures, and experts often refer to the Nagorno-Karabakh issue as a "frozen conflict". This is an absolutely accurate characterisation, but the main mistake is that many of them measure the "freezing" from the 1990s. That is not the case at all in reality. The conflict arose from that time when, in 1918, the Azerbaijani Republic, such an entity being established for the first time in history, claimed the entirety of the Baku and Elizavetpol administrative units of the former Russian Empire without any legal or other basis and without considering the demographics of either of those territories. Of course, this approach was unacceptable for the Great Powers at the Paris Peace Conference – the US, the British Empire, France, Italy, and Japan, as the creation of new states and their frontiers were not to be based on the administrative divisions of former states, but on the principle of self-determination of peoples as brought forth by US President Woodrow Wilson.

And so, when during the first London conference of the Paris Peace Conference (February 12 to April 10, 1920), the issue of the borders of the RA was once again taken up in detail on 16 February,[405] it was decided to create a commission "*on the boundaries of a new independent State of Armenia*" comprised of one member each of the Great Powers.[406] Accordingly, the commission was established on 21 February 1920, with representatives of the British Empire, France, Italy, and Japan,[407] which prepared the "*Report and Proposals of the Commission for the Delimitation of the Boundaries of Armenia*"[408] dated 24 February 1920, put on the agenda for discussion on 27 February.[409]

The president of that session, the Foreign Secretary of the British Empire, Lord Curzon, in speaking of the territorial issues between the

[405] Documents on British Foreign Policy 1919-1939, (ed. by R. Butler and J. Bury) First Series, v. VII, London, 1958, p. 81-86. Document # 10: Consideration of the future boundaries of Armenia: decision to appoint an Allied commission to report thereupon, Feb. 16, 1920. [hereafter, DBFP]
[406] *Ibid,* p. 86.
[407] *Ibid,* Document #20: Decisions of parts III and IV of the draft synopsis of the Turkish treaty (political clauses), p. 178.
[408] The entire document is available in "Arbitral Award of the President of the United States of America Woodrow Wilson: Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Washington, November 22, 1920", (prepared by Ara Papian). Yerevan, 2011, p. 98-112.
[409] DBFP, Document # 34, p. 280.

republics of Armenia and Azerbaijan, said that, "*the regions of Karabakh, Zangezur and Nakhitchevan were in dispute. The population there was chiefly Armenian, except for a part which was almost wholly Tartar*".[410] I find it necessary to stress that this part does not refer to Nagorno-Karabakh (Mountainous Karabakh), nor even to that territory created out of a part of it later, known as the Nagorno-Karabakh Autonomous Oblast, but to Karabakh itself, which includes the Karabakh Plains.

This document that expressed the joint view of Britain, France, Italy, and Japan on the borders in the southern Caucasus, called for a period of waiting so that the parties would themselves come to an agreement, only arbitrating on the bondaries in case of a failure of the parties to do so. "*As regards the boundary between the State of Armenia and Georgia and Azerbaijan, the Commission considers that, it is advisable for the present to await the results of the agreement, provided for in the treaties existing between the three Republics, in regard to the delimitation of their respective frontiers by the States themselves. In the event of these Republics not arriving at an agreement respecting their frontiers, resort must be had to arbitration by the League of Nations, which would appoint an interallied Commission to settle on the spot the frontiers referred to above, taking into account, in principle, ethnographical data.*"

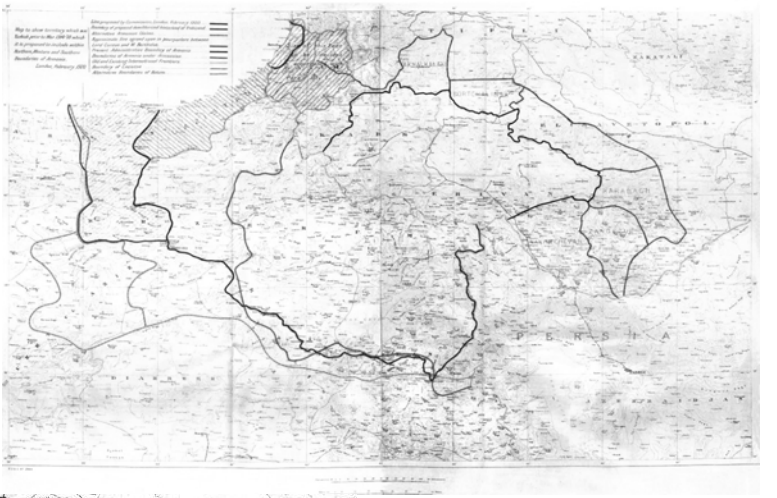
As is clear from the above, the principle of resolving by arbitration the issue of the Armenia-Azerbaijan border, as well as the Armenia-Georgia on, was proposed and adopted as early as the 24th of February, 1920, by this joint document of the Great Powers. Moreover and most importantly, the principle of delimitation was made clear: "*taking into account, in principle, ethnographical data*". Accordingly, then, the report had a map annexed to it.[411] According to that document, taking the demographic make-up of the South Caucasus of 1920 into account, not only was Nagorno-Karabakh (Mountainous Karabakh) considered part of the RA, but so was also a large part of the Karabakh Plains.

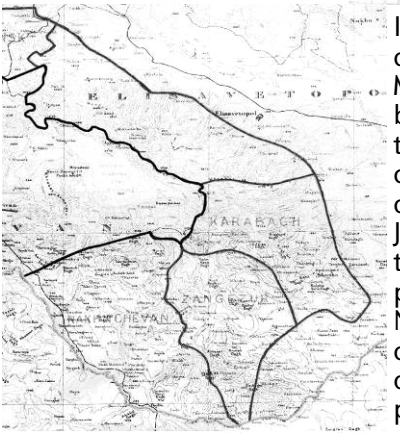
It is also of great importance that this document was included as well in the Full Report of the Arbitral Award of US President Woodrow Wilson of the 22nd of November, 1920, as document No.2 in Annex I, indicating that the US accepted the arbitration, the arbitral nature and legality of this document. Those clauses were also included in the Treaty of Sèvres (of the 10th of August 1920), as Article 92: "*The frontiers between Armenia and Azerbaijan and Georgia respectively will be determined by direct agreement between the states concerned. In the either case the States*

[410] *Ibid,* p. 281.
[411] The map is kept in the National Archives and Records Administration and is published in Arbitral Award of the President of the United States of America Woodrow Wilson: Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Washington, November 22, 1920, (prepared by Ara Papian). Yerevan, 2011, p. 328.

concerned have failed to determine the frontier by agreement at the date of the decision referred to in Article 89, the frontier line in question will be determined by the Principal Allied Powers, who will also provide for its being traced on the spot".

Map 1





In sum, one can draw the following conclusion. The proposal by Wayne Merry to resolve the Nagorno-Karabakh conflict by arbitration is completely acceptable and realistic, as it not only expresses the decision already codified by Britain, France, Italy, and Japan, but also, which is more important, it is based on as democratic a principle as "*ethnographical data*". Naturally, a basis for the arbitration can only be found on the ethnographic data of 1920, because whatever happened since 1920 – the forcible occupation of the independent republics of Azerbaijan and Armenia by the armed forces of a foreign state, the 11th Red Army, followed by their annexation to Soviet Russia in its new veneer of the Soviet Union – was in utter violation of international law, and, as goes the maxim in international law, *ex injuria jus non oritur* – law does not arise from injustice.

Consequently, I believe that the international community and, first and foremost, the US must follow up on the proposal by the American expert Wayne Merry and implement the decision of the international document that already exists based on the principle of arbitration; that is, they must

compel the Azerbaijani Republic to withdraw its forces from the territory that belongs to the RA – the Karabakh Plains and Nakhijevan (by my rough estimation, 14.000 sq.km and 5.400 sq.km, respectively).

As long as the Republic of Azerbaijan maintains its occupation of not just 19.400 sq.km of territory of the Republic of Armenia, but also continues to demonstrate claims towards territory of the RA currently liberated from Azerbaijani occupation, there will not be stability in the region.

Great Britain, France, Italy, and Japan, as well as the US of America, must not spare any efforts in implementing their very decision as soon as possible.

8 June 2012

87. **Russia Must Know that Armenia Always Has an Alternative**

Head of Modus Vivendi Center Ara Papian, political scientist, dwelt on the issue of Russian supply of armaments to Azerbaijan. According to him, Russia should not sell weapons to Azerbaijan because Armenia is its strategic ally, and strategic allies are those who are ready to sacrifice their economic and political interests for the sake of their ally. Armenia should issue an official statement about the unacceptability of such behavior of our partner. We have always been committed to our partnership with Russia and have had economic losses.

When we turn to the West for investments, they say Russia is your strategic ally so let it help you. Meanwhile, our strategic ally is arming our enemy, Papian says, adding that in case of a war both sides will have thousands of victims, and Russia should announce that it is earning money on our blood.

The arguments that Russia supplies free of charge weapons to Armenia is groundless because no one has ever seen those weapons. The speaker noted that it is impossible to know the reaction of Russia to the war because we suffered from the Russian behavior in 1917, 1929-20 and the 1990s.

According to Ara Papian, Russia acts so because Armenia is in Russia's pocket but Russia must know that Armenia always has an alternative.

Ara Papian said regarding membership to the Eurasian Union that we could not join a structure about which we have no idea. That is an amorphous idea.

Lragir.am, 21 June 2013

88. **Armenia Should Establish Sovereignty Over Kars Province**

Head of Modus Vivendi Center political scientist Ara Papian dwelt on the second pan-Armenian conference of lawyers held on July 5-6 in Armenia. He attached importance to it in terms of the discussion of the issue of compensation to Armenians by Turkey.

Papian noted that the conference discussed issues relating to individual compensation to the heirs of genocide victims, community compensation, as well as property and territorial integrity. He underlined the speech of the prosecutor general saying that "elimination of consequences of the genocide means restoration of territorial integrity of the RA".

According to Papian, for the return of property the Armenians need to apply to Turkish courts. Once compensation is refused, they should appeal to the Court of Human Rights. And for the Armenia-Turkey border it is necessary to appeal to the UN Court of Justice.

As to weakening of Turkey's foothold, Ara Papian brought the example of the Soviet Union. He says it will collapse like the USSR, falling into several small republics. He says if in 1985 one said that the USSR would collapse, one would be taken to a psychiatric hospital or would be put to prison. According to him, it is necessary to be ready for big changes that are expected in the Middle East.

The political scientist noted that there are countries, which want to control Turkey, and it is becoming less controllable due to its economic and military powers.

He says that the entire West will benefit from Turkey's weakening and split. They will use Woodrow Wilson's Arbitral Award regarding Armenia's borders for their own aims. No one will do it for Armenia's sake, only for their own goals but they may match with ours, Papian said.

The political scientist proposed that Armenia reestablish its sovereignty over the province of Kars. He noted that that territory belongs to the RA and is now occupied by Turkey. In other provinces too, we could establish our rights. It is not necessary to have full sovereignty there but demilitarization of territories, free transit, free investments, and management of cultural heritage etc, Papian says adding that intermediate solutions might be applied to the other four provinces. They should not necessarily belong to either Armenia or Turkey.

Papian underlined that it is necessary to ensure the U.S. supports us. "If you think Russians keep their bases here for our sake, you are mistaken," he said, adding that there is a possibility for deployment of an American base here. This country helps us in many issues, including military assistance without making a fuss.

Lragir.am, 9 July 2013

SUMMARY

STRATEGY PAPER ON THE ARMENIAN CAUSE

THE RESOLUTION OF THE ARMENIAN QUESTION AS A SINGULAR OPPORTUNITY FOR THE CONSOLIDATION OF ARMENIAN STATEHOOD AND THE ONLY PATH TO THE ENDURANCE OF THE ARMENIAN PEOPLE

Եւ եղիցին գործք արդարութեան խաղաղութեամբ. եւ կալցի արդարութիւն զհանգիպս. եւ յուսացեալքն եղիցին՝ մինչեւ յաւիտեան:
Մարգարէութիւն Եսայեայ. ԼԲ-ԺԷ

Et erit opus justitiae pax et cultus justitiae –
silentium et securitas usque in sempiternum.
Isaias 32:17

And the work of Justice shall be Peace,
and the service of Justice – Quietness and Security forever.
Isaiah. 32:17

Modus Vivendi
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Strategy Paper on the Armenian Cause

Statehood is the highest form of societal organization. A nation-state is the highest form of national organization, the most effective means for creating the opportunity to solve national issues and dealing with the challenges facing national security. The nation-state is the existential guarantee of the given nation, and also that of maintaining the national identity, serving as a strong basis of its economic development as well.

Taking this into account, when we discuss modern Armenian statehood from the perspective of national survival, maintaining the identity and developing the economy, then it becomes clear that, without resolving the Armenian Question, not only is the modern Armenian state with its current borders and form inadequate and not only will it continue to be inadequate in guaranteeing the realization of the aforementioned factors, but the very possibilities of its endurance as a sovereign state, as an individual political entity, will remain under question.

Thus, partially resolving the Armenian Question – for example, only on the eastern frontier, i.e., in terms of Nagorno-Karabakh (Artsakh) – will not resolve the core issues before Armenian statehood and will not deal with the challenges threatening our existence.

1. The Real Purpose of Resolving the Armenian Question

The Republic of Armenia (RA) is facing serious challenges at present. Resolving the Armenian Question, that is, the restoration of the rights of the RA and the Armenian people is not an end in itself. Either the RA, as a unique and dignified political unit can exist solely with the establishment of its inalienable and perpetual rights, or it cannot exist as such.

The real purpose of resolving the Armenian Question is to create a sustainable state, and, through the minimal requirements necessary for security and development, to guarantee the survival of the Armenians as an inseparable and unique part of humankind.

2. The Imperative Nature of Resolving the Armenian Question

Without resolving the Armenian Question, Armenian statehood will remain politically unstable, militarily vulnerable, economically dependent and psychologically timid. The very purpose of the Armenian state would be questioned, seeing as how it would be a mere formality and would not take on the main issues of statehood:

I. securing the sovereignty of the state and the security of the citizens of that state,
II. creating conditions for the country's economic development and the prosperity of the citizens of that country,

III. developing the national identity and culture based on the above two, that is, in a secure and prosperous country.

Therefore, resolving the Armenian Question is of vital importance not only for the Armenian state, but also in order to realize the collective rights of the Armenian people to live as a community in their own Homeland.

3. The Urgency of Resolving the Armenian Question

There are currently a number of serious challenges facing the RA, and without overcoming them, Armenia cannot achieve lasting security. Resolving the Armenian Question to an extent would provide for:

I. withstanding and neutralising, perhaps even rendering seriously dependent on the political will of the RA, the projects aimed at circumventing and isolating Armenia, such as the Baku-Tbilisi-Ceyhan oil pipeline, the Baku-Tbilisi-Erzurum gas pipeline, and the Kars-Akhalkalaki-Tbilisi railroad,
II. minimising the negative involvement of Turkey in the Nagorno-Karabakh (Artsakh) dispute, while forcing Turkey to focus more on its own internal problems,
III. opening the so-called Armenia-Turkey border without any political or other preconditions, guaranteeing the use of the port of Trabzon and the road to it for free or at licenced rates,
IV. driving Armenia-Georgia relations in a new direction, with mutual leverages by means of which Armenia would be free of its unilateral dependence on Georgia for transportation routes, while acquiring essential leverages on Georgia-Turkey relations,
V. creating conditions for the progressive economic development of the RA in the region, while guaranteeing new, non-traditional, sources of investment and income, transforming the Armenian-Turkish standoff – which has, up to the present, been a cause of exhausting or hindering resources – to a supplier of resources,
VI. considering the present tensions between the US and Turkey, rendering that, if not unavoidable, then at least long-lasting, adding new factors into the US-Turkey relationship,
VII. reviving the issue of legal, political and moral obligations of the United States, Europe and some key non-European countries with regards to the RA,
VIII. considering the continual efforts of Turkey to gain membership in the European Union, as well as the open or tacit resistance of certain European countries, circulating new standards of Turkish membership for European political usage,

IX. preparing legal and political bases for future inevitable geopolitical shifts, by which to not only avoid damage, but also to make gains.

The continuous efforts by the RA to bring up the rights of the Armenian people are a matter of extreme urgency and importance. The absence over a long period of time of opportune proclamations or steps in this regard could lead to serious consequences in future. The policies of the RA for almost two decades of apathy towards the Armenian Cause and inadequate steps towards bringing up our rights could provide fodder for Turkey in citing *estoppels* (that is, when the RA, through its actions or lack thereof, displays a reconciliation with a given situation), by which possible future Armenian demands could be decisively counteracted.

4. The Path of Resolving the Armenian Question

Resolving the Armenian Question has but one path: through peaceful means and compromise, the path of persistent and lasting efforts. Simultaneously, however, considering how the general political, economic or military potential of the RA, as well as that of the Armenian people, falls behind and will always fall behind the resources of Turkey and Azerbaijan, and also Georgia, which is caught up in their politicking, it thus becomes necessary for the struggle and resistance to take place entirely on such a field in which Armenia is not only on par with the others, but also has tangible advantages.

That is to say, the relations between the RA and those countries who have violated its rights must manifest themselves in terms of international law, and all the prevailing issues among those relations must be given legal approaches and solutions.

5. The Essence of the Armenian Question at the Present Stage

As a political issue, the Armenian Question has undergone a few stages. Starting as an issue of the individual and collective security and dignity of the Armenian subjects of the Ottoman Empire, it gradually grew into an issue of Armenian statehood and the restoration of the rights of that statehood.

Today, the Armenian Question is the re-establishment of the territorial, material and moral rights by international law pertaining to or retained by the current RA.

6. The Stages of Resolving the Armenian Question

The entire process of resolving the Armenian Question can be divided into three successive and mutually dependent stages:

a. The preliminary stage

The stage of collecting, researching and analysing documents pertainning to resolving the Armenian Question (not to be confused with the Armenian Genocide). The final outcome of this stage must be the preparation of a collection of documents regarding the Armenian Question (and not the Turkish crime aimed at dealing with it, the Armenian Genocide) and its publication in various formats and languages, providing bases for Armenian demands. A priority in these documents must be given to the comprehensive publication of the arbitral award and attached report of US President Woodrow Wilson deciding the frontier between Armenia and Turkey, alongwith associated official documents. Work must be carried out persistently to inform and raise public awareness on this issue.

b. The middle stage

In this stage, it will be necessary to engage notable specialists and legal professionals experienced in international law and judicial proceedings. The final outcome of this stage must be the execution of a lawsuit against the Turkish Republic at the ICJ of the UN with the participation of experts from various legal spheres. It would be appropriate in this stage to call a pan-Armenian representative body as well. It would also be important to create a professional centre for the study and follow-up of this issue, while also making it public.

c. The final stage

The stage of proposing the court case and initiating the suit. At this stage, the RA must be completely involved as the primary claimant of the basic rights of the demands of the Armenian people, calling on the ICJ of the UN (as per the second clause of Article 36 of the body's charter) to take up the issue of the Turkish Republic's disregard of international law and non-compliance with international obligetions borne. The final outcome of this stage must be the discussion at the UN Security Council (as per Articles 34 and 35 of the Charter of the UN) of the threats to regional peace and security as a consequence of the Turkish Republic having reneged on its international obligations, as well as the discussion of practical steps to be taken in order to fix the situation. That is to say, pressure on the Turkish Republic through international law, alongwith the other countries involved, to carry out the obligations they have borne arising from, in particular, the arbitral award of Woodrow Wilson of November 22, 1920, also securing the complete enforcement of international law in the region, entirely overturning the consequences that came about as a result of disregard for law.

7. The Components of the Armenian Question at the Present Stage

At the present stage, the Armenian Question has three main components: territorial, material and moral. Consequently, one can only

consider resolving the Armenian Question with a complete handling of the issues arising from the aforementioned three components, that is, with complete or partial reparations.

a. The territorial component of the Armenian Question

The territorial component of the above triad is the most essential. Although the RA had significant territorial losses during 1920-1923, nevertheless, they amount to *de facto* losses, and not *de jure*. That is, even though those territories were occupied by foreign powers and later annexed to other countries, the RA nevertheless continues to maintain the title and its legal rights with regards to those territories, because the territorial rights of the RA are based on the inalienable principles of international law, the obligations borne by certain states, as well as binding rulings and legal documents pertaining to their realisation.

The most important of the documents outlining the territorial rights and asserting the title of the RA is the arbitral award of the President (1913-1921) of the USA, Woodrow Wilson, deciding the frontier of the RA and Turkey, made and come into force on November 22, 1920. By this legal document, the title of the RA was recognised and the rights were established over a small section, the northeastern part, of the heartland of the Armenian people. The arbitral award is unconditional, binding, legally inalienable and perpetual from the moment of its establishment and coming into force (22 November 1920).

As the arbitral award was based on two documents – the legal *compromis* of the Supreme Council on behalf of the Allied Powers (or the Entente Powers – the British Empire, France and Italy) of April 26, 1920, as well as the legal *compromis* contained in Article 89 of the Treaty of Sèvres – the arbitral award is therefore a manifest legal and unavoidable political obligation of the countries party to those documents and their successor states.

Accordingly,

I. Whereas the Prime Minister of the British Empire, by approving the *compromis* on the arbitral award of April 26, 1920, was representing all the countries that formed part of the British Empire at the time or were politically subject to it, and also taking into account the fact that successor states continue to bear "the responsibility for the international relations of territory",[412] the arbitral award deciding the frontier between the RA and Turkey (22 November 1920) is therefore a legally binding document for the United Kingdom and all the successor states of the former British Empire (see Appendix I).

[412] Vienna Convention on Succession of States in respect of Treaties 1978, Article 2, (b).

II. Whereas the Prime Minister of the French Republic, by approving the *compromis* on the arbitral award of April 26, 1920, was representing all the countries that formed part of the Third French Republic at the time or were politically subject to it, and also taking into account the fact that successor states continue to bear "the responsibility for the international relations of territory", the arbitral award deciding the frontier between the RA and Turkey (22 November 1920) is therefore a legally binding document for the French Republic and all the successor states of the Third French Republic of the time (see Appendix I).

III. Whereas the Supreme Council of the Allied Powers (or Entente Powers), the Big Three, was authorised to represent and was in fact representing all the Allied Powers, the arbitral award deciding the frontier between the RA and Turkey (22 November 1920), enforced also on the basis of the *compromis* on the arbitral award of April 26, 1920, is therefore a legally binding document for the Allied Powers and their successor states (see Appendix I).

IV. Whereas the arbitral award deciding the frontier between the RA and Turkey (22 November 1920), enforced also on the basis of the legal *compromis* contained in Article 89 of the Treaty of Sèvres, the arbitral award therefore also represents a legally binding document for all the countries party to the Treaty of Sèvres and their successor states (see Appendix I).

V. Whereas each of the Central Powers – Germany, Austria, Hungary and Bulgaria – were obliged at the outset of their peace treaties to recognise '*all of the authorities of treaties and agreements, to be enforced in future … recognising frontiers decided by them*', the arbitral award deciding the frontier between the RA and Turkey (22 November 1920) is therefore a legally binding document for the aforementioned countries as well.

In sum,

- taking into account the fact that the current frontier between the RA and the RT has been clearly and comprehensively described and codified by the arbitral award of US President Woodrow Wilson (22 November 1920),
- accepting the fact that, although the rights of the Armenian people have been historically established in the Armenian Highland and certain regions next to it, nevertheless, the sovereignty and title of the current RA is inalienably recognised and legally limited only to parts in the provinces of Van, Bitlis, Erzurum and Trabzon of the former Ottoman Empire,

– considering the fact that states, whether participating directly or indirectly in the *compromis* of the arbitral award, have by virtue of that fact alone given their unconditional approval to accept as binding any award made.

Thus,

the arbitral award of US President Woodrow Wilson deciding the frontier between the RA and Turkey (22 November 1920) is a legally binding document for 142 of the 192 current member states of the United Nations, including four of the five permanent members of the UN Security Council – the United States, France, the United Kingdom and China.

This is hence **unprecedented** in international relations and international law. There is no other frontier to have such a strong legal basis, as the *de jure* border between the RA and the RT.

b. The material component of the Armenian Question

It must be made clear from the beginning that material reparations have nothing to do with "*payment in return for blood*". Material reparations must first of all include the direct material losses borne by the Armenian people and the RA, which comes to around forty to a hundred billion USD with today's currency, according to numerous estimates.

As the general principle behind reparations is the restoration, at the very least, of the situation before the fact, reparations thus have to make provisions for the recovery of that most sensitive aspect for the Armenian people, the human loss. The Turkish authorities, under the supervision of the international community and international organisations, must create a specific fund, which would encourage childbirth among Armenians, regardless of citizenship, providing significant material support to families with many children of descendants of Armenian Genocide survivors.

Material reparations must also take into account renovations within the territory of the RT of Armenian monuments and other aspects of cultural heritage, which have been purposefully destroyed or damaged by the Turkish authorities. Items and examples of the legacy of the Armenian people kept in museums, archives and elsewhere, even in private collections, must be returned to their rightful owners, the Armenian people.

To be discussed separately are the following:

– the issue of sums maintained by Armenians in banks belonging to the Ottoman Empire or located within its territory,
– the issue of gold and other precious metals and stones confiscated from Armenians,
– the issue of the sums of life, health and property insurance for Armenians,

- the issue of cumulative payment of rent on real estate (houses, schools, churches, etc.) and illegal use of land (since November, 1920) belonging to the Armenian community and individual Armenians by the Turkish state and individual Turks,
- the issue of sums that went unpaid for illegal work to individual Armenians, both civil and military, of the Ottoman Empire,
- and other issues of material losses.

To be discussed specifically is the issue of reparations for losses borne by the Armenian people as a result of the illegal actions of:

- Germany (as a country involved in the workings of the Ottoman Empire, and consequently, an accomplice),
- France (as a country which took on the mandate of Cilicia, where it did not fulfill its international obligations, however, as well as a country which provided military assistance to an ongoing movement – the Kemalists – illegal as per laws of the state and in violation of international law),
- Italy (as a country which provided military assistance to an ongoing movement – the Kemalists – illegal as per laws of the state and in violation of international law),
- Russia (as a country which encouraged an ongoing movement – the Kemalists – illegal as per laws of the state and in violation of international law, displaying wide-ranging support and immediate participation in it, as well as providing military assistance to that movement),
- and other countries.

In sum,

The RA and the Armenian people must receive complete reparations for the multiple material losses borne by them, in order to restore the situation before the losses, as well as to guarantee the material conditions required for natural development.

c. The moral component of the Armenian Question

Moral compensation must not solely include the direct recognition and simultaneous condemnation of the Armenian Genocide by the RT, but also, which is more important; it must delve into the realization of a program for reconciliation. The Turkish authorities must undertake comprehensive and multi-faceted public campaigns and educational programs revealing the historical truth to Turkish society.

8. The Danger of Inadequacy in Resolving the Armenian Question

During the past fifty years, resolving the Armenian Question, mainly characterized by the statelessness of the Armenian people and the desire to achieve certain successes, found expression through having the Arme-

nian Genocide recognised. Even if, with some reservations, one could consider such a policy justified given its times and limitations, such a political mainstay has come to be out of date and ineffectual ever since 1991, with the re-establishment of Armenian statehood. Similarly, the inclusion of the international recognition of the Armenian Genocide as part of foreign policy directives of the RA while leaving out the restoration of rights of the RA and the territorial, material and moral reparations to be made by the Turkish Republic as the successor state of the Ottoman Empire would be fruitless and, indeed, perhaps even dangerous. Bringing up this issue in such a way could create an illusory manner of possibly resolving the Armenian Question, eating up immense human and material resources, nullifying the political will to achieve the real purpose. At present, it is imperative for all political bodies in the Diaspora to restate their priorities, to redefine their targets and accordingly redistribute their human and material resources.

Even partially resolving the Armenian Question, that is, the widespread recognition of the Armenian Genocide or even an outcome to the Artsakh dispute perfectly favourable to the Armenians would not essentially change the geopolitical circumstances of the RA. The country would remain just as vulnerable, just as subject to blockade, with very limited possibilities for survival and development. Consequently, the profound awareness by the leadership of the country of the challenges threatening our statehood, the manifestation of political will to come out of this whirlpool of self-delusion and the corresponding realization of intentional, serious policies aimed at resolving the Armenian Question in order to deal with those dangers, are all vitally necessary for the RA.

9. The Manifestations of Resolving the Armenian Question

Resolving the Armenian Question is, in fact, quite possible and it can be directed in many ways. Nevertheless, resolving the Armenian Question would only be conceivable by basing it on a realistic approach, that is, by taking into account current demographic, military, political and economic realities. At the same time, in order to be viable, resolving the Armenian Question must be practicably beneficial for establishing a lasting peace in the whole region, alongwith the development of a diverse economy, the creation of a co-operative atmosphere, as well as serving certain interests of global power centres, drawing them in towards further involvement in regional issues.

There is no doubt that, on November 22, 1920, the territories that passed on their title to the RA by the arbitral award of President Wilson (which included a major part of the provinces of Van, Bitlis, Erzurum and Trabzon of the former Ottoman Empire) legally comprise part of the RA to

this day. But it is unrealistic to think that the RT would willfully return these territories to their legal owner simply to be in line with international law, without any military pressure. Therefore, it is necessary to find a way, which would be mutually acceptable for the RA and the RT, which would be approved by the other countries, which granted the arbitral award, which also would take into account the interests of the global power centers and which could be codified by international law. And so, that solution must be such that it would dispel the security concerns of the Armenian side, while providing conditions of sustained economic growth and development for the RA, as well as guaranteeing the preservation of Armenian cultural values. Simultaneously, the solution must not go against the core interests of RT, and the Turkish side must be given the opportunity to appreciate and accept in perpetuity the fact that the proposal is a dignified solution for both parties to the given circumstances.

And so, resolving the Armenian Question would be possible through the territorial lease of the territories under question, through a novel status being granted to those territories, by which the de jure territorial title of the RA would be recognized alongside the de facto rule of the Republic of Turkey over those territories. *i.e.,*

I. The RT would lease "Wilsonian Armenia" from the RA on the basis of a bilateral treaty containing international guarantees with reasonable terms.[413] This treaty and its adjunct agreements would codify the rights and obligations of the parties, as well the participation and involvement of international organisations and interested countries in the territories under question. The terms of lease, the method of payment and its periodicity would be decided by a corresponding agreement.
II. Citizens of the RT and the RA, independent of their place of residence, would maintain their citizenship, enjoying all the rights of that citizenship, carrying out their duties as citizens. All citizens of both countries would be allowed the unconditional rights of free movement, transportation of goods, residence and economic occupation in those territories. Apart from local taxes and payments, the individuals and companies who work in those territories would pay taxes according to their place of registration and citizenship as per corresponding regulations.

[413] "Reasonable" terms for rent would involve an annual payment of 1% of the GDP of the RT – 8.6 billion USD – as those territories comprise almost 13% of territories under RT (>100,000 km^2), and >8% of RT's population resides there (~5.6 mln people). [The aforementioned does not include the Kars region of the former Russian Empire (1878-1918) and the RA (1918-1920); the southern part of the Batumi region and the territories of the Surmalu region, because another solution is being proposed with regards to those territories. Please refer to point V for the details.]

III. Income received through transit from third countries (including oil and gas pipelines) would go towards the improvement and development of local infrastructure (roads, railways, public places for general use).
IV. The territory in question would be demilitarised, that is, the five kinds of offensive armaments as per the Treaty on Conventional Armed Forces in Europe (1990) would be removed from the territory.[414] Security provisions, even the defence, if necessary, of the territory would be the responsibility of international peace-keepers with corresponding authority and under the aegis of the UN Security Council. Maintaining law and order within communities would come under community police and, if necessary, internal forces. International civil and military observer and advisory bodies would have missions in the territory.
V. The status of the Kars region of the former Russian Empire (1878-1918) and the RA (1918-1920), the southern part of the Batumi region and the territories of the Surmalu region would be subject to separate discussion. Currently, those territories comprise the provinces of Kars (9,587sq.km, population 130,000), Ardahan (5,661sq.km, population 120,000), Artvin (7,436sq.km, population 192,000) and Igdir (3,587sq.km, population 180,000) of the RT. In total, 26,241sq.km, or 3.4% of the total territory of the RT, and 779,000 people, 1.1% of the total (see Appendix II). As opposed to Wilsonian Armenia, direct Armenian sovereignty would be imposed upon these territories.

10. The Process of Resolving the Armenian Question as a Means and Criterion for the Consolidation of the RA

Not only does resolving the Armenian Question in a lasting or acceptable way have vital significance for the independent and dignified survival of the RA, but the process of resolving itself is of decisive importance for the consolidation, and consequently the uninterrupted endurance, of Armenian statehood.

Political science has long since developed a formula to measure the strength of a given state. This is known as the Jablonsky formula in American political science.[415]

Pp = (C+E+M) x (S+W)

In this formula, **Pp** is Perceived power, **C** is critical mass (population + territory), **E** is Economic capability, **M** is Military capability, **S** is Strategic purpose and **W** stands for the Will to pursue national strategy.

[414] Tanks, artillery pieces, armoured combat vehicles (ACVs), combat aircraft and attack helicopters.
[415] David Jablonsky, National Power, Parameters, vol. 27, 1, Spring, 1997, p. 34-54.

It is clear from the formula that the strength of a state depends as much on the presence of long-term goals and the state's goal-oriented practices, as the population, territory, economic and military strength.

The strength of a state is not merely the sum of some indicators, but it is the product of tangible, material indicators with the sum of the goal and the willingness to achieve it. Regardless of territory, population, economic or military prowess, if the state does not have a goal, and consequently the will to attain it, the strength of the state would then be nothing, as any number multiplied by zero is zero.

Today, the Artsakh issue is not considered to be a pan-national goal, due to some disputable and not-so-disputable circumstances.

The political process of Armenian Genocide recognition, such as it is, cannot be a pan-national, to say nothing of a state policy goal, because the goal itself is not clear-cut and there is no possibility of arriving at any specific, essential result.

Therefore, not only is resolving the Armenian Question a singular opportunity to strengthen Armenian statehood and the only way for the Armenian people to endure, but also the very process of resolving the Armenian Question, that is to say, the presence of such a goal and the political will to act on it, is an indispensible factor in consolidating the strength of Armenian statehood, because ***a homeland which does not have a purpose, is merely a place to live***.

CONCLUSION

Analysing the above, as well as taking into account the aforementioned basic principles of resolving the Armenian Question, the following conclusions can be drawn:

- **Resolving the Armenian Question is realistic and viable.**
- **There is no alternative to resolving the Armenian Question. Not resolving the Armenian Question would render the Republic of Armenia ever dependent on the circumstances or goodwill of her neighboring countries.**
- **Resolving the Armenian Question is the singular opportunity of consolidating Armenian Statehood, which is the only path for the endurance of the Armenian people.**

October 2008 – March 2009
Yerevan, Ottawa

List of countries under international obligation, being party to the legal proceedings regarding the Armenia-Turkey frontier

in accordance with the list of member-states of the United Nations

(the countries listed in darkened rows do not bear any international obligations with regard to the above)

№	Current Name	As per the *compromis* of San Remo of the Supreme Council of the Allied Powers (26 April 1920)			As per the *compromis* contained in Article 89 of the Treaty of Sèvres	Notes
		Formed part of the British Empire or was politically subject to it	Formed part of the 3rd French Republic or was politically subject to it	Formed part of the Allied Powers		
I	II	III	IV	V	VI	VII
1.	Afghanistan					
2.	Albania			+		
3.	Algeria		+			
4.	Andorra			+		
5.	Angola					as an overseas territory of Portugal
6.	Antigua and Barbuda	+				
7.	Argentina					
8.	Armenia			+	+	
9.	Australia	+		+	+	
10.	Austria					as per Article 87 and 2 of the Treaty of Saint-Germain
11.	Azerbaijan					
12.	The Bahamas	+				
13.	Bahrain	+				as a British protectorate
14.	Bangladesh	+		+		
15.	Barbados				+	
16.	Belarus					
17.	Belgium			+	+	
18.	Belize	+				
19.	Benin		+			as part of French West Africa
20.	Bhutan	+				as per the treaty of 1910
21.	Bolivia			+		
22.	Bosnia and Herzegovina					as part of Austria-Hungary

I	II	III	IV	V	VI	VII
23.	Botswana	+				
24.	Brazil			+		
25.	Brunei Darussalam	+				
26.	Bulgaria					as per Article 60 of the Treaty of Neuilly-sur-Seine
27.	Burkina Faso		+			
28.	Burundi					
29.	Cambodia		+			
30.	Cameroon					
31.	Canada			+	+	
32.	Cape Verde		+			
33.	Central African Republic		+			
34.	Chad		+			
35.	Chile					
36.	China			+		
37.	Colombia					
38.	Comoros		+			
39.	Congo, Democratic Republic of					as part of Belgium
40.	Congo, Republic of		+			
41.	Costa Rica			+		
42.	Côte d'Ivoire		+			
43.	Croatia					as part of Yugoslavia
44.	Cuba			+		
45.	Cyprus	+				
46.	Czech Republic			+	+	
47.	Denmark					
48.	Djibouti		+			
49.	Dominica	+				
50.	Dominican Republic					
51.	Ecuador			+		
52.	Egypt	+				
53.	El Salvador					
54.	Equatorial Guinea					
55.	Eritrea					as a colony of Italy
56.	Estonia					
57.	Ethiopia					
58.	Fiji	+				
59.	Finland			+		
60.	France			+	+	
61.	Gabon		+			
62.	Gambia	+				
63.	Georgia					
64.	Germany					as per Article 117 of the Treaty of Versailles
65.	Ghana	+				
66.	Greece			+	+	
67.	Grenada	+				

I	II	III	IV	V	VI	VII
68.	Guatemala			+		
69.	Guinea		+			
70.	Guinea-Bissau					as a colony of Portugal
71.	Guyana	+				
72.	Haiti			+		
73.	Honduras			+		
74.	Hungary					As per Articles 70 and 72 of the Treaty of Trianon
75.	Iceland					
76.	India	+		+	+	
77.	Indonesia					
78.	Iran, Islamic Republic of					
79.	Iraq					
80.	Ireland	+				
81.	Israel					
82.	Italy			+	+	
83.	Jamaica	+				
84.	Japan			+	+	
85.	Jordan					
86.	Kazakhstan					
87.	Kenya	+				
88.	Kiribati	+				
89.	Korea, Democratic People's Republic of					as part of Japan
90.	Korea, Republic of					as part of Japan
91.	Kuwait	+				
92.	Kyrgyzstan					
93.	Lao People's Democratic Republic		+			
94.	Latvia					
95.	Lebanon					
96.	Lesotho	+				
97.	Liberia					
98.	Libyan Arab Republic					as part of Italy
99.	Lichtenstein					
100.	Lithuania					
101.	Luxembourg					
102.	Macedonia, Former Yugoslav Republic of					as part of Serbia
103.	Madagascar		+			
104.	Malawi	+				
105.	Malaysia	+				
106.	Maldives	+				
107.	Mali		+			
108.	Malta	+				
109.	Marshall Islands					
110.	Mauritania		+			
111.	Mauritius	+				

I	II	III	IV	V	VI	VII
112	Mexico					
113	Micronesia, Federated States of					
114	Moldova, Republic of					as part of Romania
115	Monaco		+			as per the treaty of July, 1918
116	Mongolia					as part of China
117	Montenegro					as part of Serbia
118	Monaco		+			
119	Mozambique					as a colony of Portugal
120	Myanmar	+		+		as part of British India
121	Namibia					
122	Nauru	+				
123	Nepal	+				
124	Netherlands					
125	New Zealand	+		+	+	
126	Nicaragua			+		
127	Niger		+			
128	Nigeria	+				
129	Norway					
130	Oman					
131	Pakistan	+		+		
132	Palau					
133	Panama			+		
134	Papua New Guinea	+				
135	Paraguay					
136	Peru			+		
137	Philippines			+		as per the Philippine Act of 1902
138	Poland				+	
139	Portugal			+	+	
140	Qatar	+				
141	Romania			+	+	
142	Russian Federation					
143	Rwanda					
144	Saint Kitts and Nevis	+				
145	Saint Lucia	+				
146	Saint Vincent and the Grenadines	+				
147	Samoa					
148	San Marino			+		
149	São Tomé and Príncipe					as a colony of Portugal
150	Saudi Arabia					
151	Senegal		+			
152	Serbia			+	+	
153	Seychelles	+				
154	Sierra Leone	+				

I	II	III	IV	V	VI	VII
155	Singapore	+				
156	Slovakia			+	+	
157	Slovenia			+	+	as part of Serbia
158	Solomon Islands	+				
159	Somalia	+				
160	South Africa	+		+	+	
161	Spain					
162	Sri Lanka	+				
163	Sudan	+				as a British colony
164	Suriname					
165	Swaziland	+				
166	Sweden					
167	Switzerland	+				
168	Syrian Arab Republic					
169	Tajikistan					
170	Tanzania, United Republic of	+				
171	Thailand	+		+		
172	Timor-Leste					as a colony of Portugal
173	Togo					
174	Tonga	+				
175	Trinidad and Tobago	+				
176	Tunisia		+			
177	Turkey				+	
178	Turkmenistan					
179	Tuvalu	+				
180	Uganda					
181	Ukraine					
182	United Arab Emirates					
183	United Kingdom of Great Britain and Northern Island	+		+	+	
184	United States of America			+		as part of the Allied Powers and as arbiter
185	Uruguay			+		
186	Uzbekistan					
187	Vanuatu	+				
188	Venezuela, Bolivarian Republic of					
189	Vietnam		+			
190	Yemen	+				
191	Zambia	+				
192	Zimbabwe	+				

Population and area of territories of the Republic of Armenia currently under the control of the Republic of Turkey

(the darkened rows pertain to territories formerly in the Russian Empire during 1878-1918 and the Republic of Armenia during 1918-1920)

№	Province	Area (sq.km)	Population	Population Density (per sq. km)
1.	Agri	11 376	571 000	50
2.	Ardahan	5 661	120 000	21
3.	Artvin	7 436	192 000	26
4.	Bayburt	4 043	97 400	24
5.	Bingol	8 125	245 000	30
6.	Bitlis	6 707	414 000	62
7.	Erzurum	25 066	959 000	38
8.	Giresun	6 934	524 000	76
9.	Gumushane	6 575	192 000	29
10.	Igdir	3 587	180 000	50
11.	Kars	9 587	287 000	30
12.	Mus	8 196	489 000	60
13.	Rize	3 920	362 000	92
14.	Trabzon	6 685	1 061 000	159
15.	Van	19 069	1 013 000	53
	Total for the territories formerly in the Russian Empire (1878-1918) and the Republic of Armenia (1918-1920)	26 241	779 000	30
	Total	**132 967**	**6 461 400**	**49**

SUBJECT INDEX

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Born in Yerevan, Armenia on June 6, 1961, Mr. Ara Papian successfully graduated from the Department of Oriental Studies of Yerevan State University in 1984.

He completed postgraduate degree course of studies in Armenian History at Yerevan State University in 1989 in Yerevan, Armenia (USSR).

In 1994, Mr. Papian graduated from the Moscow Diplomatic Academy in Moscow, USSR and in 1998, from NATO Defense College in Rome, Italy.

In 1999, he completed a course in Public Diplomacy in Wilton, United Kingdom.

In the same 1999 (April 30), Mr. Papian has founded and presides until today the "Modus Vivendi" NGO (***Modus Vivendi Center***) with the mission of solving the regional problems by peaceful means *via* International Law.

His professional experience as a diplomat has been at the Ministry of Foreign Affairs of the Republic of Armenia.

His Excellency Ara Papian was the Ambassador Extraordinary and Plenipotentiary of Armenia to Canada (2000-2006). In 2006 he was awarded the Medal *"Corps Diplomatique"* of the Ministry of Foreign Affairs of Canada, and also the Hovnan Mandakuni Order of Armenian Diocese of Canada.

Prior to his appointment to Canada, he was the spokesman and Head of Public Affairs Department of the Armenian Foreign Ministry.

His previous positions with the Armenian Foreign Ministry were a second secretary of the US and Canada Division of the American Department (1991-1992), Head of Iran Division of the Middle East Department (1994-1995), and Head of Security Cooperation Division of the Security Issues and Arms Control Department (1997-1999).

Mr. Papian was previously posted to the Armenian Embassy in Tehran, Iran (1992-1993, second secretary) and the Armenian Embassy in Bucharest, Romania (1995-1996, second secretary; 1997, Chargé d'Affaires).

Prior to joining the Armenian Foreign Ministry, Mr. Papian was a Professor of the Armenian language and literature at Melkonian Educational Institute in Nicosia, Cyprus.

In 1981-1982 and then in 1984-1986, Mr. Papian served as a military interpreter/translator in Afghanistan. He has been awarded 7 military medals and decorations. Mr. Papian led the Union of Armenian veterans of the Afghan war from 1988 to 1989.

Mr. Papian was not and is not a member of any political party.

He is fluent in Armenian, Russian, English, Persian and Greek.

Mr. Papian is married, with two sons.

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