

Ara Papian

**SOUND THE ALARMS!  
THIS IS OUR FINAL  
SARDARAPAT.**

**ANALYSIS OF THE**

"Protocol on the Establishment of Diplomatic Relations  
between the Republic of Armenia and the Republic of Turkey"  
and

"Protocol on Developing Bi-lateral relations  
between the Republic of Armenia and the Republic of Turkey"

**M<sup>⊕</sup>odus  
Vivendi**

**[www.wilsonforarmenia.org](http://www.wilsonforarmenia.org)**

YEREVAN 2009

## **A. I lament thee, o Armenian World** or **Three-Zero, in Turkey's favor**

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 Republic of Armenia 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, recognizing 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*" fulfills 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 fulfills 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 short-sighted as to legalize the illegal occupation of territories of the Republic of Armenia and the illegal possession of our national property by the Republic of Turkey, 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*".

***Ara Papian***

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31 August 2009

## **B. The American Example** (once again on Armenian-Turkish relations)

In 1927, the leadership of the United States was considering the same dilemma as the authorities of the Republic of Armenia 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 First World War, 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 work towards re-establishing diplomatic ties, especially because American companies held increasing economic interests in Turkey. A bilateral treaty had been signed on normalizing relations as far back as 6 August 1923, in Lausanne, Switzerland. According to the US Constitution, that document could only enter into force upon the approval of the Senate.

Therefore, 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 United States did not dismiss its own international liabilities and did not deny the territorial rights of the Republic of Armenia for the sake of economic interests.

Now, this was 1927. There was no longer a Republic of Armenia, 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 skillful 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 the 17<sup>th</sup> of February, 1927, diplomatic relations between the US and Turkey were re-established with the exchange of diplomatic notes. Naturally, the territorial rights of the Republic of Armenia 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.<sup>1</sup>*

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 normalize 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.

***Ara Papian***

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4 September 2009

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<sup>1</sup> Papers Relating to the Foreign Relations of the United States, 1927, v. III, Washington, 1942, p. 794.

## C. 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 one hundred percent for establishing diplomatic, as well as consular, relations and fifty percent 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 10 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 Mudros (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-recognized state, the Republic of Armenia, 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.

**Ara Papian**

Head, “Modus Vivendi” Centre

6 September 2009

## **D. 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 recognized 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 about 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 recognized 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 Republic of Armenia 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 Republic of Armenia 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 Republic of Armenia. 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%<sup>2</sup> of the provinces of Van, Bitlis, Erzurum and Trabzon respectively of the former Ottoman Empire belong *de jure* to the Republic of Armenia, 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 Republic of Armenia, although Turkey has occupied that territory since 1920. This title was initially recognized on behalf of 50 (fifty) states by Great Britain, France and Italy on the 26th of April, 1920, and was then reconfirmed by the Great Seal of the United States and the signature of President Woodrow Wilson, officially enforced on the 22nd of November, 1920, and then reconfirmed once more by Article 16 of the Treaty of Lausanne on the 24th of July, 1923.

I do not 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.

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7 September 2009

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<sup>2</sup> 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).

## E. 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 Republic of Armenia 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 lead 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 normalization of relations with Turkey without preconditions* as a prime directive of foreign policy. The foreign minister has also publicly repeated the president's position, emphasizing 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 normalization 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 Republic of Armenia and the Republic of Turkey 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*".<sup>3</sup>

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 Republic of Armenia. 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 Republic of Armenia must reaffirm its willingness to establish diplomatic relations with the Republic of Turkey without preconditions and to open the crossing points at the frontier, signing brief and pointed documents, which consists solely of those clauses.

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10 September 2009

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<sup>3</sup> 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.

## F. 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 Republic of Armenia, 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 (Nagorno-Karabakh) 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 inconsistent 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 Republic of Armenia, 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.<sup>4</sup>

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

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.

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<sup>4</sup> David Jablonsky, *National Power, Parameters*, vol. 27, 1, Spring, 1997, pp. 34-54.

Today, the Nagorno-Karabakh 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.

***Ara Papian***

Head, “Modus Vivendi” Centre

11 September 2009

## **G. The Protocols fall outside the authority of the National Assembly**

The National Assembly of the Republic of Armenia is not authorized to discuss and vote on, much less ratify the protocols between the Republic of Armenia and the Republic of Turkey on establishing diplomatic relations and developing bilateral ties.

The said protocols fall outside the authority of the National Assembly. The current Constitution of the Republic of Armenia 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.

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12 September 2009

## H. Reactions in the Turkish Press

### The Armenian opening

*By Yusuf Kanli, Hurriyet, 15 September 2009*

Obviously, there are objectionable and perhaps deplorable elements in the Turkish-Armenian protocols but a careful reconsideration might vividly demonstrate that they are products of a successful and diligent diplomacy that caters to most of Turkey's outstanding interests. Most important of all, though tacit, with these protocols Armenia has delivered Ankara two crucial concessions. What are they?

First of all Armenia has accepted for the first time ever the creation of a history commission that might feature historians from interested third parties in examining the genocide claims. That is, without saying so the Serge Sarkisian administration of Armenia has conceded from the “Genocide is a fact, there is no need to verify it through scientific research or to discuss it” position. Secondly, for the first time ever in the post-Soviet era, Armenia has agreed to recognize the joint border with Turkey as was defined in the Kars treaty, though there is no reference in the protocols to the Kars treaty. Such recognition by Armenia is no less than declaring it has no territorial claims from Turkey or it has turned a cold shoulder to Diaspora's land claims from Turkey.

Because of those concessions Sarkisian is now having a tough ride with the Armenian opposition, while many Turkish diplomats who devoted a life to battle Armenian claims against Turkey are expressing with satisfaction appreciation for the Turkish “diplomatic victory” in Armenia relations.

Yet, the opposition parties are fuming over the protocols and delivering tough statements as if the ruling Justice and Development Party, or AKP, government has betrayed Turkey's national interests.

All the issues on the table in Turkish-Armenian negotiations, excluding one, are problems between the two countries. Recognition of the Kars treaty or the joint border defined by that treaty and Armenia declaring it has no territorial claims from Turkey, resolution of the genocide claims through studies of a joint historical commission, normalization of relations including establishment of diplomatic relations and opening of the border gates are the most prominent issues the Swiss-mediated silent diplomacy between Turkey and Armenia has been aiming to achieve. Of these topics, only normalization of relations and opening of the border gates heading was not a purely bilateral subject as suspension of the plans to open a Turkish embassy in Yerevan and closure of the border were decided by Ankara as a reaction to the invasion and subsequent occupation of Nagorno-Karabakh, a predominantly Armenian dominated enclave in Azerbaijan, and several Azerbaijani-population regions around the mountainous enclave.

Indeed, without abandoning Azerbaijan and landing Turkish-Azerbaijani relations in an unprecedented crisis and risking his own political future very seriously no Turkish leader can open the border without a resolution of the Nagorno-Karabakh occupation or at least declaration of a withdrawal timetable by Armenia. Can Armenia undertake such a move now? What if, as was suggested earlier, Armenia withdraws from Nagorno-Karabakh and the Azeri regions around and Russian peacekeepers are deployed in the mountainous region? Even if with Azerbaijani demands Turkish troops join Russians as peacekeepers in the disputed territory, such a development might still be acceptable for Yerevan as an “interim formula.” After all, were not Russian military elements together with Armenian troops in the occupation of the region?

Such a development may as well help Erdoğan escape “treason” accusation in the 2010 or 2011 early polls while convert him into a “national hero” in Azerbaijan as he would have secured “liberation” of occupied Azerbaijani land.

The outcome would serve to Turkish-Russian relations, as well as the U.S. interests in this geography. Furthermore, such a resolution would be a great contribution to Western energy security, and thus would be applauded by the EU, too.

Can Armenia declare a withdrawal timetable? That might make Erdoğan a hero; otherwise, he will find himself in some very serious reputation problems in domestic politics. Would he care? So far he proved that he has no such worries.

## I. Options on Armenia as a transit country according to international law

The authorities of the Republic of Armenia 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 Republic of Armenia 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 they are ready today to pay for it with our past and our future?

Let me state at the outset that the Republic of Turkey has been executing a *war measure*<sup>5</sup> on the Republic of Armenia since July, 1993, as, according to international law, *blockades* are considered to be as such. The blockade of Armenia by Turkey is in complete violation of international law and its corresponding obligations. 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.<sup>6</sup>

On the 25th of May, 1969, the Republic of Turkey 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 recognizes 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 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 Republic of Armenia 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 Republic of Armenia, 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 Republic of Armenia in the political process of lifting the blockade.

I believe that, as long as the Republic of Armenia 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.

**Ara Papian**

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19 September 2009

<sup>5</sup> Jack C. Plano, Roy Oltan, *The International Relations Dictionary*, Santa Barbara, 1988, p. 194.

<sup>6</sup> 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 Papyan, the “Azg” daily, Armenia, 3 April, 2007

## J. Armenia and Turkey are not authorised “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 Republic of Armenia and the Republic of Turkey 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 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<sup>7</sup>, 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 First World War, on the 30th of October, 1918, the Ottoman Empire signed the Mudros 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<sup>8</sup> 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 the 26<sup>th</sup> of April, the Supreme Council of the Allied Powers officially approached the President of the United States Woodrow Wilson “to arbitrate the frontiers of Armenia” as per an *arbitral award*.<sup>9</sup>

Two factors in this previous paragraph need further clarification:

a) The Supreme Council of the Paris Peace Conference was authorized 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 First World War, 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 Republic of Armenia, 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.<sup>10</sup> 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 the 26<sup>th</sup> of April, US President Woodrow Wilson officially took on the arbitration of the Armenian-Turkish border in writing on the 17<sup>th</sup> of 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

<sup>7</sup> 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 require parliamentary ratification according to the constitutions of both countries.

<sup>8</sup> In Armenian circles, the Allied Powers are more widely referred to as the countries of the Entente.

<sup>9</sup> 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).

<sup>10</sup> Hans-Jürgen Schlochauer, *Arbitration*, Encyclopedia of Public International Law, v. I, 1992, Amsterdam, p. 226.

Sèvres was signed (the 10th of 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 Republic of Armenia 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 the 22<sup>nd</sup> of November, 1920, to come into effect that same day. Two days later, on the 24<sup>th</sup> of 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.<sup>11</sup>

*Ara Papian*

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20 September 2009

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<sup>11</sup> Manual of Public International Law, (ed. by Max Sorensen ), New York, 1968, p. 693-94.

## **K. The Meaning of Statehood and the Armenian Question**

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 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 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, 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 Republic of Armenia is facing serious challenges at present. A solution to the Armenian Question, that is, the restoration of the rights of the Republic of Armenia and the Armenian people, is not an end in itself. The Republic of Armenia, 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:

1. securing the sovereignty of the state and the security of the citizens of that state,
2. creating conditions for the country's economic development and the prosperity of the citizens of that country,
3. 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 realize 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 Republic of Armenia, 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 centers, drawing them in towards further involvement in regional issues.

There is no doubt that, on the 22nd of November, 1920, the territories that passed on their title to the Republic of Armenia 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 Republic of Armenia to this day. But it is unrealistic to think that the Republic of Turkey would willfully 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 Republic of Armenia and the Republic of Turkey, which is approved by the other countries which granted the arbitral award, which also takes into account the interests of the global power centers 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 Republic of Armenia, 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 recognized alongside the *de facto* rule of the Republic of Turkey over those territories.**

i.e.,

- I. The Republic of Turkey would lease “Wilsonian Armenia” from the Republic of Armenia on the basis of a bilateral treaty containing international guarantees with reasonable terms<sup>12</sup>. This treaty and its adjunct

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<sup>12</sup> “Reasonable” terms for rent might involve an annual payment of 1% of the GDP of the Republic of Turkey – 8.6 billion US dollars – as those territories comprise almost 13% of territories under Turkey (more than 100,000 km<sup>2</sup>), and more than 8% of Turkey’s population resides there (around 5.6 million people). The aforementioned does not include the Kars region of the former Russian Empire and the Republic of Armenia (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.

agreements would codify the rights and obligations of the parties, as well the participation and involvement of international organizations 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 Republic of Turkey and the Republic of Armenia, 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.
- 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 demilitarized, 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.<sup>13</sup> Security provisions, even the defense, 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 Republic of Armenia (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 km<sup>2</sup>, population 130 000), Ardahan (5 661 km<sup>2</sup>, population 120 000), Artvin (7 436 km<sup>2</sup>, population 192 000) and Igdir (3 587 km<sup>2</sup>, population 180 000) of the Republic of Turkey. In total, 26 241 km<sup>2</sup> or 3.4% of the total territory of the Republic of Turkey, 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 neighboring 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.**

#### ***Ara Papian***

Head, "Modus Vivendi" Centre

22 September 2009

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<sup>13</sup> Tanks, artillery pieces, armoured combat vehicles (ACVs), combat aircraft and attack helicopters.

## **L. 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 Mihrianyan noted that the decision has no legal force, and is unacknowledged by US Congress.*”<sup>14</sup> If the news agencies have quoted this respected professor correctly, then he is in error. Mr. Mihrianyan 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 24<sup>th</sup> to the 27<sup>th</sup> 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 the 26<sup>th</sup> of April, 1920 with two separate requests: a) for the United States to assume a mandate for Armenia, and b) for the President of the United States to arbitrate the frontiers of Armenia.<sup>15</sup> 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 United States 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 United States had to receive the “*Advice and Consent*” of the Senate, in accordance with the US Constitution. And so, the Senate of the United States – and not Congress – having discussed the issue of taking on a mandate for Armenia from the 24<sup>th</sup> of May to the 1<sup>st</sup> 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 United States 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 the 17<sup>th</sup> of May, 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 (the 26<sup>th</sup> of April, 1920), as well as that of Sèvres (the 10<sup>th</sup> of August, 1920), US President Woodrow Wilson granted the arbitral award on the frontiers between Armenia and Turkey on the 22<sup>nd</sup> of November, 1920, which was to come into force in accordance with the agreement *immediately* and *without preconditions*. Two days later, on the 24<sup>th</sup> 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 the 2<sup>nd</sup> of December, 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*”.<sup>16</sup> “*The arbitral award is the final and binding decision by an arbitrator*”.<sup>17</sup>

<sup>14</sup> www.panarmenian.net/news/eng/?nid=36602&date=2009-09-18, dated 18 Sept 2009, retrieved on 22 Sept 2009.

<sup>15</sup> 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).

<sup>16</sup> Hans-Jurgen Schlochauer, Arbitration, Encyclopedia of Public International Law, v. I, 1992, Amsterdam, p. 226.

<sup>17</sup> A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

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.**

There is another important issue to consider. Have the authorities and public bodies of the United States 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 United States not only recognized Wilson's arbitral award, but has also ratified it and, therefore, it has become part of the law of the land of the United States. The President of the United States 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 United States of America 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 United States explicitly expressed its position on this award on at least one occasion.

On the 18<sup>th</sup> of January, 1927, the Senate rejected the Turkish-American treaty of the 6<sup>th</sup> of August, 1923, for three reasons. One of the reasons was that Turkey “*failed to provide for the fulfillment of the Wilson award to Armenia*”.<sup>18</sup> 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*.”<sup>19</sup> 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. 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 First World War) 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 United States 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 program, the Democratic Party included a separate clause of the “*Fulfillment of President Wilson's arbitral award respecting Armenia*”<sup>20</sup> 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*

<sup>18</sup> Lausanne Treaty is Defeated, The Davenport Democrat, 19 January 1927, 1.

<sup>19</sup> The New York Times, January 19, 1927, 1.

<sup>20</sup> National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p. 277.

*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.*<sup>21</sup> The only “*promise and engagement*” of the United States to the Republic of Armenia 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 Mihrianyan. 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?**

*Ara Papian*

Head, “Modus Vivendi” Centre

22 September 2009

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<sup>21</sup> *ibid.*

## M. 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 (of the 16<sup>th</sup> of March, 1921), had a provision of the exchange of instruments of ratification “*as soon as possible*”.<sup>22</sup> The Treaty of Kars – even more ill-reputed – demanded it “*within the shortest possible time*”.<sup>23</sup>

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 Republic of Armenia “*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 don’t 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.

**Ara Papian**

Head, “Modus Vivendi” Centre

24 September 2009

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<sup>22</sup> Treaty of Friendship, Soviet Treaty Series, v. I, (ed. by L.Shapiro), Washington, 1950, p. 101.

<sup>23</sup> *ibid.*, p. 137.

## N. 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 neighbors, 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 Republic of Armenia and the Republic of Turkey, and on the development of relations between the Republic of Armenia and the Republic of Turkey. 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 Republic of Armenia 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 Republic of Armenia.

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 Republic of Armenia. That is, after the protocols come into effect, no citizen of the Republic of Armenia 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 Republic of Armenia. 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's 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 neighborly relations*”. This brings up some questions. Is the president of our republic to address the Armenian people on the 24<sup>th</sup> 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 neighborly relations*”? How is the prosecutor of the Republic of Armenia to take that? How are we to respond to the Turks, if they officially protest for that reason? Are we to say we're sorry, and that we'll 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.

**Ara Papian**

Head, “Modus Vivendi” Centre

25 September 2009

## O. SPEECH

by Ara Papian, Head of the Modus Vivendi Center  
during hearings held at the National Assembly of the Republic of Armenia

1 October, 2009

In question:  
the Protocol on the Establishment of Diplomatic Relations  
between the Republic of Armenia and the Republic of Turkey;  
the Protocol on the 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 Republic of Armenia and the Republic of Turkey and on the development of relations between the Republic of Armenia and the Republic of Turkey. 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 Republic of Armenia. 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 United Nations, 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. Isn’t 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.<sup>24</sup> 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.<sup>25</sup>

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 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 Republic of Armenia. 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

<sup>24</sup> Massimo Cocchia, Helsinki Conference and Final Act, Encyclopedia of Public International Law, v. 2, Amsterdam, 1995, p. 693.

<sup>25</sup> *ibid.*, pp. 694-695.

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.

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

**Respected Minister,**

On the first of October this year, at the end of the parliamentary 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 Woodrow Wilson on the 26th of April, 1920 with two separate requests: a) for the United States to assume a mandate for Armenia, and b) for the President of the United States to arbitrate the frontiers of Armenia.<sup>26</sup> 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 United States 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 24<sup>th</sup> of May to the 1<sup>st</sup> 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 United States 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 the 17<sup>th</sup> of May, 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 (the 26th of April, 1920), as well as that of Sèvres (the 10th of August, 1920), US President Woodrow Wilson granted the arbitral award on the frontiers between Armenia and Turkey on the 22nd of November, 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

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<sup>26</sup> 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).

accepted as such, but remained unsettled, because the beneficiary of the award – the Republic of Armenia – ceased to exist on the 2nd of December, 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*”.<sup>27</sup> “*The arbitral award is the final and binding decision by an arbitrator*”.<sup>28</sup>

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*.

There is another important issue to consider. Have the authorities and public bodies of the United States 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 United States 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 President of the United States 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 the 18th of January, 1927, the Senate rejected the Turkish-American treaty of the 6th of August, 1923, for three reasons. One of the reasons was that Turkey “*failed to provide for the fulfillment of the Wilson award to Armenia*”.<sup>29</sup> 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*.”<sup>30</sup> 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. 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 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.

<sup>27</sup> Hans-Jurgen Schlochauer, *Arbitration*, Encyclopedia of Public International Law, v. I, 1992, Amsterdam, p. 226.

<sup>28</sup> A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

<sup>29</sup> Lausanne Treaty is Defeated, *The Davenport Democrat*, 19 January 1927, 1.

<sup>30</sup> *The New York Times*, January 19, 1927, 1.

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*"<sup>31</sup> 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.*"<sup>32</sup> The only "*promise and engagement*" of the United States to the Republic of Armenia was and continues to remain the arbitral award of Woodrow Wilson on the border between Armenia and Turkey.

### **Respected Minister,**

You have stated, that "*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.

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*".<sup>33</sup> 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 Republic of Armenia 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 Republic of Armenia joined the Vienna Convention on Diplomatic Relations (1961), which has come up a lot lately, only on the 23rd of July, 1993, whereas the USSR (that is to say, the current Russian Federation) has been party to that convention since the 11th of February, 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 Republic of Armenia 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*"<sup>34</sup>) but any changes in the territory of the Republic of Armenia 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*".<sup>35</sup>

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

**Ara Papian**

Head, "Modus Vivendi" Centre

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.

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<sup>31</sup> National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p. 277.

<sup>32</sup> *ibid.*

<sup>33</sup> Official Bulletin of the Ministry of Foreign Affairs of the Republic of Armenia, # 3 (11) 20.12.2004, p. 13.

<sup>34</sup> Ian Brownlie, *Principles of Public International Law*, Oxford, 2001, p. 449.

<sup>35</sup> W. Fiedler, *Continuity*, *Encyclopedia of Public International Law*, v. 1, Amsterdam, 1992, p. 808.

## **Q. 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.**

*Ara Papian*

Citizen of the Republic of Armenia

10 October, 2009

## **ARA PAPIAN**

*Head of “Modus Vivendi”  
Center for Social Science*



Born in Yerevan, Armenia on June 6, 1961, 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 1994, Mr. Papian graduated from the Moscow Diplomatic Academy and in 1998, from NATO Defense College in Rome. In 1999, he completed a course in Public Diplomacy in Wilton, United Kingdom.

His professional experience as a diplomat has been at the Ministry of Foreign Affairs of the Republic of Armenia. Ara Papian was the Ambassador Extraordinary and Plenipotentiary of Armenia to Canada (2000-2006). Prior to his appointment to Canada, he was the spokesman and Head of Public Affairs Department. His previous positions with the Armenian Foreign Ministry were a second secretary of the US and Canada Division of the American Department (1991-92), Head of Iran Division of the Middle East Department (1994-95), and Head of Security Cooperation Division of the Security Issues and Arms Control Department (1997-99). 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, Charge 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 1981-82 and then in 1984-1986, Mr. Papian served as a military interpreter/translator in Afghanistan.

He is fluent in Armenian, Russian, English, Persian and Greek.

Mr. Papian is married, with two sons.