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Legal Foundations for Armenian Territorial Claims: Whether there are Legal Foundations for Armenian Territorial Claims

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Content

Introducation

There are several points to mention for the legal foundations for Armenian Territorial claims. The points are the arbitral award by Woodrow Wilson and several international treaties. The points are going to be discussed further below.

The former President of the United States of America, Thomas Woodrow Wilson, has made an arbitral award for Western Armenia which is still in force but is not enforced yet. In 26 April 1920, the Supreme Council of the Allied Powers officially turned to the US President Woodrow Wilson to arbitrate the frontiers of Armenia as per an arbitral award. "Arbitral awards are "final and without appeal" and they are also binding".[1] The award was granted on the 22nd of November 1920 and it should come into effect in that same day. The arbitral award has many high contracting parties to it. According to the arbitral award by Woodrow Wilson, Van (63%), Bitlis (66%), Erzurum (100%) and Trabzon (75%) belong to Armenia which means that Armenia is the *de jure* owner of those areas.[2] This award is legally binding on Turkey and Armenia and also on those countries who are party to it. Armenia and Turkey have given their consent for the US president, Woodrow Wilson, to arbitrate a decision on their boundaries through the Treaty of Sevres.

The Lausanne Peace Treaty is another legal document which indirectly concerns Armenia. According to the Article 16 of that Treaty, Turkey recognizes its territories where it has sovereignty according to the Treaty of Lausanne, and Wilsonian Armenia is not included in those territories. Turkey refuses from those territories which are outside the frontiers laid down in the Treaty. The territories of Armenia by Wilsonian Arbitral Award are not recognized as including under Turkey's sovereignty in the Lausanne Peace Treaty. Therefore, none of them belong to Turkey as Turkey has officially refused of them by signing the treaty.

[1] Ara Papian, *Sound The Alarms! This is Our Final Sardarapat* (Yerevan 2010), 22; Hans-Jurgen Schlochauer, *Arbitration, Encyclopedia of Public International Law*, v. I, (1992), Amsterdam, 226

[2] Արա Պապյան, *Հայրենատիրություն : Հայոց Պահանջատիրության Իրավական Հիմունքները և Հարակից Հարցեր* (Ասողիկ 2012), 150

According to the Wilsonian Arbitral Award, Armenia is the legal owner of those territories. According to the Treaty of Lausanne, those territories do not belong to Turkey. Thus, Turkey should accept that Wilsonian Arbitral Award is indeed in force and try to negotiate with Armenia on the points of complying with the award. There may be some difficulties for Turkey to comply with the full points of the award, but alternative solution may be found for that.

Armenia has a big opportunity to prove that those territories belong to him *de jure* and have lots of options in case if Turkey complies with the award. Armenia can suggest Turkey different ways on how to comply with the award. A possible way for Turkey to comply with the award is to compensate Armenia for the occupation on Armenian territories for so many years and also giving a formal counted amount of money in order to keep those territories under Turkish control and occupation. The compensation could rise from another point which is the right of self-determination of Kurds on the territories of Wilsonian Armenia. There can be a situation, even when Turkey is made to comply with Wilsonian arbitral decision, it will not be able to give the territories back to Armenia because of Kurd's self-determination on Western Armenia/Wilsonian Armenia. These all ways of possible solutions will be further discussed below.

- **Literature Review**

Furthermore, Mr. Ara Papian, the author of "*Sound The Alarms! This Is Our Final Sardarapat" and "Հայրենատիրություն : Հայոց Պահանջատիրության Իրավական Հիմունքները և Հարակից Հարցեր" books* claims in those books that according to Wilsonian Arbitral Decision and the Treaty of Lausanne the vilayets of Van, Bitlis, Erzurum and Trabzon belong to Armenia *de jure.* The same viewpoint shares Mr. Tigran Sahakyan, the author of "*Յավալի Պայմանագրեր" and "ԱՄՆ Նախագահ Վիլսոնի <Թուրքիայի և Հայաստանի Միջև Սահմանատման Որոշումը> Որպես Գործող Միջազգային Վավերագիր"* books. Both authors suggest some legal ways to enforce the Wilsonian Arbitral Decision on Western Armenia and both of them have nearly the same attitude towards the issue, but unfortunately they do not bring any precedents of similar awards which have been successfully enforced between the parties in order to claim or prove that there are precedents and additionally state that there can be a customary law on that issue. Further in the paper, the question of precedents and a

recommendation to the Republic of Armenia on some possible ways of resolving that issue will be provided. To shortly mention those possible ways I would suggest Armenia to solve the issue with Turkey over those territories with help of the International Court of Justice or by negotiation or mediation. During one of those procedures, Armenia can use some precedents of similar issues.

Chapter 1

The Legal Force of the Wilsonian Arbitral Award

"On April 23d the Secretary of State Informed the Armenian Representative that the United States recognized the de facto government of the Armenian Republic.

At the San Remo Conference on April 26th the Supreme Council drafted a note to the Government of the United States requesting that the United States assume a mandate over Armenia, within the limits stated in Section 5 (Section 6 ?) of the first printed draft of the Turkish Treaty, and inviting the President of the United States, whatever the decision of the American Government might be as to the mandate, to arbitrate the question of the boundaries between Armenia and Turkey."[3] "An award is the decision of the arbitrator based upon the submission or submissions made to him in an arbitration. An award must be the consequence of an arbitrator deciding as between opposing contentions, having weighed the evidence and submissions."[4] "An award must not leave an opportunity for reopening the issues resolved by that award. It must be unconditional. Other than matters specifically reserved to a further award (e.g. costs), nothing must be left undecided.

[3] Records of the Department of State Relating to Political Relations Between Armenia and Other States (1910 - 1929)
[4] Ray Turner**,** *Arbitration Awards A Practical Approach* (Blackwell 2005)

All issues to be resolved by the arbitration must be determined by the arbitrator. To leave any to be resolved by a third party is not final and such an award would not be valid. The arbitrator cannot delegate a judicial function."[5]

"Arbitration has the advantage of being a definitive means of resolving a dispute with a certain outcome. This latter word denotes a final and enforceable settlement, enforcement being possible through the courts of the land.

The advantage of arbitration is that the parties can appoint their own specified arbitrator, who will consider the evidence and decide the outcome. This means that it is possible to appoint someone who is knowledgeable of the subject-matter of the dispute, thus relieving the parties of the necessity and expense to adduce as much expert evidence."[6] "Arbitration assures parties a final and binding resolution."[7] Thus, there should be no doubt that Wilsonian Arbitral Award is final and binding for its parties.

"On May 17th the Secretary of State telegraphed President Wilson's acceptance of the invitation of the Supreme Council that he delimit the southern and western boundaries of Armenia; but the request of President Wilson to the Senate that the United States assume a mandate over Armenia was rejected by the Senate upon June 1st."[8]

Arbitral awards are "final and without appeal", as well as being binding.[9] "In 19 January 1920, the Entente Supreme Council recognized the Republic of Armenia *de facto* with a condition that such recognition must not immobilize the possible solution of the frontiers between Armenia and Turkey. That is, the *de facto* recognition of the RA was made without its territorial integrity as it was still uncertain. That recognition was limited to RA – Capital Yerevan and was not suspended to Turkish Armenia."[10] As mentioned above, in 26 April 1920, the Supreme Council of Allied Powers asked the US president, Woodrow Wilson, to make an Arbitral Decision concerning the

[5] ibid

[6] Walter Scott, Peter D'ambrumenil, Mediation & Arbitration For Lawyers (Medico-Legal Practitioner Series) (Cavendish Publishing Limited 1997)

[7] Carrie Menkel-Meadow, Lela P. Love, Andrea Kupfer Schneider, *Mediation: Practice, Policy, and Ethics* (Aspen Pub 2006) 15

[8] Records of the Department of State Relating to Political Relations Between Armenia and Other States (1910 – 1929)

[9] Papian (n 1) 22

[10] Տիգրան Սահակյան, *Յավալի Պայմանագրեր* (Լուսակն 2007), p. 235

boundaries between Trabzon, Erzurum, Van and Bitlis.[11] The government of Osman Turkey gave its consent to that request to pass to the US President in order for the letter to make an Arbitral Decision for the issue of frontiers.[12] "The Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia was submitted to the Department of State on September 28, 1920, five months after the allied Supreme Council's invitation to President Wilson. The Report defined the area submitted for arbitration, the sources available to and used by The Committee, the principles and bases on which the work had proceeded, the need for the inclusion of Trebizond to guarantee unimpeded to the sea, the desirability of demilitarization frontier line, the character of the resulting Armenian state, the immediate financial outlook of Armenia, and the existing political situation in the Near East. The seven appendices of the report included the documents relative to the arbitration, the maps used in drawing the boundaries, issue of Kharput, the question of Trebizond, the status of the boundary between Turkey and Persia, the military situation in relation to Armenia, and the financial position of those parts of the four vilayets (provinces) assigned to Armenia."[13]

In 22 November 1920, the US president made an Arbitral Award for Armenia concerning those four territories, but there was a strict limitation of the area submitted to the arbitration of President Wilson which provided the following:

"The decision of the Supreme Council at San Remo in regard to the boundaries of Armenia, as finally adopted in the Treaty of Sèvres, was based, in its main outlines, upon the report of the Expert Commission of London, dated February 24th. The treaty proposes that the boundaries upon the north and northeast, between Russian Armenia and the districts inhabited by the Georgians and the Azerbaijan Tartars, shall be determined by a direct agreement of the states concerned. It provides further that in case these states *have not determined their common frontiers by the time President Wilson's decision of the Turkish-Armenian frontiers shall have been rendered, the Principal Allied Powers shall determine these northern boundaries. The

[11] ibid 288.

[12] Տիգրան Սահակյան, *ԱՄՆ Նախագահ Վիլսոնի <Թուրքիայի և Հայաստանի Միջև Սահմանատման Որոշումը> Որպես Գործող Միջազգային Վավերագիր* (Լուսակն 2012), p. 21

[13] Ara Papian, Full Report of the Committee Upon the Arbitration of the Boundary Between Turkey and Armenia prepared with an introduction by Ara Papian (Modus Vivendi 2011)

eastern boundary of Armenia, between the Armenian state and Persia, is fixed by Article 27 II (4) of the Treaty of Sèvres. It is to be the line of the old Turco-Persian frontier. The boundary arbitration referred to President Wilson contemplates, therefore, the decision only of the southern and western frontiers of the new Armenian State. All the Powers signatory to the treaty have, by the fact of signature by their Plenipotentiaries, expressed their intention of accepting the terms of the President's arbitral decision.

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* The government of the United States has never recognized the de facto governments either of Georgia or of Azerbaijan.

The disposition of the Allied Powers, as it crystallized after the American withdrawal from Paris in December, was to grant to the new Armenian State an unimpeded sea terminal only on the Lazistan Coast. This intention, however, was modified before the request for the American mandate and the boundary decision of President Wilson was submitted to the State Department (Telegram of Ambassador Johnson to Secretary of State Colby dated April 27th). According to this modification, which was embodied in the Turkish Treaty, the possibility of including in the Armenian State any part of, or all of, the Vilayet of Trebizond, lies in the power of President Wilson as the arbitrating agent. According to the terms of the treaty, however, the boundaries are to be fixed "in the Vilayets of Erzerum, Trebizond, Van and Bitlis" (Article 89).

President Wilson is empowered:

1. To transfer "the whole or any part of the territory of the said vilayets to Armenia,"

2. to provide for the demilitarization of any portion of Turkish territory adjacent to the frontiers established, and

3. to formulate arrangements for access of Armenia to the sea

This delimitation of the area within which President Wilson's competence to arbitrate is confined, is emphasized in the wording of the invitation sent to him upon April 27th in the note of Ambassador Johnson to Secretary of State Colby, which reads as follows:

"To invite the President ---------- to arbitrate the frontiers of Armenia as described in the draft article."*

An earlier portion of the invitation sent to President Wilson also emphasizes this limitation; It remained to decide what parts of the provinces of Van, Bitlis, Erzerum and Trebizond, which the Turks still hold, might be added without danger or impropriety to Russian Armenia." The attitude of the Government of the United States regarding Trebizond, as expressed in the communication of the Secretary of State to Mr. Jusserand upon March 24th, had undoubtedly been effective in bringing about the inclusion of the western sandjakes of the Vilayet of Trebizond within the sphere of the general area which might be considered by President Wilson in making his boundary decision. The total area is, nevertheless, strictly confined to the four Vilayets of Erzerum, Trebizond, Van and Bitlis.

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* Namely, Article 89 of the draft of the treaty published upon May 11, 1920. This Article is unchanged in the final draft of the treaty signed upon August 10th at Sèvres."[14] Thus, there were certain areas on which the arbitration could be made, the arbitration could not include other areas other than those stated above.

According to San Remo Assembly document in 26 April 1920, the Award became binding for the parties and was subject to be followed starting from the time when it was presented to the Entente Supreme Council. Moreover, according to the Treaty of Sevres, Article 89: "Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarisation of any portion of Turkish territory adjacent to the said frontier."[15]

ARTICLE 90: "In the event of the determination of the frontier under Article 89 involving the transfer of the whole or any part of the territory of the said Vilayets to Armenia, Turkey hereby renounces as from the date of such decision all rights and title over the territory so transferred.

[14] Records of the Department of State Relating to Political Relations Between Armenia and Other States (1910 - 1929)
[15] Treaty of Sevres (10 August 1920)

The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory.

The proportion and nature of the financial obligations of Turkey which Armenia will have to assume, or of the rights which will pass to her, on account of the transfer of the said territory will be determined in accordance with Articles 241 to 244. Part VIII (Financial Clauses) of the present Treaty.

Subsequent agreements will if necessary, decide all questions which are not decided by the present Treaty and which may arise in consequence of the transfer of the said territory."[16]

Though, the Treaty of Sevres is not in force as it has not been fully ratified, but it is lawful and valid. [17]

The Arbitral Award is strictly corresponding to the 1907 Hague Convention norms and principles.[18]

Chapter 2

International Treaties as basis for Armenian Territorial Claims

Turkey has to give up its occupation over Van, Bitlis, Erzurum and Trabzon and return them to the Republic of Armenia as those areas *de jure* belong to Armenia or to compensate or choose another alternative option to comply with its responsibilities towards Armenia. Except of being bound by the Arbitral Award of the Former US President, Woodrow Wilson, Turkey is also bound by the Lausanne Peace Treaty, Article 16 which states: "Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is

[16] ibid
[17] Papyan (n 2) 29
[18] Սահակյան (n 10) 301 - 302

recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.

The provisions of the present Article do not prejudice any special arrangements arising from neighborly relations which have been or may be concluded between Turkey and any limitrophe countries."[19]

"Though, there is no any statement in the Treaty of Lausanne about Armenia and Armenians, it still concerns Armenia with two points. As the Treaty of Lausanne clarifies the borders of Turkey with Bulgaria (Article 2.1), Greece (Article 2.2), Siria (Article 3.1) and Iraq (Article 3.2), therefore the Turkish rights and title are recognized only on territories inside those borders. The Treaty of Lausanne has not touched upon the Armenian-Turkish borders. The reason for this, is that the border had already been decided once for all by the binding decision of the President of the USA, Woodrow Wilson."[20]

Turkey and Armenia have given their consent along with many other states to turn to the former US president by claiming that they have a territorial dispute, concerning the territories mentioned above through the Treaty of Sevres, Article 89. They also state that those territories would either belong to Turkey or Armenia depending on the arbitral decision. According to the arbitral decision, most parts of those territories belong to Armenia. It does not matter that the Treaty of Sevres has not been fully ratified and does not have heavy legal force as the consent of Turkey and Armenia within the treaty was not dependent on the ratification of the treaty but with the readiness of the Arbitral Award. In addition, Turkey has signed and ratified the Treaty of Sevres by thus, giving its full consent to all the points of the treaty including the articles 89 and 90. Furthermore, Turkey was for the arbitration and has given consent for it to be realized. This issue is not a subject to suspicion as even the signature has a very heavy force as it is proven in the case Nicaragua vs. United States of America concerning Military and Paramilitary Activities in and against Nicaragua. "Nicaragua Made a declaration on 24 September 1929 pursuant to

[19] Treaty of Lausanne (24 July 1923)

[20] Պապյան (n 2) 65

Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice"[21] The declaration noted that Nicaragua recognized the jurisdiction of the Permanent Court of International Justice. "That Article (Article 36) provided that: "The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court"[22] Nicaragua has signed the statute of the Court but has never ratified it. "The United States of America contended (inter alia) that the Court was without jurisdiction to deal with the Application, and requested that the proceedings be terminated by the removal of the case from the list by an Order dated 10 May 1984, the Court rejected the request of the United States for removal of the case from the list. Article 36, paragraph 2, of the Statute of the Court provides that:

The States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in al1legal disputes concerning:

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation. The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court"[23] "The circumstances of Nicaragua's Declaration of 1929 were as follows. The Members of the League of Nations (and the States mentioned in the Annex to the League of Nations Covenant) were entitled to sign the Protocol of Signature of the Statute of the

[21] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, (I.C.J. Reports 1984)

[22] ibid
[23] ibid

Permanent Court of International Justice, which was drawn up at Geneva on 16 December 1920.That Protocol provided that it was subject to ratification, and that instruments of ratification were to be sent to the Secretary-General of the League of Nations. On 24 September 1929, Nicaragua, as a Member of the League, signed this Protocol and made a declaration under Article 36, paragraph 2, of the Statute of the Permanent Court which read:

[Translation from the French]

"On behalf of the Republic of Nicaragua I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice.

Geneva, 24 September 1929"[24] After all discussions, the Court found, by eleven votes to five, that it had jurisdiction to entertain the application filed by the Republic of Nicaragua on 9 April 1984, on the basis of Article 36, paragraphs 2 and 5 , of the Statute of the Court.[25]

What concerns Armenia, then, Armenia has signed the Treaty of Sevres and has given its consent together with Turkey for the US president, Woodrow Wilson, to arbitrate the issue between their boundaries. Turkey's signature and ratification together are potential fact that Turkey was for the arbitration.

Furthermore, no any state has ever been against the Armenian and Turkish consent in the Treaty of Sevres even after signing the treaty and after the arbitration was made, too. As no any state member to the treaty has protested against the arbitration clause in the Treaty of Sevres, it should be noted that they were for it. This principle can be found in the case of the S.S. "Lotus" where the "Court stressed the fact that French and German governments had failed to protest against the exercise of criminal jurisdiction by states whose flag was not being flown in the two cases cited by Turkey, and observed that the French and German governments would hardly have failed to protest if they "had really thought that this was a violation of international law."[26] In this case, the court's decision is as follows: "following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship Lotus and the Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of

[24] ibid
[25] ibid
[26] *The Case of the S.S. "Lotus" (France v. Turkey) (Permanent Court of International Justice, 1926)*

international law, contrary to Article 15 of the Convention of Lausanne of July 24th,1923, respecting conditions of residence and business and jurisdiction ;

(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law."[27] Thus, there are reasonable claims that, though, the Treaty of Sevres is not in force, the consent of Armenia and Turkey in the Article 89 is undoubtedly in force.

In addition, by the Treaty of Lausanne, Turkey does not recognize Van, Bitlis, Trabzon and Erzurum as part of its territory and leaves this issue to be settled by the parties concerned. This means, that those territories definitely do not belong to Turkey in accordance with both Arbitral Award and the Treaty of Lausanne. What concerns the issue who those territories belong to, the Arbitral award is the main binding document which proofs that they belong to Armenia.

The fact is that it is already the year of 2012 but Turkey has not complied with that award yet. Since, the award is binding for Turkey; it is obvious that Turkey is violating the International Law by not complying with that Award and by still occupying those areas which *de jure* belong to Armenia. Even if the occupation is continuous, there should be compensation to Armenia. The current Republic of Armenia is the legal successor of the first Republic of Armenia (1918 – 1920) and that Award by President Wilson was for the First RA. The succession is connected with territory's legal possession and the current Republic of Armenia has been created on that former RA territory on which it was the last actor in international law there from 1918 – 1920. The current RA has assumed the right on that area which previously belonged to the former RA. Not only Armenia and Turkey but the United Kingdom, France, Italy, Japan, Canada, Australia, New Zeeland, Southern Africa, India, Pakistan, Bangladesh, Belgium, Greece, Poland, Portugal, Romania, Czech Republic, Slovakia, Serbia, Croatia, Slovenia, Bosnia and Hertsogovina, Macedonia and Montenegro are bound by the Award as they were amongst those countries that turned to the US President to make that Arbitral Award. The reason for the US to be bound is not

[27] ibid

only for that the US president has made it but also for the reason that the Great Seal of the United States of America is on the bottom of the Award.[28]

Turkey does not want to admit that those territories belong to Armenia and insists that they belong to him. In fact, they do not belong to him according to international binding documents which are the Arbitral Award by former US president, Woodrow Wilson, and the Lausanne Peace Treaty. Though, arbitration does not create formal precedents[29], but the systematic arbitral decisions which have been carried out according to international law can create customary international law, thus, several examples of successful arbitral awards have been discussed further below.

Yet in 1794 when Great Britain and United States agreed to submit a border dispute to arbitration in accordance with the Jay Treaty, international arbitration has proved a useful method of settling limited territorial disputes between nations. The parties could participate in defining the issue to be adjudicated, and they had the power to select the arbitrators, the forum, and the rules of procedure that will be used to settle the dispute. Thus, arbitration has proved to be an appealing forum for nations that have decided to resolve their differences through peaceful means because it is much more flexible than a permanent court and allows the parties to maintain more control over the proceedings.[30]

Through the course of history, arbitration has proved to be one of the most productive ways in dispute resolution which mostly concerned the land issues based on historical arguments and documentary evidence. The vivid examples of such successful Arbitral Decisions are the Arbitration between India and Pakistan over Rann of Kutch as well as Arbitration between Egypt and Israel over Taba Area.[31] These are well known examples that can serve as means of customary international law when resolving the territorial issue between Turkey and Armenia and which can support Wilsonian Arbitral decision over the Western Armenia. Furthermore, there are several treaties which are in fact invalid and constitute violations of international law

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[28] Պապյան, (n 2) 16 - 102 - 444
[29] Carrie Menkel-Meadow, Lela P. Love, Andrea Kupfer Schneider (n 7) 15
[30] Carla S. Copeland, '*The Use of Arbitration To Settle Territorial Disputes*' (67 Fordham Law Review, 1999) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3585&context=flr > accessed 01 November 2012
[31] ibid <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3585&context=flr > accessed 01 November 2012

but are widely recognized as valid ones and are used to prove as if Armenia does not have right to claim the Wilsonian Armenia. People often speak about those treaties being valid and enforceable. Those treaties are: 1. Treaty of Aleksandropol, 2. Treaty of Moscow and 3. Treaty of Kars. First of all, it should be noted that "international treaties are agreements between actors in international law, that is, sovereign states and international organizations, with the help of which they create, amend or stop reciprocal rights and duties. Thus, for the treaty to be valid, it is necessary for each ratifying member to the treaty be an actor in international law, namely, an authorized representative of the government of internationally recognized state."[32]

Further, we should proceed to the treaties from the first one in the timeline.

1. **Treaty of Aleksandropol** (3 December 1920)

The treaty is unlawful and invalid! The ratifying parties were both not eligible to ratify it. The side of Armenian party was not an authority any more, and the side of Turkish party was not yet a authority. Both sides have acted *ultra vires*, which is the abuse of power.[33] Therefore, both parties were not actors in international law, thus, were not eligible to ratify treaties.

2. **Treaty of Moscow** (16 March 1921)

The Treaty was ratified by Russian Soviet Federative Socialist Republic and Grand National Assembly of Turkey. The legal status of any treaty depends on the legal statuses of the treaty member parties. Thus, it is necessary to mention their statuses in 16 March 1921.

In the time of ratifying the treaty, there was no any recognized state as Russian Soviet Federative Socialist Republic, thus no any actor in international law. Therefore, its government did not have illegibility to ratify an international treaty. The Russian Soviet Federative Socialist Republic received its international legal recognition in 1924 by Great Britain.[34]

In the time of ratifying the treaty, the Grand National Assembly of Turkey did not have right to sign and ratify an international treaty as it was simply and NGO. It could not sign and ratify a treaty on behalf of the state.[35] In addition, the part in Moscow treaty concerning Armenia is

[32] Պապյան (n 2) 22; Manual of Terminology of Public International Law (by Paenson I.), UN, (NY 1983), 38
[33] ibid 24
[34] Ibid 25; Toynbee AJ Survey of International Affairs 1924. (London 1926), 491
[35] ibid 26

another violation of international law as treaties, in general, can concern only to the parties to it and they do not create any obligation or right for the state which is not a party to that treaty.[36]

3. **Treaty of Kars** (13 October 1921)

The treaty is unlawful and invalid, because none of the parties to this treaty has ever been an actor in international law. Signatories of the treaty included representatives from the Grand National Assembly of Turkey, Soviet Armenia, Soviet Azerbaijan and Soviet Georgia. As mentioned above, the Grand National Assembly of Turkey was not an actor in international law. Another example is the Soviet Armenia 'which has not ever been an actor in international law' either. 'It has never been recognized by any other actor in international law and has never had capacity to enter into relations with other states which is a criterion for an internationally recognized state.' This criterion is included in the Convention on Rights and Duties of States, Montevideo, 1933.[37]

So, whenever raising the issue between Turkey and Armenia, the treaties of Aleksandropol, Moscow and Kars should not be mentioned, as they are not valid and are not in accordance with international law.

Chapter 3

Recommendation to the RA Government about its Further Possible Steps on How the Problem Could be Possibly Solved

The Republic of Armenia has an issue which needs to be solved. The issue is about the boundaries of Armenia and Turkey specifically concerning the territories of Van, Trabzon, Bitlis and Erzurum. Armenia has suffered a lot from the genocide and there is no an option for another battle with Turkey. There is a better option for Armenia to solve that problem by taking it to a legal level where Armenia, in comparison with Turkey, has essential privilege. There are two reasons for Armenia to rely on, which could solve the problem in favor of Armenia. The reasons are the Wilsonian Arbitral Award and the Lausanne Peace Treaty. As stated above, these two legal documents proof that most parts of Van, Bitlis, Trabzon and Erzurum do not belong to

[36] Ibid 27
[37] Ibid 27

Turkey, in addition, the Arbitral Award proofs that they belong to Armenia *de jure*. Soon, in 2015, Armenia is going to commemorate the 100th year of Armenian Genocide, and many people are concerned about Armenia's issue with Turkey and want it to be solved as soon as possible.

As it has already been mentioned above, arbitration has been one of the most productive ways of solving territorial disputes. For the future problem solving procedures, Armenia can use successful arbitral decisions as means of customary international law for the Wilsonian Arbitral Decision such as Arbitration between India and Pakistan over Rann of Kutch as well as Arbitration between Egypt and Israel over Taba Area.

Taking into consideration the above statements, my recommendations to Armenia is to use judicial settlements. "Judicial settlement involves the reference of the dispute, by the consent of the parties, to a permanent judicial body, such as the International Court of Justice (ICJ). Judicial settlement and arbitration are often grouped together in discussions of third party dispute resolution mechanisms, because both usually apply international law as the basis for adjudication. Adjudication usually leads to final and legally binding decisions. The advantages and disadvantages of referring a dispute to a permanent court are similar to those of arbitration. Among the potential advantages of adjudication is that it is dispositive, and thus, ideally, should put an end to the dispute. As there is often a long delay before disputes are adjudicated, adjudication may also help to " 'de-politicize' a dispute [by] reducing tensions or buying time." Adjudication also allows the parties to blame the tribunal for any unfavorable outcome, which may be an important "face saving" technique. In addition, since adjudicated decisions are based on neutral principles of law and equity rather than power or bias, adjudicated decisions may be preferable to negotiated settlements, especially to a state in a weaker bargaining position. Adjudication does not foster compromise since only one side will win, and any decision reached is imposed on the parties."[38]

Before turning to judicial settlement, Armenia can turn to the United Nations General Assembly and then the letter can refer the case to the International Court of Justice (ICJ). Armenia should also try to persuade strong states to support its point in international level. The

[38] Copeland (n 21)
<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3585&context=flr > accessed 01 November 2012

ICJ could provide an advisory opinion whether the Arbitral Award by Woodrow Wilson is valid. Article 65 of the ICJ provides:

1. "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question."[39]

If the Court confirms that it is valid, then, the ICJ should be asked to provide another advisory opinion whether Turkey must comply with that award. If the answer by the ICJ will state that Turkey is bound by that award and must comply with it, then Armenia can pass to judicial settlement and turn through the UN General Assembly to the ICJ to solve their problem and to make a decision. If the decision is made in favor of Armenia but Turkey does not still comply with it, the ICJ can turn to the United Nations Security Council and the letter can demand Turkey to comply with that award. In case, if ICJ notes that Turkey must comply with the Arbitral Decision by the former president of the United States of America, Woodrow Wilson, then Turkey can encounter serious problems with complying with the award, as the compliance with the award means that Turkey must give up occupation and control over those territories which president Wilson stated that de jure belong to Armenia. Though, there may occur problems. The reason for those problems can be the issue of self-determination of Kurds in the Wilsonian Armenia. Self-determination means "1. determination of one's acts or states by oneself without external compulsion 2. The right of a people to decide its future political status (as with respect to form of government or independence) or its action in so deciding"[40] In addition, "Self-determination denotes the legal right of people to decide their own destiny in the international order. Self-determination is a core principle of international law, arising from customary international law, but also recognized as a general principle of law, and enshrined in a number of international treaties. For instance, self-determination is protected in the United Nations Charter and the International Covenant on Civil and Political Rights as a right of "all peoples." The scope and purpose of the principle of self-determination has evolved significantly in the 20th century. In the early 1900's, international support grew for the right of all people to self-determination. This led to successful secessionist movements during and after WWI, WWII and laid the groundwork for decolonization in the 1960s.

[39] United Nations Charter, Chapter XIV, Statute of the International Court of Justice (26 June 1945)
[40] Webster's Third New International Dictionary (1993)

Contemporary notions of self-determination usually distinguish between "internal" and "external" self-determination, suggesting that "self-determination" exists on a spectrum. Internal self-determination may refer to various political and social rights; by contrast, external self-determination refers to full legal independence/secession for the given 'people' from the larger politico-legal state."[41] According to the Charter of the United Nations, Chapter 1, one of the purposes of the UN is "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[42] The Article 1 of the International Covenant on Civil and Political Rights provides: "1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."[43] Furthermore, the Vienna Convention was adopted with "Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all."[44] "A half-century ago, much of the world was made up of colonies and dependent Territories ruled by a small number of colonial Powers. In 1945, the Charter of the United Nations proclaimed "the respect for the principle of equal rights and self-determination of peoples" as one of its basic purposes. Self-determination means that the people of a colony or a dependent Territory decide about the future status of their homeland. In the following decades, more than 80 colonial Territories became independent as a result of self-determination. Other Territories chose free association, or integration with an independent State. The process by which these Territories exercised their right to self-

[41] http://www.law.cornell.edu/wex/self_determination_international_law accessed 29 November 2012
[42] United Nations Charter, Chapter 1, Article 1, Statute of the International Court of Justice (26 June 1945)
[43] International Covenant on Civil and Political Rights (1976)
[44] Vienna Convention on the Law of Treaties (1969)

determination is known as decolonization. In 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted, which spelled out some of the decolonization principles."[45]

Thus, as Turkey and Armenia are parties to the United Nations, International Covenant on Civil and Political Rights and the Vienna Convention, Turkey may face serious issues concerning this problem and maybe it would not be able to give those territories back to Armenia even if it wants so because of Kurds' self-determination on the territories of Wilsonian Armenia.

"The principle of self-determination refers to the right of a people to determine its own political destiny. Beyond this broad definition, however, no legal criteria determine which groups may legitimately claim this right in particular cases. The right to self-determination has become one of the most complex issues facing policymakers in the United States and the international community at large. At the close of the twentieth century, it could mean the right of people to choose their form of government within existing borders or by achieving independence from a colonial power. It could mean the right of an ethnic, linguistic, or religious group to redefine existing national borders to achieve a separate national sovereignty or simply to achieve a greater degree of autonomy and linguistic or religious identity within a sovereign state. It could even mean the right of a political unit within a federal system such as Canada, Czechoslovakia, the former Soviet Union, or the former Yugoslavia to secede from the federation and become an independent sovereign state.

Self-determination is a concept that can be traced back to the beginning of government. The right has always been cherished by all peoples, although history has a long record of its denial to the weak by the strong. Both the Greek city-states and the earlier Mesopotamian ones were jealous of their right to self-determination. Yet to the Greeks, non-Greeks were barbarians, born to serve them and the object of conquest if they refused to submit. The development of modern states in Europe and the rise of popular national consciousness enhanced the status of self-determination as a political principle, but it was not until the period of World War I that the right of national independence came to be known as the principle of national self-determination. In general terms, it was simply the belief that each nation had a right to constitute an independent

[45] http://www.un.org/en/decolonization/questions_answers.shtml accessed 29 November 2012

state and to determine its own government."[46] As it can be seen, many states have become internationally recognized states because of their right to self-determination. This talks about the great possibility that Turkey will face the problem of complying with the Wilsonian arbitral decision if the letter becomes recognized as binding for him by the ICJ. Armenia could benefit from this and by demanding money from Turkey it can develop its economy and the industry.

Therefore, Turkey may be willing to enter into negotiations with Armenia and suggest other ways to satisfy Armenia in order for the letter not to turn to International bodies to make Turkey give back those territories. So, Armenia would have a very good chance to demand Turkey give compensation for occupying and having control over those territories for such a long time after the arbitral decision of Woodrow Wilson was made and also Armenia can demand Turkey to give annual payments for those territories or even to sell those territories for reasonable price which should be counted by experts. In such a case, Turkey will itself be interested to suggest options to Armenia to solve the issue in order to avoid of being made to comply with the decision of the ICJ by the International bodies.

The payments may deal with billions of dollars, thus, Wilsonian arbitral decision, if recognized binding for Turkey by ICJ, may bring huge amount of money for Armenia which will become a great source for Armenia's development especially in these times when Armenia has lots of problems of economy. In my opinion, the 100th year of Armenian Genocide can be a good time for Armenians to claim its rights over the Wilsonian Armenia. It is truly possible, that many other states will recognize the Genocide and will help Armenia to claim reparations. The territories which President Wilson mentioned in his arbitration were for Armenia as a remedy from Genocide, because those territories were taken away from Armenia during and after the Genocide took place. Thus, Armenia can have reasonable compensation from Turkey for its territories. The government of the Republic of Armenia should also have serious, strong arguments to be able to prove that its claims are reasonable and are based on legal ground.

The other way for the international justice to rise, the ICJ can create an ad hoc tribunal for that specific issue. Such ad hoc tribunal can be specifically designed to deal with that particular dispute.

[46] Unterberger, Betty Miller, *Encyclopedia of American Foreign Policy* (2002)

In general, "the most common and accepted methods used to settle international disputes peacefully are those set forth in article 33 of the United Nations Charter. These methods range from diplomatic means to legal means, and include negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, and resort to the United Nations' or other international organizations' dispute settlement procedures. The primary difference between diplomatic and legal means is the extent of third party involvement in the dispute resolution. Diplomatic means of dispute resolution leave control of the outcome primarily to the parties themselves, while legal means grant a third party or parties more control in determining a settlement."[47]

The issue of Armenia and Turkey has already one arbitral award which is binding, and another way to resolve that issue, is that Armenia can negotiate with Turkey over it.

"Diplomatic negotiation between the parties concerned is often considered the most efficient method of settling international disputes and is "clearly the predominant, usual and preferred method." Indeed, negotiation is used more frequently than all other dispute resolution methods combined. Parties usually prefer negotiation to other methods for a variety of reasons: negotiation allows the parties to maintain maximum control over the outcome; a negotiated settlement is more likely to be accepted by the parties; and negotiation is simpler and less costly than other methods."[48] In fact, if the parties choose to have negotiation, then, Armenia can have different proposals to Turkey. First, it can demand its territories back in accordance with the arbitral decision. Second, Armenia can negotiate over receiving compensation for Turkish continuous violation for occupying its territories since 22 November 1920 and claim additional money for those territories to leave it to Turkey.

"Parties to a dispute often agree to mediation when bilateral negotiations break down or cannot be initiated, and they desire limited third party intervention. The function of the mediator, often a third state or an international organization, is to bring the parties together and facilitate their negotiations. The mediator may also offer specific suggestions for settlement. Mediation also has the advantage of flexibility in that the mediator is not bound by legal considerations. The mediator is free to assess the interests of both sides and devise whatever

[47] Copeland (n 21) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3585&context=flr > accessed 01 November 2012
[48] ibid

compromise it deems appropriate."[49] Thus, Armenia has various ways to decide how to solve the problem.

Conclusion

The paper demonstrates that there are possible ways on how to enforce the Wilsonian Arbitral Decision. The decision itself is in accordance with international law. As already stated above, the arbitral awards are final and without appeal. No any treaty has ever made that award invalid and it never can happen. The Arbitral Award by Woodrow Wilson is still in force and valid. Turkey has never complied with that award but it has and had to comply with it. As a result, the territories of Van, Bitlis, Erzurum and Trabzon are still de facto under Turkish control. Armenia should turn to international bodies in order to make Turkey comply with the award or turn to alternative dispute resolution. The International Court of Justice can give a solution to this issue. If choosing to turn to the International Court of Justice, Armenia should prepare to present the factors which prove that the Arbitral Award is still in force and valid and then also claim that Turkey has refused of the Wilsonian Armenia in the Treaty of Lausanne. In addition, Armenia cannot directly turn to the ICJ, it can turn to the United Nations General Assembly and then, the letter can turn to the ICJ for advisory opinions. If the ICJ states that Turkey is bound by the arbitral award, then, as stated above, Armenia can receive huge amounts of money from Turkey in case if Turkey is not able to give those Wilsonian Armenia back to its legal owner.

Other ways of possible solution can be considered negotiation or mediation as alternative dispute resolution methods as stated above. Thus, the next steps Armenia can make are to decide on what way to choose to resolve the issue. If Armenia decides to choose negotiation then it should have strong arguments and principled negotiators. Even though, if the Negotiation fails, Armenia will still have the chance to turn to mediation. All these ways of possible solution of the issue depend on the advisory opinion of the International Court of Justice and also on Armenia's

[49] ibid

and Turkey's relations with each other. So, there are, indeed, legal foundations for Armenia to have claims over the territories of Wilsonian Armenia.

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