

**OPEN LETTER**  
**to the Minister of Foreign Affairs of the Republic of Turkey**  
**Ahmet Davutoglu**

**Respected Minister,**

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

To begin with, it was astonishing to hear of “*occupation*” from the foreign minister of a country which has itself been occupying 37% of the territory of Cyprus for more than three decades now, not to mention three-fourths of my homeland – the Republic of Armenia – for almost nine decades. I would like to stress that I am not referring to some abstract “*Armenian lands*”, but solely the territory granted to the Republic of Armenia through a document of international law, that is, the arbitral award of US President Woodrow Wilson of the 22<sup>nd</sup> of November 1920. I shall elaborate on the arbitral award later, but for now I would simply like to say that, in accordance with international law, arbitral awards are “*definitive and without appeal.*”<sup>1</sup>

**Respected Minister,**

While commenting on the fifth clause of protocol on the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey<sup>2</sup>, you drew the conclusion that the Republic of Armenia recognises “*the existing border*” according to the treaties of Moscow (of the 16<sup>th</sup> of March 1921) and Kars (of the 13<sup>th</sup> of October 1921).

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

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

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

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

Do you really believe that the Armenian Soviet Socialist Republic, as well as the Georgian and Azerbaijani Soviet Socialist Republic ever had the capacity to make treaties under international law? Of course not. Since April of 1920 (for Azerbaijan), December of 1920 (for Armenia) and February of 1921 (for Georgia), these countries were rendered simply territories of different administrative units under Russian Bolshevik occupation. In Armenia’s case,

<sup>1</sup> The Hague Convention for the Pacific Settlement of International Disputes, 1899, # 54; 1907, # 81.

<sup>2</sup> “Confirming the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law.”

the Senate of the United States adopted outright the following by Resolution #245 on the 3rd of June, 1924: “Turkey joined with Soviet Russia in the destruction of the Armenian State.”<sup>3</sup> If there were no Republic of Armenia from the 2<sup>nd</sup> of December 1920, how could it sign an international treaty in Kars in October of 1921?

It is an indisputable fact of international law that no legal consequences are held for an occupied country by the acts of the occupiers, as “a cession of territory during occupation is not effective.”<sup>4</sup> There is no ambiguity in this matter.

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

Clear and simple.

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

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

When it came to the borders of the Republic of Armenia, naturally, the most important was the question of the Armenia-Turkey frontier. And so, at the San Remo session of the Paris Peace Conference, alongside other issues, this particular question was discussed during the 24<sup>th</sup> to the 27<sup>th</sup> of April, 1920, and, on the 26<sup>th</sup> of April, the US President Woodrow Wilson was officially requested to arbitrate the frontiers of Armenia.<sup>5</sup> On the 17<sup>th</sup> of May, 1920, President Wilson accepted and took on the duties and authority as the arbiter of the frontier between Armenia and Turkey. I would like to especially emphasise that this was almost three months before the Treaty of Sèvres was signed (which took place on the 10<sup>th</sup> of August, 1920). Whether the Treaty of Sèvres would come to pass or not, the *compromis* of a legal arbiter existed, and consequently, the arbitral award deciding the border between Armenia and Turkey would take place. It is another matter that the Treaty of Sèvres consisted of an additional *compromis*. It is necessary to note that the validity of the *compromis* only requires the signatures of the authorised representatives and that no ratification is required for *compromis*.

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

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

### **The issue of the current status of Wilson’s arbitral award**

It is necessary to state, first of all, that any arbitral award is a binding document to be carried out without reservations. Moreover, arbitral awards are “*final and without appeal*”.<sup>6</sup> “*The arbitral award is the final and binding decision by an arbitrator*”.<sup>7</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*. 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.

Therefore, when the fifth clause of the protocol on the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey mentions “*the mutual recognition of the existing border between the two countries as defined by the relevant treaties of international law*”, then that can only take into consideration

<sup>3</sup> The Armenian Review, vol. 30, No. 3-119, 1977, p. 286.

<sup>4</sup> W. Fiedler, Continuity, Encyclopedia of Public International Law, v. 1, Amsterdam, 1992, p. 808.

<sup>5</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>6</sup> Hans-Jurgen Schlochauer, Arbitration, Encyclopedia of Public International Law, v. 1, 1992, Amsterdam, p. 226.

<sup>7</sup> A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

the border defined by the only legal document in force to this day, the arbitral award of US President Woodrow Wilson. There is no other legal document “*of international law*”, as the protocol says.

There is another important issue to consider here. Have the authorities and public bodies of the USA ever expressed any position concerning 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 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**

Arbitral awards are not subject to any legislative approval or ratification. They are governed by international public law. Therefore, the Senate, which reserves the right to take up matters relating to foreign policy according to the US Constitution, never directly discussed the arbitral award deciding the Armenian-Turkish frontier. Nevertheless, in the course of discussing other matters, the Senate of the 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 fulfilment of the Wilson award to Armenia*”.<sup>8</sup> Senator William H. King (D-UT) expressed himself much more clearly in an official statement on this occasion, “*Obviously it would be unfair and unreasonable for the United States to recognize and respect the claims and professions of Kemal so long as he persist in holding control and sovereignty over Wilson Armenia*.”<sup>9</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.

### **The position of public bodies**

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

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

In its 1924 programme, the Democratic Party included a separate clause of the “*Fulfilment of President Wilson’s arbitral award respecting Armenia*”<sup>10</sup> as a platform and goal. The 1928 platform went even further, referring to the US as a state and, as per the “*promises and engagements*” of the Allied Powers, “*We favour the most earnest efforts on the part of the United States to secure the fulfilment of the promises and engagements made during and following the World War by the United States and the allied powers to Armenia and her people*.”<sup>11</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,**

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

We – the Armenians and the Turks – are condemned together to find mutually acceptable solutions. Such solutions may come in many forms, but one thing must be clear, that they have to benefit the establishment of a

<sup>8</sup> Lausanne Treaty is Defeated, The Davenport Democrat, 19 January 1927, 1.

<sup>9</sup> The New York Times, January 19, 1927, 1.

<sup>10</sup> National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p. 277.

<sup>11</sup> *ibid.*

stable peace for the entire region, the development of a diverse economy, the creation of a co-operative atmosphere, while serving as well the realisation of certain interests of global powers and their greater inclusion in regional issues. And so, that solution must be such that it dispels the security concerns of the Armenian side, while providing conditions of sustained economic growth and development for the 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 proposal must be appreciable by the Turkish side as a dignified solution to the given circumstances.

**Respected Minister,**

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

**Accept, Minister, the deepest assurances of my consideration.**

***Ara Papian***

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