

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.¹ 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 24th of May to the 1st of June, 1920, voted against it. The real reason for this was that the US was not a member of the League of Nations, and therefore there was no legal basis to carry out any activities on its behalf.

The second request – arbitrating the frontier of Armenia with Turkey – did not come under the authority of the Senate, and so that part of the legislative branch of the 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 17th 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 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.

¹ Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia, Appendix I, Number 10. (The National Archives, Washington, 760J.6715-760J.90C/7).

The 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*”.² “*The arbitral award is the final and binding decision by an arbitrator*”.³

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 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 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*”.⁴ 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*.”⁵ 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.

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.

² Hans-Jurgen Schlochauer, *Arbitration, Encyclopedia of Public International Law*, v. I, 1992, Amsterdam, p. 226.

³ A Dictionary of Arbitration and its Terms (ed. by Katherine Seide), New York, 1970, p. 32.

⁴ Lausanne Treaty is Defeated, *The Davenport Democrat*, 19 January 1927, 1.

⁵ *The New York Times*, January 19, 1927, 1.

In its 1924 programme, the Democratic Party included a separate clause of the “*Fulfillment of President Wilson’s arbitral award respecting Armenia*”⁶ 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.*”⁷ 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 fulfillment of international obligations arising from treaties and agreements of the former USSR*”.⁸ 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*”⁹) 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*”.¹⁰

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.

⁶ National Party Platforms, 1840-1968, (compl. By Kirk and Donald Johnson), Urbana-Chicago-London, 1972, p. 277.

⁷ *ibid.*

⁸ Official Bulletin of the Ministry of Foreign Affairs of the Republic of Armenia, # 3 (11) 20.12.2004, p. 13.

⁹ Ian Brownlie, Principles of Public International Law, Oxford, 2001, p. 449.

¹⁰ W. Fiedler, Continuity, Encyclopedia of Public International Law, v. 1, Amsterdam, 1992, p. 808.