THE ARBITRAL AWARD ON TURKISH-ARMENIAN BOUNDARY BY PRESIDENT OF THE USA WOODROW WILSON (NOV. 22, 1920)

[Historical Background, Legal Aspects and International Dimensions]

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

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

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

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

Due to final and binding character of the arbitral awards one should begin with the elaboration of the legal instruments with the Arbitral Award of the President of the United States of America Woodrow Wilson (November 22, 1920).

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

Arbitration exists under both domestic and international law, and arbitration can be carried out between private individuals, between states, or between states and private individuals. Arbitration is a legal alternative to the courts whereby the parties in a dispute agree to submit their respective positions (through agreement or hearing) to a neutral third party - the arbitrator(s) for resolution.

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

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

The *Covenant* of the League of Nations (Article 13) provides arbitration and judicial settlement as one of two major procedures of peaceful settlements: *The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy they will submit the whole subject-matter to arbitration*[7].

The Charter of the United Nations (Article 33, paragraph 1) expresses its preference for a dispute settlement through arbitration: *The parties in any dispute, the continuance of which is likely to endanger the maintenance of international peace an security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial*

[1] Sohn L. B., The Role of Arbitration in Recent International Multinational Treaties, Virginia Journal of International Law, 1983, 23, pp. 171–172.

[2] International Law Commission Yearbook, Doc. A/2436, 1953, II: 202.

[3] Shabtai Rosenne, The Law & Practice of the International Court, 1920–1996 (3rd edition), vol. I (The Court & the United Nations), The Hague–Boston–London, 1997, p. 11; A Dictionary of Arbitration & its Terms (Katharine Seide, ed.), New York, 1970, p. 126.

[4] Sheldon Amos, Political & Legal Remedies for War, London–Paris–New York, 1880, pp. 164–165.

[5] Manual of Public International Law (ed. by Max Sorensen), New York, 1968, p. 584.

[6] The Hague Court Reports (James Brown Scott, ed.), New York, 1916, LVI–LVII.

[7] Manual of Public International Law, op. cit., p. 717.

settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

The Historical Background of Wilson's Arbitration

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

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

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

The guidelines adopted by the committee were to draw the southern and western boundaries of Armenia on the basis of a combination of ethnic, religious, economic, geographic, and military factors. *The Committee* had at its disposal all the papers of *The American Peace Delegation* and *The Harbord Mission*, the files of the Department of State, War, and Interior, and the cartological services of the United States Geological Survey. Aside from the advice of experts in government service and direct consultations with General Harbord, *The Committee* sought input of missionaries and others with field

[8] Toynbee A. J., Survey of International Affairs (1920–1923), London, 1925, p. 9.

[9] Hackworth G. H., Digest of International Law, Turkish–Armenian Boundary Question, vol. I, Washington, 1940, p. 715.

[10] The United States recognized the independence of Armenia, but refused to recognize that of Georgia&Azerbaijan. (H. Lauterpacht, Recognition in International Law, Cambridge, 1947, p. 11. Papers Relating to Foreign Relations of the United States, 1920, vol. III, Washington, 1936, p. 778, hereinafter – FRUS).

[11] Hackworth, op. cit., p. 715.

[12] The Treaties of Peace, 1919–1923 (Preface by Lt. – Col. Lawrence Martin), vol. I, New York, 1924, XXXII.

[13] FRUS, p. 780.

[14] Ibid., p. 783.

experience who could give detailed information about the ethnic makeup of particular villages near the border; the roads and markets connecting certain villages, towns, and cities, and specific physical landmarks.

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

Insofar as the four provinces in question were concerned, the key factors were geography, economy, and ethnography. Historic and ethical considerations were passed over. The committee tried to draw boundaries in which the Armenian element, when combined with the inhabitants of the exiting state (the Republic of Armenia) in Russian Armenia, would constitute almost half of total population and within few years from an absolute majority in nearly all districts. Such calculations took into account the wartime deportations and massacres[16] of the Armenians, Muslim losses during the war, as well as the probability that some part of the remaining Muslim population would take advantage of the provisions of the peace treaty regarding voluntary relocation to territories that were to be left to Turkey or to an autonomous Kurdistan.

The Territory that was being allocated to Armenia by arbitration (40,000 square miles = 103,599 square kilometers) was less than half of the territory (108,000 square miles = 279,718 square kilometers), which in cuneiform, ancient Greek and Latin, medieval Armenian and other European sources and maps throughout centuries had largely been called Armenia (as the historical title[17]). Since 1878[18] it had continued to hold the legal title

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

[16] The Armenian Genocide.

[17] The notion of an historic title is well known in international law. Historic title is a title that has been so long established by common repute that this common knowledge is itself a sufficient title. Since the 17th c. in the Ottoman sources and maps Armenia's name (in the form of Ermenistan) and Armenian toponyms had been periodically mentioned (see: Galichian R., Historic Maps of Armenia. The Cartographic Heritage, London, 2004), but simultaniously, in the course of time falsification and destruction of Armenian toponyms constituted part of the Ottoman

Armenia or The Six Armenian vilayets (provinces), as was defined in the Article 24 of the Mudros Armistice[19]. It should be underlined that the territory was referred just as *The six Armenian vilayets not The six Armenian vilayets of the Ottoman Empire.*

The drastic cutback of the territory for Armenians was due to far-reaching reduction of native Armenian population because of the Turkish policy of annihilation of Armenians - the Armenian Genocide. *The Armenian provisions of the Sevres Treaty were agreed upon by the Powers after due consideration of the facts that Turkish Armenia was emptied of its Armenian inhabitants[20].*

The committee made calculations, based on prewar statistics, that the population of the territories to be included in the new Armenian state had been 3,570,000 of whom Muslims (Turks, Kurds, "Tartars", and others) had formed 49%, Armenians 40%, Lazes 5%, Greeks 4%, and other groups 1%. It was anticipated that large numbers of Armenian refugees and exiles would return to an independent Armenia. Hence, after the first year of repatriation and readjustment, the population of the Armenian Republic would be around 3 million, of whom Armenians would make up 50%, Muslims 40%, Lazes 6%, Greeks 3%, and other groups 1%. The rise in the absolute number and proportion of Armenians was expected to increase steadily and rapidly in subsequent years[21].

Even though Westermann's boundary committee submitted its findings to the Department of State on September 28, 1920, two more months were to pass before President Wilson relayed his arbitration decision to the Allied governments. The State Department: 1) sent the committee's report to the War Department for its observations, and 2) requested through Ambassador Hugh Wallace in Paris formal notification from the Allied Supreme Council about the signing of the Treaty of Sevres and an authenticated copy of the document[22]. It was only on November 12, 1920, that The Committee's Report was finally delivered to the White House.

Ten days later, on November 22, 1920[23], Woodrow Wilson signed the final *Report*, titled: *Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory adjacent to the Armenian Frontier[24].*

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expansionist policy (Sahakyan L., Turkification of the Toponyms in the Ottoman Empire and the Republic of Turkey, Montreal, 2011).

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

[19] Diplomacy in the Near & Middle East, 1914-1956 (J.C. Hurewitz, ed.) vol. II, New Jersey, 1956, p. 37.

[20] Vahan Cardashian, "Armenian Independence", New York Times, March 30, 1922: 93.

[21] Hovannisian R., The Republic of Armenia, Between Crescent and Sickle. Partition and Sovetization, vol. IV, Berkeley, 1996, p. 37.

[22] Ibid., p. 40.

[23] Cukwurah A., The Settlement of Boundary Disputes in International Law, Manchester, 1967, pp. 165-166.

[24] Ibid., p. 31; Hackworth, op. cit., p. 715.

The *Full Report of the Committee upon the Arbitration of the Boundary between Turkey and Armenia (The Report* - 89 pages, and *Appendices to the Report* - 152 pages) consists of ten chapters:

1. *Chapter I. The Request for the Arbitral Decision of President Wilson, pp. 1-3*. (An overview of the Pre-Arbitration Process)
2. *Chapter II. Strict Limitations of the Area Submitted to the Arbitration of President Wilson, pp. 4-6.* (Definition of the area submitted for arbitration)
3. *Chapter III. Sources of Information Available to the Committee Formulating this Report, pp. 7-9*. (The sources available to and used by the committee)
4. *Chapter IV. Factors Used as the Basis of the Boundary Decision, pp. 10-15.* (The principles and bases on which the work had proceeded)
5. *Chapter V. The Necessity of Supplying an Unimpeded Sea Terminal in Trebizond Sandjak, pp. 16-23*. (The need for the inclusion of Trebizond in the new Armenian state)
6. *Chapter VI. Provisions for Demilitarization of Adjacent Turkish Territory, pp. 24-36*. (The desirability of demilitarization frontier line)
7. *Chapter VI. Covering Letter of the President Wilson to the Supreme Council and the Arbitral Decision of President Wilson, pp. 38-65*. (The Arbitral Award of the President with attached letter)
8. *Chapter VIII. Area, Population and Economic Character of the New State of Armenia, pp. 66-73*. (The character of the resulting Armenian state)
9. *Chapter IX. The Present Political Situation in the Near East, pp. 74-83*. (The existing political state of affairs in the Near East)
10. *Chapter X. Immediate Financial Outlook of the Republic of Armenia, pp. 84-86*. (The financial prospect of Armenia)

Maps: Boundary between Turkey and Armenia as determined by Woodrow Wilson President, President of the United States of America, November 22, 1920:

Scale - 1: 1,000,000.

Scale - 1: 200,000 (19 sheets).

The seven appendices of the report included:

Appendix I. Documents upon the Request for the Arbitral Decision.

No. 1. Allied Recognition of Armenia, January 19, 1920.

No. 2. Report of London Technical Commission, February 24, 1920.

No. 3. Note from the French Ambassador at Washington, March 12, 1920.

No. 4. Mr. Colby's Reply to the above, March 24, 1920.

No. 5. American Recognition of Armenia, April 23, 1920.

No. 6-10. Telegrams from San Remo, April 24-27, 1920.

No. 11. The President's Acceptance of the Invitation to Arbitrate, May 17, 1920.

Appendix II. (Is not available).

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

Appendix IV. The Question of Kharput. Discussion of the Possibility of Including Kharput in the Boundary Decision.

Appendix V. The Necessity of supplying an Unimpeded Sea Terminal in Trebizond Sandjak.

No.1. Economic Position of Ports in the Trebizond Vilayet.

No.2. Railroad Project for Turkish Armenia before the War (Karshut Valley).

No. 3. M. Venizelos' Statement on Trebizond before the Council of Ten (February 4, 1919).

No. 4. M. Venizelos' Statement on Trebizond before the Greek Parliament (May 13, 1920).

No. 5. The Petition of the Pontic Greeks (July 10, 1920).

No. 6. The Greeks of Pontus (Population Estimates for Trebizond Vilayet).

No. 7. General Discussion of Armenia's Access to the Sea.

No. 8. Text of the Armenian Minorities Treaty.

No. 9. The Petition to President Wilson from the Armenian Delegation.

Appendix VI. (Is not available).

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

Appendix VIII. (Is not available).

Appendix IX. Military Situation with Relation to Armenia. Estimate for August, 1920.

Appendix X. Financial Position of the Portion of the Four Vilayets Assigned to the New State of Armenia.

M A P S

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

2. *Armenian Claims (See Appendix IV).*

Original Claim of the Armenian National Delegation at the Peace Conference;

Reduced Claim of the two Armenian Delegations, since January, 1920;

Boundary established by President Wilson's Decision.

3. *Claims of the Pontic Greeks (See Appendix V, Nos. 3, 4, 5).*

Original Claim at Peace Conference; Reduced Claim, 1920;

Greek Territory in Thrace and in Smyrna District Boundary established by President Wilson's Decision.

4. *Armenia's Routes of Access to the Sea (See Appendix V, Nos. 2, 4, 9).*

Trebizond-ErzerumCaravan Route;

Trebizond-Erzerum Railway Project;

Western frontier Essential to Armenia.

5. *Armenia in Relation to the new Turkish Empire (See Appendix IX).*

Frontiers of Turkey as established by the Treaty of Sèvres and by President Wilson's Decision;

Areas of Especial Interest as established by the Tripartite Convention of August 10, 1920, between Great Britain, France and Italy;

Existing Railways.

In the cover letter to the Supreme Council, Wilson wrote: With full consciousness of the responsibility placed upon me by the request, I have approached this difficult task with eagerness to serve the best interests of the Armenian people as well as the remaining inhabitants, of whatever race or religious belief they may be, in this stricken country, attempting to exercise also the strictest possible justice toward the populations, whether Turkish, Kurdish, Greek or Armenian, living in the adjacent areas[25].

The text of the Arbitration Decision, reasonably not The Full Report, was cabled to Ambassador Wallace in Paris on November 24, 1920, with instructions that it should be handed to the Secretary General of the Peace Conference for submission to the Allied Supreme Council.[26] Wallace responded on December 7, 1920, that he had delivered the documents that morning. Wallace's attached note was dated December 6, 1920.

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

The Validity of the Arbitral Award

For the Arbitral Award to be valid it must meet certain criteria:

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

[25] For the full text of Wilson's letter see: FRUS, v. III: 790-795.

[26] Ibid., pp. 789-790.

[27] Cukwurah A.O., op. cit., p. 31; Hackworth, op. cit., p. 715.

[28] The 1899 Convention was ratified by Turkey on July 12, 1907. (The Hague Court Reports, op. cit., CII).

[29] The Hague Court Reports, op. cit.:LXXXIX. Cf. also the Article # 54 of the 1899 Convention with slightly deferent wording: The Award, duly pronounced & notified to the agents of the parties [at variance, puts an end to] the dispute definitively & without appeal.

4) The arbitrators must not have exceeded their powers[30].

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

In Armenian-Turkish boundary case the arbitrator, as was agreed in the compromis (i.e. Article 89, the Treaty of Sèvres), was *the President of the United States*, namely Woodrow Wilson. President Wilson was often challenged for his policy and had various disagreements with other politicians and political bodies. Nevertheless, never has anyone questioned his political or personal integrity and he was never blamed acting under external influence.

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

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

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

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

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

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

President Wilson's Award is highly regarded by international lawyers at present. Cf.: *President Wilson's arbitral decision was not implemented. Nevertheless, this award must be regarded as one of the most significant analyses of the various factors that have to be*

[30] Manual of the Terminology of Public International Law (Lack of Peace) and International Organizations, Prepared by Isaac Paenson in Cooperation with the Office of Legal Affairs, United Nations, 1st ed., 1983, pp. 588-590.

[31] Hovannisian R., op. cit., vol. IV, p. 30.

[32] Ibid.

taken into account in the determination of international boundaries and of the relationship among them[33]*.* Cf. also: *President Wilson's determination of the territorial frontiers of the newly established Armenian State is particularly interesting because it includes an explanation of the reasons motivating it: the need for a "natural frontier"; "geographical and economic unity for the new state"; ethic and religious factors of the population were taken account of so far as compatible; security, and the problem of access to the sea, were other important conditions*[34]*.*

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

Criterion 3. The compromis must have been valid.

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

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

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

The consent of Armenia and Turkey, as well as of other High Contracting Parties *to submit to the arbitration of the President of the United States the determination of the frontier to be fixed between Turkey and Armenia,* and to be bound by the award *to accept his decision thereupon* was done by the inclusion of a special arbitration clause in the Treaty of Sèvres (August 10, 1920), [Article 89]: *Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis, and to accept his decision thereupon , as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarization of any portion of Turkish territory adjacent to the said frontier*[36]*.*

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[33] Yahuda Z. Blum, Secure Boundaries & Middle East Peace, In Light of International Law & Practice, Jerusalem, 1971, p. 26.

[34] Munkman A. L. W., Adjudication & Adjustment – International Judicial Decision & the Settlement of Territorial & Boundary Disputes, Malcolm N. Show (ed.), Title to Territory, Dartmouth, 2005, p. 139, fn. 4.

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

[36] The official full text of the Treaty of Sevres was published in British & Foreign State Papers, 1920, vol. CXIII, printed & published by His Majesty's Stationary Office, London, 1923, pp. 652-776 (hereinafter – British Papers) and separately, as

Factor b) The compromis was duly negotiated.

In a joint note, on April 20, 1920, the Allied High Commissioners in Constantinople (Istanbul) summoned the Turkish authorities to send a Peace Delegation to receive the draft peace treaty. The Ottoman delegation, headed by Senator Tevfik Pasha (Bey) [former Grand Vezier] left for Paris in May 1, 1920[37]. Ten days later, on May 11, it was formally given the draft peace treaty. Turkish Government was accorded one month to submit in writing any observations or objections it might have relative to the treaty[38]. Tevfik Bey officially acknowledged the receipt of the treaty and pronounced that the document would be given the earnest and immediate attention of his government[39]. At the end of May, Damad Ferid, the Grand Vezier of Turkey, applied to the Supreme Council for one-month extension in presenting the Turkish observations on the settlement. The Supreme Council compromised by granting a 2-week extension until June 25, 1920[40].

The first set of Turkish observations, bearing the signature of Damad Ferid Pasha, was submitted on June 25, 1920. On July 7 second Turkish memorandum was received. In adopting a reply Supreme Council authorized the drafting committee to make minor revisions on the wording of the treaty without altering the substance[41]. Regarding the future of Armenia and the arbitration of the boundaries, the Supreme Council stated: *they can make no change in the provisions which provide for the creation of a free Armenia within boundaries which the President of the United States will determine as fair and just*[42]*.* The certitude that Armenians will not be safe and will not be treated fairly by Turkish authorities was based on lifelong understanding that: *During the past twenty years Armenians have been massacred under conditions of unexampled barbarity, and during the war the record of the Turkish Government in massacre, in deportation and in maltreatment of prisoners of war immeasurably exceeded even its own previous record (…) Not only has the Turkish government failed to protect its subjects of other races from pillage, outrage and murder, but there is abundant evidence that it has been responsible for directing and organizing savagery against people to whom it owed protection*[43]*.*

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

Command Paper # 964, Treaty Series No 11 (1920), Treaty of Peace with Turkey, signed at Sevres, August 10, 1920, HMSO, London, 1920, 100 pages.

[37] Hovannisian R., From London to Sevres, Berkeley, 1996, vol. III, p. 106.

[38] Herbert Adams Gibbons, An Introduction to World Politics, New York, 1922: 430; Helmreich P.C., From Paris to Sevres, Ohio, 1974, p. 309.

[39] British Papers, vol. XIII, p. 70.

[40] Ibid., p. 79.

[41] Ibid., vol. VIII, pp. 553-556.

[42] Ibid.

[43] Ibid.

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

In 1918-1922, Sultan-Caliph Mehmed VI was the head of the Ottoman Empire, politically recognized legitimate ruler[44]. Sultan represents the *de jure* Government[45]. Pursuant to article 3 of the Ottoman constitution [December 23, 1876; July 23, 1908]: *The Ottoman sovereignty (…) belongs to the eldest Prince of the House of Ottomans*. Treaty making power was vested in the Sultan. The Sultan had the sole power to legislate. Among the sovereign rights of the Sultan (the Ottoman Constitution, article 7) was the conclusion of the treaties.

On July 22, 1920, Sultan Mehmed VI, the constitutional head of the state, convened a *Suray-I Saltanat* (Crown Council), at the Yildiz Palace. The argument for signature was based on the *necessities of the situation*. The Council, which was attended by fifty prominent Turkish political & military figures, including former ministers, senators and generals, as well as by Prime Minister Damad Ferid Pasha, recommended in favor of signing the treaty. The Sultan rounded up the proceedings by asking those in favor of signature to stand up. Everybody but one stood up. The Treaty was accepted[46]. The final treaty, including the arbitral clause [Article 89] was signed by Turkish plenipotentiaries [General Haadi Pasha, Senator; Riza Tevfik Bey, Senator; Rechad Haliss Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne] sent by the Sultan's Government at Constantinople under the leadership of Damad Ferid Pasha[47].

Conclusion: The compromis was valid.

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

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

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

Conclusion: The official title of President Wilson's decision clearly shows that he accurately fulfilled his duty.

Legal Features and the Current Status of the Award

[44] Toynbee A. J., Kenneth P. Kirkwood, Turkey, New York, 1927, p. 151.

[45] Armstrong H., Turkey in Travail, The Birth of a New Nation, London, 1925, p. 113.

[46] Salahi Ramsdan Sonyel, Turkish Diplomacy 1918–1923, Mustafa Kemal and the Turkish National Movement, London, 1975, p. 82.

[47] Toynbee A., Kirkwood K., op. cit., p. 76; Elaine Diana Smith, Origins of the Kemalist Movement and the Government of the Grand National Assembly (1919–1923), The American University, Washington D.C., 1959 (Ph.D. thesis), p. 133.

a) Though the arbitration mainly is done out of courts, but it is a legal procedure. The arbitration is based either upon contract law or, in the case of international arbitration, the law of treaties, and the agreement between the parties to submit their dispute to arbitration is a legally binding contract. Thus, the indispensable feature of an arbitration is that it produces an award that is final and binding: *The arbitral award is the final and binding decision by an arbitrator in the full settlement of a dispute*[48].By agreeing to submit the dispute to arbitration, i.e. *compromis*[49]*,* the parties in advance agree to accept the decision[50].

b) Pursuant to Article 89 of the Treaty of Sèvres, the arbitral clause was endorsed by *the other High Contracting Parties,* so the issue of determination of the boundary was submitted to the arbitration on behalf ofall state-signatories of the Treaty of Sèvres as well. As the Treaty of Sèvres was signed by lawful representatives (*having communicated their full powers, found in good and due form*) of the 18 countries (The British Empire [separately] 1. United Kingdom, 2. Canada, 3. Australia, 4. New Zealand, 5. Union of South Africa, 6. India[51], 7. France, 8. Italy and 9. Japan [as Principal Allied Powers], as well as by 10. Armenia, 11. Belgium, 12. Greece, 13. Poland, 14. Portugal, 15. Romania, 16. Kingdom of Serbs-Croats-Slovenes[52], and 17. Czecho-Slovak Republic[53] of the one part and 18. Turkey of the other part), and they pledged *to accept the decision thereupon.* Thus, it is definitely compulsory arbitration and is obligatory for all of them.

c) Once arbitration has been properly executed it becomes irrevocable. It employs the legal doctrine of *Res Judicata (finality of judgments)*, which holds that once a legal claim has come to final conclusion it can never again be litigated[54]. The doctrine of *res judicata* is considered applicable to all arbitral awards, whether the special agreement or general treaty of arbitration contains such a provision or not.

d) The arbitral awards and court judgments are similar in their nature, as both are based on law[55]. They both are legal decisions. Therefore, the Doctrine of Collateral Estoppel, which affirms that an issue, which has already been legally duly determined, cannot be reopened or litigated again in a subsequent proceeding, applies in arbitration cases as well[56].

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

[48] A Dictionary of Arbitration & its Terms, op. cit.: 32.

[49] The *compromis* is the arbitration agreement between sovereign States which empowers them to arbitrate an existing dispute.(A Dictionary of Arbitration & its Terms, op. cit., p. 54).

[50] Ibid., p. 27.

[51] At present: India, Pakistan and Bangladesh.

[52] At present: Serbia, Croatia, Slovenia, Bosnia & Herzegovina, Macedonia and Montenegro.

[53] At present: Czech Republic & Slovak Republic.

[54] A Dictionary of Arbitration and its Terms, op. cit., p. 198.

[55] Manual of Public International Law, op. cit., p. 584.

[56] A Dictionary of Arbitration & its Terms, op. cit., p. 49.

considered valid and biding. It is thereafter precluded from going back on that recognition and challenging the validity of the award [Arbitral Award by the King of Spain (1960) International Court of Justice, Rep. 213][57].

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

f) The arbitration decisions engage the parties for an unlimited period[58]. The validity of the arbitration is not dependent upon its subsequent implementation.

g) The President is the representative authority in the United States, *his voice is the voice of the nation*[59]*.* The President's representative character also implies that all official utterances of the President are of international cognizance and are presumed to be authoritative[60]. Foreign nations must accept the assertion of the President as final[61]. By virtue of the arbitrator's position the award is binding for the US as well.

h) Annulment (nullification of the legality) of an arbitral award occurs only when there is some authoritative public or judicial confirmation of the ground for such an annulment. This confirmation might come from an international agency such as the International Court of Justice. Confirmation of the ground of an annulment might also be based on international public opinion deriving from general principals of law common to all nations[62]. Refusal by the losing party to comply with the award is not in itself equivalent to a lawful annulment. The plea of nullity is not admissible at all and this view is based upon Article 81 of The Hague Convention I of 1907, and the absence of any international machinery to declare an award null and void[63].

Conclusions

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

[57] Manual of Public International Laws, op. cit., p. 694.

[58] Wildhaber L., Treaty Making Power & Constitution, Basel & Stuttgart, 1971, p. 98.

[59] Wright Q., The Control of American Foreign Relations, New York, 1922, p. 36.

[60] Ibid., p. 37.

[61] Ibid., p. 38.

[62] A Dictionary of Arbitration and its Terms, op. cit., p. 15.

[63] Manual of Public International Law, op.cit., pp. 693-694.

After the arbitral award of the President of the USA (signed on 22 November 22, 1920, and duly notified on December 6, 1920) the presence and all acts taken by the Turkish Republic in the *Wilsonian Armenia* are, in fact, illegal and invalid. Consequently, in spite of the long standing occupation Turkey does not possess any legal title to the territory, and its *de facto* sovereignty is not more than an administrative control by force of arms. Belligerent occupation does not yield lawful rule over a territory. A single act of control is not enough to establish a transfer of title as Turkey might hope. Not even continuous occupation since 1920/1, forced changed demography of the territories and practices (turkification of the ancient Armenian names of the localities, towns, villages, districts, etc.) aiming at altering the heritage and the character of the country would help Turkey get the title.

The Arbitral Award of the President of the United States never was revoked and it can't be done. There is not a single legal instrument that conceded *Wilsonian Armenia* to Turkey. Furthermore, the boundary between Armenia and Turkey, as determined by President of the United States, was reconfirmed by the Republic of Turkey by virtue Article 16 of the Treaty of Lausanne (July 24, 1923). By the Treaty of Lausanne, which is considered *birth certificate of the Republic of Turkey,* Turkey and other High Contracting Parties recognized the Turkish title only over the territories situated inside the frontiers *laid down* in the Treaty of Lausanne. No frontier was laid down between Armenia and Turkey, thus, *Wilsonian Armenia* defiantly and evidently was not included in the Republic of Turkey. By renouncing all *rights and title* over territories *situated outside the frontiers laid down* in the Treaty of Laussane, the Republic of Turkey renounced its title *whatsoever* over *Wilsonian Armenia* and by virtue of international treaty reconfirmed the legal effects of the arbitral award of the President of the United 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 recognized by the said Treaty, the future of those territories and islands being settled or to be settled by the parties concerned (Article 16).*

It is true that Armenia possesses the legal validity to the *Wilsonian Armenia,* but it is also true that legal validity by itself will not lead to a solution. Indeed, Armenia is the *de jure* holder of the title and Turkey grips the control, and none would relinquish its claims, based on Armenian side on the legal validity and on Turkish side on the military power. There is no doubt that international law is the only way to bring about a just and peaceful resolution, thus a durable and permanent solution.