

ПОЛИТИКА

The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson, the President of the United States of America /Historical Background and Legal Assessment/

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

Ninety years ago the 28th President of the United States of America Woodrow Thomas Wilson signed an arbitration which conclusively defined the border between the Republic of Armenia and Turkey. Due to the 90th anniversary of the arbitration, likewise the final and binding character of the arbitral awards, it seems the most appropriate to elaborate the said legal instrument which officially is entitled: “*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.*”

The Historical Background of Wilson’s Arbitration

One and half years after the declaration of Armenian independence, on January 19, 1920, the Supreme Council of the Allied Powers finally agreed to recognize the government of the Armenian State on the condition that the recognition should not prejudge the question of the eventual frontier¹. The United States recognized the Republic of Armenia on April 23, 1920.

On April 26, 1920, the Supreme Council meeting at San Remo requested the President of the United States: a) The United States assume a mandate over Armenia; b) The President of the United States to make an Arbitral Decision to fix the boundaries of Armenia with Turkey³. As you know the Armenian mandate was rejected by Senate vote on June 1st 1920. Nevertheless the American answer to the second request was positive and on May 17, 1920 the Secretary of State informed the American Ambassador in France that the President had agreed

to act as arbitrator⁴. For the fulfillment of the task the State Department began to assemble a team of experts in mid-July headed by professor William Westermann, from Wisconsin University - “*The Committee upon the Arbitration of the Boundary between Turkey and Armenia*”. As the Treaty of Sevres was signed on August 10, 1920, the boundary committee began its deliberations. The signing of the Treaty of Sevres is important because the compromis – the application for the arbitration – is included in the Treaty as Article 89. It must be underlined that the status of the compromis has nothing to do with the status of the main Treaty, i.e. with ratification or non-ratification of the Treaty. So as the State Department received the authenticated copy of the Treaty on October 18th it was sufficient for President officially to conclude the arbitration.

On November 22, 1920⁵, Woodrow Wilson signed the final report with the enclosed appendices. The *Full Report* consists of 241 pages, the *Report* itself - 89 pages, and *Appendices to the Report* - 152 pages.

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 delimited⁶, as clearly states The Hague Convention⁷ (article

¹ Hackworth G. H., Digest of International Law, Turkish-Armenian Boundary Question, vol. I, Chapters I-V, Washington, 1940, p. 715.

² The United States recognized the independence of Armenia, but refused to recognize that of Georgia and Azerbaijan. (Lauterpacht H., Recognition in International Law, Cambridge, 1947, p. 11. Papers Relating to Foreign Relations of the United States, 1920, v. III, Washington, 1936. p. 778.) [hereinafter – FRUS].

³ The Treaties of Peace, 1919-1923, (Preface by Lt.-Col. Lawrence Martin).vol. I, New York, 1924, p. xxxii.

⁴ *Ibid.*, p. 783.

⁵ Cukwurah A. O., The Settlement of Boundary Disputes in International Law, Manchester, 1967, pp. 165- 166.

⁶ Cukwurah A. O., *op. cit.*, p. 31; Hackworth G. H., *op.cit.*, p. 715.

54 of the 1899; article 81 of the 1907) 8: “*The award, duly pronounced and notified to the agents of the parties, settles [puts an end to] the dispute definitively and without appeal.*”⁹.

Few words on the content of the Arbitral Award

Pursuant to the Arbitral Award the title and the rights of the Republic of Armenia were recognized on the provinces of Van, Bitlis, Erzerum and Trebizond of the former Ottoman Empire. It was less than the half of the territory on which the Armenian title was recognized by the article 24th of the Mudros armistice on October 30, 1918. This drastic cutback was due to far-reaching reduction of native Armenian population.

On the most important issue – the present status the Arbitral Award

According to the official *Manual of the Terminology of Public International Law* of the United Nations, 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;
- 4) The arbitrators must not have exceeded their powers¹⁰.

Let us step by step elaborate on the Arbitral Award to shed light on its present status.

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. official note of the Supreme Council dated April 26, 1920, and article 89 of the Treaty of Sevres), was “*the President of the United States*”, namely Woodrow Wilson. President Wilson often was challenged for his policy and had various

disagreements with other politicians and political bodies. Nevertheless, nobody and never has questioned his political or personal integrity and he never was blamed to act under external influence.

Conclusion:

It’s apparent and doubtless that the arbitrator “*have not been subjected to any undue external influence.*”

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

As it was mentioned above the State Department mid-July 1920 organized a special task group. The head of the committee was William Linn Westermann, professor of the University of Wisconsin, specialist in the history and politics of the Middle East. The principal collaborators were Major Lawrence Martin of the Army General Staff, and Harrison G. Dwight of the Near Eastern division of the Department of State 11. It is obvious that all experts in the task group were knowledgeable, experienced and impartial professionals. Before Woodrow Wilson signed the final report it was accepted by the experts of the State and War Departments and of the White House.

Conclusion: The arbitral passed through the United States Government’s three relevant department’s scrutiny and inspection. It’s obvious that the experts were capable to exclude any “*fraud*” or to notice any “*essential error*” in “*the production of proofs*.”

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 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 the question of frontier to be fixed between Turkey and Armenia*” was done by the official note and by the inclusion of a special arbitration clause in the Treaty of Sevres 12.

Factor b) – The compromis was duly negotiated.

⁷ The 1899 Convention was ratified by Turkey on July 12, 1907. (The Hague Court Reports, *op. cit.*, p. cii).

⁸ This notion was comprised in article # 54 of the 1899 Convention with slightly deferent wording: “*The award, duly pronounced and notified to the agents of the parties [at variance, puts an end to] the dispute definitively and without appeal.*”(The Hague Court Reports, *op. cit.*, p. lxxxix).

⁹ *Ibid.*

¹⁰ Manual of the Terminology of Public International Law, *op.cit.*, § 508, pp. 588-590.

¹¹ *Ibid.*

¹² The official full text of the Treaty of Sevres was published - British and Foreign State Papers, 1920. vol. CXIII, Printed and Published by His Majesty’s Stationary Office, London , 1923, pp. 652-776, [hereinafter - British Papers] and separately, as Command Paper 964 – Treaty Series No. 11 (1920), Treaty of Peace with Turkey, signed at Sevres, August 10, 1920, HMSO, London, 1920, 100 pages.

The draft peace treaty was formally given to the Turkish delegation for the observations or objections on May 11, 1920. The Turkish delegation, headed by Tevfik Pasha [former Grand Vezier] officially acknowledged the receipt of the treaty.

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

In 1918-1922 Sultan-Caliph Memed VI was the head of the Ottoman Empire, politically recognized legitimate ruler 13. Sultan represents the de jure Government 14.

On July 22, 1920, Sultan Mehmed VI, the constitutional head of the state, convened a Crown Council which recommended in favor of signing the treaty, including the arbitral clause [Article 89]

Conclusion – On account of the mentioned three factors the compromis was valid.

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

The compromis asked the arbitrator the following 1) to fix the frontier between Turkey and Armenia in the Villayets 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. Wilson did not exceed his powers.

Final Conclusions

The Arbitral Award of Woodrow Wilson is still a valid and binding document. The indispensable feature of arbitration award is that it produces an award that is final and binding. By agreeing to submit the dispute to arbitration - *compromis* - the parties in advance agree to accept the decision 15. Since the arbitral clause [the article 89 of the Treaty of Sevres] in addition to the lawful representatives of Armenia and Turkey, was endorsed by the representatives of the 16 countries thus it is definitely binding for all of them and their successor states. Furthermore by prior agreement the Arbitral Award was recognized by the countries of the Central Powers – Germany, Austria, Bulgaria and Hungary. It is obligatory for the United States as well not only as it was signed by the President of the

country but most of all because it was sealed with the Great Seal of the United States thus it became part of the law of the land.

So, in spite of the long standing occupation, Turkey does not possess any legal title to the territory of *Wilsonian Armenia*. After the arbitral award of the President of the USA, signed on November 22, 1920, Turkish *de facto* sovereignty over there is not more than an administrative control alike of Turkish status in Northern Cyprus. Thus the presence and all acts taken by the Turkish Republic in the “*Wilsonian Armenia*” are illegal and invalid, because the belligerent occupation does not yield lawful rule over a territory.

It is true that international law by itself will not be able to bring about a solution for the Armenian-Turkish confrontation. Nonetheless, 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.

Арбитражное решение Президента США Вудро Вильсона по турецко-армянской границе (исторический фон и правовая оценка)

Ара Папян

Когда 19 января 1920 года Верховный совет Парижской мирной конференции, в лице Британской империи, Франции и Италии, признал Республику Армения, то сделал это с условием: границы Республики Армения должны быть определены в будущем. С тем же условием 23 апреля 1920 года Республика Армения была признана и США.

В проблеме границ Республики Армения, естественно, важнейшим был вопрос армяно-турецкой границы. Поэтому заседание Парижской конференции в Сан-Ремо, в ряду других вопросов, 24-27 апреля 1920 года приняло на рассмотрение этот вопрос, а 26 апреля официально обратилось к президенту США Вудро Вильсону с тем, чтобы президент Соединенных Штатов вынес арбитражное решение о границах Армении. 17 мая 1920 года президент Вильсон дал положительный ответ и взял на себя обязанности и полномочия арбитра, решающего границу между Арменией и Турцией. Важно подчеркнуть, что это было почти за три месяца до подписания Севрского договора (10 августа 1920 года). Был бы заключен Севрский договор или нет, законное соглашение об арбитраже уже было, следовательно, арбитражное решение, определяющее

¹³ Arnold J. Toynbee, Kenneth P. Kirkwood, Turkey, New York, 1927, p. 151.

¹⁴ Harold Armstrong, Turkey in Travail, The Birth of a New Nation, London, 1925, p. 113.

¹⁵ *Ibid.*, p. 27.

границу между Арменией и Турцией, было бы вынесено.

На основе соглашений Сан-Ремо (26 апреля 1920 года) и Севра (10 августа 1920 года) президент США Вудро Вильсон 22 ноября 1920 года принял Арбитражное решение о границах Армении и Турции, которое согласно договоренности сразу же и безоговорочно вступило в силу.

Любое арбитражное решение безоговорочно обязательно к исполнению. То, что арбитражные решения окончательны и не подлежат кассации, закреплено в международном праве, в частности, в *Гаагской конвенции о мирном разрешении международных споров (The Hague Convention for the Pacific Settlement of International Disputes)* – статья 54 в редакции 1899 года и статья 81 в редакции 1907 года. В соответствии с этим, пре-

зидент Соединенных Штатов Вудро Вильсон своим Арбитражным решением раз и навсегда определил границу между Арменией и Турцией, оно в силе по сей день и не подлежит кассации.

Несмотря на продолжающуюся оккупацию, Турция не располагает каким-либо правовым титулом на территории *Вильсоновской Армении*. После арбитражного решения президента США, подписанного 22 ноября 1920 года, турецкий де-факто суверенитет над этими территориями не более, чем административный контроль наподобие турецкого статуса в Северном Кипре. Отсюда, присутствие и все акты Турецкой Республики в *Вильсоновской Армении* незаконны и недействительны, так как оккупация в результате агрессии не приносит правового порядка над оккупируемой территорией.