

# On the Validity of the Treaty of Sevres and the Arbitral Award of Woodrow Wilson

by: Aida Avanesian

Last revised: 1 May 2020

First published in 2017,  
in the *Armenian Yearbook of International and Comparative Law*

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Published by the *Armenian Cause Foundation*  
Yerevan, Armenia

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August 2020



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## ABOUT THE AUTHOR

**Aida Avanesian** has earned her Bachelor's degree (LL. B) in Private Law from Faculty of Laws and Political Sciences, University of Tehran (June 1972), her Master's degree (LL.M) in Private International Law, from Faculty of Laws and Political Sciences, University of Tehran (June 1975) and Doctor of Law (PhD) in Conflict of Laws from Kings Collage, University of London (May 1990).

**Aida Avanesian** has been in private legal practice with her main field of expertise in international and project finance and arbitration. Since 2013 she has been teaching *Project Finance, Arbitration, Contract Drafting and Negotiation* at the American University of Armenia, since 2015 *Arbitration and Private International Law* at the Hovhaness Tumanian State University, Vanadzor, Armenia, and since 2018 *International Arbitration and Other Alternative Dispute Resolution Mechanisms* at the French University in Armenia (UFAR).

**Aida Avanesian** is a member of Arbitrators Association of Republic of Armenia and is included in the Arbitrators List of the International Chamber of Commerce.

### **Aida Avanesian's Publications:**

*Iran-United States Claims Tribunal in Action-Seven Years of Arbitration*, book published in 1993, Graham & Trotman/Martinus Nijhof, London, England

Final editing of *Making of Contracts under English, French, Iranian and Islamic Law*; a book by Parviz Owsia, PhD, published in 1994, Graham & Trotman, London, England.

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*Project Finance*, book in Armenian, published in 2019, Yerevan, Armenia.

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In the recent years a theory has been put forward to the effect that the Arbitral Award of Woodrow Wilson, the President of the United States of America of the time, given within the jurisdiction vested in him under the Treaty of Sevres is, irrespective of the subsequent faith of that Treaty, valid and enforceable.

As a novel theory it is interesting and encouraging but its unqualified acceptance and possible use, as the legal basis for any future action, without further detailed and comprehensive examination in view of the established current legal principles, could lead to a totally undesired conclusion of which there may be no return.

This is simply because any legal issue cannot be examined in a legal vacuum and with recourse only to legal theories, rules and principles leading to the desired conclusion and without taking into account other rules and principles which are to the same extent, and sometimes even more, established in the same field of the law.

It is not the intention of this Article to examine all issues that arise or may arise in connection with the validity of the Treaty of Sevres and President Woodrow Wilson's Arbitral Award but to submit that, from a purely legal perspective, it is not possible to examine President Wilson's Award separate from and irrespective of the Treaty of Sevres and its validity. Also, it is the intention to put forward a few other legal theories which may assist in reaching a favorable conclusion and, as such, are worthy of further examination and research.

In view of the above, this Article intends to suggest that:

- a. The issue of validity of Treaty of Sevres must be separated from the issue of its enforceability;
- b. The Treaty of Sevres was a valid legal document at the time that President Wilson's Award was issued; and
- c. As a result, the Arbitral Award, having been issued under the authority of jurisdiction granted by a valid legal document, itself was and remains a valid legal document.

Let us start from the beginning.

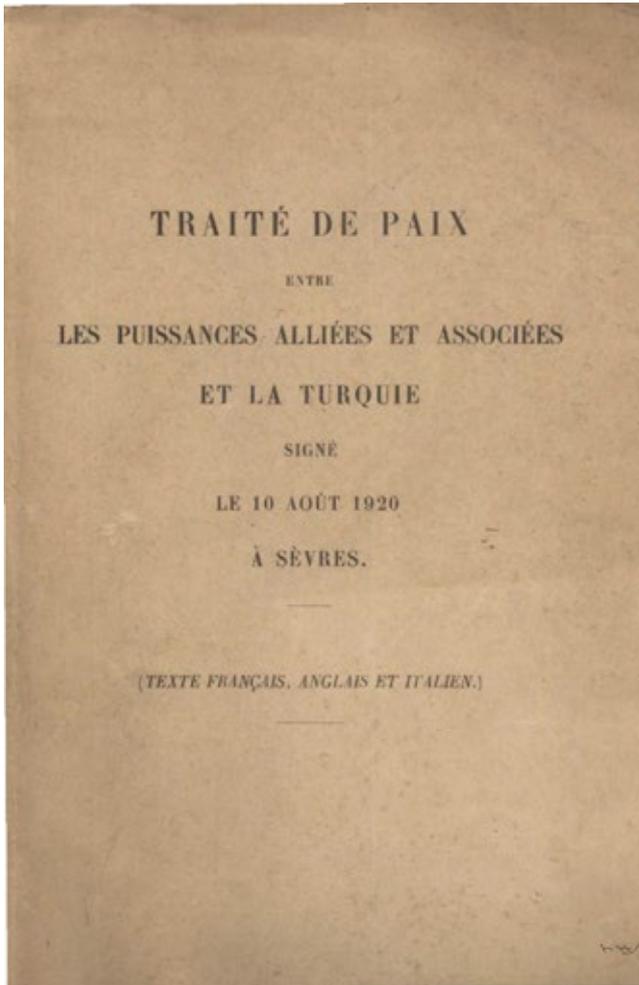
## A) TREATY OF SEVRES

Treaty of Sevres was signed at the end of World War I on 10<sup>th</sup> August 1920 in the city of Sevres in France. It was signed between the victorious Allied and Associated Powers, on the one hand, and defeated Turkey, on the other. The signatories were the British Empire (now the United Kingdom), France, Japan, Armenia, Belgium, Greece, the Hedjaz, Poland, Portugal, Roumania (Rumania), the Serb-Croat-Slovene State and Czecho-Slovakia, on the one hand, and Turkey,<sup>1</sup> on the other. The intention was to agree on the conditions for establishment of peace between Allied Powers and Turkey.

As a condition for peace, Turkey, along with other terms, was, in this Treaty accepting responsibility for atrocities committed against its Armenian population from 1914 onwards and was undertak-

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1 It is interesting to note that Turkey, rather than Ottoman Empire, is named as the signatory to this Treaty.



ing to compensate for such material/fiscal losses that Armenians living within its then borders had suffered as a result of deportation and massacres.

Although inclusion of these terms in the Treaty itself gives special importance to Treaty of Sevres as it is in this international legal document that Turkey, for the first and probably only time, has accepted responsibility for atrocities committed against Armenians, more important are the provisions of Article 88 of the Treaty which provide that “Turkey, in accordance with the actions already taken by the Allied Powers, hereby recognizes Armenia as a free and independent State”.

Furthermore, and which constitutes the core subject matter of this Article, for determination of the borders of this newly recognized State, it is provided in Article 89 of the Treaty that “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 Erzurum, 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”.

It was to address the possible consequences of the Award that Article 90 of the Treaty provided that “[I]n 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 territory so transferred. The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory” (emphasis added).

It is, of course, neither right nor possible to limit the examination of the Treaty of Sevres to the said three Articles without taking into account the other/subsequent provisions of the said Treaty, especially as it is these terms that had fatal effect on the implementation of the terms of Treaty of Sevres and, consequently, on the history of Armenia and the Armenian people in the succeeding years.

Accordingly, it is of particular importance to take note of the entry into force provisions in the final/closing (unnumbered) Paragraphs of the Treaty. According to the said provisions:

*“The present Treaty, in French, in English, and in Italian, shall be ratified. ...*

....

*“A first proces-verbal of the deposit of ratification will be drawn up as soon as the Treaty has been ratified by Turkey on the one hand, and by the three of the Principal Allied Powers on the other hand.”*

*“From the date of the first proces-verbal the Treaty will come into force between the High Contracting Parties who have ratified it.”*

The Treaty of Sevres was not, following its execution, ratified by Turkey.<sup>(2)</sup> As a result, the above process-verbal was never prepared and, consequently, entry into force of the Treaty became questionable.

## B) THE ARBITRAL AWARD OF PRESIDENT WILSON

President Wilson's mandate for determination of the frontiers between Armenia and Turkey, and other associated issues, had its history. It was based on the decision dated 25-26 April 1920 of the Supreme Council of the Principal Allied and Associated Powers whereby the Supreme Council, composed of the representatives of Great Britain, France, Italy and Japan, applied to the President of the United States of America requesting him to determine the frontiers between Armenia and Turkey.<sup>(3)</sup>

On 17 May 1920, the State Department of the United States advised the United States Ambassador in Paris that President Wilson had accepted to act as arbitrator for determination of the frontiers

between Armenia and Turkey. For preparing the substantiating grounds of the Award to be issued by President Wilson, a committee of experts (*"The Committee upon the Arbitration of the Boundary between Turkey and Armenia"*) was established by the United States State Department in July 1920. The Committee was chaired by Prof. William Westermann and other key members were Lawrence Martin and Harrison G. Dwight.<sup>(4)</sup>

The request made from President Wilson to accept the so called *"Armenia Mandate"* was subsequently incorporated in the Treaty of Sevres in the form of Article 89. Following the execution of the Treaty the above referred Committee, which had already commenced its work since July of the same year, officially continued working and approximately one and a half month later, on 28 September 1920, submitted its full report to the State Department which was then used as substantiating grounds for the Arbitral Award of President Wilson.

Thus, in implementation of his mandate, President Wilson signed the Arbitral Award on 22 November 1920. The main part of the Award was, on 24 November, transmitted, by cable, to the US Ambassador in Paris with instructions to submit the same to the Secretary General of the Peace Conference for submission to the Allied Supreme Council. Subsequently, Ambassador Wallace (the US Ambassador in France) in his letter of 7 December 1920 confirmed that he had, on the same date, submitted the Arbitral Award to the Secretariat of the Peace Conference enclosed with his letter dated 6 December 1920.<sup>(5)</sup> Thus, the Arbitral Award of President Wilson was submitted to the Supreme Council of the Principal Allied and Associated Powers four days after the Communist take-over of Armenia.

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2 In the literature relating to the period after the execution of the Treaty of Sevres and until the Communist take-over of Armenia (such as Alexander Khadissyan, *Creation and Development of Republic of Armenia*, 2-nd edition, 1968, Beirut; Simon Vratzian, *Republic of Armenia*, 1982, Alik Publications, Tehran; G. Lazyan, *Armenia and the Armenian Cause according to Treaties*, 1942, Husaber Publications, Cairo – all in Armenian) there is no mention of post-execution ratification of Treaty of Sevres by the Armenian Parliament.

3 Ara Papyan, *The Arbitral Award of Woodrow Wilson on the Frontiers between Armenia and Turkey, Legal Grounds of Armenian Claims (collection of articles)*, Yerevan, 2007, p. 5 (in Armenian); *The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson, the President of the United States of America*, Ibid. p. 99. It is incorrect to suggest that the request made to the President of the United States by the Supreme Council of the Allied and Associated Powers on 26-27 April 1920 to decide, by arbitration, the boundaries between Armenia and Turkey was sufficient to give authority to President Wilson to issue an Arbitral Award on this matter because irrespective of the political situation in Turkey at the end of World War I, Turkey continued to remain an independent State. This was the reason why it was necessary to include the arbitration clause in the Treaty of Sevres.

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4 Ara Papiian, *The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson, the President of the United States of America*, supra, p. 99.

5 Ara Papiian, *The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson, the President of the United States of America*, Ibid. p. 105. See also *The Armenian Cause-Encyclopedia*, Chief Editor Kostan Khudaverdyan, Yerevan, 1996, p. 413 (in Armenian).

The official name of the Award was:

*“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 powers vested in President Wilson which, as Arbitrator he could not exceed, were defined in the Treaty of Sevres as follows:

1. Determine the frontiers between Armenia and Turkey in Vilayets of Erzurum, Trebizond, Van and Bitlis;
2. Decide on the subject of Armenia’s access to sea; and
3. Decide on the issue of demilitarization of Turkish territories adjacent to the frontiers so determined.

President Wilson made his Award within the limits of the powers vested in him as Arbitrator. Accordingly: <sup>(6)</sup>

1. According to Section I of the Award the title of the Republic of Armenia was recognized on four Vilayets of Ottoman Empire, namely, on Van, Bitlis, Erzurum and Trebizond, totaling 103,599 square kilometers which was far less than the 279,718 square kilometers known, for centuries, in Ottoman as well as other sources as “*Erminestan*” or Armenia.<sup>(7)</sup>
2. According to Section II of the Award the assignment to Armenia of the harbor of Trebizond and the valley of Karshut Su, the issue of Armenia’s access to sea was also resolved.
3. Section III of the Award was somewhat trying to resolve the issue of demilitarization of the frontiers between Armenia and Turkey by providing that the superior officers of the

gendarmerie stationed in “*vilayets of Turkey lying contiguous of the state of Armenia*” should be appointed “*exclusively from the officers to be supplied by various Allied or neutral Powers*”.

### C) CONDITIONS OF VALIDITY OF ARBITRAL AWARDS ACCORDING TO THE PRINCIPLES APPLIED IN NATIONAL AND INTERNATIONAL ARBITRATION

It may be necessary to first define “*arbitration*” as a legal concept.

Arbitration is an alternative method of dispute resolution which, using a simplified and not necessarily technical legal term, could be defined as a private court. This means that the two or more parties to a dispute by mutual consent agree to submit their dispute, for final resolution, to one or more independent and impartial third party(ies) and undertake to submit to and comply with the decision made by the said arbitrator(s).

As an alternative dispute settlement method, arbitration is considered one of the most effective methods of settling both national (municipal) as well as, and more importantly, disputes that fall in the realm of private international law.

Arbitration has also gained special recognition and importance for settlement of disputes of public international law nature, i.e. disputes between States where the dispute, by its nature, involves or also contains a political element. This is the reason why in the *1907 Hague Convention for the Pacific Settlement of International Disputes*, adopted in Hague, The Netherlands, on 18 October 1907<sup>(8)</sup> a full section was allocated to arbitration.<sup>(9)</sup>

Although the existence of the Hague Convention could neither prevent World War I nor World War

6 *Wilson’s Border, President Wilson’s Letter Defining the Border Between Armenia and Turkey*, <http://western-armenia.org/treaty-of-sevres/Wilsons-border/>

7 See 4, supra, p. 100. See also Tatul Hagopyan, *Armenians and Turks, 2012, Yerevan*, p. 85 (in Armenian).

8 *1907 Hague Convention for the Pacific Settlement of International Disputes*, adopted in the Hague, the Netherlands on 18 October 1907 (<http://www.pca-cpa.org/upload/files1907ENG.pdf>).

9 Ibid. p. 12.

II, there exist, however, several cases where disputes in the realm of public international law have been referred to arbitration for settlement. One of these cases is the referral, by Treaty of Sevres, to arbitration of the disputes relating to determination of the frontiers between Armenia and Turkey and other associated issues.

Any arbitral award, however, whether relating to municipal, private international or public international law disputes, must meet certain conditions to be valid and effective.

One and the most important of these conditions is existence of a valid and un-terminated arbitration agreement between the parties to the dispute. In absence of a valid arbitration agreement there can be no valid arbitration and, therefore, no valid arbitration award.

This condition, which has gained the status of a generally accepted principle, is incorporated both in national/municipal legislation as well as in treaties signed in the realm of international law and in rules of international application relating to the conditions and procedure of arbitration.<sup>(10)</sup>

As an example, reference can be made to the *New York Convention on Recognition and Enforcement of Foreign Arbitral Awards*, signed in 1958 in New York, the United States of America.<sup>(11)</sup> Although this Convention is mainly aimed to be applied to arbitral awards issued in private international law disputes, it, however, incorporates the generally recognized, accepted and applied rules that constitute the criteria for determination of validity of arbitration awards.

Paragraph 1 of Article II of the said Convention specifically provides that “[e]ach Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen

or which may arise between them in respect of a defined legal relationship...”. More importantly, according to Paragraph 1(a) of Article V of the same Convention the recognition and enforcement of an arbitral award may be denied if the arbitration agreement “is not valid under the law to which the parties have subjected it ...”(emphasis added).<sup>(12)</sup>

Perhaps more importantly, reference may be made to Articles 37 and 40 of the Hague Convention.<sup>(13)</sup> Although this Convention has been signed but has not been ratified by Turkey, it nevertheless, incorporates rules, in this case in the realm of public international law, that have been generally recognized, accepted and applied in resolution of disputes by arbitration.

According to Article 37 of the said Convention “[i]nternational arbitration has for its object the settlement of disputes between States by judges of their own choice...”. It is evident that election of one or more arbitrators by the parties, as provided for in the said Article, is subject to existence of an arbitration agreement between the same.<sup>(14)</sup> Furthermore, according to Article 40 “[i]ndependently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it”. This Article makes it clear that valid arbitration of disputes the subject of public international law is also subject to existence of valid arbitration agreement between the disputing parties.

In addition to the most important condition referred to above, there are also other conditions which, according to the generally recognized, ac-

10 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958*, United Nations Conference on International Commercial Arbitration; *International Chamber of Commerce Rules on Conciliation and Arbitration*; *UNCITRAL* (United Nations Commission on International Trade Law) Arbitration Rules.

11 *Ibid.*

12 It is important to note that the term used is “valid” and not “valid and enforceable”.

13 See 8, *supra*.

14 This Convention itself could be considered an arbitration agreement between the signatories.

cepted and applied Principles of international law, must be met to secure the validity of arbitral awards.<sup>15</sup> These conditions are discussed below.

1. The arbitrator(s) must be independent and impartial and must not have been made subject to undue external pressure such as bribery or corruption. In the case of President Wilson's Award, in view of his international standing, reputation and credibility, it is not even possible to assume that he could have been corrupt or subjected to external undue pressure.
2. Presentation of the evidence must have been free of fraud and should not have contained major mistakes. Also in connection with this condition it is hard to doubt that the Committee established by the States Department of the United States and chaired by William Linn Westermann, an internationally renowned Professor of Wisconsin University, would risk its credibility by permitting such mistakes in its report that would put the validity of President Wilson's Award in question.
3. The Arbitrator must not have exceeded his powers. President Wilson's Award is clearly given within limits of the jurisdiction vested in him by the Treaty of Sevres. It determines the frontiers between Armenia and Turkey in the four vilayets of Erzurum, Trebizond, Van and Bitlis, it settles the issue of Armenia's access to sea; and, although somewhat superficially, determines the subject of demilitarization of the Turkish territory adjacent to Armenian frontiers. It is interesting to note that on the subject of the frontiers laying in south of the city of Erzingan, President Wilson, in his Award, states that he is not "*empowered to change the administrative boundary on this point,*

*and these 40 kilometers of territory lie outside the four vilayets specified in Article 89 of the Treaty of Sevres*".

In view of the above explanations it can be concluded that President Wilson's Award satisfies all three conditions discussed above leaving open only the question if the absence of post-signature ratification of Treaty of Sevres by Turkey could, and if so, to what extent, affect the validity of the Arbitral Award.

To answer this question, the validity of Treaty of Sevres at the time when President Wilson's Award was issued must first be examined to find the answer to the question if the absence of subsequent ratification of the Treaty could affect the validity of the Award if, at the time of issue, it was rendered under a valid international document.

#### D) ON THE VALIDITY OF THE TREATY OF SEVRES

In this section it is important to refer again to the closing unnumbered Paragraphs of Treaty of Sevres which provide that:

*"The present Treaty, in French, in English, and in Italian, shall be ratified. ...*

...

*"A first procès-verbal of the deposit of ratification will be drawn up as soon as the Treaty has been ratified by Turkey on the one hand, and by the three of the Principal Allied Powers on the other hand."*

*"From the date of the first proces-verbal the Treaty will come into force between the High Contracting Parties who have ratified it."*

According to the reported historical facts, although the Treaty was signed by Turkey it was never ratified by the Ottoman/Turkish Parliament after its execution. As a result, the ratification document referred to in the closing Paragraphs

15 See 4, supra, p. 106. See also *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958*, United Nations Conference on International Commercial Arbitration; *International Chamber of Commerce Rules on Conciliation and Arbitration*; *UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules*.

of the Treaty was never presented by Turkey to the Secretariat of the Peace Conference raising the question if and to what extent has the non-submission of the ratification document affected the validity and/or enforceability of the Treaty. These questions will be examined below in an effort to find answers justifiable under the generally accepted principles of law.

### 1. What effect could non-ratification of the Treaty of Sevres by the Turkish Parliament have on the validity of the Treaty of Sevres?

It must be clarified first that the wording of the second paragraph of the closing section (“From the date of the first proces-verbal the Treaty will come into force between the High Contracting Parties who have ratified it”) could be misinterpreted to mean that, irrespective of non-ratification by Turkey, the Treaty could have entered into force upon ratification thereof by the “three of the Principal Allied Powers” (Great Britain, France and Japan). This interpretation, however, is incorrect as not only Turkey was the other party of the Treaty (The Allied and Associated Powers were acting as one party and the purpose of the Treaty was to set conditions for peace with Turkey), but also because it is clear from the first sentence of the same part of the closing Paragraphs that one of the parties to the proces-verbal should be Turkey. Moreover, the ratification of the Treaty by the “three of the Principal Allied Powers” would have little effect on the subject examined under the present article.

It is, therefore, essential here to separate the issue of validity of the Treaty from the subject of its enforceability from the perspective of generally recognized and accepted principles of international law, for the purpose of determining the effect that the, arguably, unenforceability of Treaty of Sevres could have on the validity of President Wilson’s Award.

The criteria applied for determination of the validity of a treaty is if the delegation signing the treaty on behalf of a State had been authorized to sign the said treaty and whether by doing so

they have not exceeded the powers granted to them.

- (1) For verification of the authority of Turkey’s delegation who signed the Treaty reference should be made to a few historical facts.
- Between the period from 1918 to 1920 Turkey was ruled by Sultan Muhammed the Sixth who had the authority of signing treaties on behalf of Turkey according to Article 7 of the working Turkish Constitution of the time.<sup>(16)</sup>
  - On 22 July 1920, that is when the terms of the Treaty were already known, the Sultan invited the Shoray-e Saltant (the Crown Council) to examine and decide on the execution of the Treaty. The execution of the Treaty was approved in that meeting<sup>(17)</sup> and the Treaty was signed on behalf of Turkey by a delegation headed by Damad Ferid Pasha (the other members of the delegation were General Hamdi Pasha, Riza

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16 Ibid, p. 109-110. According Article 7 of the 1876 Constitution of the Ottoman Empire, revised in 1909 “Among the sacred prerogatives of the Sultan are the following: ...conclusion of treaties in general. Only the consent of Parliament is required for the conclusion of Treaties which concern peace, commerce, the abandonment or annexation of territories or the fundamental or personal rights of Ottoman subjects”. From the above translation of said Article 8, taken from the text published in Wikipedia, online Encyclopedia, it is not clear if the approval of the Parliament is required to be obtained prior or after execution of a treaty. It is essential to note that the Turkish Parliament had, by the order of the Sultan, been dissolved in March 1920. Although in April 1920 Mustafa Kemal had established a Parliament in Ankara, but it became official only in 1922 thus paving the way for the establishment of the Turkish Republic; *Grand National Assembly of Turkey, Wikipedia, The Free Encyclopedia, en.wikipedia.org/wiki/Parliament\_(Turkey)*.

17 See 4 supra, p. 110. It is essential to note that Article 7 of the Constitution does not limit Sultan’s right to appoint representatives/delegations for signing treaties. It is also relevant that the Parliament having been dissolved, the decision to sign the Treaty of Sevres was not made by the Sultan alone but by the approval of the Crown Council which, although was not replacing the Parliament but was the only political institution with whom, in the circumstances of the time, the Sultan could consult.



Tavfik Bay and Rishad Halis Bay (the Turkish Ambassador in Bern).<sup>(18)</sup>

Thus, it is undeniably clear that the Treaty was signed for Turkey by its duly authorized representatives.

(2) To examine the question if Turkey's representatives have exceeded their powers by signing the Treaty it must be pointed out that the

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18 See 4, supra, p. 110. See also Simon Vratzian, *Republic of Armenia, 1982*, Alik Publications, Tehran, pp. 439-440: "After entry of the Turkish delegation A. Millerand announced 'Gentlemen, I am announcing that the Treaty that we shall sign is completely consistent with what is approved by both parties (text translated from Armenian) . Then he invited the Turks to sign. Hamdi Pasha, Riza Tavfik Bey and Khalil Bey stood up, came, with firm steps, to the table at the center on which the Treaty was put and, with nervous movements, signed it ...". According to *Armenian Delegation Document No. 101, Letter dated 19 August to the Minister of Foreign Affairs of Armenia*. See also G. Lazyan, *Armenia and the Armenian Cause according to Treaties, 1942*, Husaber Publications, Cairo (all references in Armenian).

draft of the Treaty was submitted, by the representatives of the Allied Powers, to Turkey's representatives in May 1920. Subsequently, comments raised by Turkey were examined and, after making minor changes in the draft, the final text was prepared and submitted to Turkey on 17 July 1920.<sup>(19)</sup>

It was this draft of the Treaty that was tabled and approved in the 22 July 1920 session of Shuray-e Saltanat (Crown Council) which means that the representatives of Turkey had signed the Treaty within and without exceeding the powers granted to them.

Thus, it can be concluded that Treaty of Sevres is a valid document under public international law.

## 2. The issue of validity from the perspective of international law

The issue of validity of the Treaty of Sevres must also be examined from the point of view of generally accepted and applied principles of public in-

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19 See 4, supra, p. 110.

ternational law. Here it must be pointed out that the inclination of international law has always been to support the validity of international treaties and conventions for the very simple reason that otherwise there is a risk that international law itself may lose its practical relevance and become “dead words” or turn into intellectual exercise.

It is this approach that explains the need for the signing of the *Vienna Convention on the Law of Treaties* in 1969.<sup>(20)</sup> It is important to note that Turkey is not a signatory to this Convention which means that the terms of that Convention are applicable to Turkey only to the extent that they are considered to be declarative of generally accepted and applied principles of private international law.

Prior to the signing of the Vienna Convention, however, certain principles of private international law had gained general acceptance and application which were then modified, completed and included in the Vienna Convention which is designed to regulate rules and principles that apply to treaties signed between State parties that are the “*object*” of international law.<sup>(21)</sup>

In this connection it may be necessary to mention that, prior to the signing of the Vienna Convention, there existed a theory according to which States may refuse ratification of treaties signed by them only if it was proved that the representatives signing the treaty had exceeded their powers or secret instructions. This theory, in a modified form, was subsequently included in Article 27 of the Vienna Convention which now provides that “[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ...”<sup>(22)</sup>

20 *Vienna Convention on the Law of Treaties*, 1969, done at Vienna on 23 May 1969, entered into force on 27 January 1980, United Nations Treaty Series. Vol. 1155, p. 331.

21 *Openheim-Lauterpacht, International Law*, 1955, Vol. I, p. 909; Sh. Toriguian, *The Armenian Question and International Law*, 1973, p. 70.

22 *Ibid.*

Although the Vienna Convention was signed more than forty years after the execution of the Treaty of Sevres (and its Article 4 is entitled “*Non-retroactivity of the Present Convention*”), as already mentioned, it, to a large extent, is declarative of rules and principles of international law that had already gained general acceptance and application. Its relevance to the subject of the present article is only to the extent that the principle in the roots of said Article 27 bars Turkey from resorting to its own laws as justification for its failure to perform its obligations under Treaty of Sevres.

Speaking about this Convention, however, attention should also be paid to the first part of Article 14 which stipulates the conditions of ratification requirements. It is arguable if the conditions referred to in this Article are of declarative nature or have been regulated by the Vienna Convention. Moreover, it must be pointed out that at the time of execution of the Treaty of Sevres Turkey’s Parliament had been dissolved (and was to be officially reestablished only two years later, in 1922) but that it had, prior to execution, been already approved not only by the Sultan but also by the Crown Council of Turkey which, at the time, appeared to be the only working political institution in Turkey.<sup>(23)</sup>

Furthermore, in referring to Article 14 reference should also be made to Article 18 of the same Convention which reads as follows:

*“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:*

*(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become party to the treaty; or ...”*

23 The new “Kemalist” regime in Turkey gained recognition in the Treaty of Lausanne, signed on 24 July 1923 and the Turkish Republic was declared on 29 October 1923, i.e., more than three years after the execution of the Treaty of Sevres.

Here it is essential to note that Turkey has never advised the other parties to the Treaty of Sevres, including Armenia, that the Treaty will not be ratified by its Parliament and, therefore, it is even admitted by Turkey, that until at least the execution of the Treaty of Lausanne (which, according to Turkey, has replaced Treaty of Sevres), the Treaty of Sevres has remained a valid public international law document.

### 3. The issue of enforceability from the perspective of international law

As repeatedly mentioned above, the Treaty of Sevres, arguably, was not ratified by the Ottoman/Turkish Parliament and, consequently, it did not become enforceable.

It has already been suggested above that the issue of validity of an agreement (a treaty is an agreement) should be separated from its enforceability. A “*valid*” agreement is a document signed between parties that have the legal capacity of signing the agreement or by their duly authorized representatives. “*Enforceability*” is the effect of a validly signed agreement. In other words, enforceability pre-supposes existence of a valid agreement.<sup>(24)</sup>

To further expand on this point, in the specific context of the Treaty of Sevres, it is necessary, once again, to refer to the relevant section of the un-numbered closing Paragraphs of the Treaty which reads:

*“From the date of the first proces-verbal the Treaty will come into force between the High Contracting Parties who have ratified it” (emphasis added).*

As may be noted, the term used is “*come into force*” and not “*become enforceable*”. The difference between these two terms, in common

24 “Word ‘enforceable’ ... when employed in contract for performance ... it is synonymous with word ‘execute’ and must be given meaning of ‘perform’, ‘performable’ ...”, Henry Campbell Black, M. A. *Black’s Law Dictionary, Revised Fourth Edition, 1968, West Publishing Co.*, p. 621.

legal usage, is minimal, if not at all.<sup>(25)</sup> Both terms recognize that a legal document is validly signed although it may not be enforced by one party against the other until certain conditions are fulfilled. For example, it is not uncommon in legal documents (e.g. a contract or a piece of legislation) that the relevant document is valid and will become enforceable on a specified date (could even be a date prior to date of signing of the document) or upon fulfillment of a specific condition.

Furthermore, a validly signed document, even before completion of the conditions of it becoming enforceable, is not fully of no legal effect. At the very least, it imposes a good faith obligation on the parties to take all necessary steps to meet the conditions of its enforceability, failing which is not, normally, without any legal consequence.

This difference, which has also been recognized in the realm of public international law, means that an agreement signed between competent and authorized representatives of the parties is, from the time of its execution and despite any post-execution approval/ratification requirement, valid and is not entirely of no legal effect until such time as the party (or parties), whose approval was required for its entry into force (i.e. become enforceable), has officially (or in the manner specified in the agreement/treaty) declared its decision not to ratify/approve the relevant agreement/treaty. This point, by being emphasized upon in Article 18 of the Vienna Convention has gained the status of a principle. Said Article (referred to also in Section D(2) above) reads as follows:

*“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:*

*it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval; or ...”*

25 In *Black’s Law Dictionary* one of the meanings of “effect”, as a legal term is stated to be “enforce”, *ibid*, p. 605.

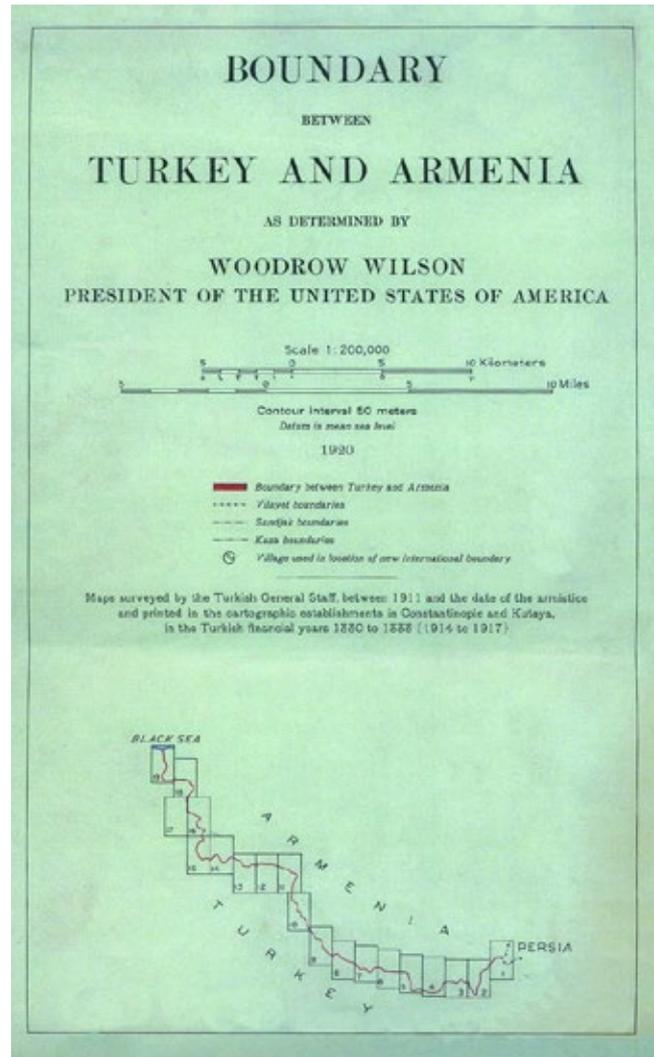
As mentioned in Section D(2) above, Turkey has never advised the other parties to the Treaty of Sevres that its Parliament will not ratify the Treaty.<sup>(26)</sup> Thus, from a legal perspective, the Treaty of Sevres was a valid legal document at the time when President Wilson's Award was issued.

## E) THE QUESTION OF VALIDITY OF PRESIDENT WILSON'S ARBITRAL AWARD

Now we must address the effect, if any, of the non-submission of the ratification document by Turkey to the Secretariat of the Peace Conference that could have on the validity of President Wilson's Award.

The subject of validity of the arbitration entrusted to President Wilson and the Arbitral Award ensuing therefrom can be examined not only from the perspective of the Treaty of Sevres but also from that of the *1907 Hague Convention on Peaceful Resolution of International Disputes*.

Let us now briefly discuss the Hague Convention. This Convention, which provides for the grounds for peaceful settlement of inter-State disputes, recognizes arbitration as one of the more effective means of peaceful dispute resolution. Article 37 of the said Convention indirectly subjects the validity of arbitration on existence of an arbitration agreement between disputing parties. Article 81 of the Convention then provides that “[T]he Award, duly pronounced and notified



to the ... parties, settles the dispute definitively and without appeal”.

This Convention, which has played an important role in the development of arbitration in the realm of international law, has been signed but as already mentioned above, has not been approved by Turkey. Therefore, it is applicable to Turkey only to the extent that its terms are held declarative of generally accepted and applied principles of international law. One of the said principles, as already said, is the existence of a valid arbitration agreement between the disputing parties. The Hague Convention does not address the issue of “*validity*” of the relevant arbitration agreement but it is notable that in other international (such as the New York Convention) or internationally applied legal documents (such as ICC Conciliation and Arbitration Rules), in referring to the arbitration agreement the only term used

26 See 20, supra, Article 18. Although it has been reported that Mustafa Kemal, in his speech of 1<sup>st</sup> March 1921 in the Turkish Parliament, established in Ankara (see 16, supra) has said that “The biggest tragedy threatening us last year was the Treaty of Sevres. But, despite all efforts of the enemies, today the Treaty of Sevres, both from a legal as well as factual perspective, does not exist” (translated from Armenian text), Tatul Hagopyan, *Armenians and Turks, 2012, Yerevan*, p. 89 (in Armenian), this cannot be considered an official refusal by the Turkish Parliament of ratification of the Treaty of Sevres. Moreover, even if it is considered to be so, this statement is made months after President Wilson's Award was pronounced which means that at least at the time of pronouncement of the Award the Treaty was a valid legal document.



is “*valid*” and not “*valid and enforceable*” or “*enforceable*”.<sup>27</sup>

Now let us return to the Treaty of Sevres and its direct relationship with President Wilson’s Award. On this subject once again reference should be made to the proposition put forward in section D

27 See Article V(1)(a) of the New York Convention “... or the said agreement is not *valid* under the law to which the parties have subjected it ...” (emphasis added); Article 6(9) of ICC Rules “... the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the arbitral tribunal upholds the *validity* of the arbitration agreement.” (emphasis added).

of this article to the effect that the nature of validity of an agreement (as well as a treaty) is different from its enforceability and that a validly signed agreement is not entirely of no legal effect.

It was concluded in Section D(1) that the Treaty of Sevres, at least to the extent relevant to Turkey, meets the conditions of validity as it was signed by duly authorized representatives of Turkey who, by signing the Treaty, have not exceeded their powers. It should be added that Turkey has never disputed the authority of its delegation. It is also important to note that none of the State parties to the Treaty have questioned

the authority of their representatives who have signed it.

For further substantiation of this conclusion it should be added that one of the generally accepted principles applied in the realm of arbitration, which has also been incorporated in many arbitration rules, is that the arbitration clause in an agreement should be viewed and dealt with as a separate agreement independent of the agreement in which it is included.<sup>(28)</sup> This means that an arbitration clause included in an agreement loses its validity only if the agreement itself is proved to be *void ab-initio*.<sup>(29)</sup>

In view of the above, it may be concluded that, irrespective of the, arguably, unenforceability of the Treaty of Sevres,<sup>(30)</sup> President Wilson's Award is valid on the grounds that it has been rendered under a valid Treaty and a valid arbitration clause

28 This doctrine, known as the Separability Doctrine is well established in the field of international arbitration (see: Garry B. Born, *International Arbitration Law and Practice*, Second Edition, p. 54; Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration*, Third Edition, p. 20-21; Redfern and Hunter on *International Arbitration*, Student Edition, Nigel Blackaby and Constantine Partasides QC with Alan Redfern and Martin Hunter, 104) and has been included in several international arbitration rules such as UNCITRAL Model Law, Article 16.1.

29 Different arbitration rules, more commonly applied in international arbitration, have adopted slightly different views on the subject. For example according to Article 16.1 of UNCITRAL (United Nations Commission on International Trade Law) *Model Law on International Commercial Arbitration* provides that: “[a] decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause” while Article 6.9 of *International Chamber of Commerce (ICC) Rules on Conciliation and Arbitration* provides that “... The arbitral tribunal shall continue to have jurisdiction over their claims and pleas even though the contract itself may be non-existent or null and void”.

30 At the time of execution of the Treaty of Sevres the Turkish Parliament had been dissolved and making entry into force of the Treaty subject to ratification by a non-existent institution is, if not illegal at least unreasonable. It is also notable that there is no record of treaties signed between the Treaty of Sevres and the Treaty of Lausanne were approved/ratified by any Turkish Parliament.

incorporated therein to which the disputing parties, i.e. Armenia and Turkey, have, by signing the Treaty, given their consent and agreed to submit to the terms thereof.<sup>(31)</sup>

## F) THE EFFECT OF SUBSEQUENT TREATIES ON THE LEGAL EFFECT OF THE ARBITRAL AWARD OF PRESIDENT WILSON

The historical events that followed the execution of the Treaty of Sevres, as well as the Communist take-over of Armenia and establishment of the Kemalist Regime in Turkey, resulted in the signing of several treaties of which the most important one is the Treaty of Lausanne, signed on 23 July 1923, which according to Turkey, has replaced the Treaty of Sevres.

Notwithstanding the fact that there are several reasonably strong grounds for the argument that none of the said treaties, especially the Treaty of Lausanne, invalidate the Treaty of Sevres, at least to the extent that it relates to Armenia and her rights<sup>(32)</sup> (itself the subject of another research), in examining the effect that the Treaty of Lausanne may have on President Wilson's Award reference should be made, once again, to Article 90 of the Treaty of Sevres which provides that:

*“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 territory so transferred. The provisions of*

31 Obviously, President Wilson also considered his Award valid and enforceable as otherwise he would not have issued an Award that would be of no legal effect.

32 Ara Papian, *The Legal Inter-relationships between Treaties of Sevres and Lausanne, Legal Grounds of Armenian Claims (collection of articles)*, Yerevan, 2007, p. 32 (in Armenian); Sh. Toriguian, *The Armenian Question and International Law*, 1973, pp. 85-86. Reportedly, the United States refused to recognize the Treaty of Lausanne for it being in contradiction with President Wilson's Award.

*the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory.” (Emphasis added)*

The most important point regarding this Article is that it does not require any subsequent action by Turkey for renouncing its “*title over territory so transferred*” but such renouncement occurs automatically upon President Wilson’s signing and dating of the Award.

Consequently, the Treaty of Lausanne could have changed the already determined frontiers only if it contained specific provisions to this effect, while not only the Treaty of Lausanne does not contain any provision/statement officially declaring the Treaty of Sevres to be void, it is essential to note that it also contains no reference to President Wilson’s Award, and the frontiers determined by that Award, or to any other matter relating to Armenia.<sup>(33)</sup>

Considering that there exists a wide spread opinion that the Treaty of Lausanne has invalidated and replaced the Treaty of Sevres, which opinion has, unfortunately, also found its way into some Armenian reference texts,<sup>(34)</sup> it may be worth to at least briefly mention that application of several generally accepted and applied principles of public international law would prove that the Treaty of Lausanne cannot be legitimately held as replacing the Treaty of Sevres, at least to the extent that it relates to parties that have not signed it and to matters which it does not specifically address.<sup>(35)</sup> In

33 Supra. See also Tatul Hagopyan, *Armenians and Turks, 2012, Yerevan*, p. 160 (in Armenian).

34 E.g., see *The Armenian Cause-Encyclopedia*, Chief Editor Kostan Khudaverdyan, Yerevan, 1996, p. 413 (in Armenian).

35 Ara Papian, *Examination of the Russian-Turkish Agreement (16 March 1921) according to International Law, (collection of articles)*, Yerevan, 2007, p. 17 (in Armenian); Ara Papian, *The Agreement of Kars and the Legal Status of the Soviet Armenian Republic according to International Law, (collection of articles)*, Yerevan, 2007, p. 23 (in Armenian); Sh. Toriguan, *The Armenian Question and International Law*, 1973, pp. 79-86.

the context of this article it is sufficient to mention that Armenia has not been a party to the Treaty of Lausanne and that there is no reference to Armenia in that Treaty.

Having briefly referred to the Treaty of Lausanne, it is also important to point out that in the context of this article, and the theory put forward herein, the affect of the Treaty of Lausanne on the Treaty of Sevres is of secondary importance as by reaching the conclusion that President Wilson’s Award was validly issued and continues to maintain its validity, it becomes no longer necessary to examine the effect of the Treaty of Lausanne on President Wilson’s Award for the very simple reason that in accordance with the above referred Article of the Treaty of Sevres (Article 90) Turkey should, from the date of the Award, i.e. 22 November 1920, be considered as having renounced its title over territories allocated thereby to Armenia.

## G) CONCLUSION

As a preamble to the conclusion it must be pointed out that it would be wrong and misleading to examine President Wilson’s Award separately from the Treaty of Sevres and the issue of validity (if not enforceability) of that Treaty. Also, the examination of the subsequent treaties should not be ignored although, as already mentioned, there are substantial legal grounds to prove that none of these treaties, including the Treaty of Lausanne, cause the invalidation of President Wilson’s Award.<sup>(36)</sup>

The most important and crucial principle of legal analysis of any matter, is that more than examination of theories and evidences beneficial to the position held, attention must be paid to opposing views and evidences that may be presented by the opposing side to find appropriate answers before entering into the dispute.

The following conclusions are, therefore, proposed in view of the above:

1. The issue of validity of the Treaty of Sevres should be separated from the subject of its enforceability;

36 Ibid.

2. The Treaty was signed by duly authorized representatives of the signatory States who have not exceeded their powers by signing the Treaty;
3. None of the signatories of the Treaty has ever challenged its validity;
4. President Wilson's Award has been rendered under the authority of a legally valid Treaty and the arbitration clause included therein to which both parties to the arbitration, i.e. Armenia and Turkey, have, by signing the Treaty, given their consent;
5. Turkey has never challenged the validity of the Treaty of Sevres and its insistence that it is replaced by the Treaty of Lausanne, which itself is seriously arguable, simply proves that even Turkey considered the Treaty of Sevres a valid document, at least until the Treaty of Lausanne was signed;
6. President Wilson's Arbitral Award was issued/pronounced at a time when the Treaty of Sevres, irrespective of its enforceability (which could also be challenged) was a valid public international law document;
7. Notwithstanding the question of the need for the post-execution approval of the Treaty, Turkey has never officially advised the other signatories of the Treaty that it is not going to ratify the Treaty;
8. President Wilson's Award has never been challenged by Turkey;
9. The non-enforceability of the Treaty of Sevres, even if so concluded, does not in itself affect

the validity of President Wilson's Award as it was issued under the authority and within the powers vested in him under a valid arbitration agreement; and

10. In view of clear stipulations of the Treaty of Sevres and according to the terms of President Wilson's Award, Turkey must be held as having renounced its title over territory allocated to Armenia by the said Award.

It can, therefore, now be concluded that the validity and enforceability of President Wilson's Award relates only to the validity of Treaty of Sevres and not to its enforceability. Realistically speaking, however, the circumstances where this theory can find implementation grounds remain a political issue and must be examined in the political field. At this stage, what remains to be done is to research, examine and prepare the legal grounds of the claim to be used as legal basis in circumstances when the political conditions are ripe.

On this subject, however, there is another political issue which calls for examination. If President Wilson's Award is held to be valid and enforceable, it will be enforceable not only against Turkey but also against Armenia. This means that by insisting on the validity of President Wilson's Award, Armenia will necessarily be renouncing any claim that it may have over other territories of Western Armenia.

*Last revised: 1 May 2020*

## Appendices

# The Treaty of Peace Between the Allied and Associated Powers and Turkey

SIGNED AT SÈVRES, AUGUST 10, 1920

### SECTION VI.

#### ARMENIA.

##### ARTICLE 88.

Turkey, in accordance with the action already taken by the Allied Powers, hereby recognises Armenia as a free and independent State.

##### 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.

##### 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. 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.

##### ARTICLE 91.

In the event of any portion of the territory referred to in Article 89 being transferred to Armenia, a Boundary Commission, whose composition will be determined subsequently, will be constituted within three months from the delivery of the decision referred to in the said Article to trace on the spot the frontier between Armenia and Turkey as established by such decision.

##### ARTICLE 92.

The frontiers between Armenia and Azerbaijan and Georgia respectively will be determined by direct agreement between the States concerned.

If in either case the States concerned have failed to determine the frontier by agreement at the date of the decision referred to in Article 89, the frontier line in question will be determined by the Principal Allied Powers, who will also provide for its being traced on the spot.

##### ARTICLE 93.

Armenia accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion.

Armenia further accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as these Powers may deem necessary to protect freedom of transit and equitable treatment for the commerce of other nations.

*(excerpts)*

# From Papers Relating to the Foreign Relations of the United States, 1920, Volume III

## THE SECRETARY OF STATE TO THE AMBASSADOR IN FRANCE (WALLACE)

Washington, November 24, 1920.

No. 671

Sir: Referring to your despatch No. 1722 of October 19th, 1920,<sup>30</sup> and in confirmation of my telegram No. 1653, November 23, 3 P.M., I beg to enclose herewith the original text of the President's decision respecting the frontier between Turkey and Armenia, access for Armenia to the sea, and the demilitarization of Turkish territory adjacent to the Armenian frontier.

This document consists of a covering letter addressed to the President of the Supreme Council, followed by the actual decision, which comprises a technical description of the boundary and which is accompanied by two maps, one showing the bound-

ary in general and one in sections showing the boundary in detail.<sup>31</sup> The decision and the smaller general map are signed and authenticated. The sectional map, on the scale of 1:200,000, is included for the convenience of the Boundary Commission.

You are instructed to transmit these enclosures to the Secretariat General of the Peace Conference, referring to the note of the Secretariat General dated October 18, 1920,<sup>32</sup> stating that the authenticated copy of the Treaty of Sevres forwarded therewith was received by the President, and requesting that, in accordance with the desire of the President and in fulfilment of the obligation first accepted by him on May 17th last and confirmed by Article 89 of the Treaty of Sèvres, the decision and maps in question be conveyed to the President of the Supreme Council of the Allied Powers.

I am [etc.]

Bainbridge Colby

## [Enclosure 1]

## PRESIDENT WILSON TO THE PRESIDENT OF THE SUPREME COUNCIL OF THE ALLIED POWERS

Mr. President: By action of the Supreme Council taken on April 26th of this year an invitation was tendered to me to arbitrate the question of the boundaries between Turkey and the new state of Armenia. Representatives of the powers signatory on August 10th of this year to the Treaty of Sevres have acquiesced in conferring this honor upon me and have signified their intention of accepting the frontiers which are to be determined by my decision, as well as any stipulations which I may pre-

scribe as to access for Armenia to the sea and any arrangements for the demilitarization of Turkish territory lying along the frontier thus established. According to the terms of the arbitral reference set forth in Part III, Section 6, Article 89, of the Treaty of Sevres, the scope of the arbitral competence assigned to me is clearly limited to the determination of the frontiers of Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis. With full consciousness of the responsibility placed upon me by your 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.

In approaching this problem it was obvious that the existing ethnic and religious distribution of the populations in the four vilayets could not, as in other parts of the world, be regarded as the guiding element of the decision. The ethnic consideration, in the case of a population originally so complexly intermingled, is further beclouded by the terrible results of the massacres and deportations of Armenians and Greeks, and by the dreadful losses also suffered by the Moslem inhabitants through refugee movements and the scourge of typhus and other diseases. The limitation of the arbitral assignment to the four vilayets named in Article 89 of the Treaty made it seem a duty and an obligation that as large an area within these vilayets be granted to the Armenian state as could be done, while meeting the basic requirements of an adequate natural frontier and of geographic and economic unity for the new state. It was essential to keep in mind that the new state of Armenia, including as it will a large section of the former Armenian provinces of Transcaucasian Russia, will at the outset have a population about equally divided between Moslem and Christian elements and of diverse racial and tribal relationship. The citizenship of the Armenian Republic will, by the tests of language and religion, be composed of Turks, Kurds, Greeks, Kizilbashis, Lazes and others, as well as Armenians. The conflicting territorial desires of Armenians, Turks, Kurds and Greeks along the boundaries assigned to my arbitral decision could not always be harmonized. In such cases it was my belief that consideration of a healthy economic life for the future state of Armenia should be decisive. Where, however, the requirements of a correct geographic boundary permitted, all mountain and valley districts along the border which were predominantly Kurdish or Turkish have been left to Turkey rather than assigned to Armenia, unless trade relations with definite market towns threw them necessarily into the Armenian state. Wherever information upon tribal relations and seasonal migrations was



**Woodrow Wilson**

(December 28, 1856 – February 3, 1924)

**28<sup>th</sup> President of the United States of America**

(March 4, 1913 – March 4, 1921)

obtainable, the attempt was made to respect the integrity of tribal groupings and nomad pastoral movements.

From the Persian border southwest of the town of Kotur the boundary line of Armenia is determined by a rugged natural barrier of great height, extending south of Lake Van and lying southwest of the Armenian cities of Bitlis and Mush. This boundary line leaves as a part of the Turkish state the entire Sandjak of Hakkari, or about one-half of the Vilayet of Van, and almost the entire Sandjak of Sairt. The sound physiographic reason which seemed to justify this decision was further strengthened by the ethnographic consideration that Hakkari and Sairt are predominantly Kurdish in population and economic relations. It did not seem to the best interest of the Armenian state to include in it the upper valley of the Great Zab

River, largely Kurdish and Nestorian Christian in population and an essential element of the great Tigris river irrigation system of Turkish Kurdistan and Mesopotamia. The control of these headwaters should be kept, wherever possible, within the domain of the two interested states, Turkey and Mesopotamia. For these reasons the Armenian claim upon the upper valley of the Great Zab could not be satisfied.

The boundary upon the west from Bitlis and Mush northward to the vicinity of Erzingan lies well within Bitlis and Erzerum vilayets. It follows a natural geographic barrier, which furnishes Armenia with perfect security and leaves to the Turkish state an area which is strongly Kurdish. Armenian villages and village nuclei in this section, such as Kighi and Temran, necessarily remain Turkish because of the strong commercial and church ties which connect them with Kharput rather [than?] with any Armenian market and religious centers which lie within Bitlis or Erzerum vilayets. This decision seemed an unavoidable consequence of the inclusion of the city and district of Kharput in the Turkish state as determined by Article 27 II (4) and Article 89 of the Treaty of Sèvres.

From the northern border of the Dersim the nature and direction of the frontier decision was primarily dependent upon the vital question of supplying an adequate access to the sea for the state of Armenia. Upon the correct solution of this problem depends, in my judgment, the future economic well-being of the entire population, Turkish, Kurdish, Greek, Armenian, or Yezidi, in those portions of the Vilayets of Erzerum, Bitlis and Van which will lie within the state of Armenia. I was not unmindful of the desire of the Pontic Greeks, submitted to me in a memorandum similar, no doubt, in argument and content to that presented to the Supreme Council last March at its London Conference, that the unity of the coastal area of the Black Sea inhabited by them be preserved and that arrangements be made for an autonomous administration for the region stretching from Riza to a point west of Sinope. The arbitral jurisdiction assigned to me by Article 89 of the Treaty of Sèvres does not

include the possibility of decision or recommendation by me upon the question of their desire for independence, or failing that, for autonomy. Nor does it include the right to deal with the littoral of the independent Sandjak of Djanik or of the Vilayet of Kastamuni into which extends the region of the unity and autonomy desired by the Pontic Greeks.

Three possible courses lay open to me: to so delimit the boundary that the whole of Trebizond Vilayet would lie within Turkey, to grant it in its entirety to Armenia, or to grant a part of it to Armenia and leave the remainder to Turkey. The majority of the population of Trebizond Vilayet is incontestably Moslem and the Armenian element, according to all pre-war estimates, was undeniably inferior numerically to the Greek portion of the Christian minority. Against a decision so clearly indicated on ethnographic grounds weighed heavily the future of Armenia. I could only regard the question in the light of the needs of a new political entity, Armenia, with mingled Moslem and Christian populations, rather than as a question of the future of the Armenians alone. It has been and is now increasingly my conviction that the arrangements providing for Armenia's access to the sea must be such as to offer every possibility for the development of this state as one capable of reassuming and maintaining that useful role in the commerce of the world which its geographic position, athwart a great historic trade route, assigned to it in the past. The civilization and the happiness of its mingled population will largely depend upon the building of railways and the increased accessibility of the hinterland of the three vilayets to European trade and cultural influences.

Eastward from the port of Trebizond along the coast of Lazistan no adequate harbor facilities are to be found and the rugged character of the Pontic range separating Lazistan Sandjak from the Vilayet of Erzerum is such as to isolate the hinterland from the coast so far as practicable railway construction is concerned. The existing caravan route from Persia across the plains of Bayazid and Erzerum, which passes through the towns of Baiburt and Gumush-khana and debouches upon

the Black Sea at Trebizond, has behind it a long record of persistent usefulness.

These were the considerations which have forced me to revert to my original conviction that the town and harbor of Trebizond must become an integral part of Armenia. Because of the still greater adaptability of the route of the Karshut valley, ending at the town of Tireboli, for successful railway construction and operation I have deemed it also essential to include this valley in Armenia, with enough territory lying west of it to insure its adequate protection. I am not unaware that the leaders of the Armenian delegations have expressed their willingness to renounce claim upon that portion of Trebizond Vilayet lying west of Surmena. Commendable as is their desire to avoid the assumption of authority over a territory so predominantly Moslem, I am confident that, in acquiescing in their eagerness to do justice to the Turks and Greeks in Trebizond I should be doing an irreparable injury to the future of the land of Armenia and its entire population, of which they will be a part.

It was upon such a basis, Mr. President, that the boundaries were so drawn as to follow mountain ridges west of the city of Erzingan to the Pontic range and thence to the Black Sea, in such a way as to include in Armenia the indentation called Zephyr Bay. The decision to leave to Turkey the harbor towns and hinterland of Kerasun and Ordu in Trebizond Sandjak was dictated by the fact that the population of this region is strongly Moslem and Turkish and that these towns are the outlets for the easternmost sections of the Turkish vilayet of Sivas. The parts of Erzerum and Trebizond Vilayets which, by reason of this delimitation, remain Turkish rather than become Armenian comprise approximately 12, 120 square kilometers.

In the matter of the demilitarization of Turkish territory adjacent to the Armenian border as it has been broadly described above, it seemed both impracticable and unnecessary to establish a demilitarized zone which would require elaborate prescriptions and complex agencies for their execution. Fortunately, Article 177 of the Treaty of Sevres prescribes the disarming of all exist-

ing forts throughout Turkey. Articles 159 and 196–200 provide in addition agencies entirely adequate to meet all the dangers of disorder which may arise along the borders, the former by the requirement that a proportion of the officers of the gendarmerie shall be supplied by the various Allied or neutral Powers, the latter by the establishment of a Military Inter-Allied Commission of Control and Organization. In these circumstances the only additional prescriptions which seemed necessary and advisable were that the military Inter-Allied Commission of Control and Organization should, in conformity with the powers bestowed upon it by Article 200 of the Treaty, select the superior officers of the gendarmerie to be stationed in the vilayets of Turkey lying contiguous to the frontiers of Armenia solely from those officers who will be detailed by the Allied or neutral Powers in accordance with Article 159 of the Treaty; and that these officers, under the supervision of the Military Inter-Allied Commission of Organization and Control, should be especially charged with the duty of preventing military preparations directed against the Armenian frontier.

It is my confident expectation that the Armenian refugees and their leaders, in the period of their return into the territory thus assigned to them, will by refraining from any and all form of reprisals give to the world an example of that high moral courage which must always be the foundation of national strength. The world expects of them that they give every encouragement and help within their power to those Turkish refugees who may desire to return to their former homes in the districts of Trebizond, Erzerum, Van and Bitlis remembering that these peoples, too, have suffered greatly. It is my further expectation that they will offer such considerate treatment to the Laz and the Greek inhabitants of the coastal region of the Black Sea, surpassing in the liberality of their administrative arrangements, if necessary, even the ample provisions for non-Armenian racial and religious groups embodied in the Minorities Treaty signed by them upon August 10th of this year, that these peoples will gladly and willingly work in completest harmony with

the Armenians in laying firmly the foundation of the new Republic of Armenia.

I have the honor to submit herewith the text of my decision.

Accept [etc.]

Woodrow Wilson

Washington, November 22, 1920.

## [Enclosure 2]

### DECISION OF PRESIDENT WILSON RESPECTING THE FRONTIER BETWEEN TURKEY AND ARMENIA, ACCESS FOR ARMENIA TO THE SEA, AND THE DEMILITARIZATION OF TURKISH TERRITORY ADJACENT TO THE ARMENIAN FRONTIER

Woodrow Wilson, President of the United States,  
to Whom it shall Concern,

Greeting:

Whereas, on April 26, 1920, the Supreme Council of the Allied Powers, in conference at San Remo, addressed to the President of the United States of America an invitation to act as arbitrator in the question of the boundary between Turkey and Armenia, to be fixed within the four Vilayets of Erzerum, Trebizond, Van, and Bitlis;

And whereas, on May 17, 1920, my acceptance of this invitation was telegraphed to the American Ambassador in Paris, to be conveyed to the Powers represented on the Supreme Council;

And whereas, on August 10, 1920, a Treaty of Peace was signed at Sevres by Plenipotentiary Representatives of the British Empire, France, Italy and Japan, and of Armenia, Belgium, Greece, Poland, Portugal, Roumania, and Czecho-Slovakia, of the one part, and of Turkey, of the other part, which Treaty contained, among other provisions, the following:

#### *“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”;*

And whereas, on October 18, 1920, the Secretariat General of the Peace Conference, acting under the instructions of the Allied Powers, transmitted to me, through the Embassy of the United States of America in Paris, an authenticated copy of the above mentioned Treaty, drawing attention to the said Article 89;

Now, therefore, I, Woodrow Wilson, President of the United States of America, upon whom has thus been conferred the authority of arbitrator, having examined the question in the light of the most trustworthy information available, and with a mind to the highest interests of justice, do hereby declare the following decision:

[...]

III

In addition to the general provisions for the limitation of armaments, embodied in the Military, Naval and Air Clauses, Part V of the Treaty of Sevres, the demilitarization of Turkish territory adjacent to the frontier of Armenia as above established shall be effected as follows:

The Military Inter-Allied Commission of Control and Organization provided for in Articles 196–200 of the Treaty of Sevres shall appoint the superior officers of the gendarmerie stationed in those vilayets of Turkey lying contiguous to the frontiers of the state of Armenia exclusively from the officers to be supplied by the various Allied or neutral Powers according to Article 159 of the said Treaty.

These officers shall, in addition to their other duties, be especially charged with the task of observing and reporting to the Military Inter-Allied Commission of Control and Organization upon

any tendencies within these Turkish vilayets toward military aggression against the Armenian frontier, such as the building of strategic railways and highways, the establishment of depots of military supplies, the creation of military colonies, and the use of propaganda dangerous to the peace and quiet of the adjacent Armenian territory. The Military Inter-Allied Commission of Control and Organization shall thereupon take such action as is necessary to prevent the concentrations and other aggressive activities enumerated above.

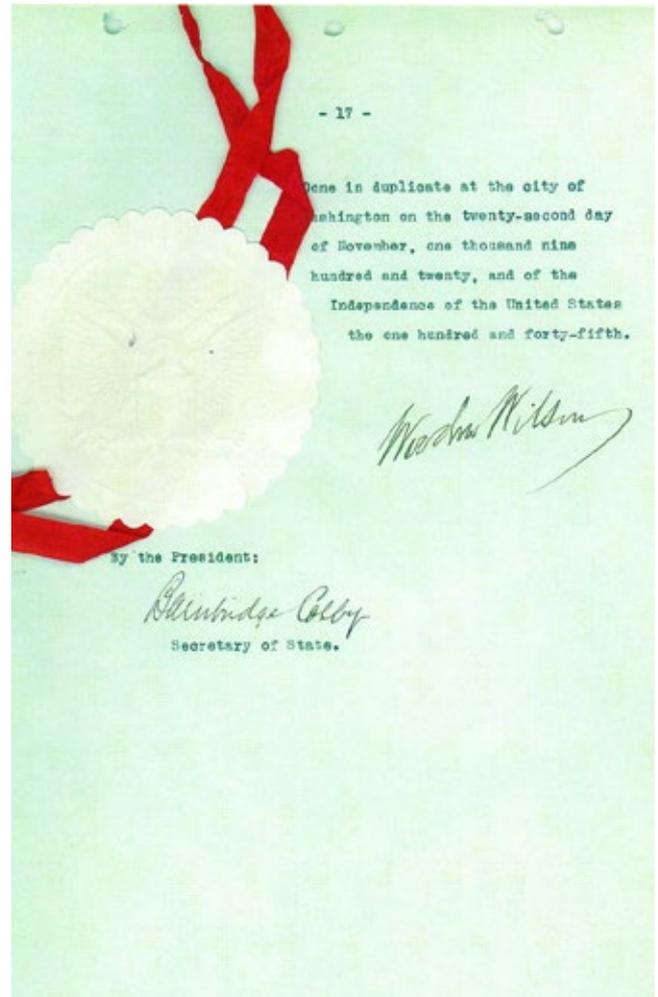
In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

[seal] Done in duplicate at the city of Washington on the twenty-second day of November, one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fifth.

Woodrow Wilson  
By the President:  
Bainbridge Colby  
Secretary of State.

*(excerpts)*

<https://history.state.gov/historicaldocuments/frus1920v03/d949>



# Address of President Serzh Sargsyan to the Conference dedicated to the 90th Anniversary of Woodrow Wilson's Arbitral Award

23 NOVEMBER 2010

Dear Participants of the Conference,

Ninety years ago on this day – November 22, 1920, the President of the United States Woodrow Wilson made an Arbitral Award regarding Armenia's borders.

It was probably one of the most momentous events for our nation in the 20th century which was called up to reestablish historic justice and eliminate consequences of the Armenian Genocide perpetrated in the Ottoman Empire. The Arbitral Award defined and recognized internationally Armenia's borders within which the Armenian people, who had gone through hell of Mets Eghern, were to build their statehood.

Perfidy and brutal force thwarted opportunities for calling President Wilson's Arbitral Award to life. Nevertheless, its significance is not to be underestimated: through that decision the aspiration of the Armenian people for the lost Motherland had obtained vital and legal force.

With the collapse of empires after World War I, a number of European nations had been endowed with the opportunity to achieve self-determination through the creation of their own nation states. President Wilson wished for Armenia to be one of those nations which would employ all opportunities offered by the European civilization. He knew what the responsibility of a great state means; he didn't not ignore sufferings of small nations.

Even today, through the power of his historic legacy, Woodrow Wilson entreats to strengthen international law, prevent genocides and undertake measures to restrain the impunity of brutal force. He is the one whom the grateful Armenian nation remembers and will remember for ever as an advocate of justice and a true friend.

Scientific studies and analysis of that historic ruling are of utmost importance, and I wish the Conference productive works.

# Pan-Armenian Declaration on the Centennial of the Armenian Genocide

*On January 29, 2015, following the session of the State Commission on Coordination of Events for the Commemoration of the 100th Anniversary of the Armenian Genocide, at the Armenian Genocide Memorial Complex at Tsitsernakaberd, unanimously adopted the Pan-Armenian Declaration on the 100th Anniversary of the Armenian Genocide. All commission members signed the declaration and participated in the promulgation ceremony of the Pan-Armenian Declaration led by President of Armenia Serzh Sargsyan. The original signed copy of the declaration was deposited at the Armenian-Genocide Museum-Institute.*

*On March 11, 2015, Armenia's Permanent Representative to the UN Zohrab Mnatsakanyan handed*

*to UN Secretary General Ban Ki-Moon the text of the Pan-Armenian Declaration on the Armenian Genocide Centennial translated into all official languages of the UN.*

The State Commission on the Coordination of Events Dedicated to the 100th Anniversary of the Armenian Genocide, in consultation with its regional committees in the Diaspora,

expressing the united will of the Armenian people,

[...]

- appreciating the joint declaration of the Allied Powers on May 24, 1915, for the first time in history defining the most heinous crime perpetrated



The official site of the President of Armenia [www.president.am](http://www.president.am)

against the Armenian people as a “crime against humanity and civilization” and emphasizing the necessity of holding Ottoman authorities responsible, as well as the role and significance of the Sevres Peace Treaty of 10 August 1920 and US President Woodrow Wilson’s Arbitral Award of 22 November 1920 in overcoming the consequences of the Armenian Genocide:

[...]

2. Reiterates the commitment of Armenia and the Armenian people to continue the international struggle for the prevention of genocides, the restoration of the rights of people subjected to genocide and the establishment of historical justice.

[...]

6. Expresses the united will of Armenia and the Armenian people to achieve worldwide recognition of the Armenian Genocide and the elimination of the consequences of the Genocide, preparing to this end a file of legal claims as a point of departure in the process of restoring individual, communal and pan-Armenian rights and legitimate interests.

*(excerpts)*

*<https://www.president.am/en/press-release/item/2015/01/29/President-Serzh-Sargsyan-visit-Tsitsernakaberd-Genocide/>*

# President Armen Sarkissian: “The Treaty of Sèvres even today remains an essential document for the right of the Armenian people to achieve a fair resolution of the Armenian issue”

*Reputable Syrian Al-Azmenah published an exclusive interview with the President of Armenia Armen Sarkissian:*

**Question:** Mr. President, August 10 marks the 100th anniversary of the Treaty of Sèvres which after WWI was signed at the Paris Peace Conference by the 13 victorious countries of the Entente on one side and the defeated Ottoman Empire on the other side. The Treaty was called to solve the tormented for decades Armenian Issue and end sufferings of the Armenians. Your opinion?

**Answer:** The Treaty of Sèvres in its essence was a peace treaty and with this regard, it really could have solved fundamentally one of the thorniest for our region problems – the Armenian issue.

The Treaty of Sèvres was preceded by the first conference, which took place in February-March 1920 in London where a political decision was adopted that one, unified Armenian state must be created. At the same time, the Republic of Armenia, which was de facto recognized on January 19, 1920, at the Paris Conference, was accepted as its axle, and some territories of Western Armenian under the Ottoman rule should have been united with it.

By the Treaty of Sèvres, Turkey was to recognize Armenia as a free and independent state. Turkey and Armenia agreed to leave demarcation of the borders of the two countries in Erzerum, Trabzon, Van, and Bitlis provinces (vilayets) to the decision made by the United States (the arbitral award of

President Woodrow Wilson which on November 22 will also mark its 100th anniversary) and accept his decision immediately and all other proposals – to provide Armenia with access to the sea and demilitarization of all Ottoman territories adjacent to the mentioned borderline.

**Question:** But the Treaty of Sèvres remained on paper...

**Answer:** I would rather say that the Treaty of Sèvres was not fully ratified (which means it remains unperfected and it is true that when it comes to Armenia its decisions were not implemented because the international political situation had changed but, at the same time, it was never denounced either.

The Treaty of Sèvres is a legal, interstate agreement which is de facto still in force because this document became the base for other documents, which derived from it, for determining the status of a number of Middle East countries after WWI or more recently, among them Syria (currently Syria-Lebanon) and Mesopotamia (currently Iraq-Kuwait), Palestine (currently Israel and Palestinian authority), Hejazi (currently Saudi Arabia), Egypt, Sudan, Cyprus, Morocco, Tunisia, and Libya.

Along with all this, the Treaty of Sèvres could have promoted the resolution of the Armenian Issue and unification of the Armenian nation on its historical lands.

It could have partly mitigated the losses inflicted on the Armenian people by the Genocide of 1915

and thus create conditions for the regulations of the relations between Armenia and Turkey and the establishment of a lasting peace among the peoples of our region.

But in September 1920, the aggression unleashed by the Kemalists against the Republic of Armenia ended in the dissolution of the Armenian independent statehood and Sovietization of Armenia.

Thus, the centuries-long struggle of the Armenian people for uniting in one state entity the separated parts of Armenia was unsuccessful.

But the Republic of Armenia and Armenian nation spread all over the world remain the inheritors and masters of our millennia-long history and civilization. No matter what was done or will be done, no matter how the undeniable facts are being denied, no matter how much the material monuments and Armenian traces on the territory of historical Armenia are being destroyed, it is impossible to annihilate the memory of the Armenian people.

The Treaty of Sèvres even today remains an essential document for the right of the Armenian people to achieve a fair resolution of the Armenian issue.

**Question:** There is an opinion that the Treaty of Lausanne of 1923 negated the Treaty of Sèvres.

**Answer:** It is simply not true and cannot be true. The Treaty of Lausanne does not contain such an annulment; moreover, it does not contain any reference to the Treaty of Sèvres. The Republic of Armenia did not sign the Treaty of Lausanne, thus we are not a party of the Treaty of Lausanne. Thus, it implies no obligation for the Republic of Armenia. In this case, the international Res inter alios acta principle (a thing done between others does not harm or benefit others). The Treaty of Sèvres and the Treaty of Lausanne are two different legal documents.

*(excerpts)*

*[https://www.president.am/en/interviews-and-press-conferences/  
item/2020/08/10/President-Armen-Sarkissians-interview-/](https://www.president.am/en/interviews-and-press-conferences/item/2020/08/10/President-Armen-Sarkissians-interview-/)*

# PM Nikol Pashinyan addresses the conference on 100 years of signing of Treaty of Sevres

I welcome all participants of this conference dedicated to the 100th anniversary of the signing of the Treaty of Sevres. Thank you very much for initiating this important event.

The Treaty of Sevres is a milestone in Armenian modern history, and it is not by mere chance that it continues to be a subject of scientific research and analysis. Therefore, I consider it extremely important that our scholars' unbiased analysis of the document signed a century ago and the events that preceded it become available to our people and to the wider international community, as well. Today's conference serves that very purpose, and I wish all of you successful proceedings, fruitful discussions and new important findings.

The Treaty of Sevres is a historical fact. It remains so to this day. What is the benefit that we can draw from that document? Why is it still in the focus of our attention?

First, the Treaty of Sevres came in the aftermath of World War I - one of the most dramatic chapters in human history - almost two years after its end. Just as the Treaty of Versailles established peace in Europe, in the same way, the Treaty of Sevres was meant to bring peace to the former Western Asian territories of the Ottoman Empire. It put an end to the war-driven sufferings and deprivations experienced by the peoples of our region. It heralded the end of the "cursed years."

Like the Treaty of Versailles, the Treaty of Sevres shaped a new system of interstate relations in the region. It introduced new principles and values, which should have established not only lasting peace, but also justice in Western Asia.

The Treaty was anchored on the most advanced ideas of the time. It specifically highlighted the principle of self-determination and equality of peoples. It put an end to the centuries-old subju-

gation imposed by empires, bringing freedom and independence to the peoples of the region.

Moreover, by granting peoples the right to establish nation-states in their historical territories, it created favorable conditions for peaceful coexistence of Muslims and Christians in the region, promoted and further developed the region's cultural and ethnic diversity.

Second, the Treaty of Sevres was the first international document to recognize and enshrine Armenia's independence. The Republic of Armenia acted as an equal party to the Treaty.

Centuries after the loss of independence, the Armenian authorities for the first time signed an international treaty along with the world's great powers. The Republic of Armenia was recognized as a full member of the international community, an equal subject of international law within the limits set out in the Treaty.

Being a party to the Treaty, Armenia and its people were recognized as key contributors to the victory of the Allies in World War I and the establishment of peace. The Treaty highlighted and properly assessed the role of the Armenian people in international relations and in the post-war global governance.

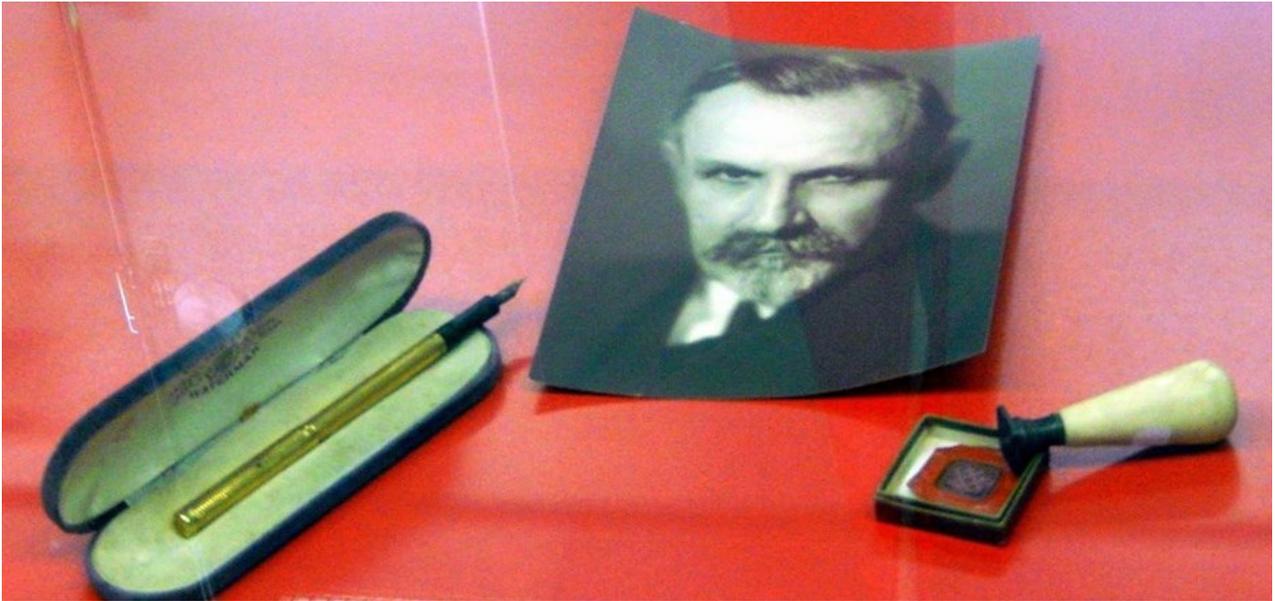
Third, in its Article 89, the Treaty of Sevres reaffirmed our nation's indisputable historical association with the Armenian Highland, wherein the Armenian people had originated, lived, developed their statehood and culture for millenia.

And finally, the Treaty of Sevres was signed in the wake of the Armenian Genocide as the Ottoman Empire was trying to resolve the "Armenian Question" by exterminating the Armenians. Our people were subjected to the most brutal and inhuman suffering. Enormous losses were inflicted on our nation. Meanwhile, the Treaty of Sevres paved the way for overcoming the consequences of the

Genocide. The establishment of the independent Armenian statehood in its ancestral homeland was the fair solution of the “Armenian Question.” Historical justice was being restored. Favorable conditions were created for reinstating our people’s economic and demographic potential and ensuring its natural development.

Although the Treaty of Sevres was never implemented, it continues to be a historical fact, which reflects our long journey to restore our independent statehood. We are bound by duty to remember it, realize its importance and follow its message.

*<https://www.primeminister.am/en/statements-and-messages/item/2020/08/10/Nikol-Pashinyan-message/>*



Avetis Aharonian, head of the Republic of Armenia delegation to the Peace Conference, who signed the Sevres Treaty on behalf of Armenia. In the photo, his pen and personal seal, which are now exhibited at the ARF-Dashnaksutyun Museum in Yerevan, Armenia



The **Armenian Cause Foundation** is a non-profit research and advocacy organization based in Yerevan, Armenia, dedicated to the multi-disciplinary study, promotion and pursuit of all aspects of the Armenian Cause, including but not limited to the international recognition of the Armenian Genocide, Armenian rights and restitution claims.

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Armenian Cause Foundation  
12/1 Mher Mkrtchyan  
Yerevan  
Armenia 0010

tel.: +374 10 52 17 65  
info@armeniancause.net  
<http://www.armeniancause.net>

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ISSN 1829-1783