

AMATEURISH CLAIMS RE GENOCIDE HARM ARMENIANS

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[Levon Gevorgyan, Repair](#), Armeno-Turkish Platform, 2 October 2015

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Despite the overwhelming and never-stopping anti-Turkish rhetoric, demanding the recognition of the Armenian Genocide by the Republic of Turkey, which is ubiquitous within the Republic of Armenia and the Armenian diaspora, the centennial of the Armenian Genocide has revealed the lack of uniform position concerning the claims based in international law and politics that Armenia and the Armenians should present against the Turkish state.

Apart from the centennial events, which only materialized in the form of commemoration concerts, exhibitions and a significant flow of tourists into the Republic of Armenia, nothing really of material value was undertaken this year.

As before, the apex of all of the undertakings of the Republic of Armenia was limited to reminding the world once again that the Republic of Turkey has not recognized the Armenian Genocide, while the apex of the activities of the Armenian Diaspora (or at least most of it) was the condemnation of the President of the United States for not using the "G" word in his April 24 address.

Thus, the centennial of the Armenia Genocide, despite the scope and the significance attached to the date, was not much different from previous April 24 commemorations. That said, it is important to understand what should and could have been done during this century of inactivity, what the risks of inactivity and the negative consequences of such inactivity are and what still can be done despite the mistakes of the past.

The Wilson award: a useless argument

One alleged claim that has during the recent years proliferated, especially in the Armenian Diaspora, but also within Armenia, is a territorial claim, based on the enforcement of the so-called Woodrow Wilson arbitral award of Nov. 22, 1920 (hereinafter "the Wilson Award"). One of the most active proponents of the claim is the former ambassador to Canaa Ara Papian, who through his Modus Vivendi NGO, has been active in promoting the idea of the Republic of Armenia filing a claim against the Republic of Turkey before an international judicial institution, like the International Court of Justice. The idea of gaining the lands of the Western Armenia, together with a direct access to the Black Sea (as proposed by the so-called award), no doubt appeal to any person who considers himself to be Armenian, has gained wide popularity. The question, however, is how realistic and how well-founded in international law such claim is and could it be enforced?

An arbitral award was indeed to be granted by the President of the United States pursuant to the Treaty of Sevres of 1920, whose article 8g provided:

"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."

The Treaty of Sevres, however, has never been ratified. So Mr. Papian claims that the Woodrow Wilson arbitral award has a legal validity of its own – validity different from and existing without the effectiveness of the Treaty of Sevres. Such validity, he claims, is based on the Hague Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes, which provided pursuant to Articles 46 and 71, respectively, that awards by arbitral tribunals are "final" and "cannot form the subject of any subsequent discussion".

The argument, unfortunately, is as far-fetched and unconnected to international law as any argument proposed by a person with no legal, let alone international law, background would be. Simply put, any arbitral award or a judgment has validity only if the parties to the dispute have vested jurisdiction with the said tribunal or court of law. The relevant provisions of the Hague Conventions do nothing but recognize the fact that an award or a judgment by a tribunal or a court vested with such authority should be final. But the said provisions do not grant the awards and judgments of such courts and tribunals with mandatory effect no matter how ill-founded their

jurisdiction is.

While the jurisdiction of President Wilson was to be based on Article 89 of the Treaty of Sevres, without the ratification of the latter Mr. Wilson was granted with no jurisdiction whatsoever.

Hence, any arguments based on this line of action, though pleasing and increasing the popularity of their authors, will do nothing for the benefit of the Republic of Armenia and the Armenians in general – they simply cannot.

The more absurd it is that a reference to the Treaty of Sevres paved its way also into the Centennial Declaration of the President of the Republic of Armenia of Jan. 29, 2015, which stated in the relevant parts:

"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, appreciating 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, reiterates the commitment of Armenia and the Armenian people to continue the international struggle for the restoration of the rights of people subjected to genocide and the establishment of historical justice; 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".

This declaration, which was claimed by the Deputy Minister of Foreign Affairs of Armenia, Shavarsh Kocharyan, to be a product of combined work of most of the government institutions and the prominent representatives of the Armenian society, appeared to be merely a combination of patriotic rhetoric and wishful thinking.

Though containing an absurd reference to the Treaty of Sevres and the Woodrow Wilson award, it, however, for the first time in history also contained a straightforward declaration of intentions to settle the disputes and controversies with the Republic of Turkey by recourse to international law. As time showed, unfortunately, these were mere shallow threats.

Hopes Destroyed by President Serzh Sargsyan

Only three months later, on April 24, 2015, in an interview given to the Turkish "Hurriyet", Serzh Sargsyan made the following statement to the question whether the Republic of Armenia has any territorial claims to Turkey:

"The Republic of Armenia has never declared any territorial claims either on Turkey, or any other country since our independence. There has never been such an issue on the foreign policy agenda of our country, and there is none today. That is a clear-cut position. We are a fully-fledged and responsible member of the international community. As a member to the United Nations, we

recognize our role in international affairs, we respect the principles of international law and, incidentally, we anticipate the same from our neighbor to the west".

Almost the same statement was reiterated during the interview with the Russian journalist Vladimir Pozner on April 27, 2015. Further to the statement of the president, Mr. Pozner asked Sargsyan to clarify the meaning of the slogan of the centennial commemoration events ("I remember and demand") and Sargsyan's response was: "We demand recognition only". It wiped out any hope that the Republic of Armenia may finally stand by the wishes of the Armenians worldwide and act as a reasonable player of the international community.

In addition, these few sentences also manifested the impotency of the current Armenian government in representing the Armenian interests on the international plane. President Sargsyan's convoluted wording, in which the vehement denial of being a claimant is followed by an apologetic statement that Armenia is a responsible member of the international community, creates the impression that the president (together with his speechwriters, advisers, etc.) thinks of inter-state claims as of something degrading, not befitting a proper member of the international community.

Furthermore, statements like this bear with them enormous historical responsibility, responsibility before the coming generations, the weight of which President Sargsyan and his administration are obviously incapable of understanding. There are numerous examples when statements by high-ranking public officials, denying the existence of claims on the side of their states or recognizing the rights of other states, were later interpreted by international courts and tribunals as estopping those first states from filing claims against the latter group.

These include the *Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia* by the Eritrea/Ethiopia Boundary Commission under the auspices of the Permanent Court of Arbitration, the *Temple of Preah Vihear* judgment and the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)* decision of the International Court of Justice. As the rule of estoppel was vividly described by one international tribunal, it precludes a state "from benefiting from its own inconsistency". And the Republic of Armenia is being inconsistent.

These are the basics of international law. Of course it is not expected from President Sargsyan (as well as any other head of state) to know all the intricacies of the international legal order, but that is what the president's apparatus (advisers, speech writers, etc.), as well as the ministry of foreign affairs are for. Failure to take account of these factors and making statements that can have huge ramifications for future generations and preclude them from filing any claims before international tribunals or courts against the Republic of Turkey is an enormous historical burden which should not be so easily undertaken. And failure to understand this due to the lack of knowledge or of professional advisers can be no mitigation.

However, this is not something new. This is just yet another blunder of many. Failure to raise the issue of closed borders and blocked access to the sea by Turkey, failure to complain about the

destruction of the Armenian cultural heritage and manifest anti-Armenian propaganda and hate speech (which are obvious violations of the Convention on the Elimination of Racial Discrimination of 1969), coming from Turkey and Azerbaijan, failure to act against the multiple cases of ceasefire violations by Azerbaijan and the loss of the case before the European Court of Human Rights, recognizing the jurisdiction of the Republic of Armenia over Nagorno-Karabakh and, thus, jeopardizing the latter's self-determination endeavors and claims for statehood are some of the international "achievements" of the current Armenian administration.

This of course begs the question whether the administration has any agenda under international law. However, what is more important here is whether Armenians worldwide should entrust the current Republic of Armenia with the right to represent the Armenian Genocide cause at all or whether they should take a different path and seek for alternative ways for historical justice, ways based in legal action and not political trades for the "G" word, through property and information claims before the Turkish courts and then before the European Court of Human Rights and not through conferences and concerts, dedicated to the centennial of the Armenian Genocide. Time flies and we will all be the bearers of the burden of inaction if we miss our chance.

Levon Gevorgyan is a licensed attorney in RA. He is one of the founding members of the International & Comparative Law Center Armenia NGO and is on the editorial board of the Armenian Yearbook of International and Comparative Law. In addition to being Legelata Law Firm's Managing Partner, he also teaches at the Yerevan State University. For further information click on [Legelata](#)

