THE LONG WINDING ROAD

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By Hovhannes Nikoghosyan, Yerevan, Dec.21, 2009

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Backgrounder

The Armenia-Turkey reconciliation process, which has justifiably been labeled historic, has kept us in suspense since mid August of 2008. Although semi-secret talks between officials began in January-February of 2007 in Bern and in Vienna, the kick-off was the widely-publicized statement and follow-up letter by Armenian President Serzh Sargsyan at the beginning of his term in June 2008. Of course, it is noteworthy that the "trigger" was the assassination of prominent Armenian journalist Hrant Dink in Istanbul (Jan. 19, 2006) by a young Turkish nationalist Ogun Samast, an alleged member of the Ergenekon secret network.

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Nevertheless, as a logical stopover for the talks, preliminary protocols (initialed on April 2, 2009) about establishing diplomatic relations and normalization, were signed Oct. 10, 2009. The signing process was difficult for both parties. The last-minute statement-checks threatened to ruin the efforts of the mediators: The parties were ready to go home empty-handed, as Armenian Foreign Minister, Edward Nalbandian, refused to accept certain items in the Turkish official statement. However, thanks to U.S. Secretary of State Hillary Clinton's flexible diplomacy and Russian Foreign Minister Sergey Lavrov's "friendly-message" ("Edward, agree upon a ceremony without statements. 19:35"), it became possible to prevent a diplomatic catastrophe. The protocols and the annex (i.e. road-map) were signed, but no one knows when they will be ratified and come into force.

Soon after Oct. 10 the clock began ticking for full-scale negotiations. Today is the perfect moment to show whose diplomacy is better manned by professionals--Armenian or Turkish. Of course, this is

not a zero-sum game, and the outcome should be in win-win logic, but much depends on the actual process which is now in its "legal debate" phase. In the meantime, the local political landscape is getting tense on both sides. Dashnaktsutyun, a traditional Armenian political party and a long-time ally of the incumbent president, is now "threatening" Sargsyan's Administration, saying that if Armenia's Parliament ratifies the protocols as is, the party "will struggle for the change of authorities" (Nov. 24, 2009). A nearly similar situation prevails in Turkey, in addition to recent developments in Turkish-Kurdish relations.

Pacta sunt servanda

Two recent statements by Armenian President Serzh Sargsyan pushed forward the start of the next round of the diplomatic game: the legal debate. Statements about the ongoing process around the Zurich Protocols, signed on Oct. 10, represented two different appr oaches to the Armenian-Turkish rapprochement process. At first, in a statement at the 12th convention of the ruling Republican Party of Armenia (Nov. 28), the President reminded attendees about the principle of "sensible timeframe" which was employed in the Protocols: "If Turkey protracts the process of ratification, Armenia will take without delay corresponding steps envisaged by international law". The second statement, with an additional explanation to the previous one, came out during the press-conference with his Latvian counterpart Valdis Zatlers (Dec. 10). Sargsyan later said that Armenia "…is ready to ratify and implement the Protocols … in accordance with our international obligations in a sensible timeframe…". In the meantime, as the President noted, he "instructed the corresponding state bodies to draft amendments for national legislation pertaining to the signing, ratification and abrogation of international agreements". Legally, these protocols are described as "international treaty", per Article 2.2 in Republic of Armenia's Law on International Treaties (2007).

As Armenian PM Tigran Sargsyan told Hurriyet Daily News & Economic Review (Dec. 18), "If Turkey comes up with preconditions, Armenia would be free to do so as well itself".

It's clear now that both parties are eager to make specific reservations while ratifying the Zurich Protocols, under Article 19 of Vienna Convention on the Law of Treaties (1969), which says that "a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation". A bold target for such action from Armenian side can be the controversial sub-commission on the historical dimension which the Armenian Parliament is eager to cancel. On the other hand, in a response to an open letter by the president of the International Association of Genocide Scholars, William Schabas (Oct. 13), Serzh Sargsyan wrote: "…it is not a (sub-) commission of historians. The purpose of that sub- commission is to give an opportunity to Armenian and Turkish peoples to find common grounds for mutual trust and dialogue… to the elimination of the consequences of the Genocide… and the fact of the Genocide itself can in no way become a subject of discussion…"

The Turkish side, hand-in-hand with Azerbaijan, is expected to make a special comment on the third paragraph of the Protocol on the Establishment of Diplomatic Relations, linking the phrase of "non intervention in internal affairs of other (i.e. third states--H.N.) states, territorial integrity and inviolability of frontiers" to her own understanding of "still unresolved legal issues of de-facto independent entity of Nagorno Karabakh."
Another hot potato is hidden in the fifth paragraph, the same Protocol, where a reference is given to "relevant treaties of international law" speaking about the mutual recognition of the existing borders.

We are now at the stage of procedural ratification of the Protocols by both parties. According to Turkish national legislation, PM Recep Tayyip Erdogan sent the documents to Parliament, and President Serzh Sargsyan, according to the Article 27 of the Rep. of Armenia (RA) Law on International Treaties (2007), appealed to the Constitutional Court to decide on the Constitutional validity of the obligations referred to in the Protocols. And here we see the challenge. Under the Article 29 of the RA Law on International Treaties, in case the Constitutional Court will come up with a legal conclusion (on Jan. 12, 2010) whether the Protocols contain any obligation incompatible with the Constitution. In this the Protocols will not be sent to the Parliament. Then the President can initiate a second round of negotiations with Turkey, bearing in mind the legal conclusion of the Court. The procedures of rejecting or declaring the international treaty null and void are described in Article 6 of the Constitution, and Articles 27-32 of the abovementioned Law.

Nagorno Karabakh Process
Legally, the most curious development is that Turkey has already been actively violating the Protocol on the Establishment of Diplomatic Relations which says that the parties "…reiterate their commitment to refrain from pursuing any policy incompatible with the spirit of good neighborly relations". Turkish high-ranking officials' statements on Nagorno Karabakh peace process are viewed in Yerevan and Stepanakert as failing to show any commitment. The most recent statement came from PM Erdogan in Washington, DC, in early December. However, as he put it the same day, there was no precondition behind the Protocols when signing them in Zurich: "When we signed the protocols with Armenia, there were no preconditions. However, in our Parliament, the adoption of these documents requires some conditions." (Regnum, Dec. 8)

By and large, experts, who have expressed their opinion about the process, can be divided into two camps, depending how they link/separate the Nagorno Karabakh peace talks to the Armenian-Turkish reconciliation process. In an interview to A1+ Armenian news agency (Nov. 23), Hamlet Harutyunyan, an MP from the ruling Republican party, said: "Of course, they are naturally interconnected. Azerbaijan and Turkey have the same foreign policy".

In early December, at a meeting in Athens about security-related issues in South Caucasus, Turkish Ambassador Unal Cevikoz, who is most likely to become the first-ever Ambassador to Yerevan, said

that Turkish MPs would make up their mind on how to vote on the Zurich Protocols depending also on the situation around the Karabakh conflict. When someone asked whether there was also any connection between Turkey's relations with Georgia with Georgia-Russian relations, Cevikoz said, "Our understanding is that these are two separate processes but they impact each other". Accordingly, nearly all analysts and commentators, writing about Armenia-Turkey diplomatic developments, started to count the number of meetings between Armenian and Azeri presidents starting September 2008, when Turkish President Gul visited Yerevan. "It will be the nth presidential meeting since Turkey and Armenia began reconciliatory talks" was the template sentence for most commentators. Citing another opinion, that of MP Metin Yilmaz of the ruling AK party (Nov. 25), who said it seemed strange that the Turkish foreign policy rested on the principle: "If Ilham Aliyev says everything is O.K, we will bring the Zurich Protocols on the agenda".

At the public level, we can see how Nagorno Karabakh negotiations turning into a specific phase, where war between Azerbaijan and Armenia-Nagorno Karapakh seems a natural next-step after politics, to paraphrase Clausewitz. Shortly before the meeting in Munich, Azerbaijan's Aliyev said his country was well-prepared and ready to use military force against Armenia if negotiations failed to produce concrete results. The unprecedented military rhetoric of Aliyev II was assessed by the co-chair states as "negative". To ease tensions, the parties decided to adopt a joint statement at the OSCE Ministerial Council in Athens to continue negotiations. But, to my mind, despite all efforts, the Moscow Declaration and the era of Russian-led mediation has been neglected once and for all since the parties could not follow their commitment to refrain from military rhetoric.

In short, both processes are now a bit comatose. Both have arrived at the point where neither party is ready to do his homework, and therefore arrive to a compromise solution. A win-win strategy is an absolute must and a non-alternative to secure a solution in a long run. On the other hand, the paradox appears: i.e. it is impossible to imagine such a level of legitimacy of the authorities in Armenia and Azerbaijan, so that they could afford, respectively, to give any territory or to recognize the independence of Nagorno Karabakh. On the Turkish side the process of ratification of the signed documents seems at a standoff. It was a courageous step to sign the two protocols, but the so-called political will is still not there for the successful outcome of the "football diplomacy".

And the natural deadline for the kick-off on the Turkish side is in mid-March.

Pacta sunt servanda (Latin for "agreements must be kept"), is a brocard, a basic principle of civil law and of international law.