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THE TREATY OF SEVRES AS THE LEGAL BASIS FOR THE WESTERN ARMENIA'S TERRITORIAL CLAIMS TO TURKEY[***]

Problem statement. History of the Armenian statehood has more than a few thousands of years and it may even be regarded as the oldest in the history of human civilization[1]. Armenian statehood took different forms: from Azzi-Hayasa confederation (1500 – 1290 BC) to the Armenian Kingdom of Cilicia, also known as the Cilician Armenia, Lesser Armenia, or New Armenia[2] (1198–1375).

Sources vary on when Armenian statehood was lost. Some scientists suggest that its loss may be dated to 1375 when the Armenian Kingdom of Cilicia was ceased to exist[3]. Others state it was lost in 1045 with the fall of Bagratid Armenia, because Cilician Armenia was outside of the traditional Armenian homeland, while Bagratid Armenia was the last major Armenian state in the Armenian Highlands[4]. Nevertheless, since the loss of Armenian statehood at that time, the First Armenian Republic (the Armenian National Council declared the independence of Armenia on 28 May 1918), officially known at the time of its existence as the Democratic Republic of Armenia, was the first modern Armenian state. It had a total land area of roughly 70,000 km², and a population of 1.3 million, or 174,000 km² – under the Treaty of Sevres – peace treaty concluded in 10th of August 1920 after World War I at Sevres, France, between the Ottoman Empire (Turkey), on the one hand, and the Allies – the UK, France, Italy, First Republic of Armenia (excluding Russia and the United States) on the other, the treaty, which liquidated the Ottoman Empire and virtually abolished Turkish sovereignty, followed in the main the decisions reached at San Remo[5].

At the same time, nowadays the Republic of Armenia, officially declared its independence on 21 September 1991, is a state in the South Caucasus region of Eurasia. Located on the Armenian Highlands, it is bordered by Turkey to the west, Georgia to the north, the de facto independent Republic of Artsakh and Azerbaijan to the east, Iran and Azerbaijan's exclave of Nakhchivan to the south and has a territorial area of 29,743 km². The latter does not correspond to the Armenian Revolutionary Federation (ARF or Dashnaktsutiun) idea of "United Armenia" which incorporates claims to significantly larger lands[6]. The Dashnaktsutiun Party, which has a major following within the diaspora, states as its goals: "The creation of a Free, Independent, and United Armenia. The borders of United Armenia shall include all territories designated as Armenia by the Treaty of Sevres as well as the regions of Artzakh (the Armenian name for Nagorno-Karabakh), Javakhk, and Nakhichevan"[7]. The party made it abundantly clear that historical justice will be achieved once ethnic Armenian repatriate to united Armenia, which in addition to its existing political boundaries would include Western Armenian territories (Eastern Turkey), Mountainous Karabagh and Nakhijevan (in Azerbaijan), and the Samtskhe-Javakheti region of the southern Georgia, bordering Armenia"[8].

As it was mentioned above, the ARF's claims on Western Armenia (Eastern Turkey) to Turkey are based on the Treaty of Sevres negotiated on the Peace Conference in Europe by the representatives of the Allied Powers gathered at the London Conference on 12 February and 10 April 1920 and finalized at the San Remo Conference between 18-26 April 1920[9]. The ratification of the Treaty of Sevres by the Republic of Western Armenia (eastern parts of Turkey that were part of the historical homeland of Armenians[10]) on June 24, 2016 has become a part of the appeal of its President Arménag Aprahamian to the United Nations for the membership, as well as for implementation of the Arbitral Award made by US president Woodrow Wilson on November 22, 1920 confirming the Republic of Western Armenia on the territory demarcated in the Arbitral Award[11]. To accomplish the goal of the ratification of the Treaty of Sevres on December 17, 2004, the National Council of the Armenians of Western Armenia declared its existence in Shushi and on 4 February 2011, the National Council became the Government of it[12]. On 16 Decem-

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[***] У статті висловлені особисті погляди авторів, які не завжди збігаються з поглядами редакції. Редакційна колегія запрошує до наукової дискусії на сторінках «Часопису» фахівців із міжнародного права з альтернативною точкою зору на цю проблематику

ber 2013, as a consequence of the National Council of Western Armenia and the Government of Western Armenia decision to constitute the Parliament of Western Armenia through democratic elections 64 members of parliament were formally elected by the Armenians of Western Armenia present on the voters' list[13]. December 16, 2013, the first President of the Republic of Western Armenia was officially elected by the members of the Parliament[14]. On February 23, 2014, a Presidential Decree stated that the Republic of Western Armenia is the Continuity State of the State of Armenia as recognized in 1920.

The aim of the article. As the Treaty of Sevres either has become a part of the platform for the Western Armenia to appeal for the membership to the United Nations or might, consequently, influence the scope of the territory of Turkey as a sovereign state, finally determined by the Treaty of Lausanne of 1923, the aim of this article is to establish whether there are historical and legal grounds for Western Armenia in its striving to become a member of the United Nations to rely on the Treaty of Sevres. For this, at one stake, it is essential to make the analysis of the historical circumstances in which the Treaty of Sevres – the Peace Treaty, negotiated by the Allied and Associated Powers on the one hand, and the Ottoman Empire – on the other, for more than a year, and finally signed by them, never came into force[15]. On the other hand, for the same reason, it is important to make a research on whether the multilateral treaty, which was signed by the "High Contracting Parties", but did not come into force, in accordance with its provisions, may still create legal obligations for its parties.

Analysis of recent researches and publications. The research made in this article is mostly based on the materials, prepared by the Armenian Genocide Reparations Study Group, chaired by Henry C. Theriault and completed of Alfred de Zayas, Jermaine O. McCalpin and Ara Papian in 2015. Notwithstanding the fact that their work was generally dedicated to the issue of reparations for Armenian genocide of 1915–1923, several parts of the report, prepared by them, directly address the questions of the validity of the Treaty of Sevres and the legal effect of the Treaty of Luasanne in respect of Armenia. The other "source of inspiration" for the preparation of the article was the Western Armenia's territorial claims against Turkey, filed to the United Nations on May 29, 2018, on the basis of either the Statement «On the Implementation of the Arbitral Award of 28th President of the United States of America Woodrow Wilson on November 22, 1920», adopted by the Government and the National Assembly (Parliament) of Western Armenia on May 29, 2018 at the 7th session of the National Assembly (Parliament) of Western Armenia of the first convocation, or ratification by the Western Armenia of the Treaty of Sevres. At the same time, the platform for the research on whether the multilateral treaty, which was signed by the "High Contracting Parties", but did not come into force, in accordance with its provisions, may still create legal obligations for its parties, formed the works of the most qualified publicists in the sphere of international treaty law as J. Castel, K. Holloway, G. Fitzmaurice, H. Lauterpacht, A. McNair, J. Moors, D. O'Connell, J.F. Triska, R. Slusser and H. Waldock, as well as provisions of the international conventions, establishing rules and principles highly recognized as being a representation of international custom (the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978). To confirm the changes in trends of modern international law for exceptional legal force of ratified treaties, the article contains the references to the practice of international tribunals (mostly, the Permanent Court of International Justice and International Court of Justice). In the analysis of the historical circumstances in which the Treaty of Sevres did not come into force the researches of A. Aleksanyan, Z. Bashahider, K. Barçın, S. Beyoğlu, B. Bülent, T. De Waal, G. Do Nascimento e Silva, H. Hanrapetutyun, A. Harutyunyan, P. Helmreich, J. Hurewitz, B. Hylton, A. Mandelstam, J. Myhill, L. Nazaryan, S. Power, M. Rolin-Jaequemyns, A. Satan and others were used.

The main part of the research. In the frames of the first part of the analysis, it should be outlined that the Treaty of Sevres – the Sevres Peace Agreement, has had the most negative associations in Turkish history. The Paris Peace Conference in which there was an attempt at establishing "the new world order" at the end of the First World War opened on 18 January 1919 and two separate Armenian delegations came to the conference. One of them was the National Armenian Delegation, which represented the Armenians who lived in the Ottoman State and other countries and was headed by Bogos Nubar Pasha. This delegation had been recognized by the Allied Powers officially. The other delegation was the one that represented the First Armenian Republic and was headed by Avetis Ahoranyan[16]. Apart from these two delegations, about forty independent Armenian delegations which came from different countries carried out lobbying activities at the Paris Peace Conference[17].

The subject that the Armenian delegations underlined at the Paris Peace Conference was that Armenians had supported and helped the Allied Powers during the war and, therefore, they had to benefit from the gains/spoils of the war, and this had to be a great Armenian state between the Mediterranean-the Black Sea and the Caspian Sea[18]. The Armenian Delegation requested from the Allied Powers six provinces from Anatolia in the official demands of the Armenian delegations in Paris and Bugos Nubar wanted Çukurova, which would make it possible to have an opening to the Mediterranean, to be added to the Great Armenia in addition to these. As a matter of fact the delegations submitted a memorandum containing their demands to the Paris Peace Conference on 26 February 1919. According to these, "seven Ottoman provinces in the east, which consisted of Van, Bitlis, Diyarbekir, Harput, Sivas, Erzurum and Trabzon, Marş, Kozan, Jabal-i Barakat, Adana and Antakya (Cilicia region), territories of the Republic of Armenia including Yerivan, Gumru and Kars for Great Armenia, and the taking of 19 billion Francs from the Turks as compensation (14,598,510,000 Francs for Turkish Armenians and 4,532,472,000 Francs for Russian Armenians) were demanded"[19].

These excessive demands against the Ottoman State, which had been defeated in the war, were far from the political, social and historical facts which were being supported by US President Wilson. British Prime Minister

Lloyd George found the Armenian demands "excessive". In spite of this, he proposed that an Armenia, whose borders would be drawn by the Allied Powers on 14 May 1919, be placed under mandate rule[20]. The Armenian government in Yerivan became very hopeful as a result of this and declared the Great Republic of Armenia on 28 May 1919[21]. However, placing Armenia under American Mandate was an option that had more weight[22].

The Ottoman State wanted to intervene in the process when the peace agreement was being prepared, but this was not accepted. Tevfik Pasha's government gave a memorandum to the representatives of the United Kingdom, France, USA and Italy in Istanbul on 12 February 1919 and emphasized that the Armenian population in Anatolia did not have a majority anywhere. The initiatives of Damat Ferit Pasha also failed to bring about any results. The Ottoman State was called officially to Paris on 30 May 1919 and Damat Ferit Pasha gave a speech to the council of 4 on 17 June 1919 and he gave a memorandum on 23 June 1919[23]. In the 11 article memorandum, it was stated that the Armenian gangs acted together with the armies of the Tsarist Russia caused the incidents experienced in Eastern Anatolia, some adjacent territory may be given to Armenia in the Caucasus, that Armenians had never been a majority in Adana and its vicinity, and that for the Armenians in Çukurova, it would be sufficient to exchange them or to make them subject to minority law[24].

Finally, the conditions of peace that were prepared for the Ottoman State were given to Grand Vizier Tevfik Pasha on 11 May 1920 and a period of one month was given for its acceptance. This became part of the Turkish history as the peace agreement with the heaviest conditions. After this time period started, the American Congress voted on Armenians becoming subjects of an American Mandate on 24 May 1920 and the American Congress rejected it. On 25 June 1920 Damat Ferit Pasha presented the counter-proposal of the Ottoman State. However, this was not accepted by the Allied Powers and the Ottoman State delegates signed the Peace Treaty in Sevres (which was a suburb of Paris) on 10 August 1920 as a result of the political and military threats. According to the Peace Treaty of Sevres, the Ottoman State recognized Armenia as an independent state and the delineation of the border in the provinces of Erzurum, Van, Trabzon and Bitlis would be done under the arbitrating role of U.S. president Wilson. Armenia having access to the sea and the demilitarization of the borders were also accepted[25].

Although the Treaty of Sevres was signed by the Ottoman delegates, it did not become a part of the national legislation of the empire as it did not overcome the procedural requirements necessary for it. According to the Revised Articles of the 1876 Ottoman Constitution of August 1909, the conclusion of Treaties in general is "among the sacred prerogatives of the Sultan" (art. 7)[26]. Only, the consent of Parliament is required for the conclusion of Treaties which concern peace, commerce, the abandonment or annexation of territory, or the fundamental or personal rights of Ottoman subjects, or which involve expenditure on the part of the State[27]. Moreover, the Turkish Grand National Assembly (TGNA) – not the direct successor government to the Ottoman government, nor yet the government of the Turkish Republic (which was established three months after the signing of the Lausanne Treaty in 1923), but represented the belligerent group led by Kemal Ataturk[28], passed a law on 7 June 1920 with which it denied the validity of all the agreements that the Istanbul government signed without the TGNA approval of the starting from 16 March 1920, when Istanbul was officially invaded and all such agreements that would be signed by it without the TGNA approval. At the same time, art. 433 of the Treaty of Sevres stated that it should be ratified (consented by the Parliament) and a first procès-verbal of the deposit of ratifications will be drawn up as soon as the Treaty has been ratified by Turkey on the one hand, and by three of the Principal Allied Powers on the other hand; from the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it[29]. Since the Treaty of Sevres was covered by the TGNA law of 7 June 1920 and it was not consented by the TGNA, it never entered into force. The Allies did not apply the necessary political and economic pressure on Turkey to ensure its implementation[30]. Such failure was attributable to the international political disarray following World War I, the rise of the Soviet Union, the withdrawal of the British military presence from Turkey[31], the isolationist policies of the United States[32], the demise of the Young Turk regime, and the rise of Kemalism in Turkey[33]. A new peace treaty eventually emerged between Kemalist Turkey and the Allies (Britain, France, Italy, Japan, Greece, and Romania) – the Treaty of Lausanne of July 24, 1923, which did not confirm the provisions in the Sevres Treaty for the recognition of a free Armenian state (Section VI, Articles 88-93), lost Western Armenia to Turkey and Eastern Armenia to a communist takeover (backed by Soviet Red Army units) in the next few years and incorporated into the Soviet Union as a Soviet Republic[34].

It is widely held that the Treaty of Lausanne[35] replaced the 1920 Treaty of Sevres[36]. However, this appears in part based on the fact that the Sevres Treaty was not implemented, while the later Lausanne Treaty established the subsequent political order in the relevant regions, especially Turkey. At the same time, the Armenian Genocide Reparations Study Group suggests that the Treaty of Sevres was and still is a legally valid document, a binding contract between its parties that reflected the positions of the parties and created the stipulated obligations[37], due to the following arguments.

Firstly, notwithstanding the fact that the Treaty of Sevres was not entered into force as it was prescribed by its art. 433, it was signed by "High Contracting Parties," which means they consented to be bound by it, whether or not it actually entered into force[38]. This conclusion may stem from the provisions either of the 1969 Vienna Convention on the Law of Treaties[39] (1969 Convention) or the 1978 Vienna Convention on Succession of States in Respect of Treaties[40]. One can argue the applicability of the 1969 Convention to the Sevres Treaty which was concluded prior it entered into force. However, notwithstanding the fact that art. 4 of the 1969 Convention stipulates that it has no retroactive effect, the rules of the Convention that reflect customary international law do apply to treaties concluded before the entry into force of the Convention[41].

On the other hand, most contemporary treaties do provide that they will enter into force only upon ratification by the states that are to become parties to the agreement[42]. However, there is growing agreement that general international law imposes on the signatories to an unratified treaty the obligation at least not to defeat the object and purpose[43] of that treaty prior to its entry into force[44]. Decisional law, state practice, and the Vienna Convention on the Law of Treaties all support this proposition[45]. Moreover, coming at the conclusion of long and complex negotiations, signature of an instrument – even when made subject to subsequent confirmation or ratification – is more than a method of authenticating a text and a signatory should not be permitted to treat his signature as a meaningless formality. In signing a treaty it exercises an important influence on some of the procedural clauses of the treaty (the right of accession, the admissibility of reservations, the conditions of entry into force) and its substantive provisions as well[46]. Often a State signs or ratifies a convention because the signature of another State or States is regarded by it, in case of doubt, as a sufficient inducement for its own signature. But if these other States are subsequently at liberty to treat their signature as implying no manner of obligation whatsoever, the concessions made by other signatories will have been made in vain seeing that the consideration which they could legitimately expect will not be forthcoming[47]. All these considerations prompt the conclusion that signature, although not implying an obligation of ratification, implies the duty to take some action showing a deliberate acknowledgement of the principle that eventual ratification is the natural outcome and purpose of the signature[48].

Finally, the fact that the Permanent Court of International Justice (PCIJ) and, furthermore, International Court of Justice (ICJ) used unratified treaties as a source of adjudication of cases, the trend for exceptional legal force of ratified treaties that had existed in the international law began to change[49]. For instance, in the *Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*[50], the ICJ was concerned, among other things, with the effect to be given to certain objections to other states' reservations made by signatories and non-signatories to an unratified multilateral convention. In that context the court stated: "Without going into the question of the legal effect of signing an international convention, which necessarily varies in individual cases, the Court considers that signature constitutes a first step to participation in the Convention…"[51]. Consequently, objections made by a state which had not signed the Convention to reservations made by other states were held by the Court to be without legal effect[52]. The *Reservations case*, thus, recognizes signature as conferring certain legal rights on a signatory. The purpose of the conferral of such rights would appear to be to enable the signatory to continue to participate in the ongoing process whereby the final balance of rights and obligations of all the parties is struck. In this sense the court is providing legal protection for the process of agreement leading to eventual ratification and entry into force[53].

The decision of an international tribunal which clearly rests on the rule imposing an obligation not to defeat the object or purpose of a treaty between signature and entry into force is *Megalidis v. Turkey*, decided by a mixed Greco-Turkish Arbitral Tribunal in 1928[54]. In that case, a Greek claimant sought the return of certain items taken forcibly by Turkish authorities from a strong-box which he rented in the Credit Lyonnais in Smyrna. The seizure occurred on August 14, 1923. The claimant relied on various provisions of the Treaty of Lausanne[55], which was signed on July 24, 1923, but which did not enter into force until August 6, 1924. Article 65 of the Treaty provided: "Property, rights and interests which still exist and can be identified in territories remaining Turkish at the date of the coming into force of the present Treaty, and which belong to persons who on the 29th October, 1914, were Allied nationals, shall be immediately restored to the owners in their existing state"[56]. To recognize the forced expropriation of the property of an allied national by Turkish authorities subsequent to the signature of the Treaty but prior to its entry into force would, of course, severely limit the scope and effectiveness of Article 65. In holding the Turkish seizure to be a violation of international law, the tribunal stated: "[A]lready with the signature of a Treaty and before its entry into force there exists for the parties an obligation to do nothing which may be prejudicial to the Treaty by diminishing the significance of its provisions."[57] The tribunal supported its imposition of the obligation by reference to the fact that "this principle … has received a certain number of applications in various treaties"[58].

There are several international decisions that appear to accept the existence of a legal obligation not to defeat the object or purpose of a signed but unratified treaty, but which do so only *arguendo* or *in dicta*[59]. In *the Case concerning Certain German Interests in Polish Upper Silesia*[60], decided by the PCIJ in 1926, the Commission took the position that an independent obligation not to frustrate the objects of a proposed treaty is attached to a state when it takes part in the negotiations or in the drawing up or adoption of the text; and a fortiori when it ratifies, accedes to, accepts or approves the treaty[61]. In *Ignacio Torres v. The United States*, decided by Francis Lieber as umpire in 1871[62], the umpire rejected the damage claim of the injured party, but stated *obiter dictum:* "How is it, however, when a treaty of peace has been signed, but has not yet been ratified? Many of the best authorities hold that peace begins *de jure* when it is signed, and not from the day it is ratified by the two supreme belligerent powers or the authorities which by the law of the land have alone the right to ratify. This, however, is far from being unconditional. If a peace were signed with a moral certainty of its ratification and one of the belligerents were, after this, making grants of land in a province which is to be ceded, before the final ratification, it would certainly be considered by every honest jurist a fraudulent and invalid transaction. But it is well understood that a peace is not a complete peace until ratified; that, as a matter of course, the ratifying authority has the power of refusing unless, for that time, it has given up this power beforehand…" [63].

Secondly, ones may state that the Lausanne Conference can be considered as a process of termination, amendment or modification of the Treaty of Sevres[64]. However, it cannot be considered as such for the following reasons.

Article 54 of the 1969 Convention states that the termination of a treaty or the withdrawal of a party from a treaty may take place only by consent of all parties[65]. Consequently, as no such consent has been given by Armenia,

Turkey could not unilaterally free itself from the obligations imposed by the Treaty of Sevres, and, therefore, the Lausanne Treaty did not represent it[66].

According to art. 40 of the 1969 Convention, any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States[67]. However, no official notification for amendment was communicated to each state party of the treaty[68]. Moreover, as to art. 40.3 of the 1969 Convention, every state entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended[69]. In fact, the Treaty of Lausanne was concluded by only 7 signatories (the British Empire, France, Greece, Italy, Japan, Romania, and the Government of the Grand National Assembly of Turkey) of the 13 who signed the Treaty of Sevres (Armenia, Belgium, the British Empire (for the British Empire, there were separate signatories for the United Kingdom of Great Britain and Ireland, for the Dominion of Canada, for the Commonwealth of Australia, for the Dominion of New Zealand, for the Union of South Africa and for India) Czechoslovakia, France, Greece, Italy, Japan, Poland, Portugal, Romania, the Serb-Croat-Slovene State, and Turkey)[70]. Thus, the Treaty of Lausanne neither could legally have amended the Treaty of Sevres, nor be regarded as successive to Treaty of Sevres agreement, because it was not a treaty of all the parties of the Sevres Treaty.

What is more, art. 34 of the 1969 Convention clearly provides that a treaty does not create either obligations or rights for a third state without its consent[71]. Then, for the state parties to the Treaty of Sevres who were not signatories to the Lausanne Treaty, including Armenia, the Treaty of Lausanne had and has no legal effect and did not create either obligations or rights[72]. Most specifically, it could not represent Armenian acquiescence to new borders with Turkey[73]. The lack of legal relevance of the Lausanne Treaty for Armenia was highlighted by Avetis Aharonian, President of the Sevres Delegation of the Republic of Armenia on behalf of the Republic of Armenia, in an August 8, 1923 letter addressed to the Foreign Ministers of the Allied Powers: "The delegation which signed the Sevres Treaty for Armenia reserves and insists upon all the rights which the powers, during and since the war, solemnly recognized and which were duly embodied in the Sevres Treaty and reincorporated and reaffirmed by decisions of subsequent conferences"[74].

According to art. 30.2 of the 1969 Convention, when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier treaty, the provisions of that other treaty prevail. However, the Treaty of Lausanne may not be regarded as the treaty compatible with the Treaty of Sevres for the following reasons. Firstly, there is a difference in the negotiating and signatory parties to the two treaties already discussed. Secondly, the scope, objectives, and context of the two treaties were quite different[75]. The Treaty of Sevres was signed by "High Contracting Parties," which are states that agree to be bound by the provisions of a treaty whether or not the treaty enters into force; the Lausanne Treaty was not signed by "contracting states"[76] and thus had no status until ratified. Thirdly, the Treaty of Sevres was concluded between the international alliance of one side in World War ("Allied and Associated Powers") and Ottoman government and was meant to end the part of World War I to establish peace[77]. The Lausanne Treaty process, on the other hand, was meant to address the Greek-Turkish conflict of 1919–1922[78]; regarding the objective of the Lausanne process, its title, "The Lausanne Conference on Near East Affairs, 1922–1923,"[79] highlighted its narrower scope, as did Robert Haab, President of the Swiss Confederation, in his official opening speech, underscoring the object and purpose of the conference "to put an end to the conflict in the Near East"[80], namely the "Greco-Turkish War."[81]

Notwithstanding the fact that Armenia was not party to the Treaty of Lausanne[82], its Article 16 indirectly reconfirms the title and rights of the Republic of Armenia by virtue of the renunciation of the title and rights of Turkey over the boundaries of Armenia set up through the arbitration of U.S. President Wilson pursuant to the Sevres Treaty[83], typically referred to as "Wilsonian Armenia", as follows: "Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned…"[84]

The Lausanne Treaty fixed the Turkish border with Bulgaria[85], Greece[86], Syria[87], and Iraq[88], but did not specify or refer to any fixing of the Turkish-Armenian border. Thus, the boundaries of Armenia with Turkey were remained fixed by the Wilson's Award, signed by the President of the United States on November 22, 1920, on the basis of the Final report, entitled, "Decision of the President of the United States of America respecting the Frontier between Turkey and Armenia, Access for Armenia to the Sea, and the Demilitarization of Turkish Territory Adjacent to the Armenian Frontier"[89]. The territory allocated to Armenia by the arbitration was 40,000 square miles (103,599 square kilometers), which was less than half of the area (108,000 square miles, or 279,718 square kilometers) that for centuries in Ottoman, as well as in non-Ottoman, sources and maps had typically been identified as Ermenistan ("Armenia"),[90] and that since 1878[91]was the holder of the legal title "Armenia" or "the Six Armenian Vilayets (Provinces)," as defined in Article 24 of the Mudros Armistice[92]. The text of the arbitration decision was cabled to Ambassador Wallace in Paris on November 24, 1920. Wallace responded on December 7, 1920, that he had delivered the documents to the Secretary General of the Paris Peace Conference for submission to the Allied Supreme Council that morning[93]. The boundary between Armenia and Turkey was settled conclusively, and the Turkish-Armenian international boundary was subsequently delimited[94].

Conclusions. Undoubtedly, there are either historical or legal grounds for Western Armenia to rely on the Treaty of Sevres when filling territorial claims to Turkey or attempting to become a member of the United Nations. The Treaty of Sevres – the peace treaty, negotiated and signed by "the High Contracting Parties", clearly shows their intention and consent to be bound by its provisions. It is evident that its ratification by Ottoman Empire failed due to the

fact that the legislative power in the state at that time was seized by the TGNA – not the direct successor government to the Ottoman government, nor yet the government of the Turkish Republic (which was established three months after the signing of the Lausanne Treaty in 1923), but rather the belligerent group led by Kemal Ataturk.

Notwithstanding the fact that the Treaty of Sevres is not in force, it created the legal obligations for its parties stemming from the signatures being placed under its provisions. The practice of international tribunals confirms that with the signature of a treaty and before its entry into force there exists an obligation for the parties to do nothing which may be prejudicial to the treaty by diminishing the significance of its provisions. Relying on the same practice, it may be stated that Turkey, having signed the Treaty of Sevres, was under the duty to show a deliberate acknowledgement of the principle that the natural outcome is the eventual ratification of the Treaty. Moreover, it was obliged not to act in contravention to the object and purpose of the Treaty of Serves which is, as to its Preamble, "a firm, just and durable Peace". Then, to follow them, Turkey was under the obligation to ensure the ratification of the Treaty, as its coming into force was conditioned on Turkey's ratification of it under art. 433. However, instead of it, on 7 June 1920 the TGNA passes a law denying the validity of all the agreements that the Istanbul government signed without the TGNA approval before and after 16 March 1920, consequently, having covered the Treaty of Sevres' signing as well, which may be regarded as the action in breach of the object and purpose of the Treaty of Sevres.

Finally, the Treaty of Sevres cannot be considered terminated, amended or modified by the Lausanne Treaty of 1923. The reasons for this are either the difference in the negotiating and signatory parties or the scope, objectives, and context to the two treaties. Consequently, the Treaty of Lausanne does not create any legal obligations for Armenia and the provisions of the Treaty of Sevres governing Armenian issues remain binding for the parties of the latter, including Armenia. Thus, as to art. 89 of the Treaty of Sevres, the boundaries of Armenia with Turkey remained fixed by the Wilson's Award, signed by the President of the United States on November 22, 1920.

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Резюме

Поліванова О.М., Абраамян А.А. **Севрський договір як правова основа територіальних претензій Західної Вірменії до Туреччини.**

Західна Вірменія (нині – території на сході Туреччини) після ратифікації нею Севрського договору у травні 2018 р. порушила питання щодо її членства в ООН. Незважаючи на той факт, що ратифікація була здійснена Народними Зборами (Парламентом), обраними прямим електронним голосуванням в Інтернеті, правовою основою такого членства визначено статті Севрського мирного договору 1920 р. щодо Вірменії, рішення Паризької конференції 1920 р., а також Арбітражне рішення про вірмено-турецький кордон, винесене 28-м президентом США Вудро Вілсоном 22 листопада 1920 року. Відштовхуючись від вищевикладеного, дана стаття містить аналіз того, чи, виходячи з Севрського договору, існують історичні та правові підстави для набуття Західною Вірменією членства в ООН. Для цього автори досліджують історичні обставини, в яких Севрський договір – мирний договір між союзними і асоційованими державами, з одного боку, та Османською імперією – з іншого, підписаний ними, не набув чинності. У статті, з посиланням на Севрський договір, аналізуються юридичні зобов'язання сторін багатостороннього договору, який був підписаний «Високими Договірними Сторонами», але не набрав чинності відповідно до його положень.

Автори доходять висновку, що мають місце як історичні, так і правові підстави для Західної Вірменії посилатися саме на Севрський договір при порушенні питання щодо територіальних претензій до Туреччини і обґрунтуванні намірів набуття членства в ООН.

У статті зроблено спробу довести, що, попри факт невступу в силу Севрського договору, він все ж створює юридичні зобов'язання для його сторін. Севрський договір – мирний договір, положення якого були обговорені й підписані «Високими договірними сторонами», що чітко показує їх намір і згоду бути зв'язаними його положеннями. Практика міжнародних трибуналів підтверджує, що з моменту підписання договору і до набрання ним чинності сторони зобов'язані не робити нічого, що може завдати шкоди договору, применшуючи значення його положень. Спираючись на ту саму практику, можна констатувати, що Туреччина, підписавши Севрський договір, була зобов'язана свідомо визнати принцип, за яким природним наслідком підписання договору є його ратифікація. Більше того, вона була зобов'язана не діяти всупереч меті та цілям Севрського договору, котрими, відповідно до його преамбули, є «твердий, справедливий і міцний мир». Тоді, слідуючи ним, Туреччина була зобов'язана забезпечити ратифікацію Договору, оскільки набрання ним чинності було обумовлене його ратифікацією Туреччиною згідно зі ст. 433. Однак замість цього 7 червня 1920 р. Великі народні збори Туреччини приймають закон, який заперечує чинність усіх договорів, підписаних урядом Стамбулу без схвалення зборами до і після 16 березня 1920 року. Оскільки Севрський мирний договір підпав під дію цього закону, саме прийняття Великими народними зборами Туреччини такого акту можна розглядати як дію, направлену на порушення мети і цілей Договору.

Ключові слова: державність Вірменії, Перша Вірменська Республіка, Західна Вірменія, Севрський договір, нератифікований договір, Лозаннський договір.

Резюме

Поливанова Е.Н., Абраамян А.А. **Севрский договор как правовая основа территориальных претензий Западной Армении к Турции.**

Статья содержит анализ того, существуют ли, исходя из Севрского договора, исторические и правовые основания для получения Западной Арменией членства в ООН. Для этого автор исследует исторические обстоятельства, в которых Севрский договор – мирный договор между союзными и ассоциированными государствами, с одной стороны, и Османской империей – с другой, подписанный ими, не вступил в силу. В статье, со ссылкой на Севрский договор, анализируются юридические обязательства сторон многостороннего договора, который был подписан «Высокими Договаривающимися Сторонами», но не вступил в силу в соответствии с его положениями.

Ключевые слова: государственность Армении, Первая Армянская Республика, Западная Армения, Севрский договор, нератифицированный договор, Лозаннский договор.

Summary

Olena Polivanova, Anna Abraamian. **The Treaty of Sevres as the legal basis for the Western Armenia's territorial claims to Turkey.**

This article contains the analysis on whether there are historical and legal grounds for Western Armenia to become a member of the United Nations relying on the Treaty of Sevres. For this, the author makes the research on historical circumstances in which the Treaty of Sevres – the Peace Treaty, negotiated by the Allied and Associated Powers on the one hand, and the Ottoman Empire – on the other, finally signed by them, never came into force. For the same reason, the article, referring to the Treaty of Sevres, provides arguments in respect of the legal obligations of the parties to the multilateral treaty, which was signed by the "High Contracting Parties", but did not come into force in accordance with its provisions.

Key words: Armenian statehood, First Armenian Republic, Western Armenia, the Treaty of Sevres, unratified treaty, the Treaty of Lausanne.