



THE ARMENIAN CENTER FOR NATIONAL AND INTERNATIONAL STUDIES

**ADDRESSING TURKEY
AND ITS BLOCKADE OF ARMENIA:
THE DOUBLE-EDGED SWORD OF THE TREATIES
OF KARS AND MOSCOW**

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The Republic of Armenia, since its declaration of independence in September 1991, has integrated into its foreign policy the desire to normalize relations with all neighbors, including the Republic of Turkey. Unfortunately, all of Armenia's good-faith initiatives to establish neighborly relations with Turkey have been met with that country's denial, delaying tactics, and outright refusal. Using the conflict in Nagorno-Karabagh and an unsatisfied demand that Armenia officially waive all claims arising from the 1915 genocide as pretexts for its conduct, Turkey has refused to enter into a diplomatic relationship with Armenia. Turkey has even gone so far as to participate in Azerbaijan's campaign against Nagorno-Karabagh by helping it with military advisers and supplies and a total air, rail, and road blockade of Armenia—with no exceptions made even for shipments of humanitarian assistance.

It has become clear during the first three years of Armenia's independence that no real accommodation can result between Armenia and Turkey without a comprehensive discussion of the thorny issues inherited from the past. The 1921 Treaties of Moscow and Kars, which for the Armenian people were coerced compacts of national humiliation, serve as a possible beginning point for a review of Turkish-Armenian relations and for a redefinition of their mutual engagements into the future. Basing itself on relevant principles of international law and Turkey's track record in the modern period, this brief paper addresses one necessary and long-overdue legal act Armenia must take in the national interest to begin the process of reassessing the past and giving contemporary resolution to the issues arising from it. Invalidating the Treaties of Moscow and Kars, in addition to being legally founded and morally necessary, might well have the strategic consequence of compelling Turkey to the negotiating table and thus shortening the road to normalization.

Background

In 1921, after the sovietization of the independent Republic of Armenia, the government of the Russian Socialist Federal Soviet Republic entered into two separate agreements with the government of Nationalist Turkey. These treaties of “friendship and fraternity” provided the foundation for bilateral relations, set boundaries, and made material provisions for unimpeded communications and free movement between the two sides. In particular, by the Treaty of Moscow of March 16, both governments agreed, inter alia, that they would ensure uninterrupted communication between their countries by “railway, telegraph, and other means . . . as well as secure the free movement of persons and goods between the two countries, without any delays.” This term, Article IX in the Moscow accord, was repeated as Article 17 of the related Treaty of Kars, which was signed on October 13 by the two governments and representatives of the recently-created Soviet Socialist Republics of Armenia, Azerbaijan, and Georgia.

Recommendation

The Republic of Armenia should annul the Treaties of Moscow and Kars, to the extent that they may be considered to apply to the new independent state, on the bases that Turkey, as an obligor under the agreements, has materially breached relevant provisions thereof, that the demise of the U.S.S.R. and the creation of the Republic of Armenia have resulted in a fundamental change in circumstances, and that independent Armenia’s Soviet predecessor had been coerced into signing the Treaty of Kars.

Analysis

The devastating effects of the Turkish and Azerbaijani blockades of Armenia, currently into their fifth year, deepen during winter. That season brings to high pitch the country’s humanitarian, economic, and political problems. With Azerbaijan, the roots and resolution of the blockade revolve around the same axis—the Nagorno-Karabagh war in the context of the dissolution of the Soviet Union. With Turkey, however, Armenia’s problems and options for countervailing action implicate the added dimension of legal redemption.

Specifically, it is herein suggested that formal notice be delivered to the signatories of the Treaties of Moscow and Kars that to the degree that the Republic of Armenia may have arguably been bound by those treaties, such binds have been shattered. National adherence to and international recognition of these treaties are unwarranted in light of material breaches of those agreements and actions illustrating Turkey’s intent to cause severe destruction in Armenia.

There are several legal bases on which Armenia can rely in demonstrating the invalidity of the Treaties of Moscow and Kars. First, Article 62 of the Vienna Convention on the Law of Treaties contemplates revolutionary new situations such as the dramatic alterations wrought by the dissolution of the Soviet Union when it provides that a fundamental change of the circumstances prevailing when a treaty was concluded is a ground for its termination or suspension, even if it is

otherwise valid. Applicable treaty law is clear that the sovereignty restored to the countries formerly within the Soviet Union and the behavior of Turkey toward Armenia in particular constitute “fundamental changes in circumstances” which permit the termination of the treaties. This binding precept of international law, known as *rebus sic stantibus*, is supported by the principle that, under the Vienna Convention on Succession of States and other applicable sources of law, successor states enjoy the freedom to decide for themselves which of their “inherited” treaties should be continued and confirmed.¹

Second, Article 51 of the Vienna Convention on the Law of Treaties, providing that a treaty is invalid when agreement has been reached by coercion, certainly contemplates the conditions of compulsion and threats of force which were employed against Soviet Armenia at the time of the signing of the treaties, and therefore constitutes a legal foundation to void that coercion. Because Armenia, as a Soviet state, was acting in fact and in essence without sovereign status, and its plenipotentiary was excluded from the substantive portions of the negotiations leading to the conclusion of the treaties, a sound argument can issue that the Armenian S.S.R. did not enter into the treaty arrangement—even if it had the capacity to do so—in an environment free of force and coercion, and its representative did not affix his signature at Kars of his own volition.

The third, direct basis for terminating operation of the treaties as they may relate to Armenia considers the activities of the parties in their execution of obligations or, conversely, their dereliction of duties arising therefrom. One party’s treaty breach, when material, entitles the other(s) to deem the treaty as either suspended or terminated. Article 60 of the Vienna Convention on the Law of Treaties holds that material breach of a multilateral treaty allows “the other parties . . . to suspend the operation of the treaty . . . in the relations between themselves and the defaulting State. . . .” In this connection, the fraudulent conduct of certain of Armenia’s neighbors and their failure to live up to their undertaking in the treaties to guarantee “uninterrupted communication among the countries” serve only to underscore the inapplicability of those documents. Turkey, Azerbaijan, and Georgia, to varying degrees of culpability, are in breach of these provisions. Under international law, including the Vienna Convention, Armenia as the aggrieved party may even go beyond the normal remedies of suspension or termination and opt to invalidate the treaties, because of Turkey’s and Azerbaijan’s continuing blockade of Armenia and their refusal to open their borders, territory and airspace for the transport of passengers, fuel, staples of life, and humanitarian shipments. There can be no dispute about the material nature of communications routes through Turkey, Azerbaijan, and Georgia to land-locked Armenia. There is also no question that the treaties’ guarantees of “free movement of persons and goods . . . without any delays” have been met with open violation on the part of Turkey and Azerbaijan and frequent disregard in the case of Georgia.

Turkey’s continued insistence that the Treaties of Moscow and Kars be reaffirmed and its manipulation of new border agreements with Azerbaijan belie the Turkish government’s own disavowal of the validity of those treaties. Yet, Turkey clings to them because Armenian, Russian, and even some Georgian rights substantially increase under the CSCE and post-Soviet legal frameworks which would apply in the treaties’ absence. Assuming, *arguendo*, the validity of the accords, Turkey is being allowed to enjoy their benefits and advantages but is not being held to the obligations they

1. See, e.g., Maloney, *Note: Succession of States in Respect of Treaties: The Vienna Convention of 1978*, 19 *Virginia Journal Int. Law* 885, 911-912

require. Namely, Turkey has initiated relations with Azerbaijan which supersede the treaties at issue and which are directly adverse to Armenian, Russian, Georgian, and Iranian interests, for example the February 1994 Compact of Friendship and Cooperation. In order to counteract Turkey's crippling blockade of Armenia and to safeguard future generations from further hardship, therefore, now is the time to put Turkey on notice that those treaties are of no effect.

Perspective

Armenia is not going to break the Turkish blockade by force of arms. That does not mean, however, that the Armenian state is powerless: the sword of the Treaties of Moscow and Kars which cut away so much of Armenia can and should be used as a shield against the unlawful, punitive, and aggressive blockades Turkey and Azerbaijan are imposing against the Republic.² Similar—and stronger—legal, political, and economic vehicles exist to defend legitimate Armenian interests, and one of the prime purposes of the Center will be to analyze and advocate use of such vehicles at home, in foreign capitals, and at the United Nations and other international organizations in the nation's defense and for its development. Today, as nature's law steadily presses Armenia toward another winter, it does have the opportunity to overcome Turkey's blockade and promote the national interest by eradicating once and for all the legacy forced on the Armenian people through the Treaties of Moscow and Kars.

Perhaps the most compelling advantage to spring from this measure would be the encouragement it would bring to bear on Turkey for it to embark on a fundamental reassessment of its past and present relations with Armenia. In the end, the recommended action will come to constitute a key factor in triggering the process of dialogue, discourse, and ultimate normalization between the two countries.



2. Some have argued that these treaties are necessary to define and defend Armenia's current frontiers, but such arguments ignore the significance of bilateral agreements as well as the protection afforded by United Nations and CSCE (Conference on Security and Cooperation in Europe) membership.