

# Review of Legal Issues between Armenia and Turkey

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*During its decade long history, ICHD has cultivated a culture of inclusive policy making process, has developed and introduced innovative instruments effective in the regional, national and local policy environment.*

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## **Economic Policy Research Foundation of Turkey (TEPAV)**

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*The Economic Policy Research Foundation of Turkey (TEPAV) is a non-partisan, non-profit think tank based in Ankara, Turkey. It was founded in 2004 by a group of businessmen, bureaucrats and academics who believe in the power of knowledge and ideas in shaping Turkey's future.*

*Aiming to contribute to public policy design, TEPAV seeks to enrich the knowledge content in Turkey's discussions. What sets TEPAV apart however, is its active involvement in economic and political development. TEPAV carries out projects, which actively contribute to economic development and bring together key policy and opinion makers to tackle the problems of the day. TEPAV sticks to academic ethical principles and quality in all activities. TEPAV has three fields of program focus: Economics, Governance, and Foreign Policy.*

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## Executive Summary

The absence of diplomatic relations deprived both countries of reciprocal political representation and led to the lack of a bilateral legal framework for the regulation of relations. A diplomatic representative is preeminently a peacemaker. The absence of official diplomatic relations renders impossible the maintenance of a vital channel of communication between the two countries.

Yet, the legal issues between Turkey and Armenia are regulated by public international law. The recognition of the Republic of Armenia by Turkey on 16 December 1991 was a momentous decision: it indicated an intention and led to further legal implications. Despite the lack of diplomatic relations, direct state to state dialogue has existed between Turkey and Armenia since the beginning of the 90's. The dialogue involved not only diplomats themselves, but also statesmen, politicians and border authorities. There is furthermore a diplomatic communication channel: the Turkish and Armenian embassies in Tbilisi are communicating through the letter exchange.

International conventions and structures can serve as a basis for and provide with a pragmatic tool in resolving the legal issues that have emerged between the two nations. However, the need for rationalism between them is the imperative for success. Seeking this goal, the two countries should abstain from blocking each other's initiatives in international structures and, moreover, lift those impediments that are currently in place.

The psychological dimension of the lack of diplomatic relations is very essential. Problems encountered by Armenian nationals in Turkey and by Turkish nationals in Armenia are in most cases not a direct consequence of the absence of diplomatic relations. The consular section of the Turkish embassy in Tbilisi is dealing with the inquiries originating both from Turkish and Armenian citizens. The lack of knowledge about legal procedures on both sides causes serious problems, which needs an in-depth review and practical remedies.

The enhancement of cooperation in the field of education and research between Turkey and Armenia should be seen as a long term investment that will help improve mutual awareness and understanding between Armenian and Turkish societies. The foundation already exists. In overcoming the obstacles brought by the absence of diplomatic relations, some universities have already signed memoranda of understanding. The establishment of institutional mechanism will make the cooperation in the field of education more sustainable.

## Introduction

The proximity factor between Turkey and Armenia has been at work despite the closed border separating the two countries. Turkish and Armenian societies do interact. The authors of this paper highly value people to people contacts as an indispensable tool in solving even the most sensitive problems. It should be noted that the business component is not within the scope of our research. The work is based on the findings of a joint investigation course carried by TEPAV and ICHD. We prioritized an analytical approach which attaches a special attention to data collection through desk based research and interviews.

This paper primarily aims at relocating Turkish-Armenian interactions within the sphere of law. Laws emerge as a result of interactions of people and nations. Their critical function is the protection of interests of the ordinary people, not the protection of the impersonal interests of states or governments. The absence of a bilateral legal framework deriving from the absence of diplomatic relations between Armenia and Turkey puts its repercussive stamp on the interstate communication. The absence of diplomatic relations has a psychological dimension for both Turkish and Armenian citizens. However to what extent does this constitute an impediment to daily interactions between Armenians and Turks and to the further development of people to people contacts? It is of paramount importance to determine precisely the legal impact of the absence of diplomatic relations. The acknowledgment of a communication between the two states, stemming from mutual obligations and responsibilities, leads to the undeniable fact that the neighborhood issues matter a great deal in this respect. This degree of pragmatism can be a source of inspiration for overcoming problems obstructing daily interactions and more ambitiously the design of policy frameworks for the further development of interactions between the peoples of Armenia and Turkey.

# **Part 1. The level of inter-state communication between Turkey and Armenia**

## **1.1. Unconditional recognition without official diplomatic relations**

Turkey reacted very smoothly to the dissolution of the Soviet Union. The Yilmaz government decided to take the risk of recognizing the independence of all former Soviet republics well before the United States and other western powers made the same decision. One of its last acts was to recognize Azerbaijan on 9 November 1991. The incoming Demirel government followed this policy, by recognizing all other post-Soviet states without any discrimination on 16 December. Between autumn 1991 and the spring 1992 it appeared likely that Turkey might be able to develop good relations with both Armenia and Azerbaijan.

The recognition of the Republic of Armenia by Turkey on 16 December 1991 was a meaningful decision: it demonstrates an intention and can lead to further legal implications. Recognition is a unilateral act of a State with international legal consequences. Contrary to Pakistan and Saudi Arabia, which are as of today the only countries that don't recognize Armenia, Turkey viewed the establishment of relations under international law to be in its own interests. Paradoxically after having granted de jure recognition to Armenia, Turkey didn't formalize its relations with Armenia by establishing diplomatic relations.

## **1.2. Communication between statesmen**

Despite the lack of diplomatic relations, direct state to state talks have existed between Turkey and Armenia since the beginning of the 90's. Along with diplomats, the dialogue involved statesmen, politicians and border authorities.

Specific occasions can prompt communication on a state level. Occasional exchanges (e.g. condolence messages) between the heads of State are regulated by diplomatic protocol. Even though there is no legal significance therein, before 2008 there were very few instances of Turkish ambassadors attending Armenia's National Day reception in third countries. More specifically, the earthquakes which hit successively both countries established temporary channels of communication. Turkey accepted aid sent by Armenia after the earthquakes which hit the Marmara region in 1999 and Van in October 2011.

### **1.2.1. *Early period of Armenia's independence***

Armenian president Levon Ter-Petrossian's presence at the meetings of heads of states of the Black Sea Economic Cooperation (BSEC) in Istanbul was taken as a further sign of his wish to improve relations with Turkey. Turkey sent a diplomatic mission to Yerevan at the end of August 1992 prospecting mutual benefits deriving from the establishment of state to state relations.

Turkey also made moves to relieve Armenia's chronic economic plight, which had been aggravated by an economic blockade on the part of Azerbaijan and the coincidental breakdown of transit routes across Georgia. In November 1992, Turkey agreed to allow the transit of 100,000 tons of wheat to Armenia through its territory and to supply electricity via a grid connecting the two countries. The latter provoked protests in Azerbaijan. On December 8, during a visit to Baku, deputy Prime-Minister Erdal Inonu was obliged to announce the cancellation of the electricity deal, though the possibility of maintaining economic ties was to be extended in case of the improvement of the situation in and around Nagorno-Karabakh. The meeting of 1993 between President Ter-Petrossian and the leader of the Turkish nationalist party, MHP, Mr. ArpaslanTürkeş aimed at laying the groundwork for future relations.

### **1.2.2. *Communication between the Ministries of Culture and Presidents***

The first openly publicized official contacts between Turkey and Armenia took place in the field of heritage protection. The Turkish government, through its Ministry of Culture, supervised the expert renovation of the Church of Holy Cross on Akhtamar Island in Van. The Ministry of Culture formally opened the church, recognized it as a museum, on March 29, 2007. The Armenian government, upon an official invitation from Turkey, sent a delegation headed by the Deputy Minister of Culture, Mr. Gagik Gyurjyan, himself a preservation expert, accompanied by several historians and members of the arts community.

Through the Armenian and Turkish press, Ministers of Culture of Turkey and Armenia have been supporting the normalization process of Turkish-Armenian relations with their constructive messages and calls for collaboration.

The president of the Republic of Turkey, Abdullah Gül, visited Armenia on 6 September 2008, upon the invitation of his Armenian counterpart, Serzh Sargsyan, to watch a World Cup qualifying match between Armenia and Turkey. This was the first visit ever made by a Turkish head of state to Armenia in the history of the two republics. President Sargsyan travelled to Bursa in October 2009 for the return

game. The involvement of the presidents of the two countries in the search for normalization of bilateral relations gave legitimacy to contacts conducted among civil society organizations.

### **1.3. The diplomatic channel: de facto communication**

It would be misleading to presume that the diplomatic channel is entirely closed between Turkey and Armenia. Turkey has de facto diplomatic relations with a country which it has recognized without hesitation. The absence of a protocol for the establishment of diplomatic relations prevents the opening of diplomatic missions and the accreditation of representatives. The official procedure requires the sending State to make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State: the person has to present his or her credentials to the head of the receiving State.

The Turkish embassy in Tbilisi has been in charge of conducting the communication with Yerevan since 2004, though this function was previously carried out by the Turkish embassy in Moscow. The Turkish and Armenian embassies in Tbilisi are communicating through the exchange of notes.<sup>1</sup> The consular section of the embassy is dealing with the inquiries originating from Armenia, those including both Turkish and Armenian citizens. Notably, the ambassador appointed to Tbilisi in 2004 was previously involved in negotiations with Armenia.

Nonetheless, in practical terms, the Turkish ambassador in Tbilisi doesn't have the possibility to travel to Yerevan and meet government representatives. He could only have done it in case of being officially accredited to Armenia.

The representative of Armenia at BSEC permanent secretariat in Istanbul has gained some visibility as the only Armenian diplomat in Turkey. Although his mandate doesn't allow him to handle bilateral Armenian-Turkish issues, he is often perceived by the civil society organizations as an influential contact person.

However, this de facto communication channel between the States doesn't allow having a representation. The absence of official diplomatic relations deprives both Turkish and Armenian states from a vital channel of communication which could have been of utmost importance in improving their relationship.

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<sup>1</sup> Interview conducted on 12 July 2012 with Amb. Ertan Tezgör who served as the Turkish ambassador to Tbilisi between November 2004-October 2009.

## **Part 2. The absence of a legal bilateral framework between Turkey and Armenia**

**I**n the absence of diplomatic relations Turkey and Armenia could not negotiate the traditional agreements of importance for the regulation of interactions, the opening of dialogue and cooperation channels. The first agreements signed after the establishment of diplomatic relations is air and road transportation agreement, customs agreement, than follow commercial agreements, among others the agreement to prevent double taxation. The absence of the legal bilateral framework can be a major source of constraints for the two neighboring countries, whose peoples have been interacting despite a closed border.

The Turkish-Armenian border is not a ceasefire line and is regulated by a set of agreements signed between Turkey and the Union of Soviet Socialist Republics (USSR), which could form the basis for the dialogue between border authorities from both sides. The official cross-border contacts and practical cooperation has never stopped. The absence of bilateral diplomatic relations can't dismiss mutual obligations and responsibilities linked to the very fact of being neighbors.

### **2.1. Dialogue between border authorities**

The Turkish-Armenian border still continues to provide contact opportunities for many district and province governors. On the Turkish side, the first tier border authorities are district governors based on the borderland and the second tier border authorities are province governors. According to the agreement signed between Turkey and the USSR, the counterparts of the district governor of Çıldır and of the governor of Ardahan are respectively the border commissioner of Ani and Akhourian and the border commissioner of Armavir and Ararat. The district governor of Digor and of Akyaka are matched by the border commissioners of Alagöz and of Ani-Akhourian, the counterpart of the governor of Kars is the governor of Shirak. The counterpart of the province governor of Iğdır is the border commissioner of Armavir-Ararat, while that of the district governors of Aralık, Karakoyunlu and Tuzluca is the border commissioner of Echmiadzin.

Border authorities are meeting based on necessity. Issues which cannot be solved by the first tier border authorities are handled by the second tier border authorities. The border authorities are representing their respective governments.<sup>1</sup>

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<sup>1</sup> Interview with the Governorship of Kars, Guideline for Border Authorities published by the Ministry of Interior of Turkey, MÜLKİ İDARE AMİRLERİ SINIR GÖREVİ REHBERİ, Yılmaz KURT, Mustafa ÇÖĞGÜN, ANKARA, 2007

Official contacts between Turkish and Armenian border authorities are regulated by the agreement signed on 15 July 1937 in Moscow between Turkey and the USSR on the settlement procedures of border incidents and conflicts.

Turkey signed new border agreements with Georgia and Azerbaijan in 1997. Despite the non-existence of a similar context with Armenia, official contacts between Turkish and Armenian border authorities are proceeding on a regular basis thanks to the border agreement signed during the Soviet times. Interestingly, the cross-border cooperation further developed on the eve of Armenia's independence with the signature of a protocol granting the airport of Gyumri the permission to use a small portion of Turkish airspace over Kars for civilian flights. These cross-border official contacts transformed into a real cooperation in the realm of the use of transboundary riparian rights and the joint management of the Arpaçay / Akhourian dam.

## **2.2. The Turkish-Armenian cooperation over the Arpacay-Akhourian dam**

The construction of the Arpaçay / Akhourian dam started in 1975 and ended in 1983. The dam is jointly managed by Turkey and Armenia. Turkey and Armenia utilize the regulated waters of the Araks River from the joint regulators for irrigation purposes. The dam bridge connects the two sides. A permanent joint commission meets every month. Eight monthly measurements are made at the joint regulators of Karakale Serdarabat, Kars Kızılay, Güven, Halıkışla and IğdırSürmeli, four on the Armenian side and four on the Turkish side.<sup>1</sup>

The Posof, Arpacay and Araks rivers used to form boundaries between Turkey and the USSR. In 1927, Turkey and the Soviet Union signed the *Protocol on the Beneficial Uses of Boundary Waters* - the so-called Kars-Protocol - which concerns, *inter alia*, the use of the Arpaçay and the Araks rivers. This protocol is still in force. The basic provisions of the arrangement are a fifty-fifty allocation of water and several regulations on infrastructure and dam building. A Joint Boundary Water Commission was established later in 1928.

The Protocol on the joint construction of the Arpacay-Akhourian Dam dates back to 1964. This protocol provides a set of rules concerning the joint construction of the dam and the equitable sharing of the water. Both states are free to use the water for irrigation purposes and may build a hydropower plant on their respective territories. This protocol was later followed by the 1975 officially ratified *Coop-*

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<sup>1</sup> Information provided by the Turkish water authority, Devlet Su İşleri Genel Müdürlüğü

*eration Agreement on the construction of a dam on the bordering of Arpacay river and the constitution of a Dam Lake*, which assured the basic principles that were already outlined in the 1964 Protocol.

On 26 October 1973, *The Agreement for the Cooperation between the Republic of Turkey and the Union of Soviet Socialist Republics for the Construction of the Bridge and the Bridge Lake Formation on The Arpacay River Border* was signed. The provisions of that agreement play a key role in the regulation of boundary waters, because they explicitly provide for regulations concerning the tributaries and make several clarifications omitted in the 1927 agreement.

A protocol to the last water agreement between Turkey and the USSR was signed on 7 March 1990. According to this agreement, "...any shift in the riverbeds of the Arpaçay, Çoruh, Posof and Çaksu rivers would be prevented jointly or the necessary facility to adjust the watercourses would be built in collaboration." However several engineering aspects of river development along borders would require improved bilateral cooperation. For instance, Turkey intends to facilitate and improve the use of the Araks river water from the joint regulator of Serdarabat which was constructed for irrigation purposes. Since the envisaged technical measures on the Turkish side would imply removal of the river bed on a short stretch, approval by the Armenian government and technical cooperation with the Armenian authorities would be necessary.

### **2.3. The postal service**

Both Turkey and Armenia are members of the Universal Postal Union, which made a bilateral postal agreement not crucial. The Treaty of Bern signed in 1874, which gave birth to the Universal Postal Union, unified postal services into a single postal territory for the reciprocal exchange of letters.

### **2.4. The air corridor**

On 2 May 1995 Turkey decided to reopen the H50 air corridor which was closed in 1993 for flight connections to Armenia. The reopening of this air corridor was requested by Azerbaijani civilian aviation authority. Azerbaijan and Armenia have access to each other's air space for civilian aviation. The closure of H50 air corridor between Turkey and Armenia was affecting Azerbaijani flight connections to Turkey and to the Western countries. In August 1996 the Ministry of Foreign Affairs of Turkey authorized the Armenian National Airlines to start operating commercial passenger connections between Armenia and Turkey. General aviation procedures apply to flights operated between Armenia and Turkey. The private



operator Armavia applies directly to the directorate general for civilian aviation based in Istanbul which then contacts the Ministry of Foreign Affairs. The air corridor is also open for transit to/from Armenia. The Turkish national carrier, Turkish Airlines, hasn't yet started operating a flight connection to Yerevan.

## **2.5. Coming together in regional organizations**

Agreements reached within regional organizations and international conventions to which both Turkey and Armenia are signatories can, to a certain extent, remedy the absence of a bilateral legal framework between the two countries.

### **2.5.1. Combating Organized Crime and Human Trafficking**

Organized crime has become a serious concern for the whole international community. It is considered one of the top non-military threats to international security. Here, Armenian-Turkish relations can be viewed in the framework of international structures, specifically BSEC, to which both countries are members. From 1996 on, a number of joint statements and declarations have been adopted by the BSEC Ministers in charge of strengthening cooperation in combating crime, terrorism, trafficking and illegal migration. The cooperation was raised to a new level in 1998, after the *Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms* was signed and its additional protocols followed (2002, 2004). The 2006 Bucharest Joint Declaration resulted in creating a more project-oriented agenda of cooperation. The BSEC-UNODC joint project on *Strengthening the Criminal Justice Response to Trafficking in Persons in the Black Sea Region* is being implemented through the *Regional Action Plan on Cooperation in the Field of Criminal Justice Response to Trafficking in Persons in the Black Sea Region* by means of the *Model Guide on Strengthening the National Criminal Justice Response to Trafficking in Persons in the Black Sea Region*.

In the context of the Turkish-Armenian diplomatic deadlock, acceding to various international instruments is a key tool for cross border cooperation on the ground. One of these instruments, which is important for both countries and which will be discussed below, is the Council of Europe Convention. On May 16, 2005, Armenia signed, and on April 14, 2008, ratified, *the Council of Europe Convention on Action against Trafficking in Human Beings*. The Convention aims to protect the human rights of the victims of trafficking and to promote international cooperation on action against trafficking, on both national and transnational levels. The Convention also addresses some migration-related issues, among which are the prevention of illegal movement and border control. In this context the Convention

recommends a strong imperative for the Parties to disseminate accurate and up-to-date information of the conditions enabling legal entry into and legal stays on their territories.<sup>1</sup>

Turkey signed this convention on March 19, 2009, but has not yet ratified it. The Convention underlines the importance of strengthened border control for preventing and detecting trafficking, checking the possession of necessary travel documents, and boosting cooperation among border control agencies. In the case of Turkey ratifying the mentioned convention, it would be possible to consider a new framework of cooperation. Identity documents, issued by the Parties, are another migration management means, mentioned in Article 8 of the Convention. This would also be an effective international mechanism serving as a base for cooperation on the stated matters between Turkey and Armenia.<sup>2</sup>

The right of the victims of trafficking to have access to the labor market of the destination country is stated in Article 12 of the Convention. Articles 14, 16 include provisions on residence permits, repatriation/return, and reintegration of victims of trafficking in their country of origin. The convention also prioritizes the organization of close cooperation between countries of destination and origin. All of the above –mentioned measures should be reflected in the legislation of the parties to the Convention. In this case it could be possible to harmonize the legal base between the signatories of the convention, notably between Armenia and Turkey, which will serve as a platform of resolving one of the daunting problems facing the two countries.

The United Nations *Convention against Transnational Organized Crime* and its three Protocols are also among such instruments, to which Turkey is a party. The Turkish International Academy against Drugs and Organized Crime (TADOC) was established in Turkey with the cooperation of the United Nations office on Drugs and Crime (UNDOC).<sup>3</sup>

Armenia signed the above mentioned convention on 15 November, 2001 and ratified and acceded on 1 July, 2003. Turkey signed on 13 December, 2000 and ratified and acceded on 25 March, 2003.<sup>4</sup> The convention stipulates provisions on liability of legal persons (art. 10), international cooperation for purposes of

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1 "Assessment of the Migration Legislation of the Republic of Armenia." Hana Kabeleova, ArmenMazmanyan, AraYeremyan..<http://www.osce.org/yerevan/25959>

2 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=-&CL=ENG>

3 Ministry of Foreign Affairs of the Republic of Turkey.[http://www.mfa.gov.tr/turkey\\_s-efforts-in-combating-organized-crime.en.mfa](http://www.mfa.gov.tr/turkey_s-efforts-in-combating-organized-crime.en.mfa)

4 United Nations Treaty Collection.[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)

confiscation (art. 13), jurisdiction (art.15), Mutual legal assistance (art. 18), and Joint investigation (art. 19), Law enforcement cooperation (art. 25), also Training and Technical Assistance (art. 29).<sup>1</sup>

The last, but not least vector of cooperation between Armenia and Turkey to be discussed here is in the NATO framework. Armenia is determined to combat terrorism and organized crime, by building on existing co-operation with NATO in this area. This can be possible particularly under NATO Partnership Action Plan against Terrorism. A relevant exchange of intelligence could be possible between Armenia and Turkey, which is a member of NATO.<sup>2</sup>

### **2.5.2. International Conventions**

Most international treaties do not have any executive power. In some countries these treaties have supremacy over state legislation; in many countries treaties are given a status of constitution and in a number of countries only certain provisions of the given treaty are reflected in state legislation. International conventions to which Armenia and Turkey are parties will be mentioned in the paper. Crucial ones are those related to Intellectual property rights, education, illegal migration, the UN, Council of Europe *Conventions against Organized Crime and Human Trafficking*, *European convention on Human Rights*, *the UNESCO Convention on Discrimination in Education*, *the European Charter for Regional or Minority Languages*, and et cetera. Among those, *the New York Arbitration Convention*, to which both Turkey and Armenia are signatories (Armenia 1998 March and Turkey 1992, September), plays a crucial role.

It is acknowledged that the New York Arbitration Convention is the foundation stone on which the entire edifice of international commercial arbitration is built. The 135 States that have ratified the Convention have committed themselves to recognizing arbitral agreements and, when one of the parties requests it, referring the parties to arbitration, even when the arbitration is to take place in a foreign country.<sup>3</sup> By making such a commitment they have also agreed that their courts will not exercise jurisdiction over the substance of the dispute as long as either party insists upon the arbitration clause. Similarly, the 135 current parties to the New York Convention have agreed that they will “recognize arbitral awards

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1 United Nations Office on Drugs and Crime.<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

2 Armenia's Commitments under individual partnership action plan with NATO. <http://www.mil.am/files/IPAP-English.pdf>

3 New York Arbitration Convention. <http://www.newyorkconvention.org/contracting-states>

as binding and enforce them in accordance with the rules of procedure” in force in the State.<sup>1</sup>

While New York arbitration can be used as one of the methods to solve conflicts between Armenia and Turkey, mainly in the business sphere, it is notable that the Georgian Government also offers Georgian regulatory environment and Georgian courts to enforce contracts or deals made via this country, which in its turn serves as a transnational court system for countries under examination.<sup>2</sup>

Armenia and Turkey are signatories to many international conventions and treaties. At the same time, most of these international conventions are only binding in the political sense and can rarely be used to enforce direct contracts. Other international instruments lack the capacity to specifically address legal relations between the two countries. An illustrative example is the WTO instruments. Turkey made a reservation to the WTO treaty and lifted the application of WTO rules in respect to Armenia when the latter joined that organization.<sup>3</sup>

The more comprehensive overview of the WTO framework and Turkey’s reservation will be provided in the “Multilateral Structures” section of this report.

The European Convention for Protection of Human Rights and Fundamental Freedoms is a very important piece of legislation in the area of human rights protection, most importantly because it established the European Court of Human Rights (ECHR). All individuals under the jurisdiction of a member state, including migrants, have the right to bring claims to the ECHR. The Convention for Protection of Human Rights and Fundamental Freedoms contains other provisions relevant to international migration. But, Turkey has ratified only protocols to the said Convention.

Armenia and Turkey have acceded to the basic human rights conventions within the framework of the United Nations relevant to migration issues, which guarantee minimum standards of treatment for non-citizens and migrants. These treaties are: the International Covenant on Civil and Political Rights (along with the Optional Protocol); the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.<sup>4</sup>

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1 Ibid.

2 Doing Business and Investing in Georgia, 2011. <http://www.pwc.com/ge/en/assets/pdf/ge-dbg-2011.pdf>

3 THM, 2010. Scenarios for Turkish-Armenian relations <http://ichd.org/>

4 United Nations Treaty Collection. <http://treaties.un.org/pages/UNTSONline.aspx?id=1>

Armenia has still not ratified the following important UN and CoE international documents on labor migration and related matters: the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, which entered into effect as of 1 July 2003. This Convention contains provisions on the fundamental human rights of labor migrants and their family members, concentrating on concrete issues related to workers employed in countries other than their own. Turkey signed this convention on 13 January, 1999 and ratified on 27 September, 2004.<sup>1</sup> In case Armenia accedes to this Convention, it would become possible to find a legal framework of regulation of migrant workers, mainly Armenian migrants in Turkey. So far, countries that have ratified the convention are those from which immigrants originate, such as Mexico, Morocco and the Philippines. For these countries this convention is a vital tool for protecting their citizens abroad. In the Philippines, for example, the ratification of the Convention took place in the context of incidents where several cases of Filipino workers were mistreated abroad and this very fact prompted the ratification of the Convention. This may also apply in Armenia's case.<sup>2</sup>

The Council of Europe Convention on the Legal Status of Migrant Workers, signed on November 24, 1977, in Strasbourg, is of paramount importance. Turkey signed this convention on 24 November, 1977, and ratified on 19 May, 1981, with an effective date of 1 May, 1973. Armenia is not a signatory to this convention, a fact that impedes possible cooperation and fruitful results between the two countries.<sup>3</sup> The explanatory report states as follows: "The authors of the Convention have taken fully into account agreements concluded elsewhere covering the same categories of persons, particularly those concluded in the European Economic Community and ILO. The Convention's relationship to other provisions of national or international law is dealt with in Articles 31 and 32 in such a way that migrant workers and their families will benefit from whichever of these texts is the most favorable. Though, it should be pointed out that the implementation of the Convention does not depend on reciprocity."<sup>4</sup>

"The provisions of this Convention are based on the principle "that the legal status of migrant workers who are nationals of Council of Europe member states should be regulated so as to ensure that as far as possible they are treated no less favorably than workers who are nationals of the receiving State in all aspects of living and working conditions." The Convention covers issues related to recruit-

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1 [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)

2 <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>

3 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=093&CM=1&DF=&CL=ENG>

4 <http://conventions.coe.int/Treaty/EN/Reports/Html/093.htm>

ment of prospective migrant workers, rights of exit and admission, work contract, work permit, social security, taxation on earnings, return home, etc.”<sup>1</sup>

### 2.5.3. *Multilateral Structures (BSEC, WTO, EU)*

#### *Signed Treaties within BSEC*

The BSEC Charter was adopted by the Heads of the BSEC Member States on June 5, 1998, at the Yalta Summit. The official day of entry into force of the charter is May 1, 1999. In Armenia and in Turkey it entered into force on May 1, 1999 and on 24 September, 1999, respectively.<sup>2</sup> According to article 5 of the BSEC charter member states are those who are parties to the charter. And according to article 32, no reservations may be made to the charter.<sup>3</sup>

Armenia and Turkey both bound themselves to the Additional Protocol to the Charter on the privileges and immunity of BSEC (April 30, 1999), to the *Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters* (April 15, 1998), to *Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms* (October 2, 1998).<sup>4</sup> They also have no reservations and have fully committed to the *Memorandum of Understanding (MoU) on Facilitation of Road Transport of Goods in the BSEC Region*,<sup>5</sup> the *MoU on Development of the Motorways of Sea at the BSEC Region*, and on *Coordinated Development of the Black Sea Ring Highway*. Additional protocols to these agreements followed not long after.<sup>6</sup>

Armenia has signed the Agreement on simplification of visa procedures for Lorry Drivers and the one for Business people, but unfortunately has not finalized the internal procedures. Turkey has expressed its commitment to be bound. This said, legal cooperation in this filed in the framework of BSEC is not complete yet.<sup>7</sup>

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1 "Assessment of the Migration Legislation of the Republic of Armenia". Hana Kabeleova, ArmenMazmanyan, AraYeremyan..<http://www.osce.org/yerevan/25959>

2 <http://www.bsec-organization.org/documents/LegalDocuments/statutory/charter/Pages/charter.aspx>

3 <http://www.bsec-organization.org/documents/LegalDocuments/statutory/charter/Download/CHARTER%20web%20080630.pdf>

4 <http://www.bsec-organization.org/documents/LegalDocuments/status/Pages/Table%20Country-Status%20NEW.pdf>

5 <http://www.bsec-organization.org/documents/LegalDocuments/agreementmous/mous/Download/MoUTranspGoods.pdf>

6 <http://www.mfa.am/en/international-organisations/BSEC/>

7 <http://www.bsec-organization.org/documents/LegalDocuments/status/Pages/Table%20Country-Status%20NEW.pdf>

Importantly, the Permanent Mission of the Republic of Armenia to BSEC was established in Istanbul in August 2001.

So, areas of cooperation include environment, transport, energy, combating organized crime and trafficking, culture, tourism, education, healthcare and the like. In the context of the above-mentioned agreements and memorandums, Armenian–Turkish cooperation is established as member states. Though for deeper overview and understanding of how cooperation can be achieved requires a thorough analysis of each agreement separately.

### *World Trade Organization (WTO)*

Armenia’s accession to the WTO in 2003 consolidated a process of trade liberalization and institutional reforms. The governments of acceding countries to the WTO understand the importance of integration into the world trading system; however, they have to take into consideration the country-specific needs.<sup>1</sup>

Armenia has a liberal trade and investment regime. The average applied tariff, at 2.7%, is among the lowest of WTO Members. It grants MFN and national treatment to foreign investors and, with respect to services, Armenia’s trade policies are more liberal than the requirements of its WTO accession commitments. During the process of acceding to the WTO Armenia underwent legal and institutional reform and bound all tariff lines at rates between 0% and 15%, replaced *ad valorem* customs fees with specific duties, and made sure its services commitments covered almost all sectors. It has a Permanent Mission in Geneva, which currently has one diplomat who is responsible for WTO matters and other economic issues in other International Organizations.<sup>2</sup>

### Turkey

Turkey’s choice to become a member of the GATT and later the WTO lay in her fundamental choice to integrate with the world economy. Turkey stands as a developing country in the WTO and Turkey’s EU candidate country status, customs union with the EU and OECD membership, also influence her WTO policies.<sup>3</sup>

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1 Country Papers on accession to WTO/Armenia. [http://www.unescap.org/tid/publication/chap3a\\_2160.pdf](http://www.unescap.org/tid/publication/chap3a_2160.pdf)

2 Trade Policy Review, WTO Trade Policy Review Body, 2010. [https://www.wto.org/english/tratop\\_e/tpr\\_e/tp328\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tp328_e.htm)

3 Mustafa Pulat. The World Trade Organization and Turkey. <http://www.turkishpolicy.com/images/stories/2003-03-economyreloaded/TPQ2003-3-pulat.pdf>

As an EU candidate country and a member of the OECD, Turkey could utilize the system established in the WTO as an importer country in cases of national emergency or other circumstances of extreme urgency, in consideration of her special geopolitical situation.<sup>1</sup>

Turkey's reservation in regard to Armenia, when the latter was acceding the organization, is of crucial importance. In 2003, when Armenia's and Azerbaijan's membership in the World Trade Organization was discussed, Turkey voted for Armenia. Unfortunately, at the same time, Turkey announced that it will not follow the WTO requirements towards Armenian trade. This means, there is no single accepted norm of international trade regulation between Armenia and Turkey, which, in turn, impedes further development of trade between these two countries. The legal base of the reservation is enshrined in Article 13 of Marrakesh Agreement.<sup>2</sup>

Unlike Armenia, which imposes up to 15% customs-tax for imported products based on WTO requirements, Turkey puts limits on only half of the imported products, and for the second half, the tax reaches up to 225%. For agricultural products, the average import duty in Turkey is 46.7% (in the Republic of Armenia 6.9%). Moreover, for beer the imposed tax is 300%, and for wine it is 400%.<sup>3</sup> More importantly, for industrial products, as a result of the EC Custom Union, Turkey has aligned its custom duties with the Common External Tariff of the European Union. The average duties imposed on industrial products is 4.6%.

### *Intellectual Property Rights*

#### Armenia

The intellectual property relates to the personal intellectual activity results, which include inventions, literary and artistic works, trademarks, names and images. The intellectual property consists of 2 fields – industrial property and copyright. The significance of the intellectual property was recognized for the first time by *the Paris Convention for the Protection of Industrial Property (1883)*

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1 According to the system all the WTO members are eligible exporter countries.

2 Invocation by the Republic of Turkey of Article XIII of the Marrakesh Agreement Establishing the World Trade Organization with respect to the Republic of Armenia: The following communication, dated 29 November 2002, from the Permanent Mission of the Republic of Turkey to the Chairman of the General Council, is circulated to WTO Members. "My authorities have instructed me to inform you and the General Council, prior to the approval of the agreement on the terms of accession for the Republic of Armenia, that the Republic of Turkey does not consent to the application as between it and the Republic of Armenia of the Marrakesh Agreement Establishing the World Trade Organization and the Multilateral Trade Agreements in Annexes 1 and 2 thereto."

3 Gagik Sardaryan. Open Border with Turkey. <http://www.amcham.am/index.cfm?objectid=671C8A30-1AE9-11DF-8CB00003FF3452C2>



and the *Berne Convention for the Protection of Literary and Artistic works (1886)*. Both conventions are managed by the World Intellectual Property Organization (WIPO).<sup>1</sup>

Armenia-Turkey relations in the field of Intellectual Property Rights can mainly be viewed in the context of international agreements and conventions. Turkey and Armenia are parties to agreements of the WIPO, General Agreement on Tariffs and Trade (GATT) and Trade Related Aspects of Intellectual Property Rights (TRIPS).<sup>2</sup>

Turkey and Armenia are both signatories to the above-mentioned conventions and are both members of the WIPO.<sup>3</sup> They are also both signatories to the Budapest Treaty, Hague agreement, Locarno agreement, Madrid Agreement, Nice Agreement, Patent Cooperation Treaty, Rome convention, Strasburg Agreement, Vienna Agreement, WIPO Convention, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty.<sup>4</sup>

In 1992 the Armenian Patent Office was established and since then filing applications for patents with respect to inventions was made possible, while registration of utility models and industrial designs became possible as of 1993. In case of foreigners, a patent attorney registered with the Armenian Patent Office is in charge of managing all the affairs.<sup>5</sup> Policy formulation in the field of industrial property is under the responsibility of the Patent Office of the Republic of Armenia, and in the field of copyrights – of the Armenian National Copyright Agency, which are in turn administered by the Intellectual Property Agency of the Republic of Armenia.<sup>6</sup>

Importantly, the legal protection of industrial intellectual property requires the same fees for both Armenians and foreigners. Civil court procedures are always available to deal with legal matters. Other measures are also in force by the TRIPS Agreement of the WTO. The latter is also within the authority of Armenian courts. Punishment provisions in the cases of infringements and violations with respect to intellectual property rights are also enshrined in the Criminal Code of Armenia. Owners of Intellectual property rights may request Armenian customs authori-

1 Customs Service of the Republic of Armenia <http://customs.am/Content.aspx?itn=csCIIntelPropertySupport>

2 Turkey, Screening report. Chapter 7 – Intellectual property law. 19 October 2006  
[http://ec.europa.eu/enlargement/pdf/turkey/screening\\_reports/screening\\_report\\_07\\_tr\\_internet\\_en.pdf](http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_07_tr_internet_en.pdf)  
<http://www.wipo.int/members/en/>

3 For more information see  
[http://www.wipo.int/treaties/en/ShowResults.jsp?search\\_what=C&country\\_id=6C](http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=6C)  
[http://www.wipo.int/treaties/en/ShowResults.jsp?search\\_what=C&country\\_id=173C](http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=173C)

5 Armenia Country Papers On Accession To The WTO. [http://www.unescap.org/tid/publication/chap3a\\_2160.pdf](http://www.unescap.org/tid/publication/chap3a_2160.pdf)

6 Intellectual Property Agency of the Republic of Armenia. <http://aipa.am/en/>

ties to register goods containing intellectual property for the purpose of preventing the illegal import or export of pirated goods. In this case, customs authorities may hold customs clearance of such goods until it can be proven that no breach of intellectual property rights has taken place. If the importer or exporter does not submit sufficient evidence, the customs office may seize the goods and impose penalties.<sup>1</sup>

### Turkey

Turkey has enacted several pieces of legislation regarding intellectual property rights: Decree-Law 544/1994 on the establishment and function of the Turkish Patent Institute; Decree-Law 551/1995 on patent rights; Decree-Law 556/1995 on trademark rights; Decree-Law 554/1995 on industrial designs; Decree-Law 555/1995 on geographical indicators (signs); Decree-Law 4128/2004 on the Amending Law on Patents, Designs, Geographical Indicators and Trademarks and Decree-Law 5147/2004 on protection of integrated circuits.<sup>2</sup> Those can be supplemented also by the Law No. 5833 on Changes to the Decree Law on Protection of Trademarks (2009), Law No. 5224 on Evaluation, Classification and Support of Cinema Films (2008), Law No. 5846 on Intellectual and Artistic Works (2008).<sup>3</sup>

To protect intellectual property rights in Turkey, which is a signatory to the Paris Convention, the priority of application is extended to the previous application by a State party to the Paris Convention or a national application within 6 months. Nevertheless, it is noteworthy that 85% of the applications for the copyright protection in Turkey are national. Armenia is also a State Party to Paris Convention, i.e. in case of infringements an international mechanism is in force for legal regulation.<sup>4</sup>

### *The European Union (EU)*

The cooperation between the European Union and Armenia has intensified substantially since 1999, when a *Partnership and Cooperation Agreement (PCA)* between the two parties came into force. Armenia became part of the European Neighborhood Policy from the very inception in 2004. *The EU/Armenia Action Plan* was adopted in 2006 as a result of extensive discussions between the Government of the Republic of Armenia and the European Commission. Based on the Partnership and Cooperation Agreement, which still governs the European

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1 Ibid.

2 Ibid.

3 <http://www.wipo.int/wipolex/en/profile.jsp?code=TR>

4 Ibid.

Union's relations with Armenia, it provides a framework for collaboration with Armenia in all reform areas. Launched in May 2009, the Eastern Partnership provides an ambitious framework for taking Armenia's relationship with the European Union to a new level. In July 2010, Armenia and the European Union started negotiations on the next step of cooperation, an Association Agreement.<sup>1</sup>

The annual "neighborhood package" published in 2012 by the European Commission underlines a good progress pace for an EU-Armenia Association Agreement (AA) within the Eastern Partnership. While Armenia is progressing closer to EU – Armenia negotiations on the Deep and Comprehensive Free Trade Area (DCFTA), EU/Turkey accession negotiations continue. During the preparatory analytical phase, the level of preparedness to start negotiations on individual chapters has been assessed on the basis of screening reports.<sup>2</sup> As of May 15, 2012 in the framework of Turkey –EU relations, the new positive agenda is intended to bring fresh dynamics. Working groups will be set up under eight chapters, among which is also the Judiciary and fundamental rights.<sup>3</sup>

The further development and positive outcome of EU-Turkey relations will promote the legal predictability of Turkey as a neighboring country, because one of the basic obligations within the frameworks of the accession process is Turkey's integration to the legal system of the Union. This means that in case of the consequent follow up of this process and Turkey's accession to the EU, one can assert the existence of guarantees for all key areas. Settling on the close EU-Armenia ties, Turkey's integration into the Union will push the relations between the EU member Turkey and Armenia into a new level. Consequently, the legal regime to be established in the relations between the EU and Armenian will be effective also in respect of Turkey. Turkey will be obliged to review all the references which it has made in respect of Armenia and the issue of opening the borders will necessitate the signing of border agreements. The official and representative functions between Turkey and Armenian are currently regulated only by the 1992 agreement on the Status of Russian border troops in the territory of Armenia and the 1973 Soviet-Turkish Convention on Border incidents and conflicts.<sup>4</sup>

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1 EU Advisory Group. <http://www.euadvisorygroup.eu/eu-armenia-relations>

2 Commission Staff Working Paper Turkey 2011 Progress Report.Brussels, 12.10.2011.  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/tr\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf)

3 <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/359&type=HTML>

4 [http://users.freenet.am/~grigorh/files/Turkey\\_EU&RA\\_eng.pdf](http://users.freenet.am/~grigorh/files/Turkey_EU&RA_eng.pdf).

## **Part 3. The impact of the lack of diplomatic relations on people to people contacts**

### **3.1. The human dimension from the perspective of the international public law**

**T**he function of law, in its simplest terms is “the protection of interests.” When asked what the interests are that concern international law, one must recognize at the outset that they are in the realm of human interactions. The final object of the law of nations is not the protection of the impersonal interests of legal entities termed states, governments, or sovereigns. It is the protection of the common interests of ordinary people.

Public international law has not been created by sovereign edicts or by international legislation. It has arisen naturally out of the intercourse of peoples and nations. This created official contacts, negotiations, and the recognition of mutual rights between nations. Foreigners trading with, or residing in, other lands were accorded special and extensive rights of residence and immunities from local jurisdiction through the system termed “extraterritoriality.” Jurists of distinction even maintain that true law as a science is “self-created,” that there is a logic in all human relationships which compels the acknowledgment of certain basic principles.

It is impossible to conceive of an utter suspension and denial of human intercourse in civil society. Abrupt and complete cessation of intercourse of peoples and nations is unimaginable.

Marriages and divorces occur, children are born, wills are made, inheritances transmitted, property exchanged, contracts signed and executed, litigations carried on and settled, criminals tried and punished; in sum, human relations remain for the most part unaffected by political disturbances.

In spite of political revolutions and catastrophic alterations in governments, the relations of peoples and of governments are also numerous. Vital contacts momentarily interrupted are quickly resumed. Commerce in goods as well as in ideas cannot be entirely prevented as well.

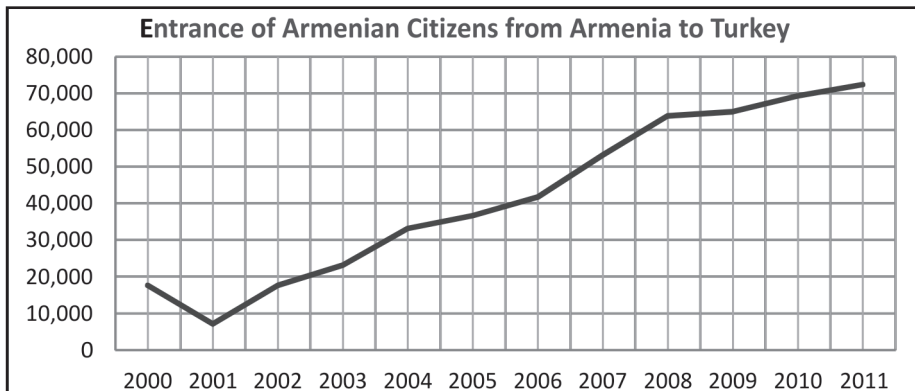
### **3.2. Determining those at the origin of people to people contacts: the agents of interactions**

The closed border has been definitively a significant barrier to human interactions: the impossibility to reopen the border has transformed it into a barrier to

direct human and business interactions preventing the populations from bridging the century-old gap dividing them. However the proximity factor between Turkey and Armenia has been at work even in the context of closed borders. The establishment of the direct flight connecting Istanbul and Yerevan together with the improvement of transit conditions through Georgia improved cross-border contacts. Mutual mistrust and deeply enrooted fears can dissuade Armenians from visiting Turkey and vice versa. However curiosity can as well be a major driving force especially in relatively open and young societies. Liberal visa regime, the low cost of travelling by road allowed the proximity factor to work sustained by cultural affinities and intermingling identities.

We are defining those at the origin of people to people contacts as agents of interactions. Broadly speaking Armenian citizens travelling to Turkey and Turkish citizens travelling to Armenia are connecting both countries and societies. Especially in dire economic context characterizing transition periods, people travel mainly out of necessity to make a living. Small traders in the 90s used to be the main agents of interactions. With the improvement of economic conditions, Armenian tourists have started visiting Turkey. The Mediterranean resort of Antalya has become a popular destination,<sup>1</sup> some as well organize trips to Anatolia, i.e. to the ancestral homeland.

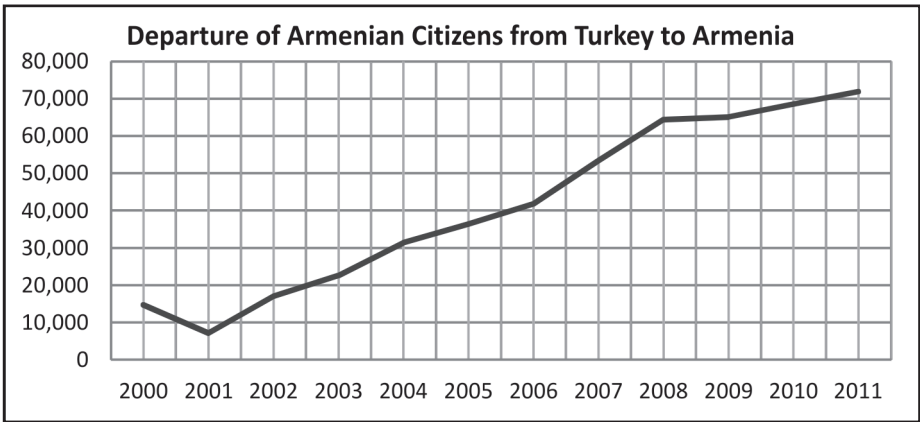
It seems that Istanbul Armenians are indeed not interacting more with Armenia compared to the Turkish society in general. Turkish citizens without any Armenian descent seem indeed more prone to get involved in business relations.<sup>2</sup> Istanbul Armenians are getting mobilized by cultural organizations.



Source: UIK Entrance Data

1 In 2011, some 50.000 Armenians travelled to Antalya <http://www.epress.am/en/2011/06/14/armenian-tourists-to-prefer-antalya-again-this-year-aravot.html>  
 2 Interview conducted with Alin Ozinian from the Turkish-Armenian Business Development Council (TABDC) on 1 August 2012 in Yerevan.

When we analyze people-to-people contacts over the years on both sides, we observe that interaction at the individual level has a constant increase over the last decade. This fact is based on data published by the Turkish Statistical Institute on the number of the Armenian nationals visiting Turkey. According to the data, it is observed that while the number of visitors was a little bit less than 10,000 in the year 2001, since then there has been a steady increase in the numbers of the visitors and 72,393 people headed to Turkey from Armenia in 2011. This number is 4.5 percent more than the visitors for 2010.



Source: TUIK Departure Data

When we observe the number of Armenian citizens departing from Turkey to Armenia, we see the entrance and departure data overlap each other. According to the data, the number of Armenian citizens departing from Turkey to Armenia was 14,672 in 2000. While the number declined in 2001, since then there has been a steady increase. In 2011, 71,869 Armenian citizens departed from Turkey to Armenia. Most of these visits are for commercial and touristic purposes. Although in limited numbers, the representatives of civil society organizations are also visiting Turkey.

The sharp decrease in 2001 is explained by the change in Turkish visa legislation for Armenian nationals. As retaliation to the adoption of the law recognizing the Armenian genocide by the French Parliament, Turkey stopped issuing visas to Armenian citizens at the border post. Armenians had to apply for a visa to the Turkish consulate in Tbilisi or Moscow. The procedures were time consuming. During this year, visa demands were being regulated either via Turkish Embassy in Moscow or Turkish Embassy in Tbilisi. Those wishing to travel to Turkey on plane were to apply to Embassy in Moscow. The consular section was granting visas in two days, while getting a visa from the Embassy in Tbilisi was taking at least

a month.<sup>1</sup> From that period on Tbilisi became a crossing point for Armenians who were required to approach in person the Turkish Consulate in Tbilisi with their passports to get their visas. In 2002 Turkey reversed its decision and facilitated the visa process by enabling Armenian nationals to pay 10 dollars each instead of the then set price of 30 dollars.<sup>2</sup>

It is not possible to determine the number of visitors from Turkey to Armenia as the relevant Turkish authorities and institutions are not collecting this kind of data. The Armenian State doesn't register foreigners entering Armenia by nationality either. According to the data provided by Armenian hotels, in 2010 the number of tourists traveling from Turkey to Armenia was 1,200 people (1.4 thousand people in 2009), not counting those who found accommodation in private apartments.<sup>3</sup>

### **3.3. Does the lack of direct consular relations cause big problems for the respective Turkish and Armenian societies and individuals?**

Consular relations have existed between peoples since ancient times. The purpose of establishing consular relations does not aim only to facilitate the interaction of the individuals in a wide range of activities including trade, tourism, employment, etc., but also to ensure the efficient functioning of their respective states in following the interests and rights of their own citizens and regulating their civic status in conformity with their interactions with foreign countries.

In this sense, the lack of consular relations between Turkey and Armenia negatively affects citizens of both countries in many aspects. It also discourages people to visit each other's countries since they are afraid to confront serious problems. To be more specific, we could elaborate on a very common case in consular affairs; such as what to do when you lose or someone steals your passport in a foreign country. This would clarify what "confronting serious problems" means.

The psychological dimension of the lack of diplomatic relations is very important. Without diplomatic relations between the two countries, in addition to political situation, Turkish citizens are discouraged to interact with Armenians and vice versa. Armenian and Turkish citizens who were interviewed under this study strongly expressed that the feeling of "there is nobody to protect them" causes a serious concern when they live or stay in each other's country.

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1 Burcu Gultekin. "The stakes of the Opening of Armenian Turkish Border. The Cross Border contacts between Armenia and Turkey". French institute of Anatolian Studies, Estambul, 2005, November

2 Ibid.

3 National Statistical Service of the Republic of Armenia (in Armenian) based on reports received from organizations.

Another striking issue is visa applications. Both in Armenia and Turkey, the respective citizens of the two countries can obtain visa at the border. In this context, this is a flexible practice. However when someone is denied to enter to other's country, there is no diplomatic mission to assist its citizen. In practice, the respective Consular Sections of the Turkish Embassy and Armenian Embassy in Tbilisi are in charge of finding solutions to these issues.

### **3.3.1. *Obtaining Armenian and Turkish visa***

#### *Obtaining the Armenian visa*

There are several types of visas to enter the territory of the Republic of Armenia. Those are visitor visa, official visa, diplomatic visa, transit visa. A valid passport, an entry visa or document of residency status is required to travel to Armenia. The easiest way of entering Armenia is to acquire a single-entry visa: with duration of up to 21 days or 120 days. The list of countries, nationals of which are required to possess an invitation letter, can be found here.<sup>1</sup>

Unless otherwise provided by international agreements of Armenia, foreigners can obtain a visa with duration of up to 120 days, which can be extended for 60 days. A foreigner can stay on the territory of Armenia for no more than 72 hours and in the Transit zone for no more than 48 hours except in cases of emergency.<sup>2</sup>

#### *Special passports*

It is estimated, that Armenian passport holders enjoy visa-free or visa-on-arrival access to 52 countries and territories. There are also negotiations between Armenia and the European Union to liberalize the visa regime.<sup>3</sup> In Turkey, authorities reportedly issue four types of passports. Green passports are issued to public officials such as "senior civil servants, former presidents, former prime ministers, former foreign ministers, and former MPs as well as current members of parliament and former ministers."<sup>4</sup> Ordinary Turkish nationals acquire visa at the border, while Armenia requires visa procedures to be fulfilled for Turkish nationals holding green passports.<sup>5</sup> This procedure is based on the reciprocity approach, as Turkey does not issue visa upon arrival for Armenians holding diplomatic passports, it has a similar requirement for Armenians holding passports

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1 [http://www.armeniaforeignministry.am/u\\_files/file/consulate/Visa/Invitation\\_eng.pdf](http://www.armeniaforeignministry.am/u_files/file/consulate/Visa/Invitation_eng.pdf)

2 Ministry of Foreign Affairs of the Republic of Armenia <http://www.mfa.am/en/visa/>

3 <http://news.am/eng/news/47333.html>

4 <http://www.unhcr.org/refworld/publisher/IRBC,,TUR,440ed75a19,0.html>

5 <http://www.armeniaforeignministry.am/en/visa/>



other than ordinary. Armenia passed a new law in 2007 concerning the rules governing foreigners visiting Armenia. Under the new law if people carry ordinary passports, their visa can be issued at the airport. But any citizen from any country carrying a special passport should obtain a visa from the Foreign Ministry. In November, 2008 they informed Turkish officials through the Turkish Embassy in Tbilisi and airlines operating between the countries that special passport holders should contact the Foreign Ministry of Armenia to inform it about the purpose of their visit, or institutions inviting them should do so three to four days before the visit.<sup>1</sup>

### *Obtaining the Turkish visa*

Armenian citizens can obtain Turkish visa upon arrival at all entry points to Turkey. Ordinary passport holders can obtain one-month multiple entry visas at the Turkish border gates. Armenia citizens can get a one-month visa for 15 USD or 10 EUR. In this context, this is a flexible practice for Armenian citizens as obtaining a Turkish visa at the border gates is an easy process to follow and does not beget any hindrance.

The regulation on visa and residence permit for foreigners, which entered into force in Turkey on February 1, 2012, aims at harmonizing Turkish laws with the EU visa regulations. The new regulation was published on Official Journal on October 24, 2011.<sup>2</sup> This regulation deals with the period of time without resident permit in Turkey.

The total period of stay for foreigners in Turkey is 90 days in the last 180 days. Foreigners intending to stay over 90 days can obtain touristic residence permit for 6 months without distinction of their country of origin. After staying 9 months in Turkey, the foreigners can stay an additional 90 days if they exit from Turkey and re-enter after one day.

### *Visa regime and open borders*

Visa regimes are essential to determine whether borders are effectively open for people. In this sense, despite the closed border, Turkey is much more at reach for Armenian nationals and vice versa than any country of the Schengen zone.

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1 <http://www.armeniandiaspora.com/showthread.php?151658-ANKARA-Passport-Crisis-Shows-Turkey-Armenia-Must-Break-More-Taboos>

2 <http://www.resmigazete.gov.tr/eskiler/2011/10/20111024-9.htm>

Border management issues are among major priorities of the Turkey's accession process to the EU. Turkey's inclusion in the Schengen-zone and the lifting of internal borders will depend on the evaluation of its border management practices. The improvement of the capacity of the Turkish public administration to develop effective border management in line with the acquis and the best practices of the EU was listed in the short and medium term priorities in the 2003 Accession Partnership.

The full implementation of the Schengen, which will affect relations with the non-European neighbors, is also among medium term priorities. A National Action Plan to implement the Integrated Border Management Strategy was adopted in 2003. Important steps have been taken to align with the EU Visa Negative List. Turkey will adapt her visa stickers to the norms of the EU and the International Civil Aviation Organization (ICAO). Turkey has to stop issuing visas at borders.

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### **In case a Turkish citizen loses his/her passport in Armenia and an Armenian citizen in Turkey?**

*If a Turkish citizen lost his passport in Armenia, he or she should get a police report from the Armenian Security Department confirming that he/she has lost his/her passport and should have the Turkish translation of this report from an authorized notary. Then the person should apply to the Turkish Embassy in Tbilisi, Georgia with this document. Since the person cannot leave Armenia without a valid passport, he/she needs someone to be a courier between Georgia and Armenia to take this document to the Turkish Embassy in Tbilisi on behalf of him/her to carry this painstaking process. If this is not possible, the Armenian authorities inform their Embassy in Tbilisi, which contacts the Turkish Embassy in Tbilisi, through whom the passport could be sent to Armenia, which is also a time and energy consuming process. It is obvious that such a simple but an urgent issue could be solved by proper diplomatic ways easily if the diplomatic relations existed.*

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### **3.3.2. Other consular affairs**

Naturally, consular affairs for Armenians and Turks are not limited with lost or stolen passports. The Turkish consulate in Tbilisi is answering requests coming from Turkish and Armenian citizens based in Armenia for the following issues:

If a Turkish citizen marries an Armenian citizen in Armenia or Turkey, how is this marriage going to be registered in both countries? How should a Turkish citizen living in Armenia follow up the procedure of his obligatory military service? Where could we apply to solve the heritage issues?

An international mechanism is also used in general terms especially in the court decisions. As the two countries are members of the Council of Europe, traditional mechanisms of the Council such as mutual legal assistance, marriage, extradition, enforcement of criminal judgments are applied in accordance with the relevant Conventions and Additional Protocols of the Council of Europe since Armenia became its member on 25 January 2001.

### **3.4. Living in Turkey as an Armenian national, living in Armenia as a Turkish national**

#### **3.4.1. *Resident card, work permits for Armenians to be employed in Turkey***

A foreigner, without a residence permit valid for 6 months, who would like to work in Turkey, is obliged to apply for work permit through a Turkish diplomatic mission in a foreign country with the necessary documents such as the contract and invitation letter of the firm. So, it is not possible for an Armenian to apply in Armenia for a Turkish work permit due to the fact that there is no Turkish Diplomatic Mission there. The practice for an Armenian, living in Armenia and wishing to be employed in Turkey is to go to Tbilisi and make the application there and when the permit is granted to travel to Georgia back again to get the permission.

#### **3.4.2. *Work visas and permits in Turkey***

In regard to Turkey, it is notable that after signing a work contract with Turkish employer and after having applied for a work permit to the Ministry of Labor and Social Security (MLSS) of the Republic of Turkey, a foreign national can apply for a work visa, which is issued for single entry only. Work permits have one-year validity. For obtaining a residence permit, work visa and work permit holders must apply to Local Police Department within 30 days after their arrival to Turkey. Only after this can the person enter into Turkey multiple times in the validity

period of residence permit and thus not be required to get a visa for entry into Turkey.<sup>1</sup>

### **3.4.3. *Marriage between a Turkish and Armenian citizens***

A marriage between a Turkish and an Armenian citizen in Turkey and in Armenia doesn't have anything particular than any other marriages between a national and a non national. Marriage of Turkish citizens with CIS citizens has become a common phenomenon in Turkey. Security department can launch an investigation within their action against human trafficking to certify that the marriage is not a fake one.

### **3.4.4. *Work permit in Armenia***

The law on foreigners requires work permit to be presented before any employment agreements are signed with foreigners. Chapter4 of the RA law on Foreigners (articles 22-29) encompass all the issues related to work permit for foreigners. Though in cases prescribed by law, there can be exceptions. Are exempted those holding permanent or special residence permit, temporary permit (art.23).<sup>2</sup>Besides, a temporary residence card would serve a basis for employment without a work permit.<sup>3</sup>

### **3.4.5. *The issue of the dual citizenship***

#### Armenia

On the 26<sup>th</sup> of February, the Parliament of the Republic of Armenia approved the bill on dual citizenship. A dual citizen of the Republic of Armenia is considered a person who is a citizen of the Republic of Armenia and another state (countries). Notably, *the dual citizen of the Republic of Armenia is recognized as only a citizen of the Republic of Armenia*. The established norm also refers to the citizens of the Republic of Armenia who, after 1 January 1995, have refused RA citizenship without the prescribed order; have accepted or been granted citizenship of another country, as well as citizens who have unilaterally refused citizenship of the Republic of Armenia. The dual citizen of the Republic of Armenia enjoys all the rights and has all the duties and responsibilities of citizens of the Republic of Armenia, *except for cases foreseen by international treaties and laws of the Republic of Arme-*

1 Consular Service of the Republic of Turkey.[http://www.konsolosluk.gov.tr/ge/en/Work\\_visas\\_and\\_permits.aspx](http://www.konsolosluk.gov.tr/ge/en/Work_visas_and_permits.aspx)

2 [http://passportvisa.am/legislation/laws\\_en/45pjk54lk1/](http://passportvisa.am/legislation/laws_en/45pjk54lk1/)

3 Law on Foreigners of the Republic of Armenia.Articles 22-29.[http://www.mvr.bg/NR/rdonlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPNRBGESChTS\\_EN.pdf](http://www.mvr.bg/NR/rdonlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPNRBGESChTS_EN.pdf)

nia. If a citizen of the Republic of Armenia accepts or is granted citizenship of a foreign state, he/she is obliged to inform an authorized body of the Government of the Republic of Armenia within a month according to the order prescribed by the Government of the Republic of Armenia.<sup>1</sup>Notably, a change was made in the RA law on ‘State Population Registry’ and, instead of submitting documents for registration all foreigners must be registered by the address in their countries of residence.<sup>2</sup>

As of January, 2009 1107 people applied to the Police Station of Armenia to get dual citizenship, out of which two were Turks.<sup>3</sup>

### Turkey

The laws of Turkey provide for acquisition of Turkish citizenship based on one’s descent—by birth to a Turkish citizen parent (or parents) in Turkey and also by birth abroad to a Turkish citizen parent (or parents)—regardless of the other nationalities a person might acquire at birth. Children born in Turkey to foreign citizens do not have a claim to Turkish citizenship, unless one of the parents is also a Turkish citizen. The automatic acquisition (or retention) of a foreign nationality does not affect Turkish citizenship. Turkish laws have no provisions requiring citizens who are born with dual nationality to choose one nationality over the other when they become adults. The Turkish government requires that those who apply for another nationality inform the nearest Turkish embassy or consulate abroad and provide the necessary documents. Dual nationals are not compelled to use a Turkish passport to enter and leave Turkey; it is permitted to travel with a valid foreign passport and the Turkish National ID card.<sup>4</sup>

#### **3.4.6. Purchase of property**

The Property Title and Land Registry Cadastre Law of Turkey<sup>5</sup> was amended on 18 May 2012 and approved by the President of the Republic of Turkey. It has an overall effect of liberalizing the purchase of property by foreigners in Turkey. It ends the systematic application of the reciprocity clause which conditionalized since 1934 rights for foreigners to own property in Turkey. The Minister for Environment and Urbanism of Turkey, Mr. Erdoğan Bayraktar presented the new law in a press conference on 8 August 2012. The new amendment is aimed at boos-

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1 <http://www.mindiaspora.am/en/erkqaghaqaciutyun>

2 Ibid.

3 <http://www.armtown.com/news/en/prm/20081213/53339/>

4 [http://en.wikipedia.org/wiki/Turkish\\_nationality\\_law](http://en.wikipedia.org/wiki/Turkish_nationality_law)

5 TapuveKadastroKanunu

ting the construction sector, attracting foreign investment in the real estate sector and at harmonization with the EU Acquis. The Minister announced that nationals from 183 countries – and not 181 as mentioned in the press previously, are allowed to buy property in Turkey.<sup>1</sup> TEPAV interviewed officials of the department for property titles for foreigners of the Directorate General for Property Titles and Land Registry Cadastre of Turkey and was told that the Council of Ministers established a restriction list which will not be made public.

The Turkish daily Sabah has published a draft list obtained from reliable sources.<sup>2</sup> Yerkir media<sup>3</sup> announced on 27 July that “a new bill which came into force in Turkey deprives the citizens of Armenia, Syria, North Korea, Cuba, Nigeria and Yemen of the right to buy immovable property in the country.” As a matter of fact, Armenia is among very few countries excluded from a list of 181 countries. Nationals from 129 countries listed among these 181 countries are allowed to buy property without restrictions and 52 with specific restrictions.

### **3.5. Situation of illegal Armenian Migrants in Turkey**

#### **3.5.1. *Effects of the absence of diplomatic relations and informal/illegal aspect***

The illegal workers constitute the major part of Armenian nationals living in Turkey. Most of the problems they face originate from the fact that their residence in Turkey is not legal. The issue of illegal Armenian workers only comes up when political tensions flare between Armenia and Turkey. The decision or need of migrants to move away from their countries of origin is most often conditioned by political, social and economic reasons.<sup>4</sup>

Currently one of the most wide-spread types of migration is illegal migration for employment. The most striking thing about it today is the scale on which this kind of migration takes place and the fact that it affects both countries of origin and receiving countries.<sup>5</sup> In fact, according to the data provided by International Organization for Migration (IOM) between 15 and 30 million persons, who are economically active in a country other than their own, are in an illegal situation, having entered the country clandestinely and/or being illegally employed.<sup>6</sup>The

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1 <http://www.akparti.org.tr/site/haberler/yabancilar-turkiyede-tasinmaz-alabilecek/29670>

2 <http://www.sabah.com.tr/Ekonomi/2012/07/27/iste-mutekabiliyetin-sifresi>

3 <http://www.yerkirmedia.am/?act=news&lan=en&id=8732>

4 [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/proceedings\\_Padua\\_June2008.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/proceedings_Padua_June2008.pdf)

5 <http://www.ilo.org/public/english/standards/realm/ilc/ilc87/r3-1b4.htm>

6 Ibid.

term ‘illegal migrant’ or ‘undocumented immigrant’ refers to ‘non-citizens who have no valid leave to enter and/or remain within a state’.<sup>1</sup>

However, despite their illegal status, the above-mentioned immigrants are still holders of rights.<sup>2</sup> Disputable as it may be, this is a fact and a number of civil, political, social and economic rights apply to any individual, irrespective of his/her administrative status of residence. Thus, on the one hand, according to international law, each state has the right to determine and control the flow of foreign nationals in its territory. On the other hand, from a human rights perspective, states are obliged to protect migrants regardless of any irregularity under national law.<sup>3</sup> Therefore, the state faces the challenge of striking a proper balance between protecting the rights of all those who are on its territory, and keeping control of the borders which basically means that illegality of status does not automatically preclude enjoyment of Convention rights.

With this respect, Turkey as a country with relatively lax visa policy, located at the crossroads of Asia, Africa and Europe, has become a major destination and transit country for illegal migration flows, as well as illegally residing work force.<sup>4</sup> All non-nationals who reside and work in Turkey are designated “foreigners” and need to have valid residence and work permits to access any social rights. Social security only comes with a work permit, and basic health insurance only with a residence permit—with the added condition that one has held the permit for at least twelve months and that one has a Turkish Republic identity number. A residence permit requires a bank account with a balance to cover at least one year residence fees.<sup>5</sup>

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1 <https://wcd.coe.int/ViewDoc.jsp?id=1237553>

2 See the Platform for International Cooperation on Undocumented Migrants (PICUM), *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*, PICUM, Brussels, 2007(a) (retrieved from <http://www.picum.org/?pid=210>). See also the Council of Europe, *Human Rights of Irregular Migrants*, Doc. 10924, Parliamentary Assembly, Committee on Migration, Refugees and Population, Rapporteur: Mr Ed van Thijn, Strasbourg, 4 May 2006; and also T.A. Aleinikoff and V. Chetail (eds), *Migration and International Legal Norms*, The Hague: TMC Asser Press, 2003.

3 *The Human Right of Irregular Migrants in Europe*. <https://wcd.coe.int/ViewDoc.jsp?id=1237553>

4 Icduygu, Ahmet “Rethinking irregular migration in Turkey: Some Demo-Economic Reflections”, 2008

5 *Undocumented Migrants and the Double Minds of Rights Claims*. <http://differences.dukejournals.org/content/22/1/64.full.pdf+html>

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## Armenian and Turkish immigration laws

*The Armenian legislation governing international migration is not unified under one comprehensive legal act. The separate facets of migration are enshrined in different laws and decisions of the government of RA. The most important of these laws is the Law on Foreigners of the Republic of Armenia, which defines the scope of entry, stay and residency of foreigners in the Republic of Armenia, their transit through and their exit from the Republic of Armenia, other issues concerning foreigners as well. However, overseas employment of RA citizens remains unregulated. The passage of the draft Law on Regulation of Overseas Labor (LROL) could enormously contribute to this regulation, which addresses concerns regarding compliance with international human rights standards.<sup>1</sup>*

*Turkey has long been a country of immigration and asylum, like Armenia's legal framework, Turkish legislation concerning the international immigration is not unified under one comprehensive legal act as well. Although Turkey, as being a transit country for immigration, receives asylum seekers intensively, it is not the practice of the Turkish government to grant most of these people full refugee and citizenship status. Turkey is among the original signatories of the 1951 Convention relating to the Status of Refugees. However, Turkey maintains a "geographical limitation" to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention.<sup>2</sup> According to the reservation, Turkey does not grant refugee status to asylum seekers coming from outside of Europe.*

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Apart from that, the law concerning immigrants varies depending on which status a person resides (such as, student, worker, etc.) in the country. In other words, Turkey treated immigrants with the application of general laws on foreigners coming into country.

Immigration from Armenia to Turkey started after the independence of the Republic of Armenia in 1991 and continues today. Between 2002 and 2007, the extent of the immigration has increased. All of the illegal immigrants enter Turkey with a 30 days visa, which they purchase at border crossings. Choosing Turkey as a destination country is conditioned by the proximity factor and the facilitated visa process. According to Alin Ozinian's research,<sup>3</sup> there are around 10,000 Ar-

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1 Hana Kaboleova, ArmenMazmanyanyan, Ara Yeremyan. Assessment of the Migration Legislation in the Republic of Armenia. OSCE Yerevan Office.<http://www.osce.org/yerevan/25959>

2 Kemal Kirisci, "UNHCR and Turkey: Cooperating towards an improved implementation of the 1951 Convention on the Status of Refugees" International Journal of Refugee Law, Vol. 13, No. 1/2, 2001

3 <http://www.epfound.am/english/accomplished/armenia-turkey-cross-border-dialogue-and-cooperation/research-to-identify-the-state-of-armenian-migrants-in-turkey.html>



menian citizens living in Turkey contrary to varied number 30,000 or 70,000 according to the Turkish politicians. Most of Armenian migrants are illegal, having no residence permit. In these circumstances they overstay their visas at Turkey, because after leaving the country they will not be able to return. But in case of disclosure, they are forced to leave the country after having a “Deport” seal put on their passport. The research has set forth that the Armenian migrants feel that the Turkish Government has no plans about deporting them. The interviewees stated that police officers are quite aware where they live but there are only a few instances when the police have come and arrested some illegal migrants. Mostly, the migrants have been arrested for criminal activity, not invalid visas. According to the study, almost all of the Armenian migrants are planning to return to their former homes when certain economic developments occur in Armenia.

When a child of an illegal Armenian couple is born in Turkey, the parents can't apply for their child's citizenship in Turkey since there is no Armenian legation to declare it in Turkey and they also may not prefer going back to Armenia since they will be banned from entering back for 5 years. Another crucial problem of those immigrants is the education problem of their children. School-age children of those migrants couldn't go to any public school or the Armenian community schools until recently since they were deprived of a legal existence. Some young Armenian adults were organizing lessons for these kids at the home of a friend or neighbor or even at the basement of a church. However, since these lessons were usually of a temporary nature, the children could not benefit much. And they couldn't get diploma for those lessons. Fortunately, the Ministry of Education has recently got this issue on the agenda and amended the Private Educational Institutions Regulation and gave the children of non-Turkish citizens a right to study in the minority schools as guest students. The ministry removed the article “in these schools only the children who belong to the same minority group can study together.” The new regulation was announced on the Official Journal on 20 March 2012.<sup>1</sup>

This amendment, though a promising progress, is still not enough since these guest students will not be rewarded with any diploma at the end of their studies. If the families of these children decide to move back to Armenia, these children will not be able to prove their studies that completed in Turkey. The Ministry of Education is currently working on giving these children legal student status. However, those families may avoid from registering their children at the schools officially because this will necessitate declaring permanent address.

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1 <http://www.resmigazete.gov.tr/eskiler/2012/03/20120320-5.htm>

Educational problems of mixed parentage children constitute another issue to be considered. With this regard it is proper to mention that endogamy outside the Armenian community has become widespread in Turkey.<sup>1</sup> Such marriages bring about various problems among which those regarding to religious affiliation, national self-consciousness and the like. Previously, in order for the child to be enrolled in an Armenian school both of his/her parents had to be members of the Armenian Apostolic Church, the law actually forbidding mixed parentage children to attend Armenian schools even in case they wished so. However, according to the notice issued by the Turkish Ministry of Education in 2010, only one of the parents has to be an Armenian Christian for the child to be able to enroll in an Armenian school. It is anticipated that this measure might have a positive impact on Armenian schools in terms of the number of students.<sup>2</sup>

## **Part 4. Untapped potential for cooperation in the field of education and research**

The development of cooperation in the field of education and research between Turkey and Armenia should be seen as a long term investment that will help to enhance knowledge and understanding between Armenian and Turkish societies. The foundation already exists. There is a revival of interest for Armenian language in Turkey. New departments are being established mainly within public universities. However they face problems finding qualified lecturers in Eastern Armenian. Turkish Studies have traditionally had its place within the Yerevan State University. The department seriously lacks books and materials. Furthermore, overcoming the obstacle that the absence of diplomatic relations could have represented, some universities have already signed memoranda of understanding.<sup>3</sup> The Higher Education Board of Turkey is delivering equivalence to degrees of some Armenian universities.<sup>4</sup> Armenian students are already eligible for a scholarship of the Turkish government. Above all, students are already acting as agents of interactions between Turkey and Armenia. The establishment of institutional mechanism will make cooperation in the field of education more sustainable.

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1 [http://noravank.am/upload/pdf/6.%20Ruben%20Melqonyan%2001\\_2011.pdf](http://noravank.am/upload/pdf/6.%20Ruben%20Melqonyan%2001_2011.pdf)

2 <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12718.pdf>

3 [http://tabdc.org/index.php?subaction=showfull&id=1218421450&archive=&start\\_from=&ucat=36&](http://tabdc.org/index.php?subaction=showfull&id=1218421450&archive=&start_from=&ucat=36&)

4 Interview with the Higher Education Board and a few Armenian students who have got the equivalence to their degrees obtained in Armenia.

#### 4.1. Academic agents of interactions

Though still limited in number, there are some Armenian nationals who have a legal resident status in Turkey. Their residence in Turkey is motivated by academic purposes. They are either students or lecturers in Turkey universities. They decided to come to Turkey after having completed a first university degree in Armenia. They became entirely fluent in Turkish in a very short period of time. They decided deliberately to settle in Turkey, more specifically in Istanbul. They have contacts with members of the Armenian community in Istanbul and are well integrated in Turkish society.

The obtention of their legal resident status took time. The lack of information on the procedures is the major reason. Access to Turkey is easy and cheap. No one thought about the possibility to launch the procedures for the obtention of a resident card before entering the Turkish territory. The role of the Turkish consulate in Tbilisi is indeed very little known. Interestingly Armenian nationals are first attempting to find the answers within the Turkish society. They are trying with the support and advice of their Turkish friends to solve problems encountered in a practical and informal way.

**Testimony 1:** *For residence permit, “I came to Turkey with a monthly tourist visa and then I applied for residence permit in Turkey. However, when my appointment with officer came, my tourist visa was already expired. The officer told me that they could not give me residence permit with tourist visa. I needed to have student visa to obtain residence permit. They advised me to go to Tbilisi to get student visa. Unfortunately, I was fined while leaving for Georgia. I got my student visa in Georgia and then came back. Finally, I obtained my residence permit. I would never say that what I went through the process is related to my Armenian identity.”*

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**Testimony 2:** *“I came to Turkey with a yearly student visa but I was coming to work in Turkey. I obtained the visa from the Embassy of the Republic of Turkey in Tbilisi. It was a single entry visa. However, during my stay I needed to go back to Armenia for some time and while returning to Turkey I applied for researcher visa which is more advantageous actually. I have applied for residence permit some time ago and after having my residence permit I will not have to apply for a new visa after my each exit. I receive my salary from the university as scholarship.” He avoided from going through work permit procedures.*

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#### **4.2. The issue of recognition of university diplomas: the Turkish Higher Education Board**

The Higher Education Board in Turkey issues equivalence to secondary school and university degree obtained abroad. The obtention of equivalence in Turkey for degrees obtained abroad is especially required in case one would like to carry on his/her studies in a Turkish institution, would consider applying for an academic or research position, intends to work in the public service. The applicant has to produce all necessary certificates and copies of thesis submitted for the obtention of the degrees. The most important criteria for the Higher Education Board in its decision is whether the university which delivered the degrees is included in the list of reference.

The Yerevan State University and the Gyumri State Pedagogical University are included in this list. Turkish equivalence for degrees delivered by these two universities can be obtained without problem. Our 'academic agents of interaction' are conforming this. The correspondence with the Higher Education Board is usually conducted in Turkish, which might pose problem to no Turkish speakers.

There are around 70 large and small universities in Armenia, it would be important the Higher Education Board reviews its lists and adds a selection of other Armenian universities.

In Armenia, the equivalence system doesn't exist. Degrees delivered by foreign universities are accepted immediately by Armenian institutions.

#### **4.3. Official agreements between universities**

Two Turkish State universities, namely the Middle East Technical University and the Ankara University signed in 1999 a memorandum of understanding with the Yerevan State University. The Turkish-Armenian Business Development Council (TABDC) facilitated the signature of these agreements. The absence of diplomatic relations hadn't been an obstacle impossible to overcome. These protocols pave the way for an academic collaboration and student exchange program. A group of academics and students from Armenia visited the Middle East Technical University in 1999. The agreements are currently ineffective.

## 4.4. Armenian language in Turkey

### 4.4.1. *Departments of Armenian Studies at Turkish universities*

There is a regain of interest in the teaching of Armenian language in Turkey. The newly opened Armenian language departments by the Higher Education Council at Turkish Universities should not be overlooked. Department for Armenian Language and Literature has lately been opened at two Turkish state universities. The first one is at Erciyes University (Kayseri). The department has begun education with 2 students and one professor in 2010.<sup>1</sup> The other one is at Trakya University (Edirne), the program will start to educate in 2012/2013 academic year for the first time. Three professors from Armenia will teach at the program. For the first year, the department will accept twenty students.<sup>2</sup> Both of these programs are undergraduate level. Besides these undergraduate programs, Ankara University has Armenian Language and Culture program at postgraduate level. The program has two professors, one of them is a full professor and the other one is a research assistant.<sup>3</sup> At Bosphorus University, the Armenian language is taught as an elective course by Modern Languages Unit.<sup>4</sup> In 2011 fall, Lifelong Learning Centre of Kadir Has University started Armenian Language Course which is open to everybody. The course is free of charge and 150 Turkish Lira is demanded only for books.<sup>5</sup>

### 4.4.2. *The Foreign Language Examination for Civil Servants for Armenian language*

The KPDS (Kamu Personeli Dil Sınavı-The Foreign Language Examination for Civil Servants) is a foreign language proficiency test, mostly taken by civil servants and students intended to pursue postgraduate career. It is administered by ÖSYM (Öğrenci Seçmeve Yerleştirme Merkezi- Centre for Student Selection and Placement) in Turkey in order to evaluate the foreign-language skills, especially of civil servants. The state pays language compensation to public servants and employees of state agencies depending on their score on the test.

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1 <http://www.zaman.com.tr/haber.do?haberno=1038054&title=ermeni-dili-ve-edebiyatinin-iki-ogrencisi-var-ikisi-de-turk&haberSayfa=0>

2 [http://www.trakya.edu.tr/anasayfa/?o=h&h\\_id=1015](http://www.trakya.edu.tr/anasayfa/?o=h&h_id=1015)

3 [http://www.dtcf.ankara.edu.tr/akademik\\_birim.php?ermeni-dili-ve-kulturu-anabilim-dali&bid=74&icerik=akademik\\_kadro#breadcrumb](http://www.dtcf.ankara.edu.tr/akademik_birim.php?ermeni-dili-ve-kulturu-anabilim-dali&bid=74&icerik=akademik_kadro#breadcrumb)

4 <http://www.yadyok.boun.edu.tr/birim/almanca-fransizca-ismpanyolca-eng.htm>

5 <http://www.khas.edu.tr/egitim/yasam-boyu-egitim-merkezi/komsu-diller-akademisi/ermenice-dil-kursu.html>

The test is applied twice a year, one in the fall and the other in spring. It is administered in several languages, but mainly in English. It is carried out in several cities throughout Turkey.

The test is applied in Armenian language since 2007 fall. The number of applications is not high comparing to the other languages (Please, see the chart below). The Armenian exam consists of translation questions though main style of the exam is multiple-choice.

Armenian Language	The number of people admitted to the exam	The number of people taking the exam
2007 Fall	1	1
2008 Spring	22	20
2008 Fall	6	4
2009 Spring	9	8
2009 Fall	23	20
2010 Spring	27	25
2010 Fall	Online data is not available	
2011 Spring	20	19
2011 Fall	23	16

\*The data was taken from [www.osym.gov.tr](http://www.osym.gov.tr)

#### 4.4.3. Saving Armenian schools in Turkey

On the other hand, Armenians have always enjoyed the status of having widespread Armenian schools in a number of countries (for instance, Russia, USA, Argentina, Lebanon, etc.) As to the situation in Turkey, it is proper to mention that by the end of the 19th century there were 90 Armenian schools in Istanbul (called Bolis by Western Armenians) of which 40 community-based and 50 private ones.<sup>1</sup> By 1914 there were 64 functioning Armenian schools with 25,000 students.<sup>2</sup> But, after the proclamation of the independence of the Republic of Turkey in 1923, the number of schools started to decrease reaching 32 in 1972-73, while in 1999-2000 there were 18 schools with 3,786 students and in 2009-2010 only 18 schools remained with 3029 students<sup>3</sup>. Currently there are 14 primary schools and five high schools for Armenian students.<sup>4</sup> (In fact, these schools adjust their structures to that of Turkey's general educational system which includes three-tier schooling: kindergarten – 1 or 2 years, primary education – 8 years, high school (lyceum) – 3 years<sup>5</sup>). It is of great importance for the Armenian minority to preserve its language, culture and religion in Turkey. Although under the Lausanne

1 ՀայՍփյուռքիանրագիտարան, Երևան, 2003

2 ՀայՍփյուռքիանրագիտարան, Երևան, 2003

3 ԳոյունճեանՍ., Ակնարկմը՝տտանալովահայկարժարաններովիրականութեան, Ստանալով, 2010

4 [http://www.todayzaman.com/news-257545-the-children-of-istanbul-illegal-armenians-lost-in-the-educational-shuffle-up-until-now-by-alin-ozinian\\*.html](http://www.todayzaman.com/news-257545-the-children-of-istanbul-illegal-armenians-lost-in-the-educational-shuffle-up-until-now-by-alin-ozinian*.html)

5 Ibid.

Treaty Armenians are entitled ‘to establish, manage and control at their own expense any schools and other establishments for instruction and education,’ there are major obstacles that directly or indirectly hinder the realization of this right.

The reasons behind the reduction of students leading to the closure of Armenian schools are various. One of those reasons is that currently many parents prefer to send their children to Turkish, English or German schools, where the education quality is higher<sup>1</sup> as compared to Armenian schools, thus making it easier for the children to get admitted to universities. In addition, this indirect limitation of mother tongue education to Armenians, who are among de facto Lausanne minorities,<sup>2</sup> can be considered as one of the biggest obstacles to opening private or public schools teaching in Armenian.

#### **4.5. International scholarship program of the Republic of Turkey and Armenian citizens**

Turkey has become lately an attractive destination for international students. Turkish government has started reforming its scholarship program. One of the reforms is uniting government and state scholarships under new Turkey scholarship program and making it available for more students. The new program aims at attracting students from all different regions of the world. Turkey scholarships are coordinated by Republic of Turkey Prime Ministry Presidency Turks Abroad and Related Communities now. This scholarship is available for Turkish language training course, associate, undergraduate, graduate and research degrees. Turkey scholarships Black Sea Undergraduate Scholarship is open to citizens of Belarus, Czech Republic, Armenia, Estonia, Georgia, Latvia, Lithuania, Mongolia, Moldova, Poland, Romania, Russia, Slovakia and Ukraine. The scholarship covers tuition fee, stipend, public transportation, health insurance, housing, round flight ticket and Turkish language education provided before starting the university program. The applications can be done via online or the Embassy of the Republic of Turkey in sending country. Armenian citizens are also eligible for applying other scholarship programs which are open to all candidates around the world.

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1 ԼոքմազգյոզյանՍ., Ստամբուլի հայկական դպրոցները, <<Գլորուս>> վերլուծական տեղեկագիր, Երևան, 2008, թիվ 3

2 Section III of the Treaty of Lausanne (July 21, 1923) Concerning Protection of Minorities. <http://www.faq.s.org/minorities/Appendices/Section-III-of-the-Treaty-of-Lausanne-July-21-1923-Concerning-Protection-of-Minorities.html#b>

#### **4.6. EU format for establishing sustainable mechanisms: FP7- Erasmus – Erasmus Mundus**

Erasmus program celebrates its 25th anniversary with ‘Erasmus: changing lives, opening minds for 25 years’ slogan, and Turkey is a part of the program since 2004. The mobility program has helped removing prejudices, combating xenophobia among European people since 1987. Erasmus consists of two programs: learning mobility, training based mobility for placement. The program is administrated by Directorate General for Education and Culture and conducted among 33 European countries now. Turkey has sent 32.103 students abroad under the program since 2004. In total, Turkey ranks 17<sup>th</sup> most sending country.<sup>1</sup> For Armenia, Armenia is a part of Erasmus Mundus program and exchanges students and staff with Greece, Portugal, Italy, Belgium, Latvia, The UK and Bulgaria.<sup>2</sup>

The EU can take a facilitator role and bring Armenia and Turkey together under Erasmus Program. The EU’s role can accelerate the process and contribute to normalization process.

Last but not least, Erasmus is not the only education program that EU conducts but certainly it is the most successful and common one. Under Lifelong Learning Program (LLP), the EU has six different programs by name Erasmus, Comenius, Leonardo Da Vinci, Grundtvig, Transversal and Jean Monnet Program. All these programs provide interchange, co-operation and mobility between education and training institutions and systems within the EU. Turkey is a part of all these programs while Armenia can take part in them under the ‘third’ countries category. These programs are opened to the countries which are part of the EU’s neighborhood policy. Those countries are addressed as a ‘third’ country in LLP.<sup>3</sup>

Apart from these education and training programs, the EU can use its research and innovation tools to bring Armenia and Turkey together. The EU’s most well-known research program FP7 (7<sup>th</sup> Framework Program for Research and Technological Development) is supporting research, technological development and demonstration projects. As a general principle, FP7 is open to participation from any country in the world. The procedures for participation and funding possibilities vary for different groups of countries. Co-operation with the ‘third’ countries is explicitly encouraged. Armenia is included among ‘third’ countries category.

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1 <http://ec.europa.eu/education/erasmus/doc/stat/table1.pdf>

2 <http://www.erasmusmundus5.gr/>

3 [http://ec.europa.eu/education/llp/doc/call11/part1\\_en.pdf](http://ec.europa.eu/education/llp/doc/call11/part1_en.pdf)



## **Part 5. Recommendations**

### **5.1. Improving the communication between the States**

#### **5.1.1. *Making the best use of multilateral and regional platforms***

The pragmatism on both sides made possible the opening of a diplomatic channel facilitating communication on the State to State level. Similarly, treaties of the Soviet times continue to regulate cross-border contacts between Armenia and Turkey. Regional organizations where Turkey and Armenia meet, international conventions signed by both countries can help to develop some legal mechanisms overcoming partially problems originating from the absence of a bilateral legal framework.

Reservations that Turkey put forward on certain occasions vis-a-vis Armenia within regional and international bodies are constraining even more the State to State communication, damaging Turkey's image on global platforms. Furthermore these reserves are counterproductive as long as they impede on Armenia's integration into global structures.

#### **5.1.2. *Prospecting possibilities to establish joint technical commissions to deal with neighborhood and legal issues***

The on-going dialogue between border officials and the cooperation for the joint management of the Arpaçay/Akhourian dam over the Turkish-Armenian border can provide a good basis for the settlement of other joint technical commissions in areas where being neighbors bring the necessity of dialogue and cooperation. The field of environmental risks provides a large room for cross-border cooperation on issues ranging from river pollution, monitoring of threats of nuclear pollution to earthquake preparedness.

#### **5.1.3. *Co-operation in the field of Intellectual Property Rights***

In the field of Intellectual Property Rights Armenia and Turkey have an immense room for cooperation and for the establishment of prerogatives that will help remove the uncertainty and further problems. As mentioned above, both are signatories to the same international conventions and both have their national relevant agencies. It is advisable for them to recognize the Intellectual Property Rights of each other through the mentioned national agencies. This said, agency in Armenia (Armenian Intellectual Property Rights Agency (AIPA)) cooperates with that of the Republic of Turkey in the legal sphere and all the necessary information and law amendments, along with sending to other agencies in range, also to the

Turkish one (Directorate General of Copyrights and Cinema Ministry of Culture of Turkey). The legal recognition in this case will bring all the more important result. A reciprocal recognition of property rights registered by Armenian and Turkish citizens will be a good conflict prevention mechanism.

#### **5.1.4. *Supporting dialogue between local authorities***

The Turkish and Armenian governments should support dialogue and cooperation between local authorities. The Congress of Local and Regional Authorities organized within the Council of Europe can provide with legal framework and guidance to local authorities on both sides of the Turkish-Armenian border. The Black Sea Euro-Region association can be instrumentalized in this respect.

#### **5.1.5. *Official cooperation in the field of culture and heritage protection***

Local cooperation can be enhanced to the national level in the field of culture and heritage protection. The fact that culture is not respecting borders is particularly true in the case of Armenia and Turkey. The channel of communication opened between the Ministries of Culture of Turkey and Armenia on the inauguration ceremony at Akhtamar should be further developed and lead to the opening of a cultural corridor between the two nations. Creativity and pragmatism should pave the way to the development of a cultural diplomacy which can to be conducted through non official channels.

### **5.2. *Helping people connecting Turkey and Armenia***

Human to human contacts are in the long term an essential key in solving even the most sensitive problems. The final object of the law of nations is not the protection of impersonal interests of states of governments. It is the protection of the ordinary common interests of peoples.

#### **5.2.1. *Providing better information on 'Absence of diplomatic relations, what it means for Armenian and Turkish citizens?'***

The psychological dimension of the lack of diplomatic relations is very important. The impossibility to see a building belonging to them with their national flag in each other's country leads to the feeling of 'there is nobody to protect us'. Armenian and Turkish citizens should be better informed of the functions of the Turkish consulate based in Tbilisi. An information center advising in Armenian and Turkish on practical and legal issues can be established within a private organization or be envisaged within a joint NGO project. It would be very useful to

study the laws of the two countries and create useful communication-oriented tools, such as Armenian-Turkish dictionaries and manuals, with the active legal vocabulary and required legal information therein.

### **5.3. Facilitating the life of ethnic Armenian Turkish citizens in Armenia**

Istanbul Armenians are not major agents of interactions between Turkey and Armenia. Though very limited in number, a few Istanbul Armenians are residents in Armenia. The Ministry of Diaspora of Armenia is also covering Turkey.

#### **5.3.1. *Perceiving the illegal migrants as an asset for bilateral relations***

Turkey has become over the last ten years an immigration country. Illegal migrant work force has become significant. Armenian illegal migrants wouldn't deserve much of the media coverage if they hadn't been from time to time taken hostage by the political discourse in Turkey over disagreements either with the Armenian government or the Armenian Diaspora. The recent change in the Turkish legislation should hopefully act as an incentive for the Turkish employers to propose a regular contract to the Armenian migrants. Temporary solutions alleviating human sufferings should be hailed as well. It is all the more important to try and change the perception of these 'Armenian migrants' both in Turkey and Armenia and transform them in an asset for the future of relations between the two nations. These people can be seen as a bond between the two societies.

### **5.4. Cooperation in the field of education and research: a way of enhancing knowledge and understanding between the Armenian and Turkish societies**

The development of cooperation in the field of education between Turkey and Armenia should be seen as a long term investment that will help to enhance knowledge and understanding between Armenian and Turkish societies. The foundation already exists. Steps taken in the areas highlighted below will help to further develop academic cooperation between Turkey and Armenia. Furthermore the establishment of institutional mechanism will make cooperation in the field of education more sustainable.

#### **5.4.1. *Equivalence in Turkey for degrees obtained in Armenia***

The Higher Education Board in Turkey issues equivalence to secondary school and university degree obtained abroad. There are around 70 large and small uni-

versities in Armenia, it would be important the Higher Education Board extends lists of universities from Armenia.

**5.4.2. *Developing mechanism of cooperation between the newly established departments of Armenian studies in Turkey and Turkish studies departments in Armenia.***

- Going beyond, student exchange programs can involve English and French language universities in Armenia and Turkey. The linkage between the Erasmus and Erasmus Mundus programs of the EU can provide a framework for the institutionalization of student exchange between Turkey and Armenia.
- Possibilities for cooperation in the field of academic research should be prospected and promoted. Microbiology and nanotechnology can provide room for cooperation

Below is a table of comparisons between Armenia and Turkey and relevant recommendations.

Field	Turkey	Armenia	Recommendations
Business	Not possible to purchase property. Law on Mutuality of the Republic of Turkey.	Possible to purchase property.	To the Turkish government to revise the laws in this regard.
	Reservations towards Armenia in WTO.	Under WTO applies MFN and national treatment to all member states.	To the Turkish government to lift reservations.
	Puts limits on half of the imported products, and for the second half, the tax reaches up to 225%.	Applied tariff, at 2.7%, is among the lowest of WTO Members.	To the Republic of Turkey to revise the applied measures.
Intellectual Property	Party to WIPO, GATTs and TRIPS agreements.	Party to WIPO, GATTs and TRIPS agreements.	To both governments take steps towards securing Intellectual property in the framework of international mechanisms.
Conventions			
Council of Europe Convention on Action against Trafficking in Human Beings	Signed, not ratified.	Ratified.	To the Republic of Turkey to ratify the Convention. Migration Management mechanisms will be in force between Armenia and Turkey.
International Convention on the Protection of the Rights of Migrant Workers and Members of their Families	Ratified.	Not yet ratified.	To the Republic of Armenia to ratify the convention.
Council of Europe Convention on the Legal Status of Migrant Workers	Ratified.	Not a signatory.	To the Republic of Armenia to sign the convention.
Agreement on simplification of visa procedures for Lorry Drivers and the on for Businesspeople	Ratified.	Not a signatory.	To the Republic of Armenia to sign the agreement.



This study primarily aims at relocating Turkish-Armenian interactions within the sphere of law. Laws emerge as a result of interactions of people and nations. Their critical function is the protection of interests of the ordinary people, not the protection of the impersonal interests of states or governments. The absence of a bilateral legal framework deriving from the absence of diplomatic relations between Armenia and Turkey puts its repercussive stamp on interstate communication and cooperation. The absence of diplomatic relations has a psychological dimension for both Turkish and Armenian citizens. However to what extent does this constitute an impediment to daily interactions between Armenians and Turks and the further development of people to people contacts? It is of paramount importance to determine precisely the legal impact of the absence of diplomatic relations. The acknowledgment of a communication between the two states, stemming from mutual obligations and responsibilities, leads to the undeniable fact that neighbourhood issues a great deal in this respect. This degree of pragmatism can be a source of inspiration for overcoming problems obstructing daily interactions and more ambitiously the design of policy frameworks for the further development of interactions between the peoples of Armenia and Turkey.

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