

Town Hall Meeting Scenarios

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Issues of Business co-operation in the context of Armenian-Turkish Relations

Town Hall Meeting in Yerevan

11.11.2010

Scenario 1. Current state of Armenian Turkey business relations

The land communication between Turkey and Armenia **remains closed**. **No diplomatic relationship** has been established between the two states. As a result of this reality the **legal enforcement** of any contract between Armenian and Turkish residents – both private persons and businesses - remains limited to good faith and to political will to a certain extent.

Armenia and Turkey are signatories to many international conventions and **treaties**. At the same time most of these international conventions are the only **politically binding** documents and rarely can be used to **enforce direct contracts**. Some other international regulation instruments lack to specifically address legal relations between two countries. An illustrative example is the WTO instruments. Thus, 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. Some of bilateral and multilateral treaty agreements are the heritage of the former Soviet Union, such as the joint management of water resources and dams on the bordering rivers.

Meanwhile, **business partners** in Armenia and Turkey have established alternative schemes during the past decades. For example, many business partnerships rely on so called gentlemen's agreements where majority of contracts are based on trust and long term relationship. Sometimes such established business relationships are so strong that a telephone call is enough to make multimillion deals. However, this practice is mainly limited to trade deals and do not ease customs procedures. Thus, as direct contracts are not signed, the contracts in service sphere remain rather limited (for example in telecommunication sphere).

No effective legally binding mechanisms exist for business partners in Armenia and Turkey. Instead, social norms and business practices somewhat fill this gap. As a result, the number of transactions is rather low, opportunities for those partners that have no established relationship are limited and the risks for new partnerships are high.

Financial transactions between Armenian and Turkish residents are facilitated smoothly via various means ranging from cash payments to bank transfers and offshore transfers.

The practices of litigation related to business contracts vary. The major contracts refer to New York Arbitration Convention. There are also reported cases when conflicts between Armenian and Turkish business partners have been resolved via New York arbitration. However the costs of such practice are very high and not necessarily affordable. In some cases a Turkish partner took a suspect intermediary to Armenian court.

Scenario 2. Cutting business relations off, seeking for new opportunities

The radical negative changes in the political environment result in fully freezing the relations between Turkey and Armenia. Turkey decides to restrain from its announced plan of *“the establishment of rapid and safe transport infrastructure that will increase the competitive power of*

the country and integration with Europe and neighboring economies” in regard to Armenia and fully stop cooperation with Armenia. This results in nullifying cooperation in the spheres of air transport. Georgia joins to this policy and shuts its mediator role between Turkey and Armenia which results in stopping any land transport between Armenia and Turkey via Georgia as well as Fiber-Optic cable stops sending/receiving traffic via Georgia.

EU doesn't welcome this step and includes preconditions in EU accession negotiations to reopen existing but small infrastructure with Armenia.

Such situations redirect investment money of Armenia towards construction of North-South infrastructure. Armenia becomes fully integrated with Iran's and Georgia's transport and telecommunications network. Armenia joins/buys to the IT cable under the black sea and invests in Iran-Armenia highway construction. A political vision for Armenia becomes “let it be expensive but secure”. Such political shifts make Armenia's politics hardliner.

A new status quo is established at the end with Iran-Armenia-Georgia-Black Sea-EU and EU-Turkey-Georgia-Azerbaijan crossroads where Georgia is no more acting as a crossroad. These two independent infrastructures work simply in parallel despite crossing each other.

Scenario 3. Borders are open, economies are flourishing

The opening of Armenia Turkey border and dialogue among countries brings about to the normalization of relations between two countries. Turkey as well as Armenia realize the importance of mutual trust and make efforts to sustain an atmosphere of effective relations.

Despite of the global financial crisis/problems business entities welcome border opening as an opportunity for large scale investments and projects. Particularly, Russian companies state readiness to invest into railroad and energy projects. New opportunities are given to such areas as electricity export and re-export, a railroad passing from Turkey to Iran and far Asia via Armenia, etc.

Armenia takes a lead as an initiator of new projects via negotiations with big powers and taking into account economic interests without touching/damaging political interests.

A new competitive market is emerging as a result of investments made by and representations of transnational corporations.

Armenia becomes fast growing country among other CIS countries.

Scenario 4. Borders are open, but economy stagnates

Armenia and Turkey make all possible efforts to be polite to each other and improve relations via taking a stand that “peace and mutual trust are the most important for a prosperous future”

International community tries not to intervene into politics in the region pushing Armenia and Turkey to make face to face dialogue without any intermediary. Armenia doesn't push any political agenda while Turkey initiates a process for final border demarcation which will “end tension and ambiguity of the situation bringing about uncertainties and conflicts and establishing long lasting peace among our nations”

However economic progress is not registered despite of the forecasts of political-economic engineers since almost all the infrastructure in Armenia belongs to Russian companies. Turkey earns a new political bargaining power which is to enable or disable any cross-border project. Step by step Armenia starts to give up some political positions in exchange for economic gains. Also

Turkey acquires a new instrument in the form of economic projects to have impact on Nagorno Karabakh conflict resolution process. As a result a new Russia-Turkey cooperation prospect is being outlined within the Turkey's vision about Stable Caucasus initiative.

A new cross border investment project starts but the economy of Armenia remains the same since all the project owners are Turkish and Russian companies. The only registered change becomes the loss of Georgian monopoly as a route to/from Armenia.

Legal issues in the context of Armenian – Turkish relations

Town Hall Meeting in Gyumri

23.11.2010

Scenario 1 – Armenia Turkey legal relations – current situation

The land communication between Turkey and Armenia **remains closed**. **No diplomatic relationship** has been established between the two states. As a result of this reality the **legal enforcement** of any contract between Armenian and Turkish residents – both private persons and businesses - remains limited to good faith and to political will to a certain extent.

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Scenario 2 – Improved “status quo”

Armenia-Turkey rapprochement process has made **no significant progress** – the land communication remains closed and no diplomatic relationship exists.

The main problem in the legal area remains complicated **customs regulation** between two countries. Meanwhile, the business communities in both countries seek solution to reduce

uncertainties created by political situation and mitigate risks for business relations. Existing partnerships and business associations join their efforts to establish and institutionalize existing **workarounds**. Many business partnerships address the challenge by legally registering their deals via intermediary companies or their branches in Georgia. A chain of joint Armenian-Turkish companies is established in Georgia and various offshore zones that facilitate business relations between Armenian and Turkish companies. Several enterprises including Armenian-Turkish clearing house, joint bank, insurance company, legal services have been established.

While the business risks are very much tied with political risks and are sensitive to minor changes in political situation, all transactions across the border are **insured** from political risks.

Business associations in some way institutionalize social norms established between Turkish and Armenian businesses via reducing risks. Armenian and Turkish companies who have a long term practice of joint business deals share their knowledge and help with business networks to newcomers. Negotiations with world famous insurance companies are held to hedge deals which are not possible to legally enforce.

As a result a new automated B2B system emerges which allows making cross border transactions between emerging partners thus expanding existing market. The customs registration and other workarounds of current problems are covered via fee which makes transaction costs higher but somewhat risk-free.

While New York arbitration is used as one of the method to solve conflicts, the Georgian Government offers Georgian regulatory environment and Georgian court to enforce contracts on deals made via this country. Many business partners consider this offer as a way to ensure that contracts are **legally binding** and enhance the effectiveness of **contract enforcement**.

Scenario 3 – Politically favorable legally easy, but borders are closed

While the land border between Armenia and Turkey remains closed, leadership in both countries made a political decision to enable direct contracting between Armenian and Turkish companies as a step forward towards normalization of relations. The governments have signed a new protocol providing a list of legal documents that enable bilateral business transactions and legal environments of Turkey and Armenia to become effective for enforcement of contracts.

Armenian and Turkish governments and intermediaries consider that deeper economic ties and interests will promote effective environment for rapprochement mitigating political risks and reducing political dependences from the interests of third parties. As a result, Armenian and Turkish companies received political green light for **infrastructure** related joint projects.

The **electric grids** in neighboring countries have been connected and power producers and net operators signed a business agreement under mediation of Russia and the USA. Armenian three major **communication** service providers and their Turkish partners agreed on a direct connectivity business project. A Turkish operator becomes a very successful ISP in Armenian market.

Meanwhile, citizens of both countries enjoy the right to **cross the borders** via Georgia or air. Individual **insurance policies** work in each country enabling tourism relations. Armenian and Turkish citizens can **purchase** services and goods in each country, however the protection of their consumer rights remain not effective. There are also rare cases of ownership of companies' shares of **joint ventures** owned by Turks and Armenians. However, the political risks for such joint ventures remain substantial.

Scenario 4 – Protocols are signed, borders are opened

After a new crisis in the region and the Georgian-Russian month-long conflict (so called the War of Red Wine) the Armenian-Turkish protocols have been ratified in a rush under strong international leadership and mediation of key centers of global power.

The land borders became **open** and the countries prepare to establish diplomatic relationship within months. As the border was open Armenia has been receiving goods directly from Turkey during six months after the “Red Wine War”. However, as Georgian border became operational, Turkey declared that the state of humanitarian emergency has been overcome and the Armenian-Turkish border shall meet the requirements of the **European Customs Union**. The customs border is temporarily **under construction** and is used as a customs green zone corridor only. People can travel back and forth but transportation of goods is facilitated through Georgia until the customs is revamped.

Meanwhile, the countries entered the process of establishing diplomatic relations that will take a while due to number of nuances of Armenian-Turkish relations.

Two political discourses emerge: one force requires that only non-declared goods to be allowed to pass the border unless all legal issues are not settled, while another group notes no serious legal problems and advocates establishment relations between Turkey and Armenia as relations of the countries with any other country. As one of the politicians announces “Protocols were simply political and face-saving actions to show willingness to open the borders. The borders could be opened without any protocol and thanks that we have now opened border. We have to stop political speculations and simply move forward.”