
POLITICAL SCIENCES AND INFORMATIONAL SECURITY

TERRITORIAL ISSUES IN THE KARABAKH CONFLICT IN THE LIGHT OF INTERNATIONAL LAW AND DOCUMENTS RECOGNIZED BY THE PARTIES

Alexander Manasyan

*Corresponding member of NAS RA,
Head of the Chair of Theoretical Philosophy
and Logics, Yerevan State University*

Abstract

“Karabakh conflict” is in the first lines of the word list of modern global political discourse. The problem is viewed differently by the conflicting parties and mediators, as well as analysts. Our task is to present an image of the conflict corresponding to the “original” in the light of the textbook facts of history and primary sources. The expertise is carried out in the format of theses on key issues of the topic stated in the title.

Keywords: Karabakh conflict, Azerbaijani Democratic Republic, Turkization of the Caucasian Tatars

Preamble to the topic. “Karabakh conflict” is in the first lines of the word list of modern global political discourse. The problem is viewed differently by the conflicting parties and mediators, as well as analysts. But to a first approximation, the analysis already demonstrates that the main source of discrepancies lies in the attitude towards historically and legally reliable facts. Sometimes they are simply ignored or presented in incorrect modi. Our task is to present an image of the conflict corresponding to the “original” in the light of the textbook facts of history and primary sources. We do not need to plunge into distant history. For a full-fledged political and legal expertise of the conflict, it will be enough to take the first decades of the XIX century - the years of the accession of Eastern Armenia to Russia - as the starting chronological point. The expertise is carried out in the format of theses on key issues of the topic stated in the title.

Thesis 1. The main argument of Baku in the light of the establishment of the Azerbaijani Democratic Republic (ADR)¹ in 1918.

The key argument in the discourses around Nagorno-Karabakh² (NK) was the argument of official Baku about Artsakh's belonging to Azerbaijan. It is refuted by many legal and political facts. Here we will turn to the most indisputable historical fact. Until 1918, this could not have happened due to the fact that before that time there was neither a political or administrative unit with the right to subjectivity with the name Azerbaijan in Transcaucasia, nor a geographic region with such a name, nor a

¹ Abbreviations and their backronyms are used in the text for stylistic reasons.

² The toponym “Nagorno-Karabakh” that came into use during the Mongol rule, is the name of the provinces of Artsakh and Utik' of historical Armenia, which later became known simply as Artsakh. In this article, *Nagorno-Karabakh* and *Artsakh* are used synonymously.

community with the ethnonym *Azerbaijanis*. A state-like entity called *Azerbaijan* first appeared as a result of the Turkish intervention in Transcaucasia during the collapse of the Russian Empire. On September 15, 1918, accompanied by the expeditionary force of the German Empire, the Turkish troops that had entered Baku overthrew the legitimate authorities, massacred more than 30 thousand Armenians and established a new Turkish state - the Azerbaijani Democratic Republic (ADR). This was Turkey's first pre-Cyprus experience of creating a satellite state beyond its borders through a military invasion. The Turkish Republic of Northern Cyprus (1975) has not been recognized by any state except for Turkey itself. However, the Turkish project "*Azerbaijan*", launched in 1918, was completed in 1991: the Republic of Azerbaijan received international recognition.

Thesis 2. The beginning of the Karabakh conflict.

The Turks initially laid at the basis of the ADR the idea of creating a link between Turkey and Central Asian Turkestan as a decisive step in ensuring the spatial continuity of the Great Turan project, which the Turks were pursuing.

After the capture of Baku in September 1918, in line with the implementation of this plan, the Turkish troops moved to Nagorno-Karabakh (Artsakh) in order to force it to surrender to the ADR. This is how the Karabakh conflict began. The people of Artsakh, who had already proclaimed their land an integral part of the Republic of Armenia, rejected these demands and on October 18, 1918, near the village of Msmna, they defeated the Turkish regiment that had penetrated into NK. The ADR and the Republic of Armenia (RA) were recognized *de facto* by the League of Nations. The issue of their *de jure* recognition was postponed until the resolution of disputed territorial issues arising as a result of ADR claims to vast territories of Transcaucasia from Baku to Batumi, including NK, Zangezur, Nakhichevan and Kars.

Thesis 3. Self-determination of Nagorno-Karabakh in 1918-1920. Declarations of the Congresses of Plenipotentiary Representatives of the People (PRP) of Nagorno-Karabakh.

In 1918-1920 the Congresses of Plenipotentiary Representatives of NK (PRNK) repeatedly declared the Armenian region an integral part of the Republic of Armenia, which proclaimed its independence on May 28, 1918. In the conditions of the collapse of the Russian Empire, when there were no *de jure* recognized states in Transcaucasia, the Resolutions of the Congresses of PRNK were acts of self-determination of Artsakh in territories that did not belong to anyone except the people of Artsakh.

In the chaos of the collapse of the Russian Empire, in the entire Transcaucasia there was no other national institution endowed with such a high legitimacy as the Congress of PRNK. The NK National Council elected by the Congress of PRNK was empowered to manage the economic and social life of Artsakh, to organize the protection of the region from external aggression.

General William Thomson, who entered Baku in November 1918 leading the British military mission and declaring himself military governor, demanded that the NK National Council recognize the power of the ADR. In August 1919, the VII Congress of the PRNK, under the pressure of the British, concluded a "Temporary Agreement" with the government of the ADR on the temporary recognition of the ADR's power "until this issue was resolved at the Peace Conference"³. The matter did not reach the Paris Peace Conference. In March 1920, the "Temporary Agreement" was violated by the Azerbaijani side, which organized the massacre of Armenians in Shushi and nearby villages.

On April 28, 1920, on the day of the entry of the XI Red Army into Baku and the proclamation of the Azerbaijani Soviet Socialist Republic (AzSSR), the IX Congress of PRNK again proclaimed NK an integral part of the Republic of Armenia⁴ and informed the "delegation of the Republic of Armenia in Moscow about the decision of the Congress to convey to the Russian Soviet government"⁵.

Thesis 4. Consequences of the Turkish intervention in Transcaucasia.

The Turks, who fought in World War I on the side of the defeated Triple Alliance, soon left Transcaucasia. But their intrusion into the region was not without consequences. And this is not only about the establishment of the satellite state ADR. They drew the Caucasian Tatars into bloody orgies of *pogroms* against Armenians, finally infecting the former with genocidal consciousness and behavior. In the absence of other ethno-generating principles and values, the aggressive intolerance and hatred towards Armenians and other indigenous peoples of Transcaucasia became determinants of the emerging political identity of the turkifying Caucasian Tatars.

Thesis 5. Rejection of the ADR application for admission to the League by the League of Nations.

In view of the unreasonable claims of the ADR to the territories where it had neither historical right, nor political or administrative control, the League of Nations refused to admit it to the League⁶ and in 1920 the issue of Nagorno-Karabakh was included in the agenda of the Paris Peace Conference. The ADR left history without a legal successor, without factually established and recognized borders and sovereignty over the so-called disputed territories - NK, Zangezur and Nakhichevan.

Thesis 6. Relinquishment of claims to Nagorno-Karabakh, Zangezur and Nakhichevan by the AzSSR and recognition of the right of the people of the NK to full self-determination.

³ From the history 1989: 23-25.

⁴ Bulletin of the Archives of Armenia 1989, N 1: 120.

⁵ Nagorno-Karabagh 2008.

⁶ League of Nations 1920: 173-174.

On November 30, 1920, a day after the establishment of Soviet power in Armenia, Baku declared the recognition of Nagorno-Karabakh, Zangezur and Nakhichevan as integral parts of Soviet Armenia. On December 1, 1920, the Declaration was proclaimed at a ceremonial meeting of the Baku Council, dedicated to the establishment of Soviet power in Armenia. On December 2, 1920, the Declaration was published with the part about Nagorno-Karabakh revised: "... the working peasants of Nagorno-Karabakh are given full right of self-determination"⁷. On December 4, the central body of the RCP(b) - newspaper "Pravda" published an article by J. Stalin on the relinquishment of claims to Nagorno-Karabakh by the AzSSR⁸. The original of the Declaration, according to which Baku recognized Nagorno-Karabakh as an integral territory of Soviet Armenia, is still inaccessible to researchers.

Thesis 7. Proclamation of NK as an integral part of Soviet Armenia.

On June 12, 1921, Soviet Armenia declared NK as its integral part⁹. The legality of this act was beyond doubt both from the point of view of international law and in the context of regional political and legal realities. The document was not legally vulnerable, due to:

a) The resolutions of the Congresses of the PRP of NK in 1918-1920, proclaiming NK as an integral territory of the RA;

b) The absence of parties disputing that NK belonged to Soviet Armenia, including the AzSSR, which recognized the right of the people of Nagorno-Karabakh to full self-determination.

On June 3, 1921, before the Republic of Armenia declared NK as its integral part, the Kavbiuro of the RCP(b)(Caucasian Bureau of the Russian Communist Party [of Bolsheviks]), with the participation of representatives of Azerbaijan, adopted a special resolution obliging Armenia "to indicate in the declaration of the Armenian government that Nagorno-Karabakh belonged to Armenia"¹⁰.

Thesis 8. Discussion of the issue at the plenary session of the Kavbiuro of the RCP(b) of July 4, 1921.

On July 4, 1921, at the request of Baku, which recognized the right of the people of Nagorno-Karabakh to complete self-determination on December 2, 1920, the issue was put on the agenda of the Kavbiuro of the RCP(b). After discussion and voting, it was decided: "to include Nagorno-Karabakh in the SSR of Armenia, to hold a referendum only in Nagorno-Karabakh"¹¹. N. Narimanov, the representative of the AzSSR, demanded that the issue be passed on to the Central Committee of the

⁷ Mountainous Karabagh 1992: 604-605.

⁸ Stalin 1947: 413-414.

⁹ Nagorno-Karabagh 2008: 629.

¹⁰ Nagorno-Karabagh 2008: 627.

¹¹ From the history 1989: 56.

RCP(b). The Bolshevik Central Committee of the RCP(b), which had already decided to tear NK away from Soviet Armenia, but avoided responsibility for this arbitrariness, was not going to consider the issue itself. It was for this purpose that J. Stalin was sent to the plenary session of the Kavbiuro of the RCP(b), with the task to solve the issue of transferring Nagorno-Karabakh to the AzSSR on the spot. Stalin's mysterious silence at the meeting of July 4, 1921 has an explanation after all: the next day he completed the task of the Center, but in line with his concept of autonomization.

Thesis 9. Consideration of the issue at the plenary session of the Kavbiuro of the RCP(b) on July 5, 1921 and the annexation of Nagorno-Karabakh.

On July 5, 1921, a new session of the plenary meeting of the Kavbiuro of the RCP(b) was held, at which the draft of the new decision was read out: "Based on the need for national peace between Muslims and Armenians ... leave Nagorno-Karabakh within the Azerbaijani SSR, granting it broad regional autonomy with the administrative center in the city of Shushi, which is part of the autonomous region ..." ¹².

The draft was not put up for discussion and voting, which demonstrates the blatant cynicism of the arbitrariness towards Armenia. The Kavbiuro of the RCP(b), an unconstitutional, partisan institution of a third party, did not have the right to resolve territorial issues (especially beyond the borders of Russia). The implementation of this factually not adopted decision with gross violations was in fact the annexation of NK, which had already been declared an integral part of Soviet Armenia.

Even if we assume that the Kavbiuro of the RCP(b) had the authority to make decisions on Artsakh, the legal assessment of the documents emerging from it shows the gross distortions of the essence of the issue contained in them. On July 4, 1921, the Kavbiuro of the RCP(b) decided: "*To include Nagorno-Karabakh in the SSR of Armenia*", while Nagorno-Karabakh had already been declared an integral part of Soviet Armenia with the knowledge and by the decision of the same Kavbiuro of the RCP(b) a month earlier (June 3, 1921). The next day, the Kavbiuro of the RCP(b) decided "*to leave Nagorno-Karabakh within the Azerbaijani SSR*" despite the fact that Nagorno-Karabakh had never been a part of the Azerbaijani SSR before and had already been declared an inseparable part of Soviet Armenia.

The second paragraph of the not adopted, but enacted draft resolution of the Kavbiuro of July 5, 1921 was an outrageous arbitrariness: "To instruct the Central Committee of Azerbaijan to determine the boundaries of the autonomous region and submit to the Kavbiuro of the Central Committee of the RCP(b) for approval". In fact, Baku received the task to determine the borders of not only the region, but also of Soviet Armenia.

¹² Nagorno-Karabagh 2008: 639.

Thesis 10. Decree of the Azerbaijani Central Executive Committee (AzCEC) of Soviets on the formation of the Autonomous Oblast of Nagorno-Karabakh (AONK) “from the Armenian part of Nagorno-Karabakh”.

Tearing Nagorno-Karabakh away from Soviet Armenia, the Kavbiuro of the RCP(b) compensated for this annexation by granting Nagorno-Karabakh (i.e. the entire Nagorno-Karabakh) “broad regional autonomy”, which the name of the autonomy corresponded to until 1936 - the Autonomous Oblast of Nagorno-Karabakh (AONK). According to the annexation act, territorially the AONK had to coincide with geographical Nagorno-Karabakh. The exact formulation “Leave Nagorno-Karabakh within the boundaries of the Azerbaijani SSR, granting it broad regional autonomy” leaves no room for discrepancies. On July 7, 1923, the AzCEC, in violation of the already illegal (and not adopted!) decision of the Kavbiuro of the RCP(b), decreed *the Autonomous Oblast of Nagorno-Karabakh* only on one-fourth of Nagorno-Karabakh with the wording: “To form an autonomous region from the Armenian part of Nagorno-Karabakh ... with the center in the town of Khankendi”¹³. Delaying the decreeing of the region for two whole years, Baku put into circulation the issue of the so-called Kurdistan autonomy (*Red Kurdistan*) in order to territorially separate the region from Armenia¹⁴. With such manipulation, in 1923, the AONK was decreed with shrunk borders and with 95% of Armenian population (Armenians would have made up a significant majority even if autonomy had been granted to the entire Nagorno-Karabakh). Khankendi (historical Vararakn, present-day Stepanakert) was declared the center of the region, instead of the city of Shushi, as the Kavbiuro of the RCP(b) required. After such a disintegration of the NK territory, in 1936, the Autonomous Oblast of Nagorno-Karabakh (AONK) was renamed into the Nagorno-Karabakh Autonomous Oblast (NKAO), reflecting the plunder of the region's lands. Having decreed the autonomous region from a part of Nagorno-Karabakh, it was also necessary to finalize the historical and factual belonging of NK to Armenians with a special statement: “All pastures, forests, orchards and factual ownership of land and water are retained by the current owners”¹⁵.

Thesis 11. Continuation of the annexation policy under cover of border demarcation.

Comparison of the official maps of the ArmSSR, AzSSR and NKAO of the 1950s with those of the 1930s shows how, without the consent of the ArmSSR and NKAO, their borders were cut to pieces by the tacit consent of Bolshevik Moscow¹⁶. In 1927 the territory of Soviet Armenia was 30 thousand 247,6 square km, and by the time of the collapse of the USSR it was 29 thousand 742,5 square km, 505,1 square km less than in 1927. And all these territories were transferred to the AzSSR as a result of repeated

¹³ From the history 1989: 152-153.

¹⁴ *Red Kurdistan* was never formed, and the Kurdistan County, created in 1923, was annulled in 1929.

¹⁵ Nagorno-Karabagh 2008: 651-652.

¹⁶ Nagorno-Karabagh 2008: 654-657.

“border clarification” carried out under various pretexts (mainly with the motivation to provide pastures to nomadic farms), often without any registration.

Thesis 12. Ideological cover and political and legal compensation for the annexation of Nagorno-Karabakh.

The plundering of Armenian territories took place under the pretext of the project of building in the AzSSR an international, not national, socialist republic of a new type not having a titular nation. The goal of the Soviet government in Azerbaijan, repeatedly voiced by the Bolshevik leaders, was “to create a strong non-national center out of it”¹⁷. Until the adoption of the new Constitution in 1936, the AzSSR remained the only republic in the USSR that did not have a titular nation. The concept of *an Azerbaijani* had no ethnic content and referred to all the residents of the AzSSR. The special status of the AzSSR as a Soviet republic without a titular nation excluded the division of the peoples inhabiting it into titular and non-titular. All of them were considered co-founders of the AzSSR as their common state¹⁸, but not national minorities. The place of the Armenians in the republic was special not only because of their significant role in the economy, culture and political history of Eastern Transcaucasia. Since the time of the Russian Empire, the ethnopolitical portrait of Eastern Transcaucasia was presented through the tandem of the concepts of “Armenians-Muslims”, in which the concept of *Muslims* served as a common name for all the peoples professing Islam. Until the 1930s, the conceptual construction “Muslims-Armenians” was a key political formula in almost all the documents concerning the problem. With this key idea of “establishing national peace between Muslims and Armenians” in the AzSSR, the draft decision of the Kavbiuro of the RCP(b) of July 5, 1921 was initiated. Recalling in the preamble the bloody clashes between Muslims and Armenians, the Decree “On the formation of the Autonomous Oblast of Nagorno-Karabakh” announced that the goal of Soviet power in the AzSSR was the establishment of cooperation between Muslims and Armenians “in a single state union”¹⁹. By the Decree of the AzCEC “On the nationalization of state institutions in the Azerbaijani SSR” the Armenian language was declared the language of communication with the AONK²⁰. On the flag of the Nakhichevan Autonomous Republic, the name of the autonomy was written in the Turkish and Armenian languages²¹. Regarding the territory of the Autonomous Oblast of Nagorno-Karabakh, the Decree on its formation stated that “... the factual ownership of land and water ... is retained by the current owners”. In the annual economic reports the Nakhichevan Autonomous Soviet Socialist Republic and the AONK were pointed out in a special line

¹⁷ From the history 1989: 56.

¹⁸ In 1997, the Minsk Group proposed to return to the idea of a common state, but Baku categorically refused.

¹⁹ From the history 1989: 152.

²⁰ Nagorno-Karabagh 2008: 652-653.

²¹ <https://bit.ly/2VWA2AV>

as national and state formations²². According to the constitution of the AzSSR, the chairman of the Regional Council of Deputies of the AONK/NKAO was assigned the second position in the hierarchy of the republic's legislative power - the position of the first deputy of the Supreme Soviet of the AzSSR. The political and legal attributes for the Armenian region and the Armenian people of the AzSSR collectively constituted a kind of compensation for the annexation of Nagorno-Karabakh and Nakhichevan, filling the concept of a non-national AzSSR with political and legal content. In a broad sense, it was expressed in the fact that in all the official documents of the twenties related to the problem, the granting of "broad regional autonomy" to Nagorno-Karabakh was considered to be the realization of the right of the Armenians of the AzSSR to self-determination, an act ensuring "the legal existence of the Armenian people within Soviet Azerbaijan"²³. Formulations on the status of the AONK/NKAO and "the legal existence of the Armenian people within Soviet Azerbaijan" leave no room for speculations that the Armenians of the AzSSR were the co-founder of this international Soviet republic without a titular nation, and not a national minority.

Thesis 13. Creeping retreat from the idea of a non-national AzSSR.

As it turned out later, the status attributes of the Armenian autonomy of the AONK and the place of Armenians in the national mosaic of the non-national AzSSR were a cover for the "velvet annexation" of Armenian lands. The goal was to soften the arbitrariness towards the Armenians and convince them to refrain from open protests. At the same time, the Bolshevik Center considered them decisions subject to revision. The main goal for the Bolshevik-Trotskyists, who had colluded with the Turks, was the inclusion of NK within the AzSSR. The course towards a gradual political and legal devaluation of the statutory merits for the AONK practically began with decreeing the region only on a part of Nagorno-Karabakh with shrunk borders. Meanwhile, the process of Turkization of the Caucasian Tatars, which had begun under Tsarism, was gaining momentum. In the non-national, international AzSSR, the Center undertook the implementation of the policy of *rootization*²⁴ envisaged for the national republics, the declared goal of which was to train personnel for the party and state apparatus of the republic of representatives of indigenous peoples. Raising the newcomer Caucasian Tatars to the rank of an indigenous people, the Center set about incorporating them into the power structures of the AzSSR, ousting from there the personnel of truly indigenous nationalities, primarily Armenians.

Thesis 14. Closure of the project of the national AzSSR. Mutation of the Stalinist project for the construction of the Azerbaijani nation.

²² From the history 1989: 273.

²³ Kirov 1924.

²⁴ There exists rich literature in regard to the assimilation of Caucasian Tatars until 1930s. See e.g. Sventokhonsky 2001; Auch 2001; Baberovsky 2004.

After the death of the “leader of the revolution”, the statesman Stalin, who had been debating with Lenin on the national and state structure of the USSR, dealt with the Trotskyist branch of the Bolsheviks and in the 1930s began to implement his own approaches in matters of the national and state structure of the USSR. He appeared to have a special plan for the AzSSR, aimed at overcoming the undesirable consequences of the policy of the Russian Empire and the Bolsheviks for the USSR. This involved in the process of Turkization the ethnically faceless mass of migrant workers who had come from Persia to Russia and whom the empire called by the false ethnonym *Caucasian Tatars*. Stalin decided to bring out a new Azerbaijani nation, different from both the Persian and Turkish identity, by merging the indigenous peoples of the AzSSR professing Islam with Caucasian Tatars. The plan of Stalin, who was thinking in imperial categories, was that due to the mastering of the history and culture of indigenous peoples, Caucasian Tatars had to acquire a new ethnic identity in this merger and recognize themselves as Azerbaijanis. The project of Azerbaijanization of the republic was aimed not only at strengthening the southern borders of the USSR. At that time, it also had an unvoiced geopolitical subtext: at a convenient moment to carry out the Turkish idea of creating a Greater Azerbaijan “in red performance”. It is known that when creating the ADR in 1918 the Turks assigned to it the name of the real Azerbaijan - the northwestern province of Iran. Stalin did not mind intercepting this plan of the Turks and carrying it out “in red performance”. At the end of World War II, he was close to realizing this idea. Only under the firm insistence of the allied powers to withdraw the Soviet troops from Iran and the flexible policy of the latter, this plan was not realized²⁵.

The project of Azerbaijanization encountered certain difficulties from the beginning. The influx of migrant workers, who had found themselves in Transcaucasia and had become the largest community through the efforts of the empire, had neither history connected with Transcaucasia, much less a culture created here to invest in the “money-box of the project nation”. Everything was to be accomplished at the expense of the indigenous peoples and undisguised robbery of Persian literature, the privatization of the classics of which began in Baku already in the early thirties. Thus, the Stalinist project of building a new Azerbaijani nation, on the one hand, presupposed the assimilation of Caucasian Tatars in the culture of indigenous peoples, and on the other hand, the taking away the national identity from the indigenous peoples and their forced Azerbaijanization. In 1933, Stalin entrusted the implementation of this plan to his favorite Mir-Jafar Baghirov, who was appointed first secretary of the Azerbaijani Communist Party in 1933 (before that, none of the leaders of the non-national AzSSR had been a Caucasian Tatar). In 1936, the ethnonym *Azerbaijanis* first appeared in the new Constitution of the USSR as the name of the new titular nation of the Republic.

But in spite of Stalin’s plan, on the ground, the project of Azerbaijanization of the Republic practically turned into the process of forced Turkization of the indigenous peoples of the Republic through the efforts of the aforementioned Baghirov. A special

²⁵ In post-Soviet conditions, the project of Greater Azerbaijan again appeared in the “working folder” of Turkey.

spiritual image of the newly-minted Azerbaijani was formed – an abuser confident in his impunity with the political consciousness of a Turk.

The Stalinist project of Azerbaijanization of the Republic proved to be a failure. The “leader of the peoples” had miscalculated. Even in his thoughts he had not assumed that the leadership of the Republic could turn the project he had conceived into a mechanism of the Turkization of the Republic. Most of the indigenous peoples professing Islam, under the pressure of Azerbaijanization with massively distributed Azeri passports, went into a kind of national underground. Even now they are waiting for a convenient situation to get out of this underground. Meanwhile, the Armenians of the AzSSR, who did not succumb themselves to the project of Azerbaijanization/Turkization, especially after Stalin’s death, began to be viewed as an obstacle to the completion of this plan, which had already survived a mutation. All the peoples of the multinational AzSSR and the union state itself would undoubtedly benefit if the development of the Republic was oriented towards maintaining its multinationality and federalization.

Thesis 15. Transformation of the national and state structure of the USSR towards the Stalinist plan of autonomization.

Stalin, who put forward the concept of autonomization in the disputes around the national and state structure of the USSR, did not overpower Lenin, who had laid the foundation for the construction of the USSR on the idea of national republics as sovereign entities. After Lenin’s death, Stalin, who did not renounce his views, was forced to reckon with Lenin’s legacy as a fact. He did everything to fit the established political realities within the framework of his concept and ensured that in the Constitution of the USSR (1936) named after him, the national republics delegated to the Union Center their most significant powers and functions, which are associated with the sovereignty of the state. This philosophy of the Stalinist Constitution was adopted by the 1977 USSR Constitution. The unity of the USSR and the supremacy of the Constitution of the USSR were also ensured by the fact that from the beginning the constitutions of the union republics could not contradict the Constitution of the USSR, since they were drawn up on its basis. In the pyramid of national entities, the interval of status powers of the union republics and lower-level entities of the national and state structure was reduced, which was reflected in the documents on the state and legal status of the NKAO. This was recorded primarily in the fact that the NKAO, along with the AzSSR, had the constitutionally established status of an entity of the national and state structure of the USSR with the right to self-determination (all national autonomies had this status). The supremacy of the Constitution of the USSR in determining the status of NKAO was also enshrined in the “Law of the AzSSR on the Nagorno-Karabakh Autonomous Region” (Baku, 1987), all articles of which on the status and powers of the NKAO begin with the statement: “In accordance with the Constitution of the USSR and the Constitution of the Azerbaijani SSR ...” (The right to draw up the “Law of the AzSSR

on the Nagorno-Karabakh Autonomous Region” according to the legislation of the USSR rested with the Regional Council of People’s Deputies of the NKAO, after whose submission the Supreme Soviet of the AzSSR approved the law). Both the AzSSR and the NKAO were entities of the national and state structure of the USSR and in terms of the right of representation in the supreme legislative power of the country they were equal (the difference was limited to quotas). Territorial integrity as one of the attributes of statehood for the AzSSR and NKAO was defined in a legally equivalent way: the territory of the autonomous region (as in the case of the republic) could not be changed without its consent. The NKAO and AzSSR were also equal in terms of the key attributes of statehood delegated to the Union Center. Neither the NKAO, nor the AzSSR had their own currency, their own armed forces. The USSR had one state border, and the internal borders between the republics had the status of administrative borders. The prosecutors of the Union republics and autonomous formations (in this case, the AzSSR and NKAO), in accordance with Article 166 of the Constitution of the USSR, were appointed by the Prosecutor General of the USSR.

It is obvious that in the Stalinist edition of the national and state structure of the USSR the delegation of such significant powers by the national republics to the Center brought their status attributes as close as possible to the analogous attributes of autonomous formations.

Thesis 16. The eradication of Armenians from Nakhichevan. Protests of the Artsakh people against the arbitrariness towards the Armenians of the AzSSR.

The legal transformation of the national and state structure of the USSR towards the Stalinist concept of *autonomization* did not become an obstacle to the forcible Azerbaijanization (in fact, Turkization) of the non-Turkic peoples of the AzSSR professing Islam and the eradication of Armenians from the Republic. On the contrary, Baku was given carte blanche to act on behalf of the Union Center. The genocide of the Armenians of the Nakhichevan region that had started by the Turks in 1918, continued in Soviet times as well. In 1925, by the decision of the Azerbaijani Central Executive Committee, in violation of the Treaty of Kars, the refugee Armenians that had fled from the *pogroms* of the Turks in 1918, were prohibited to return to their homes²⁶. By the 1980s, almost all the Armenians were squeezed out of Nakhichevan by “soft” pressure. The same policy was pursued with respect to the NKAO, the authorities and population of which repeatedly turned to the Center with protest petitions (1930s, 1945, 1965, 1967, 1987) with tens of thousands of signatures. There was no estoppel (tacit agreement) regarding the forcible inclusion of Nagorno-Karabakh into the AzSSR. In 1977, in connection with the adoption of the new Constitution of the USSR, the Presidium of the Council of Ministers of the USSR, having discussed the question of the status of the NKAO in the light of the letters of the workers, concluded: “It is necessary

²⁶ Bakinskiy rabochiy, 06.05 1925.

to annex Nagorno-Karabakh ("Artsakh" in Armenian) with the Armenian SSR"²⁷. The powerful protest movement, known as the *Karabakh Movement*, that started in 1988 was a continuation of the incessant struggle of the Artsakh people for the restoration of justice and the realization of their right to full self-determination, recognized, but suppressed by force. Up to Gorbachev's coming to power, the Center's disregard for the arbitrariness committed in the AzSSR against Armenians and other indigenous peoples had a political explanation in the light of the project to build a new Azerbaijani nation. Moscow also hoped that the policy of autonomization, which was not officially declared, but was actually pursued in the USSR in the form of delegating to the Center the main attributes of statehood by the Union republics, would eventually eliminate all local contradictions. It was believed that this would be facilitated by the proclaimed goal of the national policy in the USSR - the formation of the Soviet people as a historically new community of people.

Thesis 17. Gorbachev's *perestroika* as a project for the collapse of the USSR. The genocide of the Armenians of the AzSSR.

Pinning their hopes on the policy of *perestroika* and *glasnost* proclaimed by M. Gorbachev, on February 20, 1988, the extraordinary session of the Regional Council of People's Deputies of the NKAO appealed to the Supreme Soviets of the AzSSR, ArmSSR and USSR with a request to consider the issue of transferring the NKAO from the Azerbaijani SSR to the Armenian SSR. Baku responded to the request to consider the issue with the Armenian genocide in Sumgait. This was followed by acts of mass violence against Armenians throughout the whole AzSSR. Gorbachev and his team actually appeared to be on the side of the *pogromists*. The genocide of Armenians in the AzSSR was a shock that shook the USSR, since it was this crime that revealed the deliberate inaction of the union authorities in ensuring the physical safety of their citizens. One must have an idea of the power of the USSR secret services in order to understand the Center's awareness of this inaction. As it turned out later, it was through the Karabakh conflict that Gorbachev's team carried out the course of dismantling the USSR into union republics. All the actions of this team in 1988-1991 received adequate understanding in the light of this plan. It also included the punitive operation "Ring" in the spring of 1991, when the Center put at the disposal of Baku the internal troops of the USSR Ministry of Internal Affairs and the units of the 23rd division of the 4th Soviet Army stationed in Kirovabad to carry out a large-scale military and police operation to deport the Armenian population of Artsakh and liquidate the "rebellious region". The purpose of the operation was to ensure the preparation of the full dissolution of the USSR into union republics, so that after the flag of the USSR was lowered there were no obstacles and exceptions in the way of its implementation. But Gorbachev did not manage to complete the violence against NKAO before he left. The coup (according to many experts - a staged performance) in August 1991 led the country to the final phase of disintegration, and the Karabakh conflict entered the period of post-Soviet realities.

²⁷ Nagorno-Karabagh 2008: 665.

Thesis 18. Insurmountable legal obstacles to the application of the principle of territorial integrity to the Republic of Azerbaijan.

During the collapse of the USSR, the Republic of Azerbaijan was recognized within the borders of the AzSSR, and this became the justification for the wars (1992-1994, 2016, 2020) against the Nagorno-Karabakh Republic (NKR), unleashed by Azerbaijan to restore its allegedly violated territorial integrity. But upon closer examination it turns out that from the fact of the political recognition of the Republic of Azerbaijan stemmed neither its right to use force against the NKR, nor a legal conclusion about the territorial integrity of the Republic of Azerbaijan within the borders of the AzSSR. It does not have the right to use force under the UN Charter²⁸ which prohibits its member states from resorting to force when settling disputes. The principle of territorial integrity of states (inviolability of state borders) is also inapplicable to the Republic of Azerbaijan, since its purpose is to protect the legitimate borders, and not those resulting from annexations. The application of this principle to the Republic of Azerbaijan bypassing the annexations of the Armenian territories in favor of the AzSSR is unlawful. It was documented in the Russian-Turkish Treaty of Moscow²⁹ (March 16, 1921) and the Treaty of Kars³⁰ (October 13, 1921) and in the decision of the Kavbiuro of the RCP(b) of July 5, 1921.

The legal nullity of the treaties of Moscow and Kars from the moment of their signing stems from the fact that one of their signatories, the Government of the Grand National Assembly of Turkey represented a reclusive movement in the Ottoman Empire, and was not entitled to conclude such treaties on behalf of the state. The status of this party to the treaties of Moscow and Kars did not exceed the status of a non-governmental organization³¹. Such a qualification of these documents also stems from the fact that Armenia was forced to accept them. It is documented in Article XV of the Treaty of Moscow, according to which Russia undertook "to take in relation to the Transcaucasian Republics the steps necessary for the obligatory recognition by these Republics the treaties that they will conclude with Turkey, articles ... directly concerning them". It is clear that these steps of coercion had to be taken against Soviet Armenia in order to get its consent to relinquish Nakhichevan. While recognizing Turkey and the USSR in the 1920-30s, the West ignored the illegality of these agreements, considering them not subject to revision. But this did not make them legally sound. Nowadays this is even more relevant because the implementation of the forcibly imposed annexationist treaties was accompanied by violations incompatible with the treaties themselves, with the consequences of which both Armenia and Russia are faced today. On February 18, 1924, bypassing the Treaty of Kars, the Nakhichevan region was unilaterally

²⁸ <https://www.un.org/ru/charter-united-nations/>

²⁹ Documents of the USSR Foreign Policy 1959. The book is placed on the website: <https://bit.ly/3IAKQfe>

³⁰ Documents of the USSR Foreign Policy 1960: 420-429. <http://dvp.sssr.su/IV.pdf>

³¹ Although the other signatories of the documents were not recognized subjects of international law either, in 1921 they were not confronted by internationally recognized subjects disputing their rights.

transformed into an autonomous republic within the AzSSR. A double legal regime arose regarding the status of Nakhichevan: in the USSR it was an autonomous republic within the AzSSR, and under the acting Treaty of Kars it was a territory only transferred under the patronage of the AzSSR. The successive changes in the status of Nakhichevan within the USSR had no consequences for the Treaty of Kars, which remained indifferent to its statutory metamorphoses within the USSR.

Azerbaijan's renunciation of the legal succession of the AzSSR in 1991 gave the status of Nakhichevan a legally absurd character: according to the acting Treaty of Kars (if we considered it legally sound), this was a territory that had been transferred under the patronage of the already defunct AzSSR, and according to Article 134 of the Constitution of the Republic of Azerbaijan it was an autonomous state (!) within the unitary Republic of Azerbaijan which had renounced the legal succession of the AzSSR³². The Treaty of Kars, according to which Nakhichevan was torn away from the ArmSSR and transferred under the patronage of the AzSSR, which had gone into oblivion, is in effect, and the AzSSR left history without a legal successor. The only conclusion that inevitably follows from these legal facts is unambiguous: Nakhichevan is now the territory of Armenia occupied by the Republic of Azerbaijan.

Thesis 19. Proclamation of the independence of the Republic of Azerbaijan as a legally invalid act.

On February 5, 1991, the Supreme Soviet of the Azerbaijani SSR adopted the Law "On Changes in the Name of the Azerbaijani SSR"³³, decreeing "to rename the Azerbaijani State, the Azerbaijani Soviet Socialist Republic, to the Republic of Azerbaijan". The center did not react to this act, which was in disagreement with Article 71 of the Constitution of the USSR. It was clear that the "Republic of Azerbaijan" was just another name for the AzSSR, since the renaming did not entail any changes either in the constitutional status of the republic, or in its political or national and state structure. The current Constitution of the USSR retained this name until the collapse of the union state, and according to the Fundamental Law of the USSR, acts of sovereignty were adopted on behalf of the AzSSR. The Declaration "On the Restoration of State Independence"³⁴ of August 30, 1991, and especially the Constitutional Act "On State Independence"³⁵ of October 18, 1991, in which the "philosophy of sovereignty" of the Republic of Azerbaijan is laid out in detail, suggest important legal implications. In the "Constitutional Act ..." the status of the territory annexed in April 1920 by Soviet Russia was attributed to Azerbaijan. It was specifically a territory and not a Soviet republic, and it could become its successor during the collapse of the USSR. The motives for renouncing the legal heritage of the Soviet period are obvious: it contains

³² <https://www.wipo.int/edocs/lexdocs/laws/ru/az/az057ru.pdf>

³³ http://base.spinform.ru/show_doc.fwx?rgn=2888

³⁴ <http://www.myazerbaijan.org/index.php?p=Azerbaijan/5>

³⁵ <http://nurlu.narod.ru/ARMA.htm>

documentary evidence (the “decision” of the Kavbiuro of the RCP(b), the treaties of Moscow and Kars, the illegality of which Baku had no doubt of) of the annexation of Nagorno-Karabakh and Nakhichevan in favor of the AzSSR and was not suitable for justifying the legality of the borders of AzSSR. But it was not only that. Baku hoped that by renouncing the heritage of the AzSSR, the Republic of Azerbaijan would be freed from responsibility for the genocide of the Armenians of the AzSSR. Therefore, ignoring the USSR Law of April 3, 1990 “On the procedure for resolving issues related to the secession of a union republic from the USSR”³⁶, Baku proclaimed the independence of the Republic of Azerbaijan not by an act of secession from the USSR, but by the restoration of the Azerbaijani Democratic Republic of 1918-1920 established by the Turks.

But even such a formalization of sovereignty did not help the Republic of Azerbaijan to acquire legitimate borders, since the ADR established by the Turks had left history without acquiring either recognized or established borders which they could refer to. In 1991, Baku did not have legitimate grounds (treaties, agreements), ensuring the applicability of the principle of territorial integrity to the Republic of Azerbaijan. This led to the absence in the “Constitutional Act ...” of a legally significant statement regarding the territorial integrity of the Republic of Azerbaijan. Article 14 of the “Constitutional Act” stating that “the territory of the Republic of Azerbaijan within the historically established borders is unified, indivisible, inalienable” is a statement devoid of legal meaning. The insolubility of the task of proclaiming the independence of the Republic of Azerbaijan on the basis of legitimate succession forced Baku to resort to the substitution of all key facts and concepts in the “Constitutional Act”. One of them was in the above-mentioned excerpt from Article 2, stating that “the Republic of Azerbaijan is the successor of the Republic of Azerbaijan that existed from May 28, 1918 to April 28, 1920”. But there existed no state with such a name in Transcaucasia. Baku post-factum renamed the long-gone Azerbaijani Democratic Republic into the Republic of Azerbaijan in order to give legal credibility to the act of succession with such an adjustment.

Thesis 20. The problem of recognition of the Republic of Azerbaijan within the borders of the AzSSR in the context of the right of peoples to self-determination.

In the modern world, the primary source of the legitimacy of the state border is the act of self-determination of people, implemented through an independence referendum. The state border is one of the final forms of the realization of the right of self-determination of peoples, formalized in interstate treaties (agreements) between neighboring states. The emergence of three republics with the name of Azerbaijan (with each subsequent one not being the legal successor of the previous one) in the east of Transcaucasia in the 20th century demonstrates that none of them established itself by an act of self-determination through an independence referendum.

³⁶ Messages of the congress 1990: 253.

The first such state - a similar formation, the Azerbaijani Democratic Republic - became a political reality as a result of the Turkish intervention in Transcaucasia in 1918. There was no mention of an independence referendum.

The second state - a similar formation emerged in April 1920, when the XI Red Army of Soviet Russia entered Baku, abolished the ADR and proclaimed the AzSSR. And again, without an act of an independence referendum.

In 1991, the current Republic of Azerbaijan, on the initiative of the EU, was also recognized not on the basis of an act of self-determination. The "referendum" was carried out post-factum after the recognition of the Republic of Azerbaijan by Europe.

Thesis 21. On the legitimacy of the proclamation of the Nagorno-Karabakh Republic (NKR).

All the legal acts, all the documents adopted in the XX century in Artsakh by a referendum or by its elected authorities were in accordance with international law.

1918-1920

Endowed with full representative power, the Congress of Plenipotentiary Representatives of Nagorno-Karabakh and the National Council of Nagorno-Karabakh elected by it as the supreme executive body in the conditions of "statelessness" of the region were absolutely legitimate according to the criteria of modern international law. In 1918-1920 there was no other national institution in Transcaucasia with such a resource of legitimacy as the Congress of the PRNK. The British military mission that entered Baku, led by General Thomson, and the ADR government, which entered into contractual relations with Nagorno-Karabakh and on August 26, 1919, concluded a "Temporary Agreement" with the National Council of NK, had to reckon with this³⁷.

1988-1989

The decision of the extraordinary sitting of the Council of People's Deputies of the NKAO dated February 20, 1988, was a petition addressed to the Supreme Soviets of the AzSSR, ArmSSR and USSR to consider the issue of transferring the NKAO from the AzSSR to the ArmSSR³⁸. The Regional Council of the NKAO did not violate either the principles of international law or the laws of the USSR by its petition-appeal.

The decision of the Eighth session of the Council of People's Deputies of the NKAO of the 20th convocation "On the proclamation of the secession of the Nagorno-Karabakh Autonomous Oblast from the Azerbaijani SSR" dated July 12, 1988, was adopted after the appeal of the Regional Council of People's Deputies dated February 20, 1988, on the transfer of the NKAO from the AzSSR to the ArmSSR was followed by the Armenian genocide in the city of Sumgait and acts of mass violence against Armenians in the Armenian-populated regions of the Republic. It became obvious that the Baku leadership had undertaken bloody forms of de-Armenization of the Republic and that the security of the region's population could be solved only by secession from

³⁷ Nagorno-Karabagh 2008: 364-366.

³⁸ Nagorno-Karabagh 2008: 665.

the Azerbaijani SSR and joining the Armenian SSR. This was a decision made by an entity of the national and state structure of the USSR, endowed with the right to self-determination.

On August 16, 1989, based on the experience of the Congresses of the PRP of NK of 1918-1920, a Congress of People's Representatives (PR) of Nagorno-Karabakh was convened to govern the region in conditions when, by the Decree of the Presidium of the USSR Supreme Soviet dated January 12, 1989, a special form of government was introduced in the NKAO and the powers of the Council of People's Deputies of the NKAO were temporarily suspended³⁹. The decree of the Presidium of the USSR Supreme Soviet was an unlawful act, and this was confirmed on November 28, 1991, by the USSR Constitutional Supervision Committee, which ruled that "the competence of the Presidium of the USSR Supreme Soviet did not include the right to suspend the activities of any Councils of People's Deputies"⁴⁰. In accordance with the Constitution of the USSR, the Congress of the PR of Nagorno-Karabakh restored people's power in the NKAO as the fundamental principle of the political system of the USSR. The National Council, elected by the Congress of PR of NK, carried out the functions of the executive power of the NKAO until the proclamation of the NKR.

1991

On September 2, 1991, the Nagorno-Karabakh Republic was proclaimed by the Joint Session of the Nagorno-Karabakh Regional and Shahumyan District⁴¹ Councils with the participation of people's deputies of all levels in full accordance with the international legal norm on the right to free self-determination of peoples and the laws of the USSR as a disintegrating state⁴².

In 1991, the impeccability of the proclamation of the NKR in the context of Soviet constitutional law was ensured by the USSR Law "On the procedure for resolving issues related to the secession of a union republic from the USSR" of April 3, 1990, which approved the right of autonomous formations and large minority populations to independently decide the issue of their status in the event of the secession of the union republic from the USSR⁴³. The law proceeded from the fact that autonomous national formations and areas of compact residence of non-titular nationalities were included within the union republics on the basis of the right of peoples to self-determination and that they retained this right in the event of secession of the union republic from the USSR. This fundamental provision was reaffirmed in the USSR Law "On the separation

³⁹ Pravda, January 13, 1989. Nagorno-Karabagh 2008: 670-671.

⁴⁰ Nagorno-Karabagh 2008: 709-711.

⁴¹ On February 12, 1991, by the decision of the Supreme Soviet of the AzSSR, the district was liquidated and included in the Goranboy district.

⁴² The declaration of independence referred to as «Common declaration of human rights» <https://bit.ly/3rQW7C6>, «International pact of economic, social, and cultural rights» <https://bit.ly/3yfvph>. «International pact of civil, political, and cultural rights» <https://bit.ly/3yb9RbP>.

⁴³ Messages of the congress 1990.

of powers between the USSR and the subjects of the federation”⁴⁴ adopted on April 26, 1990, in a wording that excludes any misinterpretation: “Autonomous republics, autonomous formations are part of union republics on the basis of free self-determination of peoples”. With the sovereignty of the NKR the above-mentioned laws of the USSR together with the Declaration of the AzSSR of December 2, 1920 (by which Baku recognized the right of the people of Nagorno-Karabakh to full self-determination) eliminated the contradiction that is sometimes seen between the principles of self-determination of peoples and the territorial integrity of states. Artsakh retained its right to full self-determination even after the collapse of the USSR, regardless of the observance or violation of the procedures for the secession of the Republic of Azerbaijan from the USSR in 1991 and its claims to NK.

The proclamation of independence of the NKR on September 2, 1991, was absolutely legitimate in the context of the proclamation of the independence of the Republic of Azerbaijan, if we ignore the legal inconsistency of the act of its sovereignty. The declaration of the Republic of Azerbaijan dated August 30, 1991, on the restoration of the ADR, which had existed and had not acquired established or recognized borders, expanded the legal basis for the declaration of independence of the NKR, since it followed from this act that the NKR declared its independence in the territories that did not belong to the Republic of Azerbaijan either legally or factually. With such a legal basis for the legitimacy of sovereignty, on December 10, 1991, in the presence of international observers, the Joint Session of People’s Deputies of all levels of the NKAO and neighboring Shahumyan district voted for the independence of the NKR through an independence referendum. 99.89 % of the citizens participating in the referendum voted in favor of the sovereignty of the NKR.

Thesis 22. On the political and legal assessment of the recognition of the Republic of Azerbaijan within the borders of the AzSSR by the European Community: reprisal against RIGHT.

The West desired not just the abolition of the USSR, but such an elimination of the nuclear superpower which would not entail dangerous consequences for the West (and possibly for the whole world). The safest and most inexpensive project was the collapse of the USSR into union republics. It was obvious that possible disputes over “conflict borders” between the Union republics would not be aggravated by the republics themselves, in order not to miss the historic chance of sovereignty. And therefore, in the geopolitical project of dismantling the USSR, these minor contradictions could be neglected. But the West had a special attitude to the Karabakh conflict. In 1988-1990, the people of the NKR repeatedly received messages of support for their liberation movement. Here are some examples.

⁴⁴ Messages of the congress 1990. <http://docs.cntd.ru/document/901817747>

On September 12, 1988, the European Parliament adopted a Resolution “On the situation in Soviet Armenia and Nagorno-Karabakh”⁴⁵, in which it condemned “the violence against Armenians in Azerbaijan” and supported “the demand of the Armenian minority for reunification with the Socialist Republic of Armenia”. On November 19, 1989, the US Congress adopted a “Resolution in support of the fundamental rights and aspirations of the people of Nagorno-Karabakh”⁴⁶ and called to support such a “fair settlement of the conflict over Nagorno-Karabakh, which would really reflect the views of the people of that region”. Moreover, the Congress called “to investigate the acts of violence committed against the people of Nagorno-Karabakh, to identify and bring to justice those who are guilty of killings and bloodshed”. After these resolutions the massacres and bloodshed intensified, especially in the spring and summer of 1991 during the punitive operation “Ring”.

On March 10, 1999, the European Parliament adopted a resolution confirming that during the collapse of the USSR the NKR proclaimed independence on the same legal basis as the Republic of Azerbaijan⁴⁷.

The genocide of the Armenians of the AzSSR, which took bloody forms in 1988-1991, concerning which the elite of world science and culture of the West raised alarm⁴⁸, was sufficient for an adequate assessment of the essence of the Karabakh conflict. But the official West ignored Baku’s criminal acts and in 1992 recognized the Republic of Azerbaijan within the borders of the AzSSR, the heritage of which the Republic of Azerbaijan had just renounced. The most plausible explanation for this behavior of the West comes down to the fact that the West saw in the Karabakh conflict an explosive mechanism for the collapse of the USSR into union republics. Keeping their finger on the pulse of the implementation of this project, the western capitals shrewdly did not call the crimes of Baku by their own name, so that at the finish line, when they recognized the Republic of Azerbaijan within the borders of the AzSSR, they would not find themselves on the side of the state that they themselves had accused of committing genocide. It was clear that this would become a collective violation of the UN General Assembly Declaration of October 24, 1970 “On the principles of international law concerning friendly relations and cooperation between states in accordance with the Charter of the United Nations”, according to which the UN supports the application of the principle of territorial integrity only to states “observing in their actions the principle of equality and self-determination of peoples”⁴⁹. Probably, the Western capitals also believed that accusing the AzSSR of committing a crime against humanity and failing to recognize the territorial integrity of the Republic of Azerbaijan on this basis would give

⁴⁵ Official Journal of the European Communities, No. C 94/117, July, 1988.

⁴⁶ <http://thomas.loc.gov/cgi-bin/query/z?c101:S.J.RES.178>.

⁴⁷ Official Journal of the European Communities, C175/251. The European Parliament leaned on the Resolutions it adopted on January 12, 1990, May 27, 1993, June 18, 1977, November 3, 1998.

⁴⁸ https://aga-tribunal.info/en/open_27-7-1990_en/

⁴⁹ Acting international law 1996.

https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml

rise to similar problems, complicating the “velvet dissolution” of the USSR. In discourses on this topic, the idea is often expressed that the West was by default guided by the principle of *uti possidetis*, usually applicable in situations of transition of sovereign power. This principle which means “whatever you own is yours,” in 1991 was probably justified for many union republics of the USSR, but not for the Republic of Azerbaijan, because since 1988 Baku had neither administrative nor political control in the NKAO. Chronologically, the last status of the NKAO was a special administration introduced in the region on January 12, 1989, when all economic and administrative-and-party structures were withdrawn from the subordination of the AzSSR and reassigned to Moscow and Yerevan.

The initiator of the official legalization of the dissolution of the USSR into the union republics was the European Community (EC). On December 16, 1991, in Brussels, at the level of foreign ministers the EC Council determined a general approach to the issue of the official recognition of new states in the post-Soviet territory and Eastern Europe (the document is known as the “Statement by the Twelve”⁵⁰). The European Community declared the criteria for the recognition of new states. On December 21, 1991, by a joint declaration in Alma-Ata the union republics that had already declared their independence, including the Republic of Azerbaijan, agreed to the criteria for recognition put forward by Europe⁵¹. On December 23, 1991, the EC in its turn approved the Alma-Ata Declaration and began to implement its decision. As expected, this was perceived in Baku as approval for the continuation of the war against the NKR and the policy of ethnic cleansing. This put into action the historically developed syndrome of impunity for crimes against humanity, for the acts of genocide of Armenians in Baku (1905, 1918, 1990), Shushi (1920, 1988), Sumgait (1988) during the punitive operation “Ring” (1991). The European Community ignored not only the genocidal behavior of the AzSSR/Republic of Azerbaijan, but also the legal facts incompatible with the recognition of the Republic of Azerbaijan within the borders of the AzSSR. “Disregarded” was the fact that none of the state-like formations with the name “Azerbaijan” was established by an act of self-determination (referendum on independence) as a starting point for acquiring legitimate borders. In 1991 neither the EU, which recognized the Republic of Azerbaijan, nor the Azerbaijani authorities could indicate which borders were under consideration if: a) the Republic of Azerbaijan, refusing to be the successor of the AzSSR, proclaimed the restoration of the ADR of 1918-1920, which included neither Nagorno-Karabakh nor Nakhichevan; b) the ADR, the statehood of which was being restored, did not have established borders; c) Azerbaijan lost all ties with Nakhichevan, which, under the acting Treaty of Kars, had only been transferred under the patronage of the already defunct AzSSR; d) by the time Azerbaijan was recognized in accordance with the norms and principles of international law, on December 10, on the basis of a nationwide referendum, the independent NKR

⁵⁰ <http://docs.cntd.ru/document/901857469>

⁵¹ <https://cis.minsk.by/page/178>

became a reality within the borders of the NKAO and the adjacent Armenian-populated Shahumyan district.

In fact, in 1991, the EU adopted not the act of recognition of the Republic of Azerbaijan with established borders, but ascribed virtual borders to it, instructing Baku to clarify them at its discretion. It was exactly what the Kavbiuro of the RCP(b) did in 1921. And in 2021, based on the experience of the 1920s, Azerbaijan began to clarify “its borders” and invaded the territory of the Republic of Armenia.

The act of recognition of the Republic of Azerbaijan in the virtual borders of the AzSSR in 1991 did not change the annexationist nature of the Treaty of Kars and the “decision” of the Kavbiuro of the RCP(b) and did not make the borders of the Republic of Azerbaijan definite. This political act did not (and could not) entail legal consequences for previously concluded treaties and equivalent documents concerning the territories included within the AzSSR. The recognition of the Republic of Azerbaijan within the borders of the AzSSR did not give legitimacy either to the Resolution of the Kavbiuro of the RCP(b) dated July 5, 1921, or to the acting Treaty of Kars and the borders of the AzSSR that appeared on their basis. Nakhichevan and Nagorno-Karabakh did not cease to be annexed territories. Baku understood this very well (and still understands it!). In the absence of legal grounds for the proclamation of the Republic of Azerbaijan within the borders of the AzSSR during the collapse of the USSR, the borders for the Republic of Azerbaijan could be established by an act of primary self-determination – an independence referendum, since before that not a single such act had been carried out in the east of Transcaucasia. Baku did not dare to do this, fearing the loss of not only Nagorno-Karabakh, but also of the districts with a large minority population of Lezghins and Talysh, who were ready to use the USSR Law “On the procedure for resolving issues related to the secession of a union republic from the USSR” of April 3, 1990. Baku avoided holding an independence referendum, since at the end of the collapse of the USSR the capitals of the union republics already knew about the intention of the West to recognize the post-Soviet republics within the borders of the former union republics.

Thesis 23. The Minsk process of the resolution of the Karabakh conflict under the auspices of the Organization for Security and Cooperation in Europe (OSCE): an imitation of a legal approach.

The OSCE’s general approach to the resolution of the conflict predetermined the decision of the European Community (EC) on the recognition of the post-Soviet states within the borders of the union republics. The formula turned out to be inapplicable to the AzSSR due to the well-known legal facts already mentioned above and came into conflict with both the UN Charter and the Helsinki Final Act⁵². The EC decided to bypass these facts, apparently assessing them as inevitable costs of the dismantlement of the USSR. The a priori message about the legitimacy of the borders of the AzSSR

⁵² <https://www.osce.org/ru/ministerial-councils/39505>

became a starting point for the substitution of the image of the conflict. The principles of international law, declared by the OSCE as the basis for the settlement of the conflict, turned out to be only declared, but not introduced into the Minsk process, becoming in fact a cover for the OSCE's avoidance of RIGHT. The principle of the territorial integrity of states was "involved" in the settlement of the conflict without establishing the legality of its application to the Republic of Azerbaijan with the annexed Nakhichevan and Nagorno-Karabakh. This recognition of the Republic of Azerbaijan ran counter to the UN General Assembly Declaration "On Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" of October 24, 1970, according to which the principle of territorial integrity is applicable to states "conducting themselves in compliance with the principle of equal rights and self-determination of peoples". If we assume that at the end of the dismantlement of the USSR it was politically unreasonable for the West to mention the genocide of the Armenians in the AzSSR, in the following decades, when the Republic of Azerbaijan's actions proved that it adhered to this criminal line already in relation to Artsakh, there can be no reasonable explanation for the exclusion of the genocidal behavior of Baku from the framework of the settlement of the conflict. Apart from the factology of the conflict, the principle of international law on free self-determination of peoples was "introduced" into the Minsk process as well. The settlement process left out not only the right of the people of Nagorno-Karabakh to full self-determination, secured by the UN Charter, not only the recognition of this right in the national and state system of the USSR, but also the fact of recognition of the right of the people of Nagorno-Karabakh to full self-determination by the AzSSR itself by the Declaration of December 2, 1921. For the OSCE the fundamental principles of international law actually turned into a farce for the settlement of the Karabakh conflict. This was especially evident at the OSCE Summit in Lisbon⁵³, which offered Nagorno-Karabakh "the highest degree of self-government within Azerbaijan", recognized for Nagorno-Karabakh back in 1921 in the following formulation: "broad autonomy within the Azerbaijani SSR".

The December 1991 decision of the EC to recognize the Republic of Azerbaijan with Nagorno-Karabakh and Nakhichevan not belonging to it, in fact, became an argument to justify the wars it unleashed against the NKR in 1992-1994, 2016 and 2020 (in the latter case, with the involvement of Turkey and detachments of mercenary terrorists). The global danger of the recognition of the Republic of Azerbaijan with territories not legally belonging to it lies in the mutation of the principle of the territorial integrity of states, which in this application turns from the principle of stability and peace into the principle of cover-up of genocide and seizure of territories.

Thesis 24. The first Karabakh war of 1992-1994.

After sovereignization, the Republic of Azerbaijan, which had lost the support of Gorbachev's team, quickly had a complete fiasco in the war it had unleashed against

⁵³ <https://www.osce.org/files/f/documents/2/4/39543.pdf>

the NKR. Separate self-defense detachments in the NKR quickly united into the Self-Defense Army, which not only repulsed the attack of the Azerbaijani troops, but also liberated part of the territories of Nagorno-Karabakh, which, according to the July 5, 1921 decision of the Kavbiuro of the RCP(b) were to be part of the Armenian Autonomous region of AONK but were torn away from it by a decree of the AzCEC of the AzSSR in 1923. In May 1994, Baku was forced to agree to an indefinite ceasefire and, on the initiative of Interparliamentary Assembly of the CIS, to sign the Bishkek Protocol jointly with the delegations of Armenia and the NKR.

Thesis 25. Armenia and Azerbaijan in the Minsk Process.

On February 20, 1988, when making a request to the Supreme Soviet of the AzSSR, ArmSSR and USSR about the handover of the Armenian region from the AzSSR to the ArmSSR, the NKAO counted on a positive solution to the issue not only pinning their hopes on the proclaimed new political course of *perestroika* and *glasnost*. Until 1988, there were more than two dozen cases of changes in the borders and the state and legal status of entities of the national and state structure of the USSR. Political decisions, as a rule, were made in the Central Committee of the Communist Party of the Soviet Union with their subsequent inclusion in the agenda of the Supreme Soviet of the USSR and the corresponding union republics for their legal and legislative processing. In the case of the NKAO, the Politburo of the Central Committee of the CPSU reacted immediately and sharply. The very next day in the main party newspaper "Pravda" they evaluated the decision of the NKAO Regional Council as "the result of the actions of extremists and nationalists"⁵⁴. For the first time, Moscow gave absolute meaning to the sovereignty of the republics. In Yerevan people responded to the events unfolding in the NKAO with peaceful rallies of support. After the massacre of Armenians in Sumgait they grew into a nationwide protest movement unprecedented for the USSR ("Pan-Armenian National Movement - PANM) under the slogan *Miatsum/Reunification*. In the events that unfolded around Nagorno-Karabakh after the Sumgait massacres, Moscow clearly adhered to a course that was strange for the Soviet superpower: not to close the issue and not to give a solution to the conflict, but rather to escalate it. Refusing the people of Karabakh, Moscow actually referred to Baku's denial of the right of the people of NK to self-determination, despite the fact that the AzSSR recognized this right back in 1920. The leaders of the PANM who came to power in Armenia retreated from the goal of reunification, considering it inexpedient, and this was unexpected for the broad masses involved in the national movement *Miatsum*. However, on December 1, 1989, they had to draw back at the Joint session of the Supreme Soviet of Armenia and the National Council of the NKAO in which the issue of reuniting the ArmSSR and NKAO was raised under the pressure of a powerful national movement. The Joint session adopted a resolution on the reunification of the ArmSSR and NKAO⁵⁵. Moscow reacted to this

⁵⁴ Pravda, February 21, 1988.

⁵⁵ <https://www.arlis.am/DocumentView.aspx?docid=3153>

negatively, although it could not assess (and did not assess) this act as illegal, and later only persuaded Yerevan to denounce the Joint Resolution. In the light of the events of 1988-1991 that have already become history, it is difficult to find any other reasonable explanation for the behavior of Gorbachev's team and leaders of the PANM in the Karabakh issue, other than that they were informed about the project of the collapse of the USSR into union republics and their involvement in its realization. The retrospective analysis does not reveal any fact that contradicts this version.

On September 21, 1991, the independence referendum in the Republic of Armenia was held without the NKAO, within the ArmSSR. Knowing about the position of the leaders of the PANM, after the proclamation of the declaration "On the restoration of state independence" in Baku (30.08.1991), at the Joint session of People's Deputies of all levels of the NKAO and adjacent Shahumyan region on September 2, 1991, Nagorno-Karabakh Republic (Artsakh) was proclaimed. The political elite of the PANM adhered to a different position. On March 5, 1992, on the day of the accession of the Republic of Armenia and the Republic of Azerbaijan to the UN, the leader of the PANM, President Levon Ter-Petrosyan reaffirmed his vision of the resolution to the problem, reiterating his support for leaving the Armenian region within the Republic of Azerbaijan in the status of "full autonomy", considering that "the status of autonomy as a part of Azerbaijan would completely satisfy all parties"⁵⁶. In July 1992, the aggravated relations between the PANM elite and the parliament around the issue of Armenia's attitude towards the status of the NKR ended in a compromise. On July 18, 1992, the opposition in the RA Parliament achieved the adoption of a resolution obliging the Republic of Armenia "not to recognize any internal or international document recognizing the NKR as a part of the Republic of Azerbaijan"⁵⁷. The position of the President of Armenia on the Karabakh issue became the reason for his dismissal from office in February 1998 and the coming to power of Robert Kocharyan (1998-2008). On June 24, 2004, from the rostrum of the session of the Parliamentary Assembly of the Council of Europe the latter voiced the key thesis of the essence of the conflict that "Nagorno-Karabakh has never been a part of independent Azerbaijan"⁵⁸. This was an attempt to oust the initial *a priori* thesis of the OSCE from the negotiation process, without reflecting on the factology of the conflict assuming that Nagorno-Karabakh belonged to the Republic of Azerbaijan. The OSCE responded with silence, although it was obvious that such a position provoked Baku's confidence in the solution of the issue by force and a surge of hatred towards Armenians⁵⁹. Within the framework of the Minsk process Armenia failed to link

⁵⁶ Komsomolskaya pravda, March 5, 1992.

⁵⁷ Bulletin of the Archives of Armenia, N 13 (1017), doc. 313 <https://www.arlis.am/DocumentView.aspx?DocID=3278>

⁵⁸ <https://armenpress.am/rus/news/539931/>

⁵⁹ A clear manifestation of the ideology of racism implanted in the Azerbaijani society was the brutal murder of Gurgen Margaryan, a fellow student, an Armenian serviceman, by Ramil Safarov, an officer of the Azerbaijani army, motivated by ethnic hatred (in February of the same 2004, in Budapest, at the courses organized as part of the Partnership for Peace programme). The offender not only was not condemned by the Azerbaijani society, but became its favorite. And when in 2012, shortly after the visit of Hungarian Prime Minister Viktor Orban to Baku Ramil Safarov was extradited,

the principles of international law with the generally recognized and documented facts of the legal folder of the problem. All the projects of the Minsk Group on conflict regulation, presented to the parties, assumed the return of the territories of seven regions “around Nagorno-Karabakh” under Azerbaijani control, although the people of Karabakh had not occupied territories outside the geographic borders of Nagorno-Karabakh. They liberated only a part of the lands which were to be within the boundaries of the Armenian autonomy of the AONK even according to the annexationist decree of the Kavbiuro of the RCP(b). The issue of the legitimacy of the borders of the Republic of Azerbaijan was off the agenda of the Minsk Group, which inspired the Republic of Azerbaijan to unleash wars against the NKR. In 2020 it entered the war against the NKR with the participation of Turkey and with the involvement of terrorist units from Syria. In the spirit of the Minsk Group approach, the new leadership of the Republic of Armenia which came to power in 2018 as a result of the “velvet revolution”, agreed to the “return” of the territories “around” Nagorno-Karabakh, liberated during the 1991-1994 Karabakh war. But Azerbaijani troops broke deep into the territory of not only the former region from the south, but also entered the territory of the Republic of Armenia under the pretext of clarifying the borders. It takes time to uncover the secrets of the 44-day Karabakh war, where the interests of all power centers of the world crossed. The implications of the trilateral statement of November 10, 2020 remain to be brought to light. But according to its results as of June 2021, when this article was written, barbarism prevailed over civilization in the 2020 Karabakh war. Referring to the characters of Armenian mythology we can say: Bel, who appeared in a new form, seriously wounded Hayk⁶⁰.

BIBLIOGRAPHY

Sources

Acting international law 1996. Acting international law, in three volumes, vol. 1, Moscow.

Bakinsky rabochy (Baku, in Russian).

Bulletin of the Archives of Armenia, 1989 (in Arm.).

Council of People's Commissars of ASSR. Report on the III All-Azerbaijani conference of the Councils in 1922-1923 (in Russian).

Documents of the USSR Foreign Policy, vol.3, Moscow, 1959 (in Russian).

Documents of the USSR Foreign Policy, vol.4, Moscow, 1960 (in Russian).

he was welcomed in Azerbaijan as a national hero. The killer was pardoned and rewarded with all kinds of awards and honors.

⁶⁰ According to mythology, Hayk was the progenitor of Armenians, and Bel was the leader of the giants, who demanded that Hayk recognize his superiority. Hayk refused to obey Bel and killed him in a decisive battle in Hayots-Dzor. According to legend, his tribe began to be called Hay (Hay) by his name, and the country – Hayastan.

From the history 1989. From the history of the formation of Nagorno-Karabagh-Karabagh Autonomous Oblast of Azerbaijani republic (1918-1925). Documents and materials, Baku (in Russian).

Kirov S.M. 1924. Report in the VI conference of AC(w)P. 05.05.1924, in Archive of Political Documents of Administration by the President of Azerbaijani Republic (Baku), f. 1, l. 169, f. 249/11, p. 3.

Komsomolskaya Pravda (Moscow, in Russian).

League of Nations 1920. League of Nations, the Records of First Assembly, Meetings of the Committees II, Genova.

Nagorno-Karabagh 2008. Nagorno-Karabagh in international law and world politics. Documents and commentaries, vol.1, Moscow, 2008 (in Russian).

Pravda (Moscow, in Russian).

News of the Supreme Council of the Republic of Armenia, N 13 (1017), doc. 313.

Messages of the congress 1990. Messages of the congress of peoples' deputies of the USSR and Supreme Council of the USSR, 1990, N. 15.

Studies

Auch E.-M. 2001. Between adaptation and self-affirmation. Early phase in seeking for national identity in the milieu of Muslim intellectuals and the rise of a new society in the south-eastern Caucasus (1875-1905), in Azerbaijan and Russia: Societies and States, Moscow (in Russian).

Babеровsky J. 2004. Civilizing Mission and Nationalism in Transcaucasia, Abimperio: New Imperial history of Post-Soviet space, Kazan (in Russian).

Mountainous Karabagh in 1918-1923, Yerevan, 1992 (in Russian).

Official Journal of the European Communities, No. C 94/117, July, 1988.

Official Journal of the European Communities, C175/251.

Stalin J.V. 1947. Works, vol. 4, Moscow (in Russian).

Sventokhovskiy T. 2001. Russian rule, modernizing elites and the rise of national identity in Azerbaijan, in Azerbaijan and Russia: Societies and States, Moscow (in Russian).

Internet resources

<https://www.un.org/ru/charter-united-nations/>

<https://www.wipo.int/edocs/lexdocs/laws/ru/az/az057ru.pdf>

http://base.spinform.ru/show_doc.fwx?rgn=2888

<http://www.myazerbaijan.org/index.php?p=Azerbaijan/5>

<http://nurlu.narod.ru/ARMA.htm>

https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml

https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

<http://docs.cntd.ru/document/901817747>

<http://thomas.loc.gov/cgi-bin/query/z?c101:S.J.RES.178>
https://aga-tribunal.info/en/open_27-7-1990_en/
https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml
<http://docs.cntd.ru/document/901857469>
<https://cis.minsk.by/page/178>
<https://www.osce.org/ru/ministerial-councils/39505>
<https://www.osce.org/files/f/documents/2/4/39543.pdf>
<https://www.arlis.am/DocumentView.aspx?docid=3153>
<https://www.arlis.am/DocumentView.aspx?DocID=3278>
<https://armenpress.am/rus/news/539931/>

Translated from the Armenian by Syuzanna Chraghyan