

Between ‘Civilisation’ and Conflict: The Territorial Delimitation of Azerbaijan in 1918–1920 and the Making of the Modern Legal Doctrine

Anush Harutyunyan

Institute of Oriental Studies, “Geghard” Scientific Analytical Foundation, Armenia

Email: anushhar1997@gmail.com

ORCID: 0000-0002-2902-0932

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Abstract

This article examines a contradiction at the heart of the constitutional-legal construction of the Republic of Azerbaijan: while proclaiming itself the legal successor of the People’s Republic of Azerbaijan of 1918–1920 and declaring the Soviet period an occupation, it simultaneously relies on borders that were established precisely by Soviet acts of 1921–1923. Drawing on the documents of the Paris Peace Conference, the materials of the League of Nations, the decisions of the Kavbiuro of the Russian Communist Party (the regional decision-making organ of the Russian Communist Party- Bolsheviks), and the Treaties of Moscow and Kars, the article shows that the borders of the first republic acquired neither internal definition nor international recognition: the recognition of January 1920 was de facto only, and the application for admission to the League of Nations was rejected in December 1920, among other reasons because of unresolved territorial disputes with neighbouring states. The article concludes that two incompatible sources of legitimation — a national-democratic one (1918–1920) and a Soviet-administrative one (1921) — coexist within the constitutional construction of the modern state, and that the doctrine of ‘restoration’ is irreconcilable with the principle of *uti possidetis* on which the international recognition of the post-Soviet borders was based. This collision raises a fundamental question about the limits of historical-legal argumentation in the contemporary political and legal debates of the South Caucasus.

Keywords: *People’s Republic of Azerbaijan, Constitution, state succession, territorial delimitation, League of Nations, Nagorno-Karabakh, uti possidetis*

Introduction

The title of this article may prompt a question: what logical connection can exist between the current Constitution of Azerbaijan and territorial-boundary problems that lie more than seventy years behind it? The answer lies in the way the constitutional order of the modern republic defines its own origins.

The Constitution of the Republic of Azerbaijan was adopted by nationwide referendum on 12 November 1995 and entered into force on 27 November 1995; it was subsequently amended three times.¹

The Constitution refers to legal acts that preceded its adoption. In particular, the preamble states that it is based on the principles reflected in the Constitutional Act ‘On the State Independence of the Republic of Azerbaijan’.² That Constitutional Act was adopted on 18 October 1991 by the Supreme Council of Azerbaijan. It, in turn, is based on the Declaration ‘On the Restoration of the State Independence of the Republic of Azerbaijan’,³ in which the Supreme Council declares itself guided by the supreme state interests of the people of Azerbaijan.

According to the Constitutional Act:⁴

— the invasion of Azerbaijan by the XI Army of the RSFSR on 27–28 April 1920, the occupation of the territory of the republic and the overthrow of the People’s Republic of Azerbaijan, a subject of international law, are qualified as an occupation;

— the Republic of Azerbaijan is the successor of the Republic of Azerbaijan that existed from 28 May 1918 to 28 April 1920;

— the part of the Treaty on the Formation of the USSR of 30 December 1922 concerning Azerbaijan is declared invalid from the moment of its signature;

— the Constitution of the Azerbaijani SSR of 1978 remains in force only in those provisions that do not contradict the Constitutional Act.

It is precisely here that the connection with the territorial-political realities of 1918–1920 arises. By such formulations in its constitutional acts, Azerbaijan distances itself from the Soviet legal and state-political legacy. The question therefore presents itself: with which Azerbaijan, constitutionally speaking, are we dealing today? Above all, this concerns its territorial boundaries and the spatial reach of state jurisdiction. A clearer answer requires turning to the events of 1918–1920.

Sources and Method

The study rests on a historical-legal analysis of three groups of sources: first, the constitutional acts of Azerbaijan of 1991–1995 and the declaratory acts of the People’s Republic of Azerbaijan of 1918–1920; second, the international documents of 1919–1921 — the materials of the Paris Peace Conference, the memoranda and decisions of the League of Nations, the Treaties of Moscow and Kars, and the decisions of the Kavbiuro of the Russian Communist Party (Bolsheviks); and third, the historiography of the territorial delimitation of Transcaucasia (Kazemzadeh, Hovannisian, Swietochowski, Saparov) together with the legal literature on the continuity of states (Marek, Ratner; Krüger as against Luchterhandt and Potier). The method consists in

¹ Constitution of the Republic of Azerbaijan, <http://web2.anl.az:81/read/page.php?bibid=527546&pno=2>.

² Constitutional Act of the Republic of Azerbaijan ‘On the State Independence of the Republic of Azerbaijan’, 18 October 1991, https://files.preslib.az/projects/remz/pdf_ru/atr_kons.pdf.

³ Declaration of the Supreme Council of the Republic of Azerbaijan ‘On the Restoration of the State Independence of the Republic of Azerbaijan’, https://files.preslib.az/projects/remz/pdf_ru/atr_kons.pdf.

⁴ Constitutional Act ‘On the State Independence of the Republic of Azerbaijan’, 18 October 1991.

confronting the doctrinal constructions — succession, continuity, *uti possidetis* — with the territorial realities of 1918–1923 as they are documented in the sources, which makes it possible to test the internal coherence of the current constitutional doctrine.

The Borders of the First Republic and International Recognition, 1918–1920

The formation of new states in Transcaucasia in 1918 became a turning point for the subsequent historical-political development of the region.⁵ With the end of the war, military operations and conflicts in the region did not cease; on the contrary, the very creation of independent states generated new problems, which the newly formed states also sought to resolve by securing their place in the emerging world order.

One of the most important conditions of statehood is a clear definition of territorial boundaries — an extraordinarily difficult task in this region, given its ethnographic mosaic, the problematic character of the former tsarist administrative division, historical notions of the ownership of particular territories, and the territorial ambitions and the military and economic capacities of the states themselves. The question therefore arises: what were the borders of Azerbaijan in 1918–1920?

The preamble of the Constitutional Act refers to the Declaration of Independence of 28 May 1918, point 1 of which states that Azerbaijan extends over Southern and Eastern Transcaucasia — a formulation of an extremely indeterminate character that presupposes no clearly delineated borders.⁶ The international recognition of the Azerbaijani Republic in 1918–1920 is no less problematic.

The arena of international recognition in the post-war period was the Paris Peace Conference, called upon to sum up the results of the war and to consolidate its consequences. In the new world order taking shape after the First World War, the Transcaucasian republics, during the almost two years of their independence, likewise strove to obtain the conditions of legitimacy required for the recognition of their statehood according to the notions of the time.

On 11 January 1920 the Paris Conference recognised the existence of this state formation *de facto* only, which implied no recognition of any borders.⁷ The territorial-boundary indeterminacy of Azerbaijan was confirmed at the international level once more: its application for admission to the League of Nations was refused (the application was rejected by the Assembly of the League in December 1920). The decision noted, first, that it was difficult to determine with precision the territory within which

⁵ The classic survey of the territorial conflicts of the three Transcaucasian republics remains Firuz Kazemzadeh, *The Struggle for Transcaucasia (1917–1921)*, New York: Philosophical Library, 1951. On the geopolitical circumstances of the emergence of the Azerbaijani republic in 1918 see Anush Harutyunyan, 'The Geopolitical Conditions of the Emergence of the Democratic Republic of Azerbaijan (1918): A Brief Overview', *Fundamental Armenology* 1 (17) (2023): 6–19.

⁶ Decision of the Azerbaijani National Council on the Declaration of Azerbaijan as an Independent State [Azərbaycanın Müstəqil Dövlət elan edilməsi haqqında Azərbaycan Milli Şurasının qərarı], <https://axc.preslib.az/az/page/iKYoaVNIso>. On the first republic see also Tadeusz Swietochowski, *Russian Azerbaijan, 1905–1920: The Shaping of National Identity in a Muslim Community*, Cambridge: Cambridge University Press, 1985.

⁷ Documents on British Foreign Policy 1919–1939, 752.

the government of this state exercised its authority, and second, that owing to disputes with neighbouring states concerning borders it was impossible to establish the present limits of Azerbaijan.⁸

Moreover, the League had earlier observed that on this territory of some 40,000 square miles there appears never to have existed a self-standing state; it had formed part of larger state formations such as the Mongol and Persian empires and, from 1813, of the Russian Empire. It was also noted that the name 'Azerbaijan' chosen for the new republic coincided with the name of the neighbouring Persian province.⁹

Thus, the borders of Azerbaijan in 1918–1920 do not lend themselves to any precise definition. At the same time, by proclaiming itself in point 1 of the Constitutional Act the successor of the Azerbaijani Republic of 1918–1920, modern Azerbaijan in effect repudiates the borders of the Azerbaijani SSR, which took shape after 28 April 1920. Yet the internationally perceived borders of modern Azerbaijan were formalised precisely in the Soviet period, in particular in 1921.

The Soviet Making of the Borders, 1921–1923

The formation of the borders of Soviet Azerbaijan proceeded along two lines:

(a) on the basis of the decision of the Plenum of the Caucasian Bureau of the Russian Communist Party (Bolsheviks) of 5 July 1921, by which Nagorno-Karabakh was transferred to Azerbaijan (the borders of the Nagorno-Karabakh Autonomous Region and of the Kurdistan uezd being definitively formalised only on 7 July 1923);^{10 11}

(b) in accordance with the Treaty of Moscow of 16 March 1921 and the Treaty of Kars of 13 October 1921 deriving from it, by which Nakhichevan was placed under the protectorate of Azerbaijan with the status of an autonomous republic.

These acts — the decision of the Plenum of the Caucasian Bureau as well as the Moscow and Kars treaties — are themselves, from the standpoint of legal validity, vitiated by serious juridical defects.

⁸ League of Nations, Letter from the President of the Peace Delegation of the Republic of Azerbaïdjan, Geneva, 7 December 1920, 2.

⁹ League of Nations, Memorandum on the Application for the Admission of the Republic of Azerbaijan to the League of Nations. Memorandum by the Secretary-General, 24 November 1920, 2.

¹⁰ For an archive-based analysis of the Kavbiuro decisions of 4–5 July 1921 and of the shaping of the autonomy in 1921–1923 see Arsène Saparov, 'Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918–1925', *Europe-Asia Studies* 64, no. 2 (2012): 281–323; idem, *From Conflict to Autonomy in the Caucasus: The Soviet Union and the Making of Abkhazia, South Ossetia and Nagorno Karabakh*, London: Routledge, 2015. The ethnic complexity of the population living within these borders is documented by the early Soviet censuses: see Anush Harutyunyan, 'The Ethnic Structure of Soviet Azerbaijan (Based on the Materials of Agricultural Census of 1921)', *Banber Arevelagitutyan instituti* [Bulletin of the Institute of Oriental Studies], 2023, no. 3: 147–159; Anush Harutyunyan, 'Etnik dasakargman skzbunknerë est 1926 t. arajin hamamiutenakan mardahamari' [Principles for Determining Nationality according to the First All-Union Census of 1926], *Patma-banasirakan handes*, 2022, no. 3: 47–61 (in Armenian).

¹¹ Yuri G. Barsegov, *Nagornyi Karabakh v mezhdunarodnom prave i mirovoi politike: Dokumenty i kommentarii* [Nagorno-Karabakh in International Law and World Politics: Documents and Commentary], Moscow, 2008, 639.

If the borders of Azerbaijan as of 28 April 1920 were considered defined and reflected the territorial realities of the moment, how is one to interpret the declaration of the Azerbaijani Revolutionary Committee of 30 November 1920, by which Nakhichevan, Nagorno-Karabakh and Zangezur — regarded as territories disputed between Armenia and Azerbaijan — were recognised as an inalienable part of the Armenian SSR?¹²

As of April 1920, there existed not a single legal act confirming the appurtenance of Nakhichevan to Azerbaijan; on the contrary, as early as 1919 it had been recognised as an inalienable part of the Republic of Armenia. As for Nagorno-Karabakh, the Armenian population of the region at its Seventh Congress recognised the authority of Azerbaijan only conditionally and provisionally — pending the final settlement of the question at the Paris Peace Conference. Consequently, with respect to Nagorno-Karabakh as well there existed no international-legal or inter-state settlement possessing legal force. Had this question found its logical resolution before 28 April 1920, it would not have become a subject of discussion either on 30 November 1920 or, still less, in June–July 1921 within the framework of neo-Bolshevik policy.

Which Borders Does Azerbaijan Recognise? Two Sources of Legitimation

Which borders, then, does Azerbaijan recognise? In modern Azerbaijan, notions of the borders of 1918–1920 are reduced to the map presented at the Paris Peace Conference in 1919 — in essence, a compendium of territorial claims against the neighboring states. Yet the fact remains that at the moment of Sovietisation on 28 April 1920 neither Nagorno-Karabakh, nor Nakhichevan, nor, still less, Zangezur lay juridically within the jurisdiction of the Azerbaijani Republic.¹³

The question therefore arises: proceeding from the provisions of the Constitution of Azerbaijan, how lawful today is the appurtenance of Nakhichevan and Nagorno-Karabakh to Azerbaijan? Moreover, in recent years it has been consistently asserted in Azerbaijani scholarly-political circles, out of political conjuncture and expediency, that it was Soviet power that ‘handed over’ Zangezur to Armenia at Azerbaijan’s expense. Yet in 1920–1921 the struggle in Syunik was led by Garegin Nzhdeh, and Syunik never formed part of Azerbaijan either juridically or factually.

¹² On the disputed territories in 1918–1920 and the Azrevkom declaration of 30 November 1920 see Richard G. Hovannisian, *The Republic of Armenia*, vol. IV: *Between Crescent and Sickle: Partition and Sovietization*, Berkeley: University of California Press, 1996; on the preceding period, vols. I–III (1971–1996).

¹³ The Azerbaijani legal position is set out in Heiko Krüger, *The Nagorno-Karabakh Conflict: A Legal Analysis*, Berlin–Heidelberg: Springer, 2010. For the opposite position see Otto Luchterhandt, *Nagorny Karabakh’s Right to State Independence According to International Law*, Boston: Baika, 1993; for a balanced appraisal, Tim Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia: A Legal Appraisal*, The Hague: Kluwer Law International, 2001.

Conclusion

The problem of the borders of Azerbaijan in 1918–1920 never received definitive international-legal consolidation. The international recognition of the republic was of a limited character, and its territorial limits remained a matter of dispute.

The modern Republic of Azerbaijan, proclaiming itself the successor of the state of 1918–1920, simultaneously relies on the borders that took shape in the Soviet period and were recognised by the international community after 1991. Two different sources of legitimation thus coexist within the constitutional-legal construction of the state — a national-democratic one (1918–1920) and a Soviet-administrative one (1921).¹⁴

This circumstance gives rise to a fundamental theoretical-legal question about the relationship between the principle of succession and the principle of territorial integrity, and about the limits of historical-legal argumentation in the contemporary political and legal discussions of the South Caucasus.

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¹⁴ On the doctrine of the identity and continuity of states: Krystyna Marek, *Identity and Continuity of States in Public International Law*, Geneva: Librairie E. Droz, 1954. On the recognition of the post-Soviet borders on the basis of *uti possidetis*: Steven R. Ratner, ‘Drawing a Better Line: *Uti Possidetis* and the Borders of New States’, *American Journal of International Law* 90, no. 4 (1996): 590–624. On the political practice of early Soviet Azerbaijan and resistance to the Soviet legitimation see Anush Harutyunyan and Gor Margaryan, ‘Ideological Resistance in Early Soviet Azerbaijan: A Textual Analysis of a Unique Archival Document’, *Historia i Świat* 14 (2025): 369–381.

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About the Author

Anush Harutyunyan is a Researcher at the Institute of Oriental Studies. She holds bachelor's and master's degrees in history from Yerevan State University and pursued doctoral studies in the Institute of Oriental Studies NAS RA. Her research focuses on ethno-political processes in Eastern Transcaucasia during the nineteenth and twentieth centuries, including ethnic identity and ethno-consolidation among the Muslims of the region. She has published on the emergence of political currents in Eastern Transcaucasia and on questions of nationality in Soviet censuses.

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