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THE NAGORNO-KARABAKH CONFLICT – KEY HISTORICAL EVENTS AND LEGAL ISSUES¹

Abstract: The status of self-proclaimed and not officially recognized Republic of Nagorno-Karabakh represents a disputable issue in politics and international public law. Like other entities floating between autonomy within a sovereign state and fully confirmed independence, it triggers numerous questions regarding sovereignty, territorial integrity, right to self-determination, secessionism and separatism. Current position of Nagorno-Karabakh cannot be fully comprehended without a detailed insight into historical and political courses that shaped its evolution. Therefore, the authors attempt to highlight the most important and influential historical events and circumstances that had been affecting the South Caucasus region, to explain their repercussions on today's status of Nagorno-Karabakh and, based upon them, estimate future development of this entity's position in international relations.

Key words: *Nagorno-Karabakh, independence, self-determination, foreign policy, secession*

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INTRODUCTION

THE RELEVANCE OF NAGORNO-KARABAKH CONFLICT

The conflicts in the Caucasus Region came to the focus of the international community, particularly the European Union, after the events that took place in Georgia in the summer of 2008. These developments have underlined the importance of resolving disputes through mediation, prior to their escalation into increased regional tensions and violence. Experts describe the Nagorno-Karabakh conflict as a state-formation conflict derived from competing claims on status of the Nagorno-Karabakh area. However, several other issues make the situation even more complicated. These refer to internally displaced persons, competing territorial claims, refugees and responsibility for atrocities during the armed phase of the conflict. This conflict has long and complex historical roots and serious violence has occurred as one of its consequences on several occasions (1).

The actual beginning of modern Nagorno Karabakh Conflict took place in 1988, along with the beginning of disintegration of the Soviet Union. Prior to the proclamation of independence, the Nagorno Karabakh region used to have the status of an autonomous province within the Soviet Socialist Republic of Azerbaijan, one of 15 former Soviet "Union Republics" that became independent states. The majority of Nagorno Karabakh population consisted of ethnic Armenians, largely Orthodox Christians, whose autonomous status was guaranteed by Moscow. Being afraid of losing their autonomy and becoming subordinated to predominantly Muslim government of Azerbaijan political leaders of Nagorno Karabakh actively petitioned authorities in Moscow to transfer the region to Armenian jurisdiction. The conflict sharpened as the Soviet Union collapsed over the course of 1991. When Azerbaijan declared its own independence from the USSR, and its sovereignty was internationally recognized in early 1992 Nagorno Karabakh indicated its desire to withdraw from Azerbaijan, as an autonomous area within the Soviet structure. Azerbaijan argued, on the contrary, that its constitution would permit independence only if approved by a countrywide referendum. This argument was based upon Article 78 of the Soviet Constitution, according to which the territory of any of the Union Republics could not be changed without their consent. Consequently, Azerbaijan forcefully resisted efforts of Nagorno Karabakh to break away from Azerbaijan, and in early 1991, Azerbaijani forces attempted to surround the area and disable any assistance it could receive from the outside (2).

Armenia and the Soviet Union were involved in armed battle over the territory between 1990 and 1991. Nevertheless, after the dissolution of the USSR, an armed conflict escalated between the Nagorno-Karabakh and the government of Azerbaijan. In December 1991, Nagorno-Karabakh unilaterally proclaimed independence and held elections to a parliament whereas in January 1992, the first violence between the self-proclaimed Nagorno-Karabakh republic and the Azerbaijani government occurred.

Tensions escalated and led to intensive armed confrontations and ethnic cleansing. Due to these conflicts, between 10,000 and 20,000 people were killed and almost 1.5 million ended up as internally displaced (1).

In spite of numerous negotiations, no final solution has been found yet, and the unrecognized “Republic of Nagorno Karabakh”, also familiar as the “Artsakh Republic”, has obtained *de facto* independence in the region, with strong support from Armenia, although it remains internationally recognized as part of the sovereign territory of Azerbaijan. At this point, it is essential to draw clear distinction between the official and unofficial (*de facto*) international recognition of sovereignty and the role of this act in the establishment of an independent state. Contemporary international public law supports the theory according to which official recognition of a state’s sovereignty has only declarative implication, which means that a new state is founded as soon as three constitutive preconditions are met: defined territory, stable population and effective government [3]. As it can be noted, Nagorno-Karabakh seems to fulfill all of these conditions, but still lacks the official support of international community, because the legality of its separation from an independent state is still being questioned.

Since it was created, the Minsk Group, has collectively made several efforts and proposed several solutions to this issue. When proposing potential solutions the Minsk Group has been guided by fundamental OSCE principles defined in the 1975 Helsinki Final Act [4]. The Final Act primarily supports the principles of the territorial integrity of states, the non-use of force, and accepts only the alterations of boundaries that are based upon the peaceful consent of the parties involved. On the other hand, it also recognizes the right of “self determination of peoples”, defined extensively enough to allow for its application in a wide variety of formats including independence in some cases, but mainly through autonomy or power-sharing agreements. The government of Azerbaijan has held strongly to the principle of the territorial integrity of states and attempted to bring Nagorno Karabakh under the full control of Azerbaijan, whereas Nagorno-Karabakh advocated the principle of self-determination. Like in other cases of self-proclaimed independence by the areas within sovereign state, the core issue and the key to resolve this conflict would be to reconcile these two widely accepted, but not entirely compatible norms of territorial integrity on one side and self-determination on the other [2].

It is familiar that The Minsk Group has generally been unable to make the parties to agree to the Madrid principles. Furthermore, it should be mentioned that in early 2013, during unsettled presidential election in Armenia and the prospect of a presidential election in Azerbaijan in the fall, it has been focused mostly on crisis management rather than conflict resolution [2]. In spite of numerous efforts from the outside, the undefined status of Nagorno Karabakh remains an unresolved issue.

1. THE GROUNDS OF CONFLICT IN THE SOUTH CAUCASUS REGION

The issue of Nagorno-Karabakh emerged in the 1920s, throughout the period of new regime in the Union of Soviet Socialist Republics (USSR). During the October Revolution, the Transcaucasian Federation (i.e. Transcaucasian Democratic Federative Republic) was founded, as it proclaimed its independence from the USSR on April 22 1918. However, it soon became clear that a state like that such sate was not sustainable because of the fact that Armenia was interested to make the Transcaucasian Federation a protectorate of Russia or of the United Kingdom, whereas Georgia insisted that German protectorate should be established over that same region. The interest of Armenia and Georgia for the origin of the protectorate over the Transcaucasian Federation appeared to be the consequence of their struggle to stabilize supremacy in that area and to prevent potential Turkish invasion. Democratic Republic of Azerbaijan, Democratic Republic of Georgia and Democratic Republic of Armenia all proclaimed their independence in May 1918. Soon after that, Azerbaijan decided to leave the region of Yerevan to Armenia. Because Armenian government treated these areas as their national and historical heritage, they rapidly initiated organized resettlement of the Muslim population from the regions of Nakhchivan, Karabakh and Yerevan. Not long after that, Azerbaijan proclaimed its independence under the protectorate of the Ottoman Empire, whereas Georgia officially became the protectorate of Germany. In the last days of World War I, the Ottoman army invaded the South Caucasus region. The persecution and extermination of the Armenian people by the Turks and Azeri took place at the same time as armed conflict between the Armenian army on one side and Turkish and Azerbaijanian forces on the other. After Turkish retreat, Great Britain overtook key role in that region and Karabakh was once again set under the control of Azerbaijan, which was officially approved by the Armenian authorities in February 1920 [5].

On December 2 1920, Turkey and Armenia signed an agreement, known as the Treaty of Alexandropol [6], by which Armenia agreed to disown 50% of the territory it had possessed prior to the beginning of the conflict. On 10 August 1920, Turkey and Armenia became parties to another important treaty – the Treaty of Sèvres, which was signed by the nations that constituted the Central Powers on one side and the members of the Allied powers on the other [7]. The Treaty of Alexandropol was supposed to be ratified by the Armenian Parliament one month after the signing, but thus never happened due to the invasion of the Soviet forces that came from the adjacent Azerbaijan [8].

2. NAGORNO-KARABAKH AS A PART OF THE USSR

Among the three states of the Southern Caucasus, Azerbaijan demonstrated the highest level of support for the Bolsheviks. Such political situation together with its great oil reserves caused the Red Army to enter Baku, the capital of Azerbaijan in April 1920. The Soviet authorities established their government in Yerevan in November 1920 and occupied Georgia in April 1921, which allowed the USSR to control the entire Southern Caucasus region. With the intent to resolve the issues related to Nagorno-Karabakh and under the impact of the central Soviet authorities, the Revolutionary Committee of Azerbaijan issued a decree by which Karabakh, Zangezur and Nakhchivan were subordinated to the Armenian authorities. Nevertheless, in April 1921 the USSR and Turkey signed the Treaty of Moscow [9], by which Karabakh and Nakhchivan were assigned to the Azerbaijan Soviet Socialist Republic. The reason why Turkey insisted on the aforementioned agreement was its intention to prevent the forming of a strong and independent Armenian republic that would come up with its territorial requests. As the confirmation of the Moscow Treaty, Turkey and three states of the Southern Caucasus signed the so-called Treaty of Kars, in October 1921 [10]. After these changes occurred, the Azeris were placed in a rather inconvenient position, particularly because of the fact that there was no any territorial bond between Nakhchivan and the Azerbaijan Socialist Soviet Republic. On the other hand, the Armenians also found themselves in a similar situation since a large number of them remained in Karabakh, which was geographically separated from the Armenian Socialist Soviet Republic. Throughout 1922, Karabakh was affected by some major turmoil caused by the discontent of the Armenians with current state in that region. In order to prevent the escalation of dissatisfaction, the negotiations on the status of Karabakh within the Azerbaijan Socialist Soviet Republic were initiated. As the result of these negotiations, Karabakh was proclaimed an autonomous region in November 1924. It was later given the name Nagorno-Karabakh, meaning the mountain Karabakh because mountain regions were also declared as parts of this autonomous area.

When it comes to the position of Nakhchivan, it obtained the status of an autonomous republic within the Azerbaijan Socialist Soviet Republic in 1922. The agreement regulating that issue was made earlier, in 1921, during the dialogue between the representatives of Turkey and the USSR. On that occasion, it was also agreed that the status of Nakhchivan could not be changed without the official approval of Turkey [4].

The most difficult moment in modern history of Turkey and Armenia, which still represents an obstacle in the relations between these two state certainly was the massacre that Turkish authorities conducted over the Armenian people in 1915. Armenia became a part of the USSR in 1922 and the central Soviet authorities failed to defend national interests and standpoints of the Armenians. In that period, the principal

goal of the USSR was to strengthen and confirm its authority. The Soviets attempted to reach this goal through improvement of diplomatic relations with Turkey, lead by Mustafa Kemal Atatürk who was struggling to maintain newly established modern Turkish Republic. Previously mentioned Moscow Treaty, which provided numerous benefits for Azerbaijan, was signed in accordance with these pro-Turkish aspirations of the USSR. These political movements faced strong disapproval of the Armenians, and contributed to the beginning of Nagorno-Karabakh conflict. Namely, after the dissolution of the Ottoman Empire, the Western European states guaranteed that the Armenians would be given Eastern and central parts of today's Turkey that they refer to as Western Armenia [11]. After it had been decided that Nagorno-Karabakh and Nakhchivan would belong to Azerbaijan, the Armenians concluded that their national interests had not been taken into consideration within the USSR. During the 1930s, the Armenians were using various political means to influence the change Nagorno Karabakh and Nakhchivan status, but they failed to obtain the support of the central Soviet authorities. No actual political movements that would contribute to an efficient resolution of Armenian problems were made during the Cold War period, neither by the Russian nor by the Turkish side. It is also worth mentioning that there had been no any communication between Armenia and Turkey since 1922, when Armenia became a part of the USSR [12].

3. CHANGES IN THE SOUTH CAUCASUS REGION IN THE POST-COLD WAR PERIOD

Iran started showing its interest for the South Caucasus Region, including Nagorno-Karabakh, after the Islamic Revolution in 1979. After major political changes, Iran started persuading bordering states with predominant percentage of Muslim population to embrace its ideological and religious standpoints. Such approach also represented Iran's specific defensive strategy against its neighbors, particularly those who supported ideas opposite to the ones accepted by Iran after the Islamic Revolution. After the dissolution of the USSR, Iran abandoned its efforts to promote the Islamic Revolution and significantly upgraded its diplomatic relations with Russia. There were several reasons for that: the fact that they both feared that the USA could overtake the role of the leading force in the region, multi ethnical structure of both states as well as their struggle to decrease the influence of Turkey in the states located in Central Asia and South Caucasus region with dominant Muslim population [13]. That is the reason why both – Iran and Russia keep giving their informal support to Nagorno-Karabakh's unrecognized government. Therefore, it can be said that the position of the South Caucasus region depended largely on the relations between Russia and Turkey in the post Cold War period. These relations were principally governed by

the proclamation of independence of pro-Turkish states on the territory of former USSR, including Azerbaijan, as well as by Turkish foreign policy [14]. To be more exact, Turkey abandoned former isolationistic principles of Kemal Atatürk's foreign policy. These so-called "neo-Ottoman" ideas of Turkish political parties made Russia assume that Turkey might attempt to expand its influence on the South Caucasus region. However, mutual interests regarding combating separatism and secessionist aspirations of certain national groups led to the improvement of relations between Russia and Turkey. Both of them have territories settlers of which are struggling for independence. Russia is facing this problem in Chechnya, whereas Turkey is struggling to prevent separatism of the Kurds. In that context, it seems that Turkey is no longer ready to criticize Russian military activities in Chechnya and, it actually supports Russia's territorial integrity and its fight against separatism [15].

4. INTERNATIONAL-LEGAL ASPECTS OF NAGORNO-KARABAKH CONFLICT

It would not be exaggerated to state that the Nagorno-Karabakh conflict puts to the test the essential but at the same time the most disputable principles of international law: the right to self-determination on one side and the principle of sovereignty on the other. Moreover, it seems that the very core of this problem lays in the conflict between two major principles – the right of nations to self-determination and the principle of territorial integrity and inviolability of state frontiers. These two principles are indeed incompatible in cases where the population residing on part of the territory of a certain state declares its intention to secede, that is, to subject the borders of this state to change or revision. To make things more complex, the parties to the conflict tend to interpret these principles in accordance with their own interests. Therefore, it appears that the universal solution of the conflict depends on the opinion of international community, which is different in every single case, depending on the prevailing political conjuncture [16].

The principle of self-determination is mentioned in several international documents [17]. In Article 1 Paragraph 2 of The Charter of the United Nations, it is emphasized that one of the most important purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"[18]. This principle is also referred to in Chapter IX of the Charter, dedicated to economic and social cooperation. Namely, in Article 55 it is emphasized that the goals of the United Nations in the field of economic and social cooperation should be promoted in "the conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights dedicate their first paragraph to right of self-determination, by highlighting the fact that “all peoples have the right of self-determination” and that “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Furthermore, this right is also confirmed by the provisions of Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations as well as by some other documents adopted by the United Nations [17].

The essence of the right of self-determination could be described as the ability of one people to determine freely their political status. It allows and empowers peoples to create an independent and sovereign state or to unite with other peoples and create a unitary or federal state. However, there is no consensus among experts neither about the peoples that are entitled to claim this right nor about the situations or actual ways in which it can be performed [17].

The principle of sovereignty is restricted (limited) by the right of self-determination, whereas the right of self-determination is restricted by the principle of sovereignty, meaning that they balance each other. Nevertheless, when resolving conflicts, a difference should be drawn between a “normal case” and an “exceptional case”. In a normal case, the priority of the principle of sovereignty is applied. “In exceptional cases,” when a national minority is unbearably discriminated, the right to self-determination in the form of the right of secession has a priority over the sovereignty of the state. Accordingly, in the case of Nagorno-Karabakh, the right of self-determination gains priority over the right of Azerbaijan to sovereignty, because the policy and conditions of life in the region show that the Armenian ethnic group was an object of permanent and mass discrimination for decades in administrative, national-cultural, social-economic and demographic sense. It seems logical that the right of self-determination would allow the Armenian ethnic group of Nagorno Karabakh either to form its own state or to unite with the Republic of Armenia [16].

On the other hand, the Azeri side perceives the Karabakh conflict exclusively from the aspect of Armenia’s territorial claims and, accordingly, insists that this issue does not collide with principles of international law. According to them, the conflict must be considered exclusively within the framework of the international principle of the integrity of the state within the borders recognized by the international community when the Azerbaijan Republic was admitted to the United Nations: namely, within the administrative borders of the former Azerbaijan Soviet Socialist Republic. It is noted international documents contain provisions, which completely remove the priorities of the right to self-determination. Moreover, it is also worth noting that international documents on self-determination contain a clause according to which “Nothing in

this document can be interpreted as violation of the territorial integrity of a state”. This suggests that modern international community recognizes only the internal aspect of self-determination defined as the right of states to restore their independence if occupied or conquered by foreign forces [16].

CONCLUSION

The conflict that has been affecting the Nagorno-Karabakh region for almost one century has deep and multi-layered historical, political, sociological, ethnical and religious roots. Just like other similar cases of self-proclaimed independence of certain autonomous but not sovereign entities within sovereign states, it once again draws attention to a conflict between two widely accepted but almost completely unmatchable principles of international public law: the principle of sovereignty and the principle of self-determination. Although primarily related to former colonial territories, the interpretation of the right of self-determination is once again in the focus of international public law experts, due to the emergence of new challenges such as the cases of Former Yugoslavia, Kosovo, Abhasia and Southern Ossetia [17]. The definition and, what is even more important, the actual interpretation of these principles by those entities that are empowered to make or influence political decisions in that area appear to be the key factors to the solution of that long lasting and complex problem.

Apart from the conflict of the aforementioned two principles of international public law, another important question could be raised in the case of Nagorno-Karabakh: Should the International Community support the so-called principle of reality or the principle of legality? The relation between actual and legal component in the process of one state's recognition (*i.e.* the effectiveness and lawfulness) has been varying throughout history. In the past, the principle of effectiveness used to be predominant, whereas the principle of legality is becoming more and more important nowadays [19]. Not only would the solution of these dilemmas contribute to the resolution of the Nagorno-Karabakh conflict, but also it would set the foundations for future issues of similar kind. However, one should be aware of the fact that each conflict has different historical roots and is influenced by various political and historical circumstances and factors on both – national (local) and global level. Therefore, establishing a unique principle that would be applied on all similar cases appears to be a rather difficult task. However, attempting to create some kind of guidelines or at least uniformed methods of interpretation on an international level that would complete and improve the existing ones could be more than helpful.

There are authors, such as Abasov, suggesting that the conflict in the South Caucasus region could and should have been resolved when dissolution of the USSR, performed by the scenario of the “Belovezhie agreements” took place. However, they claim that the

opportunity to do so was missed because the stability of the authorities in the region actually depended on their successes and failures in conflicts [16]. Although it could be stated that the Republic of Armenia holds the key role in this matter, it cannot be stated with certainty. On one hand, Armenia has been supporting Nagorno-Karabakh's struggle for independence, but, on the other, it seems that there is a common center in this country that would take a history-making decision. Also, there are experts suggesting that the consensus about the standpoint that only peaceful negotiations and attempts to create a system of mutual guarantees of security, stability and cooperation in the region already represent a success and a step towards the resolution of the conflict [16].

For example, Abasov compares this situation with the one when Georgia, Azerbaijan and Armenia gained independence for a short period at the beginning of the 20th century. He highlights the fact that the independence they obtained at that moment led to an inter-ethnic confrontation accompanied by frequent military operations, similarly to the situation in the Nagorno-Karabakh region in the past couple of decades. The question is, of course whether outcome of historical and modern confrontations will be the same or, to be more exact cause the same negative consequences. The answer depends on the will of political elites of the region to learn from the past and their capability to overcome personal goals on one hand and their differences on the other. Finally, the impact of alien political ambitions and interests must not be neglected in this case [16].

It is clear that there are numerous internal and external obstacles seriously diminishing the chances to resolve the Nagorno Karabakh conflict [2].

The analysis of the historical background to the conflict reveals that the dispute over Nagorno Karabakh actually reflects the prevalence of a "backward looking" focus. Namely, it seems that long and complex confrontations, armed conflicts and unsuccessful negotiations have discouraged not only the confronted parties but all the other participants as well and disabled them from shifting to a forward-looking standpoint and focus on the potential collective benefits of a peaceful resolution of the conflict. Until relevant entities are struggling to resolve the issue on a diplomatic level, it is of key importance to prevent any further confrontations and outbreaks of violence. Therefore, it has to be highlighted that current situation i.e. the status quo, carries and increases the risk of repeated violence, and makes the final resolution of the conflict even more uncertain. [2].

The impact of Nagorno-Karabakh conflict and its possible resolution is immense and multi-layered. Since there are many similar cases of unrecognized entities attempting to gain independence, the official international recognition of Nagorno Karabakh Republic might initiate an avalanche of similar cases. This would produce long-term and worldwide consequences on several levels: legal, political, social, economic, security etc. That is the reason why a profound insight into the historical roots of the conflict is necessary. It draws the line between theoretically similar but

historically and actually completely different cases and makes, for example, the principle of self-determination applicable in ones and completely unacceptable in the others. This particularly refers to the South Caucasus region, which has always been turbulent due to social, ethnical, economic and religious differences between its members. Unfortunately, it seems that final resolution to the conflict depends neither on the principles of international law nor on the conclusions drawn from negative past experiences and historical events but more on current political flows and economic interests on local and global level.

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СУКОБ ОКО НАГОРНО КАРАБАХА – КЉУЧНИ ИСТОРИЈСКИ ДОГАЂАЈИ И ПРАВНА ПИТАЊА

САЖЕТАК

Статус самопроглашене и званично непризнате републике Нагорно Карабах представља спorno питање у политици и међународном јавном праву. Као и други ентитети који лебде између аутономног статуса унутар суверене државе и потпуно признате независности, оно повлачи бројна питања у вези са суверенитетом, територијалним интегритетом, правом на самоопредељење, сецесионизмом и сепаратизмом. Тренутна позиција Нагорно Карабаха не може се у потпуности разумети без детаљног увида у историјске и политичке токове који су обликовали његов развојни пут. Зато аутори настоје да издвоје најзначајније и најутицајније историјске догађаје и околности које су погађале регион Јужног Кавказа, да објасне њихове репрекусије на данашњи статус Нагорно Карабаха и да, на основу тога, процене будући развој положаја овог ентитета у међународним односима.

Кључне речи: *Нагорно Карабах, независност, самоопредељење, спољна политика, сецесија*