

The Legal Aspects of Nagorno Karabakh Conflict During the Azerbaijan Peoples' Republic Period

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Abstract

The ongoing Nagorno Karabakh conflict between Armenia and Azerbaijan results from two principles of international law: the main sides of conflict, Armenia and Azerbaijan, defending their position claim the self-determination right of people and territorial integrity with inviolability of state borders. The main obstacle on the ongoing "no war, no peace" condition of negotiation process is that mutual agreed statement on these principles is not possible. [1, 33] Firstly, in order to look the legal aspects of Nagorno Karabakh conflict, there is a need to analyze the political and legal processes that created the problem around Nagorno Karabakh's legal status. Therefore the ADR period (May 1918- April 1920) is important: because those years involve the beginning of the contemporary ethnic conflict and the formation of the current legal-political position of conflict sides. On other words, analyzing the process of legal status of NK conflict during the ADR period from the frame of sides' claims and arguments is very important on the research of the legal aspects of Nagorno Karabakh conflict.

Keywords: Azerbaijan, Nagorno Karabakh conflict, Armenia, problem, Russia, territorial integrity, self-determination

Introduction

Firstly, it is necessary to look through the legal aspects of NK problem with the historical process together. As both Armenia and Azerbaijan consider themselves right and the claims and arguments are dated to historical process or are the result of this process. The opposite historical texts form the knowledge about the root of conflict.

In this article, firstly we tried to analyze the claim and arguments of conflict side on the legal status of NK during 1918-1920 with the participation of ADR. The main aim of this is to evaluate the political and legal issues of NK problem in this stage.

The reason of choosing the stage of ADR for research is that this period is the beginning of the two South Caucasus neighbor people's state establishment and as well the beginning years of political-legal debate around the NK. There is a special need to analyze those periods in order to raise the fake and wrong knowledge on the legal aspects of conflict.

Although in this article we made the way for the claims and arguments of armenian side on the NK in 1918-1920 and tried to answer these claims and arguments by defending Azerbaijani side. The main object in this is that to raise the wrong perception and knowledge about the political-legal background of the conflict and to illuminate the historical realities of Azerbaijan position once more.

The position of Azerbaijan side to the Armenian arguments

According to the Azerbaijani side, the Armenian claims on Nagorno Karabakh never being under the jurisdiction of independent Azerbaijan are completely baseless. Either in the Tsarist Russia period or in the ADR period or in the later stage (until Armenian occupation) the Nagorno Karabakh had been managed within the borders of Azerbaijan, as an integral part of the country. The border and territorial conflict started by Armenians with intervention to historical territories of Azerbaijan and the principles of the territorial integrity and the inviolability of borders of international law can't be accepted both in ADR period and in the later stage as self-determination right. According to the position of the Azerbaijani side, the right of self-determination is not connected to unilateral secession (or force disconnect - the author) and is to be applied in the context of preservation of territorial integrity... The war restarted as a result of Armenian aggression, which aims to build the Great Armenia. [2]

The Government of Azerbaijan, as now, in the years 1918-20, made its debut in respect of international law and the territorial integrity of its territory and neighboring countries, the principles of respect for state sovereignty. In this regard, the Azerbaijani leadership, on the basis of the principle of self-determination, did not accept the unilateral declaration of independence the Nagorno-Karabakh Armenians because neither Azerbaijani government had agreed to such a disconnect, nor Armenians attempted to such an agreement. The declaration of independence by Armenians in Nagorno Karabakh was an unilateral act against the principles of international law and rebel to Azerbaijan state and went along with the aggression toward the local Muslims. Of course, such a case could not be taken by the Azerbaijani government. Besides with legal factors, historical-cultural factors also played an important role in this problem. The Nagorno Karabakh was a part of Azerbaijan not only in the social-economic aspects, but also in historic-ethnographic terms and occupied an important place as an integral part with the public and political life of the country for centuries.[3, 5]

The ADR leadership while giving particular importance to the inviolability of territorial integrity didn't forget to highlight the historical territories of Azerbaijan in the Declaration of Independence. The six-point document of Azerbaijan National Council announced East and South Caucasus, including Nagorno Karabakh, Azerbaijan territory and stated paying special attention to good neighborly relations with neighboring peoples and states, and also giving wide opportunities for free development to people who lived in the territories of ADR. [4, 267-292, 135-137] These provisions, of course, included Armenians living within the borders of Azerbaijan.

ADR, living 23 months, had paid attention particularly to the international norms, as well as respect for the principles of territorial integrity and state sovereignty, in its international relations. For example, when the League of Nations refused to accept Azerbaijan to the organization because of border disputes with its neighbors, head of Azerbaijani delegation to the Paris Peace Conference, Alimardan Topchubashov, noted in the letter, dated to December 7, to the leadership of the organization in this regard that:

"It is an undisputed fact that, until the invasion of the Russian Bolsheviks on April 28th, 1920, the legal Government of Azerbaijan exercised its authority over entire territory of the Azerbaijan Republic, without exception, within the present boundaries as indicated in the map submitted to the Secretary-General of the League of Nations".

"States which have been in existence for centuries, have had, and still have, frontier disputes; but these disputes don't cause them to be deprived of their sovereign rights over their own territory. The Republic of Azerbaijan, in defending the integrity of her territory against all aggressions is obliged to come into conflict with Georgia over the districts of Zakatal, and with Armenia over Karabagh and Zanghezour. These territories form part of Azerbaijan, and are administered by the Azerbaijan Government; the provinces of Karabagh and Zanghezour were left under Administration of Azerbaijan by the decision of a former Allied representative in the Caucasus". [6, 39-40, 40-41]

Indeed, according to Mudros Peace Agreement Azerbaijan passed to the British mandate and the Ottoman-Turk troops that came with the ADR government call to release its territories occupied by Armenian-Dashnak forces were forced to leave Azerbaijani territories. As a result, the union troops entered Azerbaijan on November 17, 1918. The representative of the Allied Powers, General Thomson initially did not trust the government, but later, on December 18, he declared the only true power in the government headed by Fatali Khan Khoyski. Also, General Thomson assured the support of the Allies to the Government of Azerbaijan.[6, 36] Then, in early 1919, General Thomson agreed to the appointment of Khosrov Bey Sultanov to Governor-General position as a representative of the government of Democratic Republic of Nagorno-Karabakh. This, as claimed by the Armenians, was not an interim measure, but in the fact the Allies de-facto agreed that Nagorno-Karabakh was Azerbaijani territory.

Although the Armenian National Council of Karabakh refused to agree the appointment of Khosrov Bey Sultanov as Governor-General of Nagorno-Karabakh by Allied representative, General Thomson, and Armenians declared that the interim agreement signed with the ADR doesn't affect the declaration of independence of Nagorno-Karabakh. However the 1919 provisional agreement concluded with the government of the ADR in September shows that the Armenian Assembly of Nagorno-Karabakh officially accepted Nagorno Karabakh as part of Azerbaijan until the final decision of the international conference on the issue. [1,30][9, 75-76]

Another point worthy to pay attention to this issue, is that the Government of Azerbaijan approached the problem on the principle of self-determination in relation to and the Nagorno-Karabakh and other places claimed by Armenians. The conversation dated to 18 November 1918 between the head of the Azerbaijani delegation to the Paris Peace Conference

Alimardan bey Topchubashov and the Foreign Minister of Turkey showed that the minister recommended to Alimardan bey going talks with Armenians, as Armenian population is in the majority in those areas, and all states, especially the Entente states, support them, and that sooner or later they will achieve their goals. Responding to the representative of Turkey Alimardan bey says: "The Karabakh issue raised by Armenians is not about 5 or 10 villages, but about the whole 4 provinces - Shusha, Javanshir, Jabrail and Zangezur. This is a territory where the number of Muslim and Armenian population is not equal but there is no reason to talk about the absolute majority of Armenians. Moreover, they are not the local people of this place. They migrated here after the war between Ottomans and Russia. It should be noted that there are more than 100 thousand Muslim population in the province of Iravan, despite the fact we don't have an eye on the land. Finally, Armenians in Karabakh do not live in compact itself, they form mixed settlements. However, we are in favor of a peaceful solution of the dispute." [8, 49]

Indeed, the statistical materials by 1918 support Alimardabn bey's remark and show that there were more Azerbaijani population than Armenians in the several provinces. Thus, the Armenian population of Kazakh-Sevan, Zangezur, Shusha and Javanshir districts of former Yelizavetpol province were with respect to 46 (Azerbaijanis - 50), 44 (55), 53 (46), 32 (68) percent. [8, 48]

The small text above clears the attitude of ADR government toward the claims of self-determination of the Armenians of Nagorno-Karabakh: *Nagorno-Karabakh is an integral part of Azerbaijan within the borders- the claims of Armenians to this territory is unacceptable; giving reason to self-organize to the majority of Armenians in the Nagorno Karabakh is out of the question; Armenians aren't the ethnic population of Nagorno Karabakh and they have been moved here as a result of historical events; settlement of the ethnic majority in any area can't be motive to self-determination; Armenian and Muslim population in the region is populated by a mix, there is no compact settlement of Armenians and the declaration of independence in any form by Armenian majority from the ethnic migration is not possible.*

As you can see in this issue, despite that all the facts in favor of Azerbaijan, the Azerbaijani government was a supporter of a peaceful resolution of the conflicts that occurred within its borders in the case of neighboring countries. The ADR kept its consistent position of peaceful resolution of the territorial conflicts until the end. So, in April of 1919 in Tbilisi in order to discuss the state of confrontation among the republics of the Caucasus and to determine the boundaries a conference was called. According to the formula adopted by the conference, the republics should discuss controversial issues about the regions with mixed population among themselves, agree over the dispute and if this is not possible, however, the dispute should be resolved through arbitration. [8, 51] Indeed, unlike the Armenians of Nagorno-Karabakh, which declared independence unilaterally the Azerbaijani side remained loyal to the formula until the end (XI Soviet Army invaded Azerbaijan and put an end to the independence of ADR on April 28 in the 1920, the Armenians used the sharp socio-political situation in the Nagorno-Karabakh Armenians and revolted in 1919, and declared Nagorno-Karabakh a part of Armenia declaring that an agreement had been canceled). The League of Nation refused to recognize the South Caucasus states basing on the invasion by bolsheviks and boundary conflicts, in his letter to the League of Nation dating later 1920, the head of representatives of ADR, Alimardan bey stated that the conflicts on borders are internal matter and the related governments would find ways to resolve conflicts on the basis of mutual concessions. If this isn't not possible, each of the three Transcaucasian republic, of course, will appeal to the League of Nations for the settlement of border conflicts. These principles were reflected both in the political memorandum by the Azerbaijani delegation to the Peace Conference (1919), and in the notes sent to the Secretary General of the organization for membership to the League of Nation. [6, 41]

As we have seen since the beginning of the last century, the Armenian side approached one-sided to the Nagorno Karabakh dispute and tried to solve the problem within the framework of the right of self-determination while the Azerbaijani side concerned with the respect for the territorial integrity and sovereignty of the state within the framework of international law. Also, Azerbaijan being an unconditional right side in the case, tried to solve the conflicts on the borders, resulting from the claims and invasion by neighboring countries, with the peaceful agreement.

The answer of Azerbaijan side to the Armenian argument on the recognition of ADR by international community

The claims by Armenians on the issue that ADR never formally recognized international community and by the League of Nations, it should be noted that: during 1918-1920, ADR had a series of diplomatic relations with several countries, signed agreements on the principles of mutual relations, and 16 states had representation in Baku. By a decision dated January 12, 1920, the Supreme Council of the Allied Powers in the Paris Peace Conference recognized de facto the independence of Azerbaijan with other Caucasian republics. [5] This was actually recognition as a subject of international law.

Indeed, in response to a letter dated November 1, 1920 by the head of the Azerbaijani delegation to the Secretary-General of the League of Nations – requesting an application for the admission of the Democratic Republic of Azerbaijan to be accepted to the Assembly of League, the Secretary General of the Organization had accepted the memorandum on November 24, 1920. Memorandum stated that the mandate of the Azerbaijani delegation to the Paris Peace Conference was given in April 1920 by the time the government had been in power. Even so, the Memorandum referred to the date of request of the delegation of Azerbaijan (1 November 1920) and paid a special attention to the situation that the Azerbaijani government de facto was not in the power on the date of the publication of the Memorandum (24 November 1920) and encroached the situation after the invasion; the division of the army, the government had left only one region in its hand and all territories, including railways were captured by the Bolsheviks, in other words, it showed that the government can not control the whole territory of the country. [5]

After noting these facts, the Secretary General of the League of Nations touches necessary conditions for the adoption of the organization in accordance with the Charter of the Organization and notes that two issues are important from a legal perspective to announce the application given by the delegation on admission to the organization. The first one that the territory of Azerbaijan having been originally part of the Empire of Russia, the question arises whether the declaration of the Republic in May 1918 and the recognition accorded by the Allied Powers in January 1920 suffice to constitute Azerbaijan de jure a “full self-governing State” within the meaning of Article 1 of the Covenant of the League of Nations. And should the Assembly consider that the international status of Azerbaijan as a “fully self-governing State” is established, the further question will arise whether the Delegation by whom the present application is made is held to have the necessary authority to represent the legitimate government of the country for the purpose of making the application, and whether that Government is in a position to undertake the obligations and give the guarantees involved by membership of the League of Nations. [6, 36, 37]

As can be seen the main questioning point of the memorandum is the issue of legitimacy of Azerbaijani government after the occupation of Azerbaijani territory by the Bolsheviks.

According to the memorandum on December 1, the 5th Committee elected by the Board came to the conclusion that within the current conditions it is impossible to accept ADR in accordance with the terms of the Charter of the Organization of LN. As mentioned above, the committee came to this conclusion based on the facts that the Azerbaijani government found it difficult to define the scale of territories under its control (1) and impossibility to define its borders because of disputes with neighboring countries (2). Apparently, the Assembly of LN didn't admit membership to ADR not due to territorial claims toward neighbors (in this case the Nagorno-Karabakh) as presented by the Armenian side, but because of the border disputes resulting from the aggression of neighbor states and the occupation of Azerbaijani territories by Bolsheviks. In a letter to the leadership of the organization Alimardan bey Topchibashov protested each of these cases individually, referring to the Russian occupation and border conflicts with its neighbors as an argument to admit a member of the League of Nations. [6, 40]

Thus, the relevant documents of the League of Nations show that the reason refusing to accept ADR was not related to, as claimed by the Armenian side, Azerbaijan's inability to control the Nagorno Karabakh or Nagorno-Karabakh's being disputed area between the two countries. There is no note about Nagorno Karabakh issue on the discussion and decision about Azerbaijan. [6, 43] Also by reviewing these documents the absurdity of the argument on Azerbaijan's claim to the areas populated by Armenians (Nagorno Karabakh) becomes clear. It is obvious actually that the state, considerable part of the territory of which was occupied by the time of consideration of its application in the League of Nations, and yet the Government that submitted this application was overthrown, could not be regarded as fully self-governing in terms of Article 1 of the Covenant of the League of Nations. Thus, these were just those conditions that prevented Azerbaijan from being admitted to the League of Nations. [5]

At the same time, the League of Nations didn't accept the membership of Armenia because of not having clear and recognized borders, the status and the constitution, a stable government (16 December 1920) [7, 27, 2-3] and this shows that the argument of “impossibility to determine exact current borders” which made LN refuse Azerbaijan's membership was not affiliated with any of the Nagorno-Karabakh conflict. The organization refused to accept Armenia's membership with the same argument of “clear borders” and “stable government”.

Result

The look at the legal and political views in the ADR period showed that the main claim of the Armenian side in the Nagorno-Karabakh problem, "the self-determination of Karabakh's Armenians isn't contrary with the principle of territorial integrity of Azerbaijan because Nagorno Karabakh was never under the jurisdiction of Azerbaijan" is not based on historical truth. Nagorno-Karabakh was an integral and inseparable part of the Azerbaijan Democratic Republic (May 1918 - April 1920) within the borders and jurisdiction. Also, the declaration of separation from Azerbaijan and independence of Armenian living in the Nagorno Karabakh can not be justified under the principle of self-determination; because of the unilateral secession and armed rebellion against the government of Azerbaijan, as well as aggression carried out against the local Muslim population. The ADR government neither recognized the independence of Nagorno-Karabakh Armenians, nor gave them any form of autonomy within the law. On the contrary, the Azerbaijani government declared that the act was against the territorial integrity and sovereignty of Azerbaijan and as well contrary to the fundamental principles of international law. Also, the Azerbaijani side, despite being the right side of the Nagorno-Karabakh problem, was a supporter of disputes through peaceful means.

On the claims of the Armenian side about the LN not recognizing the ADR it should be noted that the Supreme Council of the Allied Powers in the the Paris Peace Conference de-facto recognized Azerbaijan, along with other Caucasian republics, on January 12, 1920. This is actually means that Azerbaijan recognized as a subject of international law.

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