SOME STATE LEGAL PROBLEMS IN THE ARMENIAN-AZERBAIJANI, NAGORNO-KARABAKH CONFLICT

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The Kosovo Precedent, which at first posed an enigma for the world community, showed, as events unfolded and they were subsequently understood, what can happen when the settlement of territorial conflicts falls outside the law, the regulations of international law adopted by the world community are ignored, and the law of force takes priority over the force of law (the events in Tibet, the aggravation of the situation in Abkhazia and South Ossetia, and the attempts by the Armenian armed forces to violate the ceasefire regime in Nagorno-Karabakh and on the border with Azerbaijan).

This calls for the powers of reason to exert every effort to ensure that Kosovo does not become a precedent and that the regulations of international law established by the members of the international community themselves remain the precedent in international relations. The world community is faced today with a vitally important task, the price of which is peace on Earth. This task is to ensure that the world is not redivided and that borders are not redrawn. The onset of the first stage in this process goes back to the beginning of the Nagorno-Karabakh conflict, the beginning of Armenia's aggression against Azerbaijan. The second stage began with the recognition of Kosovo's independence. This task can only be solved by returning conflict settlement to the scope of the law, in so doing, restoring genuine respect for the regulations of international law established by the world community. This is what the GUAM Baku Declaration of 19 June, 2007 called for, after foreseeing this possible turn in events, by confirming the "need to continue active joint action to settle the protracted conflicts in the GUAM region by observing the principles of sovereignty, territorial integrity, and inviolability

of the states' internationally recognized borders and in compliance with the provisions of the Joint Declaration of the GUAM Heads of State on Conflict Settlement, as well as the importance of mobilizing the support of the international community to settle these conflicts."

We are making this modest attempt to shed light on some of the state legal problems arising in this most notorious territorial conflict in order to attract the attention of the forces capable of settling it to the obvious facts.

Some banal thoughts on **"the legitimacy of unrecognized states in the post-Soviet space."** The legal system of any state is based on its legitimacy. The legitimate process of forming the people's expression of will and the legislation process based on it are the necessary and determinative prerequisites of state-building. This is essential for declaring a state legitimate. Let us take a deeper look into the "legal system" of the unrecognized states in the post-Soviet space. We will show that neither the law, nor a legal system function in them today and, correspondingly, their "legitimacy" is only a myth.

In order to justify the **first thesis**, we must turn to the spirit of law in general. In Ancient Greece and Ancient Rome, the maintenance of human rights was related to ancient polis, which made it possible to draw up and then pass on to the next generations the state's immense spiritual wealth and ideas of citizenship and democracy.[1] Law in general, as well as the rights of individuals, the members of the polis, can be traced back, according to the ideas of antiquity, not to force, but to the divine order of justice.

Both law in general and the rights of individuals in particular are impossible without common standards of behavior, which express what is permissible and what is forbidden equally for everyone, as well as determine an equal measure of freedom. Where there is no equal measure (common standards, single scale), there can be no law.[2]

Solon (circa 638—559 B.C.), a famous state official and legislator, one of the Seven Wise Men of Ancient Greece, understood law (and its rule) as a combination of "right" and "might." Along with the distinction between right and law, this framework also included an understanding of polis law as a universal form and generally valid measure of official recognition and expression of the rights of polis members. This universality of the law is expressed in the demand for legal equality: all citizens are equally protected by the law and are subordinate to its rules, which are obligatory for all.[3]

What are we seeing in the so-called NKR (Nagorno-Karabakh Republic), for example? An Armenian community of 120,000 people, out of the population of 180,000 in the Nagorno-Karabakh Autonomous Region, which is part of the Azerbaijani Republic, refused to obey the laws of a state recognized by the world community—the Azerbaijan Republic; with the help of Armenia's armed forces that invaded the Azerbaijan Republic, the Azeri community of 60,000 people was driven from the NKAR, other territory contiguous to Nagorno-Karabakh was seized, hundreds of thousands of Azeris were driven from it, after which the Armenian community set about building a "democratic" state with a "democratic legal and election system!?" What is the essence of this legal system that applies to territory from which most of the indigenous population has been expelled? Incidentally, the number of those expelled is six-fold larger than the Armenian community remaining in these territories. As we see, **"formation of law" in the "NKR" violates the basic principles of law: justice, equality, and freedom, without which it is impossible to form a democratic legal system.**

Now let us take a look at the **second thesis.** Every law student learns from the very start that law cannot exist without a state, and a state cannot exist without law. It is stands to reason that in order for

[1] See: S. Utchenko, *Politicheskie ucheniia Drevnego Rima*, Moscow, 1977, p. 41.

[2] See: *Prava cheloveka v mezhdunarodnom i vnutrigosudarstvennom prave* (Ed.-in-chief, Professor R. Valeev), Kazan State University, Kazan, 2004, p. 9.

[3] See: Aristotel, *Afinskaia politika*, Moscow, 1996, pp. 17-18.

the standards regulating vital activity in unrecognized states to be recognized as legal, these "formations" themselves must first be recognized as states. There is a multitude of studies on the origin and nature of the state in the theory and history of the state and law. Among this multitude of studies, contemporary science singles out two main and most popular theories: the natural law theory (in the literature it is also called the contractual theory or the theory of **contractual origin** of the state and law) and the theory of coercion, which sees the main reason for the emergence of a state in **conquests, violence and subjugation by others.**[4] We will emphasize that a historical-legal analysis makes it possible to convince ourselves of the strength of arguments the advocates of both theories advance.

The emergence of new states in today's world is a phenomenon the world community does not encourage, so it very rarely takes place. Something like this happened in the first half of the 1990s, when the Soviet Union fell apart into 15 independent states, new states were formed instead of the Socialist Federal Republic of Yugoslavia and the Czechoslovak Socialist Republic, and the unification of Germany took place. Despite the dramatic effect of the events that accompanied these processes, the formation of the newly independent states was based on a **legal contract** (in some legitimate form), that is, agreements on the creation of these states which were recognized by the world community. This made it possible to shift in a civilized way from state formations created by the force of arms, by means of coercion, conquering, and enslavement (the U.S.S.R., the S.F.R.Y., and the C.S.S.R.), to independent states created on the basis of a voluntary contract and so recognized by other democratic states.

Other events also took place at this time. Certain forces, using democratic processes in the above-mentioned territories, tried to create new states (Nagorno-Karabakh in Azerbaijan, Abkhazia and South Ossetia in Georgia, Transnistria in Moldova, and Chechnia in Russia) by coercive means (under the guise of democratic and nationalistic slogans). But there is no legal contract in any of these cases that is recognized by the world community. The reason is obvious: **today's world community does not regard violence or coercion as a way or means for creating a new state. The creation of a new state in today's democratic world is only possible with a legal contract, when all the sides concerned come to a voluntary agreement.** A contract cannot have legal force if one of the sides coerces the other by force of arms; this kind of contract is legally non-existent, or will sooner or later be violated and abolished. It will constantly be a potential source of instability in a particular region. **International recognition of a state created by one state occupying the territory of another state might be regarded in the world as a precedent and entail unpredictable consequences for the world community.** It is no accident that not one of the above-mentioned formations has been recognized by a single state in the world, including the Republic of Armenia.

Since it is generally known that law is created by state bodies authorized for that purpose, it inevitably follows from the aforesaid that the regulations applied in the unrecognized illegal formations are not in essence legal and so cannot form a legal system, along with other factors. Accordingly, the power bodies in these formations are not legitimate.

Armenian speculations about the "1991 referendum in the NKAR." Essentially all Armenian sources that justify the legitimacy of "NKR's independence" base their arguments on the referendum held in the NKAR on withdrawal (secession) from the Azerbaijan Republic in compliance with the U.S.S.R. Law on the Procedure for Resolving Issues Relating to the Withdrawal of a Union Republic from the U.S.S.R. of the 3 April, 1990.[5] Almost all the arguments of the Armenian side on the legitimacy and independence of the "NKR" are substantiated by the referendum held and references

[4] See: for example: *Teoriia gosudarstva i prava. Lecture Course*, ed. by M.N. Marchenko, Zertsalo, TEIS, Moscow, 1996, pp. 23-39; *Osnovy teorii gosudarstva i prava. Textbook* (Ed.-in-chief S.S. Alexeev), Iuridicheskaia literatura Publishers, Moscow, 1971, pp. 38-41.

[5] See: *Gazette of the Supreme Soviet of the U.S.S.R.*, No. 15, 1990, Items 252 and 253.

to this Soviet document. The illegality and unlawfulness of this referendum, as well as the absurdity of the references to the aforesaid U.S.S.R. law become obvious even upon fleeting acquaintance with the content of this Law.

- We will primarily draw attention to the name of the Law, which talks about the withdrawal of a Union republic from the U.S.S.R., but (attention!) in no way implies an autonomous region or even an autonomous republic. This is also directly mentioned in Art 1 of this Law.
- Second, the mentioned Law envisages the possibility of holding a separate referendum for each autonomy in the Union republics holding a referendum on withdrawal from the U.S.S.R. and having constituent autonomous republics, autonomous regions, and autonomous areas. In this case, the autonomous republics and autonomous formations retain the right (1) to independently decide whether they remain in the Union of S.S.R. or (2) remain in the Union republic that is withdrawing, as well as to (3) **raise the question of their own state legal status** (see Art 3 of this Law). This is far from what happened in the NKAR at the 1991 referendum and from what Armenian Defense Minister Serge Sarkisian said at the parliamentary hearings on the Nagorno-Karabakh problem on 30 November, 2005[6] for the reasons given below:

  1. The right to "constitute themselves as independent entities of the Union Federation, including secession from the Union republics they belonged to (if such Union republics raise the question of withdrawing from the U.S.S.R.)," as Serge Sarkisian said, could be accrued in compliance with the Law of 3 April, 1990 not from the time "the Union republics raise the question of withdrawing from the U.S.S.R.," but at the time a Union republic holds a referendum on withdrawal from the U.S.S.R. (again see Art 3 of this Law).
  2. In compliance with Art 4 of the Law of 3 April, 1990, "the Supreme Soviet of a Union republic shall form a commission of representatives from among members of all the sides concerned, including the autonomies, in order to organize a referendum on withdrawal from the U.S.S.R. and set the time for holding the referendum and summing up its results." As we know, this did not happen.
  3. A referendum on the withdrawal of a Union republic from the U.S.S.R., in compliance with Art 2 of the U.S.S.R. Law of 3 April, 1990, shall be held no sooner than six and no later than nine months after the decision was adopted to raise the question of a Union republic's withdrawal from the U.S.S.R. The Supreme Soviet of the Azerbaijan Republic adopted the Constitutional Act on State Independence on 18 October, 1991 and, consequently, in compliance with the law to which Armenian sources refer, the referendum could not be held earlier than 18 April, 1992 or later than 18 July, 1992. This means that in compliance with the Law of 3 April, 1999, the NKAR did not accrue the right and could not have accrued the right to hold a referendum on self-determination. Theoretically speaking, such right, in compliance with the U.S.S.R. Law of 3 April, 1990, could have arisen only in the period between 18 April and 18 July, 1992 when the Azerbaijan Republic itself was holding a referendum.
  4. And, finally, nowhere in the Law of 3 April, 1990, can a single word be found about the right of an autonomous region to independently hold a referendum.

[6] See: Full text of the report of the Armenian defense minister at the parliamentary hearings on the Nagorno-Karabakh problem is available at [http://www.regnum.ru/news/437271.html].

- Third, let us turn again to Art 3 of the Law, the first part of which says, as noted above, that at the holding of a referendum on secession from the U.S.S.R. by a Union republic, its constituent autonomous entity retains the right **"to raise the question of its state-legal status."** Note: not the right to self-determination and withdrawal from the U.S.S.R., but only the right "to raise the question," making a decision on which, in compliance with the Law of 3 April, 1999, lay within the competence of the Union of S.S.R. (see Arts 3-12 of this Law). This regulation was included in the Law for the one sole purpose of having a legal mechanism for retaining autonomous republics and autonomous formations in the U.S.S.R. in the event a Union republic attempted to withdraw from the U.S.S.R. It would be naïve and unprofessional to presume that, following the withdrawal of a Union republic from the federation, the Union of S.S.R. would create favorable conditions for the withdrawal of autonomous formations as well. **The only and main purpose for adopting the above-mentioned Law was not to streamline the withdrawal of Union republics (and according to the Armenian version, autonomous formations as well) from the Union of S.S.R., but, on the contrary, to hinder free exercising of the right to free withdrawal of Union republics from the U.S.S.R. envisaged in Art 72 of the last U.S.S.R. Constitution.**
- Fourth, in compliance with the Law of 3 April, 1990, the results of a referendum on the withdrawal of a Union republic, and autonomous formations along with it, from the U.S.S.R. did not automatically provide grounds for withdrawal from the federation. In order to acquire legal force, a long and complicated procedure had to be tackled that ended in the results being considered by the U.S.S.R. Supreme Soviet and the U.S.S.R. Congress of People's Deputies (for more detail, see Art 7 of the Law of 3 April, 1990), which, naturally, never happened.
- Fifth, while plans were being made to hold a referendum in Nagorno-Karabakh in December 1991, the NKAR itself, as an autonomous formation, no longer existed: the Nagorno-Karabakh Autonomous Region was abolished by the Law of the Azerbaijan Republic of 26 November, 1991, in compliance with the Constitution of the Azerbaijan Republic and the Constitutional Act on State Independence.[7] Consequently, the provisions of Art 3 of the U.S.S.R. Law of 3 April, 1990 no longer applied to the territory of the Azerbaijani Republic.
- Sixth, by the time the liquidated NKAR held its referendum, the Union of S.S.R. had also ceased to exist as an entity of international law and geopolitical reality as a result of the Belovezh Agreement on the Creation of the Commonwealth of Independent States among the Russian Federation, Ukraine, and Belarus of 8 December, 1991.[8] Consequently, in this case, even reference to the laws of a state that does not exist is incorrect.

So the myth about the formation of two equal independent states on the territory of the Azerbaijan Republic after the collapse of the U.S.S.R., the second of which is the "NKR", and the myth about the legitimacy of the "NKR's independence" are nothing more than falsifications propagated by the Armenian separatists.

"The possibility of recognizing the 'NKR's' independence." Some forces and their sources are trying to present a whole series of reasons that are supposedly sufficient for recognizing the "NKR's" independence and its withdrawal from the Azerbaijan Republic. The main argument in this

[7] See: On the Abolishment of the Nagorno-Karabakh Autonomous Region of the Azerbaijan Republic. Law of the Azerbaijan Republic of 26 November, 1991, *Gazette of the Supreme Soviet of the Azerbaijan Republic*, No. 24, 1991, Art 448.

[8] See: *Collection of Documents of the Commonwealth of Independent States*, No. 1, 1991, Art 6.

issue is the thesis that the "NKR," according to its founders, is a "more democratic formation" than the Azerbaijan Republic, and that these "democrats" need more "freedom and independence."

We will not compare the democratic situation in the Azerbaijan Republic and the Nagorno-Karabakh region that has withdrawn from its subordination. We will simply look at how "democratic" the self-proclaimed "NKR" is.

For lawyers, diplomats, political scientists, historians, and many others, we will not be saying anything new if we note that the literature on international law has long used a concept of "state" that comprises three main components: sovereign power, the population, and a specific territory. Consequently, in order to recognize the so-called NKR as being capable and worthy of existing as an independent democratic state, the world community must be convinced that it has all three of these components. After turning a blind eye to the will of the Azerbaijan Republic and its people on this issue, we will take a deeper look into each of these components.

- First, ***sovereign power.*** It stands to reason that this power derives from a "people." We have already shown in previous publications that the population of Nagorno-Karabakh is not a "people." Let us briefly reiterate. Nagorno-Karabakh is a region of Azerbaijan where two communities, Armenian and Azeri, lived until the Armenians carried out ethnic cleansing. These two communities comprise the population of Nagorno-Karabakh, but they can in no way be described as a "people." The term "people" is a political category, and peoples in this context are "Armenians" and "Azeris," which have already realized their right to self-determination within the framework of the Republic of Armenia and the Azerbaijan Republic, respectively. The term "people" cannot be applied to the population of Nagorno-Karabakh of the Azerbaijan Republic. Sovereign power should be independent. It seems to us that not one self-respecting politician, lawyer, diplomat, political scientist, or historian would take it upon himself to prove the independence or sovereignty of the power of the so-called NKR, at least as far as its dependence on the Republic of Armenia is concerned.
- Second, ***population***. Who populates the "NKR" today? We touched on this subject above. Since the beginning of occupation of Azerbaijani territory by the Republic of Armenia, the whole of the Azeri population, consisting at the time of approximately one third of the entire population of the NKAR (more than 60,000 people), left the territory of the former NKAR at gunpoint. In addition to this, since it did not wish to participate in the hostilities and unlawfulness in Nagorno-Karabakh, part of the Armenian population (approximately 25-30,000 people) also left it. If we take into account the instances of people settling illegally on the Azerbaijani territory occupied by the Republic of Armenia, the population of the so-called NKR comprises at most 100,000 people. It is difficult to understand the extent to which the above-mentioned fits into the framework of a democratic process. What about the Azeri population of Nagorno-Karabakh when "recognizing the independence of the NKR?" What about their rights? What "democrat" can answer these questions?
- Third, ***territory***. What territory are we talking about when we define the territory of the "NKR"? The former territory of the former Nagorno-Karabakh Autonomous Region of the Azerbaijan S.S.R.? Or the entire territory occupied by the armed forces of the Republic of Armenia, including, in addition to the territory of the former NKAR, seven other administrative regions of the Azerbaijan Republic? If we are talking only about the territory of the former NKAR, what about the rights of the part of the population expelled from it? If we mean the territory of the NKAR + seven administrative regions of Azerbaijan, what about the rights of the more than 700,000 Azeri citizens driven from their land for the sake of the security of 100,000 Armenians? Sorry, I forgot we are talking here about democracy!

We have shown that when talking about the "NKR" and about "parliamentary or other elections in the NKR," no one even thinks about their legitimacy. All of these concepts do not have anything in common with the law, international regulations and customs, or even with moral standards. **This is because the essential principles of law: justice, equality, and freedom, without which,** as we said above, **it is impossible to form a democratic legal system, are being violated.** The unrecognized "NKR", as well as its institutions are based on the force of arms, aggression, and occupation, which contradicts the convictions of today's world community regarding the fact that **the creation of a new state is only possible with a legal contract, when all the sides concerned come to a voluntary agreement and strive for peace and prosperity.**

It is gratifying that David Shakhnazarian, one of the leaders of the Armenian National Movement party, former minister of national security of the Republic of Armenia, ambassador extraordinary and plenipotentiary, and currently chairman of the Center of Political and Legal Research Concord, openly admitted the following in one of his interviews: "The Caucasus will be able to develop and prosper only as a united region and market… Georgia and Azerbaijan are trying to ensure their own national security by joining the Euro-Atlantic structures and NATO. The Armenian leaders stated that the country's national security will be ensured by Russian armed forces and Russia's protection. I do not think that in the 21st century, armed forces, particularly foreign armed forces, can form the basis of national security for any country… Today there is the great danger that by carrying out such a policy Armenia could become a serious destabilizing factor for the entire region."

This insight does not need any comment. But I can add that the Republic of Armenia has long become a serious destabilizing factor, and not only for the Central Caucasian region.

All of the above makes it possible for us to conclude that **the attempts by the Republic of Armenia to imitate (including by means of "elections") the creation of an "independent democratic Nagorno-Karabakh state" on occupied Azerbaijani territory are leading to its isolation not only in the Central Caucasus, but also in the democratic world.**

Settlement of this international territorial conflict will only be possible when the world community gives it ***an objective political legal assessment.*** Only on the basis of comprehensive, complete, and exhaustive study of the reasons and roots of the conflict, as well as an assessment of the situation that has developed at the time the decision is made will it be possible 1) for the sides (with the participation of mediators) to make a fair decision; 2) for generally accepted international legal regulations to be applied correctly and effectively; and 3) for stable, long-term peace guaranteed by the world community to be ensured.

As we know, such prestigious international organizations as the U.N., OSCE, European Union, Council of Europe, NATO, and others are being called upon to speak on behalf of the world community, the direct obligations of which are to maintain and restore peace and stability both throughout the world as a whole and in its separate parts, and impose sanctions against the aggressor country.

The adoption by the Parliamentary Assembly of the Council of Europe on 25 January, 2005 of Resolution 1416 (2005) "The Conflict over the Nagorno-Karabakh Region dealt with by the OSCE Minsk Conference" (rapporteur David Atkinson), which acknowledges the occupation of a significant part of the territory of Azerbaijan by Armenian troops and reiterates that "the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe,"[9] was albeit a tardy, but not the final step in this direction. The adoption in mid-March 2008 at the 62nd session of the U.N. General Assembly of the Resolution on the Situation in the Occupied Territories of Azerbaijan, which essentially presents a political legal assessment of the Nagorno-Karabakh conflict, should serve as an impetus for other international organizations, pri-

[9] See: [http://assembly.coe.int/Documents/AdoptedText/ta05/ERES1416.htm].

marily the OSCE, within the framework of which the Minsk negotiation process is going on without much success, to make similar decisions.

In so doing, it is worth reminding the co-chairing states of the OSCE Minsk Group that the Azerbaijan Republic and the Republic of Armenia signed the Helsinki Final Act, thus recognizing, in compliance with their constitutions:

1) the higher juridical force of the regulations of this Act both in domestic and in foreign legal relations;

2) the principles of inviolability of the frontiers and territorial integrity of the participating states.[10]

If the world community assumes an objective stance, this might make it possible to withdraw the armed forces from the conflict zone and settle the conflict peacefully without armed pressure and on the basis of the principles of international law.

Questions about the ***form of state structure*** are arising all the more frequently in light of the need to settle the conflict**.** The doctrine of constitutional and international law is rather conservative in its definitions. So for many decades, scholars have been trying to fit all the examples of state formations existing in practice into the concepts of "confederation," "federation," and "unitary state." At the same time, a political and legal empirical analysis makes it possible to convince ourselves that these categories essentially do not exist in pure form, their elements are so mutually integrated that we can talk about the creation of certain hybrid forms. For example, there are generally accepted federative states in the world, the constituents of which nevertheless have the right to enter international legal contracts (the Austrian Lands, the territorial constituents of Bosnia and Herzegovina).

At the same time, inductive methods for studying these problems give rise to certain definitive generalizations. In our opinion, when studying the diverse ways to build interstate relations, the conclusion can be drawn that, depending on the existing interrelations between the state and its constituent parts, the following general forms of state structure can be distinguished today: confederation, federation, unitary regional state, and unitary state with a special autonomous status for certain individual territories. It seems to us that a blind approach to the traditional conceptions, definitions, and classifications often has the opposite effect. An attempt to fit the existing reality into a definitive framework could lead to simplification, or, even worse, to distortion of the diversity taking place in the current constitutions, and become a hindrance and obstacle during conflict settlement. So ***when settling an ethnoterritorial or ethnopolitical conflict, we should keep in mind the doctrinal conceptions and definitions of constitutional and international law and the constitutional and international law realities existing in the world, while states should be willing to adopt non-standard and non-routine decisions that make it possible to settle a specific conflict.***

The significance of the **study of the legal aspects for settling ethnoterritorial and ethnopolitical conflicts** both in Europe, and in other regions of the world lies in the fact that, first, they have existed (the Åland Islands in Finland, Flanders in Belgium) and continue to exist (the Basque country in Spain, Northern Ireland in Great Britain, Corsica in France) for many decades, and sometimes centuries; second, that throughout human history such conflicts have often been settled with the help of specific legal decisions, and, third, attempts to resolve these conflicts outside the law could lead to unpredictable and far-reaching consequences (which we are seeing with Kosovo in Serbia). So international law and national legal systems should be the basis for settling all the existing conflicts, regardless of their special features. The distribution of powers among different departments, between

[10] See: *Final Act of the Conference on Security and Cooperation in Europe* (Helsinki, 1 August, 1975), available at [http://www.hri.org/docs/Helsinki75.html].

the center and the region, between the state and the autonomy, between the federation and its constituent should be a key issue in the decisions being made. Theoretically, the range of distribution of these powers lies between "full sovereignty" and "full anarchy." It goes without saying that it is unrealistic to imagine that a conflict can be settled by maintaining just one of these categories; therefore, in practice, the fair settlement of a conflict (at a specific stage) should lie somewhere in the middle of the said range.

In so doing, when approaching this study, we are keeping in mind that the circumstances in Nagorno-Karabakh of Azerbaijan differ from the situation in Finland, Belgium, Spain, Great Britain, or in any other country or region.

When showing the difference between the unitary and federative state structure, we point to the fact that the constituent parts of a federation usually have their own constitutions, like the states in the United States of America, for example, the Lands in Germany, the republics in the Russian Federation, or they have fundamental laws which are not called constitutions, for example, the charters of the regions, territories, and an autonomy region of the Russian Federation. This establishes a system of state power bodies of the federation constituents, their powers, etc. It fully confirms the thought expressed by Doctor Conrad Hesse, a professor of Freiburg University, to the effect that "despite the communality of the structural principles, each federative state is a specific and historical identity."[11]

The system of power bodies of the administrative-territorial units in a unitary state and their competence are set forth in the constitution and laws of the state.

Federation constituents, in contrast to the constituents of a unitary state, have broad political independence and state autonomy. But it would be a mistake to think that the country's administration is centralized in all unitary states, while decentralization and precise distribution of powers between the center and regions are characteristic of federative states. Each unitary and each federative state has its own special features, which are sometimes very significant. For example, in such unitary countries as Spain and Italy, the autonomous units have a degree of state autonomy that the constituents of some federative states do not have.

The status of the individual constituents in unitary and federative states rarely differs from the status of other constituent parts of the same state. In this respect, the state-territorial structure can both simple (symmetrical) and complex (asymmetrical).

A simple (symmetrical) state structure is characterized by the fact that all of its constituent parts have the same status. For example, the Austrian and German Lands, *voyevodstvos* in Poland, and regions in Belarus are equal.

In a complex (asymmetrical) state-territorial structure, the constituent parts of the state have a different status. For example, the unitary composition of Ukraine includes the Crimean Autonomous Republic, which has a special status, in addition to regions that have the same status. Sicily, Sardinia, Friuli-Venezia Giulia, and other regions of Italy have, in compliance with the constitution of this country, special forms and conditions of autonomy in keeping with special statuses established by constitutional laws. The Basque country, Catalonia, Galicia, Andalusia, and other provinces of Spain have autonomy. In each of these self-governing regions, there is an assembly elected by the people which issues the laws in effect in the province. Great Britain, as a unitary state, consists, as we know, of historically developed parts—England, Scotland, Wales, and Northern Ireland. The administrative-territorial division of these parts differs: in England and Wales they are counties, Northern Ireland is divided into districts, and Scotland into council areas. Greater London is an independent administrative-territorial unit.

[11] See: K. Hesse, *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, 20th edition, Müller, Heidelberg, 1999.

As already noted above, the scope of a territorial autonomy can differ, and two of its forms are singled out depending on the indicated scope—state (legislative) and local (administrative). The state form of territorial autonomy is characterized by the fact that its bearer has the outer attributes of a state—a parliament, government, sometimes a constitution, citizenship, whereby the state's general constitution usually sets forth the sphere of legislative competence of the autonomous parliament.

A local form of autonomy does not have these attributes, and the range of autonomous rights of territorial units is usually defined by ordinary law. In most cases, constitutions and laws envisage that autonomous units draw up (sometimes they also adopt them themselves) fundamental regulatory acts defining their internal structure (constitutions, charters, regulations, charters of self-government, and so on).

Sometimes territorial units with a large foreign population distinguished by different lifestyles or the isolated, for instance island, status of a territory are given a special autonomous status which is characterized in the relevant cases as national-territorial. For example, the Åland Islands in Finland populated by Swedes, the islands and border areas of Italy, the autonomous regions of China populated by non-Han minorities, the island of Greenland in Denmark populated by Eskimos, Zanzibar in Tanzania, and others enjoy this autonomy.

In particular, the Åland Islands, which are a region of Finland, are guaranteed their territorial integrity; they have their own parliament and their own government with its guaranteed powers, their own citizenship (citizens of the Ålands automatically acquire Finnish citizenship). Incidentally, the president of Finland has the right to veto Åland laws. The law on autonomy of the Ålands is adopted by the Finnish parliament by two thirds of the votes and is approved by the same majority in the Åland parliament.

The territorial structure system in the United Republic of Tanzania, which is usually described as a federation in the literature, is similar in many ways to the Finnish and Danish systems. In reality, there are no grounds for this characterization, despite the contractual origin of this united state. The mainland part of the country—Tanganyika—does not have its own special power bodies that could act along with the general state bodies and, in essence, Tanzania is a unitary state with the autonomy of Zanzibar.

The autonomy of Scotland within Great Britain is also very unusual. Scotland does not have its own legislative and executive bodies, but, in compliance with the Act of Union of 1707, it is recognized as having the right to have its own legal and judicial system, its own (Presbyterian) church, and special representation in the House of Lords (in the House of Commons, Scotland is represented in accordance with the usual procedure).

Territorial or national autonomy, as well as self-government, can be either very broad or very narrow. Switzerland, the U.S., and to some extent England are examples of broad self-government. The Swiss republic consists of separate states, or cantons. Each of them enjoys complete autonomy and has its own elected government. There is no need to ask for the permission or approval of the central government to resolve canton affairs.

Distribution of powers between the state and the autonomy is the key to eliminating disagreements between the sides in a conflict. In our opinion, it requires defining the following:

1) the exclusive powers of the central authorities;

2) the exclusive powers of the autonomy;

3) the possibility of granting residual powers either to the central authorities, or to the autonomy;

4) the possibility of adopting such a legislative technique as "concurrent powers" without granting residual powers either to the central authorities or to the autonomy;

5) the possibility of the central authorities adopting framework laws specifying the law-making powers of the autonomy.

The principle of "concurrency" without granting residual powers to the central authorities or to the autonomy was adopted during resolution of the Åland Islands question. Nevertheless, in our opinion, it is technically difficult to carry out and could subsequently lead to certain complications: in practice it is very difficult to compile an exhaustive list of powers and then distribute them between the state and the autonomy.

At the same time, it was legislative and executive powers that were distributed between Finland and the Åland Islands. Questions of judicial power were not included in the agreement on self-government and so the use of the Åland Islands' legislation was referred to the competence of the Finnish courts, the system of which is headed by the Supreme Court and Supreme Administrative Court of Finland.

We believe that the division of legislative powers between a state and its autonomies should be based on a clear delimitation of the exclusive powers of the state and the autonomy. In all other spheres, several routes can be taken: 1) by creating competing (competitive) powers—this is when the autonomies adopt legislative acts on issues that are not regulated by the relevant laws of the state; 2) by adopting framework laws; 3) by delegating, with mutual consent under an authorizing law, several legislative or administrative powers of the state to the autonomous region.

International practice shows that such as foreign policy, defense, monetary system, customs services, intellectual property, bankruptcy, weights and measures, and several others should remain within the jurisdiction of the state (central authorities).

The adoption by the central authorities of framework laws specifying the law-making powers of the autonomy consists in the central authorities establishing certain limits for the functioning of autonomous authorities. In this framework, the central authorities cannot interfere in the activity of the autonomy. Beyond these limits, all power belongs to the center.

During the activity of the OSCE Minsk Group much is being said about mutual **compromises and concessions.** We will stipulate that "concessions" imply making demands of the occupant and, if rejected, the regulations of international law are applied in order to ensure that the occupant agrees to these concessions. Only after this can the aggrieved side be appealed to with respect to compromises, which are expressed in not blaming and punishing the occupant. We believe that such compromises and concessions could look as follows:

On the part of the Republic of Armenia:

(1) an end to the occupation and a withdrawal of its armed forces from the territory of the Azerbaijan Republic;

(2) disbandment and disarmament of the armed formations of Nagorno-Karabakh.

On the part of the Azerbaijan Republic:

(1) granting of the highest autonomy status to Nagorno-Karabakh;

(2) renunciation of claims to the Republic of Armenia at the International Court of Justice for the rehabilitation of areas destroyed during the war or for payment of compensation for the more than thirteen years of forced expulsion of their inhabitants, for the inflicted economic and moral damage;

(3) consent to the temporary stationing of U.N. peacekeeping forces in Nagorno-Karabakh; and

(4) consent to the establishment of horizontal relations between the center and the Nagorno-Karabakh autonomy with clear division of powers under one of the aforesaid variants.