NAGORNO-KARABAKH: SEPARATISM AND ELECTORAL LEGITIMACY

Namig ALIEV

D.Sc. (Law),
State Councilor, Second Class
(Baku, Azerbaijan)

Introduction

The conflict known throughout the world as the "Nagorno-Karabakh" conflict arose during the disintegration of the U.S.S.R. The situation that had taken shape in the Soviet Union at that time was conducive to the emergence of this conflict, while the confrontation over Nagorno-Karabakh, encouraged by the country's authorities led by Mikhail Gorbachev, served as a catalyst of centrifugal processes, triggering off numerous ethnic and territorial conflicts in the post-Soviet space and transforming the evolutionary process of the U.S.S.R.'s disintegration into a revolutionary breakup.

The active phase of the conflict started in February 1988, when the separatist forces of the Nagorno-Karabakh Autonomous Region (NKAR) of the Azerbaijan Republic, instigated by the Republic of Armenia, began to organize rallies, strikes and other civil disobedience actions, seeking a secession of the region from the Azerbaijan Republic and its incorporation into the Republic of Armenia. Ethnic cleansing of Azeris started in that Union republic of the U.S.S.R. and in the territory of Nagorno-Karabakh, with the creation of monoethnic Armenian areas.[1] As a result of the first stage of the conflict, the parliament of the Republic of Armenia took a decision to incorporate the NKAR into the Republic of Armenia, whereas the Azerbaijan Republic abolished the NKAR and extended its uniform administrative-territorial division to that territory.[2]

The conflict moved into the phase of armed hostilities in late 1991 and early 1992, when the U.S.S.R. had ceased to exist and the last legal and

[1] See: *The Conflict over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference. Resolution 1416 (2005) of the Parliamentary Assembly of the Council of Europe* [http://assembly.coe.int/Documents/AdoptedText/TA05/ERES1416.htm], 22 August, 2005.

[2] See: "Ob uprazdnenii Nagorno-Karabakhskoi avtonomnoi oblasti Azerbaidzhanskoi Respubliki. Zakon Azerbaidzhanskoi Respubliki ot 26 noiabria 1991 goda," (On the Abolition of the Nagorno-Karabakh Autonomous Region of the Azerbaijan Republic. Law of the Azerbaijan Republic of 26 November, 1991), *Vedomosti Verkhovnogo Soveta Azerbaidzhanskoi Respubliki*, No. 24, 1991, p. 448.

organizational (except international legal) barriers to the forcible annexation of Nagorno-Karabakh by the Republic of Armenia had been removed.

By mid-1994, Armenia's armed forces, supported by illegal Armenian armed formations of Nagorno-Karabakh, occupied areas of Azerbaijan bordering on the Republic of Armenia, the territory of the former NKAR proper and other areas adjacent to it, totaling about 20% of Azerbaijan's territory. All Azeris were expelled from these lands, tens of thousands were killed and hundreds of thousands wounded. A so-called "Nagorno-Karabakh Republic" (NKR) with its own government bodies and attributes was established in the occupied territories. However, not a single state in the world and not a single international organization have recognized such a state as the "NKR."

On 19 June, 2005, yet another round of elections—this time parliamentary elections—was held in the self-proclaimed "Nagorno-Karabakh Republic." But can these elections, just as the "NKR" itself, be regarded as legitimate?

"Legitimacy of the NKR and Its Electoral System"

It goes without saying that any electoral system is based on the legal system. Let us examine the "legal system of the NKR" and try to prove that the "NKR" today has no law, no legal system and, accordingly, no electoral system. If this is the case, the elections held in that territory cannot be regarded as legitimate.

In order to support the **first thesis**, let us consider the essence of law in general. In Ancient Greece and Ancient Rome, the content of human rights was connected with the polis (city-state), which made it possible to generate and to pass on to future generations immense spiritual wealth, including the ideas of citizenship and democracy.[3] According to ancient beliefs, law in general and the rights of individual people (members of the polis) do not derive from force, but from the divine order of justice. Neither law in general nor the rights of individuals are possible without a general standard of behavior expressing the measure of what is permitted and prohibited that is the same for all subjects, an equal measure of freedom. Where there is no equal measure (common standard, single scale), there is no law either.[4]

Solon (c. 638 BC-559 BC), the famous statesman and legislator known as one of the Seven Sages of Greece, understood "law" (and its rule) as a combination of "right" and "might." Apart from drawing a distinction between right and law, such a construction included an understanding of polis law as a universal form and generally valid measure of the official recognition and expression of the rights of polis members. Such universality of the law signifies a demand for legal equality. All citizens are under equal protection of the law and have to comply with its universally binding rules.[5]

So what do we find in the "NKR"? The Armenian community numbering 120 thousand out of the 180 thousand population of the NKAR (part of the Azerbaijan Republic) refuses to obey the laws of the Azerbaijan Republic, a state recognized by the world community; with the support of the armed forces of the Republic of Armenia invading the territory of the Azerbaijan Republic, it expels from this territory the Azeri community numbering 60 thousand, seizes other lands adjacent to Nagorno-Karabakh, driving out hundreds of thousands of Azeris, and gets down to building a

[3] See: S.L. Utchenko, *Politicheskie uchenia Drevnego Rima*, Moscow, 1977, p. 41.

[4] See: *Prava cheloveka v mezhdunarodnom i vnutrigosudarstvennom prave*, ed. by Editor-in-Chief Prof. R.M. Valeev, Kazan State University, Kazan, 2004, p. 9.

[5] See: Aristotle, *Afinskaia politika*, Moscow, 1996, pp. 17-18.

"democratic" state with a "democratic legal and electoral system." What is the substance of this legal system, covering territories from which most of their indigenous inhabitants have been expelled? Incidentally, the number of those expelled is six times larger than the Armenian community remaining in these territories. As we see, **the "creation of law" in the "NKR" violates the basic principles of law: justice, equality and freedom, without which it is impossible to create a democratic legal system.**

Let us turn to the **second thesis.** Any law student knows from his very first days in college that law does not exist without the state, and the state without law. Evidently, in order for the rules regulating life in the "NKR" to be recognized as legal, it is first necessary to recognize the "NKR" itself as a state. In the theory and history of the state and law there are numerous scientific doctrines on the origins and nature of the state. From this diversity, modern science singles out two basic and particularly popular theories: natural law theory (also known in the literature as contractual theory or the theory of the **contractual origin** of the state and law) and the theory of coercion, which sees the main reason for the emergence of the state in **conquests, violence and subjugation by others.**[6] (It should be emphasized that the advocates of both these theories advance compelling arguments.)

The world community today does not encourage the emergence of new states, so that in practice such cases are quite rare. This happened, for example, when the Soviet Union fell apart into 15 independent countries, when new states emerged in place of the Socialist Federal Republic of Yugoslavia (SFRY) and the Czechoslovak Socialist Republic (CSSR), and when Germany was unified. Despite the dramatic events that accompanied these processes, the emergence of new independent states was based on legal treaties (in various legitimate forms), that is, agreements on the creation of these states recognized by the world community. This made it possible to go over in a civilized way from state entities created with the use of arms, through violence, conquest and subjugation (U.S.S.R., SFRY, CSSR) to independent states set up on the basis of voluntary treaties and therefore recognized by other democratic states.

In that period, other events took place as well. On the tide of democratic processes, certain forces using democratic and nationalist slogans as a cover tried to create new states by force (Nagorno-Karabakh in Azerbaijan, Abkhazia and South Ossetia in Georgia, Transdniestria in Moldova, Chechnia in Russia). However, none of these cases has to do with a treaty recognized by the world community. The reason here is obvious: **the world community does not regard violence or coercion as a way or method of creating a new state. The creation of such a state in today's democratic world is possible only in the presence of a legal treaty, concluded by voluntary mutual consent of all the parties concerned.** If one of the parties is coerced into signing a treaty with the use of arms, this treaty can have no legal force; such a document is legally null and void and, sooner or later, is bound to be violated or denounced. It will constantly be a potential source of instability in the region. **The fact of international recognition of a state created through the occupation of another state's territory could be regarded in the world as a precedent, entailing unpredictable consequences for the global community.** It is no accident that none of the above-mentioned entities has been recognized by a single state, including the Republic of Armenia.

Since law is made by duly authorized government bodies, it necessarily follows from the above that rules adopted in unrecognized illegal entities are not legal by their very nature. Consequently, the system of elections to illegitimate government bodies created in these entities is not legitimate either.

---

[6] See, for example: *Teoria gosudarstva i prava. Kurs lektsi,* ed. by M.N. Marchenko, Zertsalo, TEIS, Moscow, 1996, pp. 23-39; *Osnovy teorii gosudarstva i prava. Uchebnoie posobie*, ed. by S.S. Alekseev, Yuridicheskaia Literatura Publishers, Moscow, 1971, pp. 38-41.

Armenian Speculations about the "1991 Referendum in the NKAR"

In trying to justify the legitimacy of "NKR independence," virtually all Armenian sources refer to the referendum held in the NKAR on the issue of secession from the Azerbaijan Republic[7] in accordance with the U.S.S.R. Law on the Procedure for Resolving Issues Related to the Withdrawal of a Union Republic from the U.S.S.R., adopted on 3 April, 1990.[8] The illegal and unlawful nature of that referendum, and also the absurdity of references to the aforesaid U.S.S.R. Law are evident even after a cursory examination of the content of that document.

- First of all, let us note its title: it deals with the possible withdrawal (secession) from the U.S.S.R. of a Union republic, and not of an autonomous region or even an autonomous republic. An explicit statement to that effect is also contained in Art 1 of the said Law.
- Second, the Law considers the possibility of a separate referendum for each autonomy in the Union republics holding a referendum on secession from the U.S.S.R. and having constituent autonomous republics, autonomous regions or autonomous areas. In this case, the autonomous republics and other autonomies retain the right to an independent solution of the question on whether to stay within the Union of Soviet Socialist Republics or within the Union republic seceding from it, and also the right **to raise the question of their state-legal status.**[9] This is by no means what happened at the 1991 referendum in the NKAR and of what S. Sarkisian, defense minister of the Republic of Armenia, spoke at the parliamentary hearings on the Nagorno-Karabakh problem on 30 March, 2005.[10] In order to support our thesis, let us cite the following factors.

  1. The right to "constitute themselves as independent entities of the Union Federation, including secession from the Union republics of which they were part (in case of the Union republics raising the question of secession from the U.S.S.R.)," as S. Sarkisian says, could arise under the Law of 3 April, 1990, not from the time of "the Union republics raising the question of secession from the U.S.S.R.," but at the holding of a referendum by the Union republic on the issue of secession from the U.S.S.R.[11]
  2. In accordance with Art 4 of this Law, "in order to organize a referendum on secession from the U.S.S.R., to set the date for the referendum and to sum up its results, the Supreme Soviet of the Union republic shall set up a commission with the participation of representatives of all the parties concerned," including the autonomies. As we know, that was not the case.
  3. A referendum on the secession of a Union republic from the U.S.S.R. (pursuant to Art 2 of the Law of 3 April, 1990) could be held not earlier than six months and not later than nine months after the day of adoption of a decision on raising this question. The

[7] See: "Karabakhski konflikt: vzgliad izvne," *Zerkalo*, 13 August, 2005, p. 9; "Polnyi tekst doklada ministra oborony Armenii na parlamentskikh slushaniakh po probleme Nagornogo Karabakha" [http://www.regnum.ru.news/437271.html], 22 August, 2005, etc.

[8] See: "Zakon SSSR 'O poryadke reshenia voprosov sviazannykh s vykhodom soiuznoi respubliki iz SSSR,' Verkhovnyi Sovet SSSR 3 aprelia 1990," *Vedomosti Syezda narodnykh deputatov SSSR i Verkhovnogo Soveta SSSR*, No. 15, 1990.

[9] See: Art 3 of the said Law.

[10] See: "Polnyi tekst doklada ministra oborony Armenii na parlamentskikh slushaniakh po probleme Nagornogo Karabakha."

[11] See: Art 3 of the said Law.

Supreme Soviet of the Azerbaijan Republic passed the Constitutional Act of State Independence on 18 October, 1991, so that in accordance with the Law, so shamelessly and confidently invoked by Armenian sources, no referendum could take place before 18 April or after 18 July, 1992. So, in accordance with the Law of 3 April, 1990, the right to hold a referendum on self-determination did not and could not arise for the NKAR. Theoretically speaking, it could have arisen only in the period between 18 April and 18 July, 1992, at the holding of a referendum by the Azerbaijan Republic itself.

4. Finally, the Law of 3 April, 1990, did not say a single word that would entitle autonomous regions to hold a referendum on their own.

- Third, let us turn once again to Art 3 of the given Law. Part one of that article, as we noted above, says 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."** Let us note the following: not the right to self-determination and secession from the U.S.S.R., but only the right to "raise the question," whose decision (in accordance with the given Law) was within the competence of the Union.[12] This provision was included in the Law with only one purpose: in case of attempts by any Union republic to secede from the U.S.S.R., to have a legal mechanism for keeping its constituent autonomous republics or other autonomous entities within the Soviet Union. It would be naive and unprofessional to think that the U.S.S.R. sought to create conditions for a withdrawal, in the wake of a Union republic leaving the Federation, of its constituent autonomous entities as well.
- Fourth, under the Law of 3 April, 1990, the results of a referendum on secession from the U.S.S.R. of a Union republic together with its autonomous entities did not as yet provide sufficient grounds for an actual withdrawal from the Federation. In order for these results to have legal force, it was necessary to go through a long and complicated procedure ending with an examination of the results of such a referendum by the U.S.S.R. Supreme Soviet and the U.S.S.R. Congress of People's Deputies.[13] Naturally, that did not take place.
- Fifth, at the time when a referendum in Nagorno-Karabakh was being prepared in December 1991, the NKAR itself as an autonomous entity was no longer in existence: the Nagorno-Karabakh Autonomous Region had been abolished by a law of the Azerbaijan Republic adopted on 26 November, 1991, in accordance with the Constitution of the Azerbaijan Republic and the Constitutional Act of State Independence.[14] Consequently, the provisions of Art 3 of the U.S.S.R. Law of 3 April, 1990, no longer applied to that territory of the Azerbaijan Republic.
- Sixth, by the time of the referendum in the already abolished NKAR, the Soviet Union itself had also ceased to exist as a result of the "Belovezhskaia Pushcha Agreement" between the Russian Federation, Ukraine and Belarus of 8 December, 1991. In other words, in this case even an attempt to appeal to the laws of a nonexistent state is incorrect.

So, the myth about the establishment of two equal independent states (the second of which is the "NKR") in the territory of the Azerbaijan Republic after the breakup of the U.S.S.R. and the myth about the legitimacy of "NKR independence" are just another two falsifications propagated by the separatist regime.

---

[12] See: Arts 3-12 of the said Law.

[13] For more detail, see: Art 7 of the Law of 3 April, 1990.

[14] See: "Ob uprazdnenii Nagorno-Karabakhskoi avtonomnoi oblasti Azerbaidzhanskoi Respubliki. Zakon Azerbaidzhanskoi Respubliki ot 26 noiabria 1991 goda," (On the Abolition of the Nagorno-Karabakh Autonomous Region of the Azerbaijan Republic. Law of the Azerbaijan Republic of 26 November, 1991), *Vedomosti Verkhovnogo Soveta Azerbaidzhanskoi Respubliki*, No. 24, 1991, p. 448.

The Purpose and Outcome of the Elections

According to the well-known political scientist Zardusht Alizade, the purpose of the elections held at different levels by the separatist regime of Nagorno-Karabakh is to try to legalize its rule, the right to govern the people, to control the budget and to pocket certain amounts.[15]

Evidently, the parliamentary elections of 19 June, 2005, ended very much like the municipal elections in 2004. They were followed by a number of statements from various quarters on the recognition of the territorial integrity of the Azerbaijan Republic,[16] on the non-recognition of the Nagorno-Karabakh Republic (by the U.S.),[17] on the non-recognition of the independence of Nagorno-Karabakh (by Russia),[18] on the recognition of the elections to the "NKR parliament" as illegitimate,[19] etc. The Internet site PanARMENIAN Network stresses that "in view of the non-recognition of the NKR, international organizations have refrained from sending their observers" to the elections.[20]

It should be noted that virtually all democratic states have dissociated themselves from the attempts by the Republic of Armenia and the "NKR" to regard the presence of "observers at the elections" as tacit recognition of "NKR" independence. Thus, a statement by the Information and Press Department of the Foreign Ministry of the Russian Federation of 22 June, 2005, says that "Russia does not recognize Nagorno-Karabakh as an independent state… It should be emphasized that the citizens of the Russian Federation who acted as observers at these elections were present in Nagorno-Karabakh on their own initiative and exclusively in a private capacity."[21] "The elections held by the Karabakh Armenians in the occupied Nagorno-Karabakh region of Azerbaijan are illegal," said Namik Tan, a spokesman for the Turkish Ministry of Foreign Affairs. "The elections in Nagorno-Karabakh, which still remains under Armenian occupation, are a violation of the rules of international law and the principles of the United Nations, the OSCE and the Council of Europe."[22] And Jean-Batiste Mattier, press minister of France, said on 23 June, 2005, that France, like the whole world community, recognizes Azerbaijan's territorial integrity and does not recognize Nagorno-Karabakh as an independent state. He emphasized: "The 'parliamentary elections' held in the Nagorno-Karabakh region of Azerbaijan will not have any effect on the process of peaceful settlement of the conflict or on the subsequent status of that region."[23]

Conclusion

As we see, when speaking of the "NKR" or of "parliamentary or other elections in the NKR," no one would even dream of regarding them as legitimate. All these concepts have nothing to do with law, with international rules and customs or simply with moral norms. **The reason for this is a vio-**

[15] See: R. Orudzhev, "Separatisty uporno gotoviatsia k 'prozrachnym vyboram'," *Ekho*, 18 June, 2005, p. 5.

[16] See, for example: "SShA i YeS podderzhivaiut territorialnuiu tselostnost Azerbaidzhana, Gruzii i Moldovy" [http://www.day.az/news/politics/21037.html], 17 August, 2005 (22 August, 2005); "Chyi interesy obsluzhivaet MID RF v Zakavkazie?" [http://www.panarmenian.net/library/rus/?id=71], 17 August, 2005 (22 August, 2005).

[17] See, for example: G. Movsesian, "Nagornyi Karabakh: pravo na vybory," *Erkir* (Armenia), 13 August, 2004.

[18] See, for example: Iu. Merzliakov, "Rossia ne priznaiot nezavisimost Nagornogo Karabakha" [http://www.day.az/news/armenia/26932.html], 17 August, 2005 (22 August, 2005); "Chyi interesy obsluzhivaet MID RF v Zakavkazie?"

[19] See, for example: "Frantsia priznala nelegitimnymi vybory v 'parlament NKR'" [http://www.day.az/print/news/armenia/26925.html], 17 August, 2005 (22 August, 2005).

[20] See: "Chyi interesy obsluzhivaet MID RF v Zakavkazie?"

[21] Ibidem.

[22] See: "Prevratitsia li Karabakh v Kosovo?" [www.regnum.ru/news/476020.html], 22 August, 2005.

[23] See: "Frantsia priznala nelegitimnymi vybory v 'parlament NKR'."

lation of the basic principles of law: justice, equality and freedom, without which, as noted above, **it is impossible to create a democratic legal system.** The unrecognized "NKR" and "its institutions" are based on the force of arms, aggression and occupation, which runs counter to the belief of the contemporary world community that **the creation of a new state is possible only in the presence of a legal treaty, when all the parties concerned reach a voluntary agreement directed toward peace and prosperity.**

It is gratifying that David Shakhnazarian, one of the leaders of the Armenian National Movement party, former national security minister of the Republic of Armenia, ambassador extraordinary and plenipotentiary, and currently chairman of the Concord Center for Political and Legal Studies, has openly admitted in one of his interviews: "The Caucasus can develop and prosper solely as a united region and market… Georgia and Azerbaijan are trying to ensure their national security by joining Euro-Atlantic structures, including NATO. And the leaders of Armenia have declared that the country's national security will be ensured by Russia's armed forces and patronage. I do not think that in the 21st century any armed forces, especially foreign ones, can provide the basis for any country's national security… Today there is a big danger that as the result of such a policy Armenia could become a serious destabilizing factor for the whole region."[24]

There is no need to comment on such a revealing statement. However, one can say in addition that the Republic of Armenia has long become a serious destabilizing factor, and not only for the South Caucasus.

All of this invites the following conclusion: the attempts of the Republic of Armenia to simulate (including by means of "elections") the establishment of an "independent and democratic Nagorno-Karabakh state" in the occupied territories of Azerbaijan lead to its isolation not only in the South Caucasus, but also throughout the whole democratic world.

---

[24] "Karabakhski izlom. Interviu s Davidom Shahnazarianom," Washington Profile, No. 102 (502), 10 November, 2004 [http://www.washprofile.org/WPF-2004/WPF%2011.10.04.html], 22 November, 2005.