

**AMERICAN UNIVERSITY OF ARMENIA**

Master's Paper

***AZERBAIJANI TERRITORIAL INTEGRITY  
& NAGORNO KARABAKH***

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# INTRODUCTION

The collapse of the USSR and the emergence of new states on the world map was a real geopolitical shock which led to lots of problems for both peoples living in post Soviet area and for the whole international community. The Nagorno Karabakh conflict and its internationalization was a direct effect of the abovementioned processes. Analyzing the history of Nagorno Karabakh it becomes clear that this conflict is a result and continuation of decolonization, which started after the World War II. As we know, after the end of World War II number of countries became independent or reunited becoming new actors of international relations. The Soviet Union became involved in those processes only in 1980s because during Soviet period there was little contact between two powers of the world\_ East and West. Armenia and NK as a part of Soviet Union was also involved in those processes. NK which became a part of Azerbaijan only because of Stalin's maneuvers, started to strive for the reunion of two parts of Armenians: Armenia and NK. The problem, which roots go deep into the history, has arisen as a domestic one within the borders of the Soviet Union and with the collapse of USSR and the formation of Nagorno Karabakh Republic has become a subject of settlement of international law. Azerbaijan proposes the principles of territorial integrity and inviolability of frontiers as a solution to the conflict. Yet, Armenia and Nagorno Karabakh insist on the principle of self-determination. Thus, since 1991 the contradiction between these two principles has become the issue of discussions to resolve Nagorno Karabakh conflict. At a first glance these two peremptory international legal norms protect virtually antagonistic values. Yet, before speaking about the contradiction of abovementioned principles, it is worth delving into the gist of the principles and finding whether there is enough justification for the parties to promote their approaches. This paper will focus on legitimacy of Azerbaijan's claim that Nagorno Karabakh is a part of its territory.

*The aim of the study:* The study covers the legal aspects of Nagorno-Karabakh problem. It examines the issues of law as they affected the legal status of Nagorno Karabakh. We aim at presenting a brief overview of the status of Nagorno Karabakh from a legal point of view and assess the legality of the claim of the Republic of Azerbaijan that Nagorno Karabakh is a part of its territorial integrity.

To fulfill the aforementioned goals, we will discuss:

- Declaration of August 30, 1991 on “*Reestablishment of the State Independence of the Republic of Azerbaijan*” as it existed in 1918-1920<sup>1</sup>, thus including NK within its territory, when NK had a status of a disputed territory;
- the legality of the inclusion of NK within the borders of the Azerbaijani SSR in 1921 by the Communist party;
- the referendum of NK on December 10, 1991; the Republic of Nagorno Karabakh held its own referendum on independence in the presence of international observers and media representatives.

The problem is very serious because the settlement of Nagorno Karabakh conflict has become a key problem for Armenians; their future and development are mostly contingent on its outcome. Moreover, this issue is very actual not only for Armenians but for the international community as well, because one of their main responsibilities and problems is to establish and sustain peace and stability in the region and the whole world, which implies settlement of all conflicts. Experts of international relations and law in all over the world carried out a number of attempts to tackle the problem and achieve a just solution of a dispute which seems rather entangled. Number of articles, books, documents and other materials has been published on this topic both in Armenia and abroad, yet there is lack of

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<sup>1</sup> Declaration of the Supreme Soviet of the Azerbaijan Republic on “Re-establishment of the State Independence of the Azerbaijan Republic”, Bakinski Rabochi, August 31, 1991.

materials which highlight legal aspects of this conflict, helping to resolve the question justly and to establish rule of law. To obtain this thorough examination of available documents in combination with current principles and rules of international law is required.

The paper consists of an *introduction*, *two chapters* and a *conclusion*. *Introduction* concerns the purpose of writing on this topic and its relevance, enlightens the main issues being considered in the paper. *The first chapter* introduces the history of NK conflict in applicable legal documents. It reveals the discrepancies between Armenia and Azerbaijan over NK during 1918-1920. Then it speaks about the Nagorno Karabakh conflict during the USSR and discusses the Soviet law of April 3, 1990 “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR”. Later on in this chapter the legitimacy of NK referendum is discussed, taking into consideration Law on the Succession from the USSR. *In the second chapter* we turn to the succession of states. Here the 1978 Convention on succession is discussed taking into consideration the declaration of Independence of the Republic of Azerbaijan of 1991 and the principle of *uti possidetis juris*. In the *conclusion* inferences are drawn and probable solutions are suggested.

**Methodology:** For the full and comprehensive assessment of the issue the following methods are applied: academic research and applied research to find out historical background, to use some part of accumulated theories, knowledge, methods and techniques and elaborate on them. We try to analyze all the available information trying to achieve a resolution of the conflict via objective and impartial examination of the questions involved. Besides, statistical data from the National Archive of Armenia and Geneva National Archive are also used.

The method of “case studies” is used to scrutinize Yugoslavia and other cases to discuss the history of the application of the principle of *uti possidetis juris*. Then the method of analogy is applied to find similarities and differences between these cases and the case of NK.

Considering the fact that the topic is modern there is much more to be learnt from expert opinions than the books, so the experts in the field of international law and political science who are familiar with the issue in question were interviewed: Sergey Minasyan - political scientist, the deputy- director of Institute of Caucasus, Yeghishe Kirakosyan - the lecturer on international law in Yerevan State University, Ara Papian – Head of the Modus Vivendi center, Babken Harutyunyan - the lecturer of history at Yerevan State University and a cartographer, Aleksandr Iskandaryan- the head of the Institute of Caucasus.

## **Chapter I**

# **The History of the Nagorno Karabakh Conflict in Legal Documents**

The analysis of the legal aspects of the Nagorno Karabakh conflict requires delving into the history and finding the roots of the problem. In 17-18<sup>th</sup> centuries Armenians were fighting against the Persian dominancy<sup>1</sup>. Starting that time the Armenians of Karabakh apply to the Russian Empire to become a part of it. It coincided with the Russian expansion in the south leading to the First Russo-Persian War, which ended with Gyulistan Treaty in 1813. Under the terms of the Treaty of Gyulistan (1813) Karabakh, along with the other northeastern provinces of Armenia, was transferred from Persian to Russian dominion<sup>2</sup>. In 1840, as a result of the implementation of an administrative reform in the Caucasus, which divided the region into two administrative districts, Karabakh was incorporated into the Caspian District<sup>3</sup>. The next administrative reform of 1867 incorporated Karabakh into the Elizavetpol District, which remained undisturbed until the beginning of World War I<sup>4</sup>. With the end of the Imperial Government in the October Revolution of 1917 three ethnic republics of Transcaucasia – Armenia, Azerbaijan and Georgia were formed in 1918 as a result of the collapse of the Russian Empire, which led to territorial disputes between Armenia and

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<sup>1</sup> “The Artsakh Question: an Analysis of Territorial Dispute Resolution in International Law”. GOLIATH Business knowledge on demand. 01-May-08

[http://goliath.ecnext.com/coms2/gi\\_0199-8139141/The-Artsakh-question-an-analysis.html](http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html)

<sup>2</sup> Kotanjyan, Hayk. *Political Problems of Security: Perestroyka in the USSR- Karabakh, Armenia, South Caucasus-Afghanistan*. Yerevan: Drastamat Kanayan Institute for National Strategic studies, MOD, RA, 2010.

<sup>3</sup> Id.

<sup>4</sup> Avakian, Shahen. *Nagorno Karabakh Legal Aspects*. *mfa.am*. 3<sup>rd</sup> edition.

[http://www.mfa.am/u\\_files/file/Legal%20Aspects\\_Nagorno\\_Karabakh\\_en\\_2010.pdf](http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno_Karabakh_en_2010.pdf)

Azerbaijan over Nagorno Karabakh. Thus the roots of Nagorno Karabakh conflict dated back from the period of the Russian Empire's disintegration after the 1917 October Revolution.

*NK as a Separate Legal Entity in 1918-1920:* The population of Nagorno-Karabakh, 95 percent of which were Armenians, convened its first congress, which proclaimed Nagorno-Karabakh an independent political unit, elected the National Council and Government<sup>1</sup>. In 1918-1920 Nagorno-Karabakh had all the elements of statehood, including the army and the legitimate authority. Starting this point, the Democratic Republic of Azerbaijan, with the help and support of Turkey, made several attempts to include Nagorno Karabakh within its borders. Yet, Armenians refused to obey both the ultimatums of the Turkish Command and the demands of the government of Azerbaijan, referring to the fact that British command had recognized Nagorno Karabakh as a separate territory, the status of which would have been decided at the Paris Peace Conference<sup>2</sup>. A provisional agreement was signed between the seventh Assembly of Karabakh Armenians and Azerbaijani government<sup>3</sup>. Azerbaijani sources refer to this fact to disprove the allegations of the Armenian side that Nagorno Karabakh possessed at that time the status of "an independent legal entity" or "an independent political unit"<sup>4</sup>. However, even though in this agreement the Armenian National Assembly of Nagorno Karabakh recognized their autonomy within the borders of Azerbaijan, yet it was on a temporary basis; the wording of the agreement clearly mentioned that this

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<sup>1</sup> "The Artsakh Question: an Analysis of Territorial Dispute Resolution in International Law". *Goliath Business knowledge on demand*. 01-May-08

[http://goliath.ecnext.com/coms2/gi\\_0199-8139141/The-Artsakh-question-an-analysis.html](http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html)

<sup>2</sup> Avakian, Shahan. Nagorno Karabakh Legal Aspects. *mfa.am*. 3<sup>rd</sup> edition.

[http://www.mfa.am/u\\_files/file/Legal%20Aspects\\_Nagorno\\_Karabakh\\_en\\_2010.pdf](http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno_Karabakh_en_2010.pdf)

<sup>3</sup> Id.

<sup>4</sup> Musayev T., F. *From Territorial Claims To Belligerent Occupation: Legal Appraisal*.



question should have been discussed in an upcoming Peace Conference :”Armenians of Nagorno Karabakh consider NK as a territory within Azerbaijani borders *until the issue would be discussed at the Paris Peace Conference*”<sup>1</sup>. Besides, the fact that the Democratic Republic of Azerbaijan entered into an agreement with the Seventh Assembly of Armenians in NK is evidence that Karabakh was really a separate distinct legal entity. This fact completely proves the allegations of the Armenian side that Nagorno Karabakh possessed at that time the status of “an independent legal entity” or “an independent political unit”. However, Azerbaijan broke the agreement and take up arms. So, the Ninth Assembly of Armenians of Karabakh, had to pronounce the signed “provisional agreement” violated and declared Nagorno Karabakh as an inalienable part of the Republic of Armenia, which is stated in the telegram of the chairman of the Armenian National Council of Nagorno-Karabakh of June 9, 1920 addressed to the chairman of the Armenian delegation in Moscow<sup>2</sup>. Thus, From May 1918 until April 1920, when the Democratic Republic of Azerbaijan became sovietized, Nagorno Karabakh had never been an integral part of the Democratic Republic of Azerbaijan before 1921. Moreover, it was regarded as a distinct legal entity. To prove this we may bring one of the arguments of League of Nation, which serves as a basis for denying Azerbaijan to become a member-state; it states: “The frontier disputes with Georgia and Armenia made it impossible to ascertain with certainty whether the boundaries of the state of Azerbaijan could be considered as definitely established”<sup>3</sup>. To be impartial, however, it should be mentioned, that the main reason for denying Azerbaijan the

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<sup>1</sup> Zolyan, Suren. Нагорный Карабах: Проблема и конфликт. [Nagorno Karabakh: Problem & Conflict]. Yerevan: “LINGVA” Publishers, 2001.

<sup>2</sup> Avakian, Shahen. Nagorno Karabakh Legal Aspects. *mfa.am*. 3<sup>rd</sup> edition.

[http://www.mfa.am/u\\_files/file/Legal%20Aspects\\_Nagorno Karabakh\\_en\\_2010.pdf](http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno_Karabakh_en_2010.pdf)

<sup>3</sup> RA National Archive. Fund 430. List 1. Work 1218.

League of Nations: The Records of the First Assembly, The Meetings of the Committees, Fourth Committee.

membership was that it was difficult to form an opinion about the territory over which the Government which had been exiled from Baku still exercised authority, as Government in power was changed in Baku; Azerbaijan was sovietized. This is the fact Azerbaijani people mostly rely on. However, it is explicitly stated that Nagorno Karabakh had a status of disputable territory between Armenia and Azerbaijan according to the decision of the League of Nations, which was even admitted by the President of the Peace Delegation of the Republic of Azerbaijan as well. In his letter to the Secretary-General of League of Nations from 7<sup>th</sup> December, 1920 he stated that there were disputes between Armenia and Azerbaijan concerning Zangezour and Nagorno Karabakh, which should be solved by mutual concessions of interested governments<sup>1</sup>.

***Legal status of NK during Soviet Period:*** As it was already mentioned in April 1920 Azerbaijani Soviet Republic was already established, which was followed by the sovietization of Armenia; on November 29 Soviet Socialist Republic of Armenia (ASSR) was founded. Immediately on the next day, on November 30 the now-Soviet Government of Azerbaijan adopted a declaration on recognition of Nagorno Karabakh, Zanghezour and Nakhichevan as a part of Soviet Armenia<sup>2</sup>. This was announced to the Armenian Revolutionary Committee by the chairman of Azerbaijani Revolutionary Committee, Narimanov, and the Peoples Commissar on Foreign Affairs, Huseinov<sup>3</sup>. Then it was assigned to the Armenian SSR to endorse this fact which was done in the article “Reunion of Nagorno

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<sup>1</sup> League of Nations: An Extract from the Journal N17 of the First Assembly, Geneva, 1920, page 139.

<sup>2</sup> Kotanjyan, Hayk. *Political Problems of Security: Perestroyka in the USSR- Karabakh, Armenia, South Caucasus-Afghanistan*. Yerevan: Drastamat Kanayan Institute for National Strategic studies, MOD, RA, 2010.

<sup>3</sup> “Declaration of the Revolutionary Committee of the Azerbaijan SSR on Recognition of Nagorno Karabakh, Zanghezour and Nakhichevan as an Integral part of the Armenian SSR”. *Communist* 7 Dec. 1920

Karabakh with the Armenian SSR” in the journal “Soviet Armenia”<sup>1</sup>. Alexander Miasnikyan, Chairman of the Council of People’s Commissars of the Armenian SSR, issued the following decree: “On the basis of the declaration of the Revolutionary Committee of the Soviet Socialist Republic of Azerbaijan, and the agreement between the Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorno Karabakh is an inseparable part of the Soviet Socialist Republic of Armenia”<sup>2</sup>.

On July 4, the Central Committee of the Caucasian Bureau with the majority of votes decided to include Nagorno Karabakh in the Armenian SSR, and to conduct a plebiscite only in Nagorno Karabakh, considering the ethnic factor<sup>3</sup>. Narimanov, who himself announced NK as a part of Armenia, now protested this decision and even threatened if NK united with Armenia, People’s Commissar Council would put down all the responsibilities<sup>4</sup>. During the nights of July 4 and 5, a new decision was suggested by Moscow, which proscribed: “Proceedings from the necessity of establishing peace between Muslims and Armenians... leave Nagorno Karabakh in the Azerbaijan SSR, taking into account the economic ties, granting it wide regional autonomy with an administrative centre Shushi, included in the autonomous region”<sup>5</sup>. However, this decision should be considered null, because during the

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<sup>1</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>2</sup> Kotanjyan, Hayk. *Political Problems of Security: Perestroyka in the USSR- Karabakh, Armenia, South Caucasus-Afghanistan*. Yerevan: Drastamat Kanayan Institute for National Strategic studies, MOD, RA, 2010.

<sup>3</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>4</sup> Id.

<sup>5</sup> Kotanjyan, 201

night Stalin failed to obtain the approval of the members of the Plenary Session. De jure, the previous decision about the reunification of NK with Armenia is the only legal document adopted without procedural violations. Besides, it should be mentioned that on July 16 the Central Committee of Armenian Communist party expressed its disagreement concerning the decision of inclusion NK within the borders of Azerbaijan<sup>1</sup>.

As we have already demonstrated, Nagorno- Karabagh did not belong to the Azerbaijani SSR, neither during the sovietization of Azerbaijan, nor after the establishment of the Soviet power in Armenia, when Baku recognized all disputed territories as Armenian. And only the will of a political party of a third country, with no legal power or jurisdiction, decided the status of the territory of Nagorno Karabakh. The decisions of Bolshevik Party of Soviet Russia were not binding on other Soviet States because the Soviet Union came into existence only in December of 1922<sup>2</sup>, which implies that in 1921 all the Soviet republics, including Armenia and Azerbaijan was separate independent actors of international relations. Even more, this act was done with procedural violation; there was no approval of Plenary Session. Nonetheless, this fact was ignored during the whole period of USSR existence and Nagorno Karabakh was considered as a part of Azerbaijani SSR. Only on July 7, 1923 Soviet Azerbaijan's Central Executive Revolutionary Committee established the Nagorno Karabakh Autonomous Oblast /Region/ (NKAO) only on the *Armenian populated* part of its territory; the capital of it was shifted from Shushi to Stepanakert<sup>3</sup>. As a result, the Nagorno Karabakh

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<sup>1</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>2</sup> Kotanjyan, Hayk. *Political Problems of Security: Perestroyka in the USSR- Karabakh, Armenia, South Caucasus-Afghanistan*. Yerevan: Drastamat Kanayan Institute for National Strategic studies, MOD, RA, 2010.

<sup>3</sup> Zolyan, Suren. *Нагорный Карабах: Проблема и конфликт*. [Nagorno KARabakh: Problem & Conflict]. Yerevan: "LINGVA" Publishers, 2001.

Autonomous Oblast was totally isolated from the Armenian SSR and deprived of a common border with Armenia. Later in these counties the Azeri authorities put into force repopulation programs in order to further isolate NK Armenians from the SSR of Armenia, promote their assimilation into Azerbaijan and, above all, discourage any ambitions to join the Armenian SSR<sup>1</sup>. As it was mentioned in the decision of RevCom on the establishment of NKAO, the last was an Armenian part of NK, so the majority of its population was Armenians in 1923. If in 1920s there were 300 thousands of Armenian residents there, in 1979 there were only 140 thousand remaining<sup>2</sup>. However, it is worth mentioning, that despite of this policy Armenians always composed the majority of the population of Nagorno Karabakh. In 1926 89.1% of the population was Armenians, whilst, Azerbaijani was 12.6%, in 1959 the scene was like this 84.4%, and 13.8% respectively, in 1979 75.9% and 22.9% respectively<sup>3</sup>. The rest of the population was Russians and other minorities. Regardless this intentional degrading policy, the Armenian population never obeyed to Azeri rules; petitions and protests continued during the 70 years of the Soviet authorities. Already in 1945 Arutyunov, the first secretary of the Communist Party of the Armenian SSR, suggested to Stalin to reunion NKAO with Armenia, taking into consideration the will of the nation. This movement increased and was even more intensely expressed in the Khrushchev years, culminating in the “Letter of the Thirteen” in 1965<sup>4</sup>. It was a document by leading NK Armenian intellectuals complaining of cultural and

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<sup>1</sup> Zolyan, Suren. *Нагорный Карабах: Проблема и конфликт*. [Nagorno Karabakh: Problem & Conflict].

Yerevan: “LINGVA” Publishers, 2001.

<sup>2</sup> Id.

<sup>3</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008.

<sup>4</sup> Zolyan, Suren. *Нагорный Карабах: Проблема и конфликт*. [Nagorno Karabakh: Problem & Conflict].

Yerevan: “LINGVA” Publishers, 2001.

economic discrimination against the Armenians as compared to the rest of the Soviet Azerbaijan. To prove the discrimination it is enough to cite the statistics of People's Economy of Azerbaijani SSR. In 1981-1985 the capital investment per person in NKAO was twice as little as the average data of the rest Azerbaijan<sup>1</sup>. A petition was sent for the Nagorno Karabakh Autonomous Region to be transferred and reunited with the Armenian SSR, it was signed by 45 thousand people<sup>2</sup>. The result was the assignment to Armenian and Azerbaijani government to decide the status of NK mutually. However, it was accompanied by the new wave of arrests, repressions and expulsions. In 1977, when the new plan of USSR Constitution was being discussed, Armenians of NKAO made a suggestion to unite it with Armenia, and as a result the presidency of the Council of Ministers of USSR made a decision to correct the errors of the past and to unite NKAO with Armenia<sup>3</sup>, however this decision was later exposed to the Azerbaijani pressure and forgotten. Yet, Armenians did not give up efforts to obtain their goals and in 1980s, during Gorbochov's Perestrojka, resumed their undertakings. On February 20, 1988, a session of the Regional Council of delegates of the NKAO adopted a resolution "making an appeal to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR to withdraw the Nagorno-Karabakh Autonomous Oblast from Azerbaijan and transfer it to Armenia"<sup>4</sup>. At the same time, an appeal was sent to the Supreme Soviet of the USSR for the approval of this resolution. This appeal was not considered,

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<sup>1</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>2</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>3</sup> Id.

<sup>4</sup> Id.

however, referring to Article 78 of the Soviet Constitution which prohibited the alteration of a Soviet Republic's territory without its consent<sup>1</sup>. Even though the efforts undertaken by Armenians were through peaceful and constitutional means, the Azerbaijani Authorities were trying to solve the question "in their own way"<sup>2</sup>.

The Armenian riots and complaints were accompanied by massacres and unlawful activities; Azerbaijanis used every possible means to expel the Armenians from their lands; and this policy was implemented systematically. In response to this policy, the National Council of Nagorno Karabakh Autonomous Oblast (NKAO) in conjunction with the Supreme Council of Armenian SSR adopted a decision about the reunification of NKAO and Armenian SSR, taking into account the accepted principle of self-determination, which led to a new wave of violence. On July 7, 1988 the European Parliament having regard to public demonstrations in Soviet Armenia for reunification with NK and the historic status of the autonomous region of Nagorno Karabakh as a part of Armenia, taking into consideration NK inclusion within Azerbaijan in 1923 and massacres of Armenians in Sumgait, supported the demand of NK to reunite with the Armenian SSR and called on Supreme Soviet to study the proposals of the Armenian delegates that NK temporarily be governed by the central administration in Moscow, temporarily to the Federation of Russia or be temporarily placed under the authority of a 'presidential regional government'<sup>3</sup>. Then the USSR Collapse process started and NK like other republics and independent territories of the USSR declared its independence.

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<sup>1</sup> USSR Const., Art. 78

<sup>2</sup> Balayan, Tigran. *Ղարաբաղյան հիմնահարցը և միջազգային դիվանագիտությունը 1991-1994 թթ.* [Nagorno Karabakh problem and international diplomacy in 1991-1994.], Yerevan, 2004.

<sup>3</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

***The Nagorno Karabakh Conflict after the Collapse of the USSR:*** On September 2, 1991, Nagorno Karabakh, in compliance with the domestic Soviet law, initiated the process of independence through the adoption of the “Declaration of Independence of the Republic of Nagorno Karabakh” by the local councils of Nagorno Karabakh<sup>1</sup>. This act was in full conformity with the existing law. The Soviet law of April 3, 1990 “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR”<sup>2</sup> allows an autonomous region within the territory of any soviet republic to trigger its own process of independence. Laws adopted by the Supreme Soviet were at the highest level in the Soviet normative hierarchy and had an absolutely binding force for all the members of the USSR. At the time of adoption of the law, even after that more than a year, Azerbaijan was a member of the Union and thus, this law was binding for it as well. On December 10, 1991 the Republic of Nagorno Karabakh held its own referendum of independence, which was in conformity with Article 3 of the Soviet law “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR”<sup>3</sup>, which stipulated that secession from the USSR should be conducted according to this particular law<sup>4</sup>. It has a separate article about the autonomous regions, which provides that: “In a union republic, which includes autonomous republics, autonomous regions or any type of similar distinct territories within its borders, referendum should be conducted separately in each autonomy. The residents or citizens of the

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<sup>1</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիսնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>2</sup> Law on the Secession from the USSR N 1409-I, Supreme Council USSR, 90-15, 1990 April  
30[http://osgenocide.ru/2007/05/18/o\\_porjadke\\_reshenija\\_voprosov\\_svjazannykh\\_s\\_vykhodom\\_sojuznoj\\_respubliki\\_iz\\_ssr.html](http://osgenocide.ru/2007/05/18/o_porjadke_reshenija_voprosov_svjazannykh_s_vykhodom_sojuznoj_respubliki_iz_ssr.html)

<sup>3</sup> Id.

<sup>4</sup> Id., Art. 1



latter have right to independently decide whether to continue its existence within the USSR, to remain within the borders of the former union republic as well as to decide the legal status of their state... The results of the referendum of each autonomy shall be considered separately”<sup>1</sup>. A total of 82.2 percent of Karabakh’s registered voters participated in the referendum and overwhelmingly (99% vote in favor of independence, which is the same as 107,648 voters) supported Nagorno Karabakh’s independence from the already seceded Republic of Azerbaijan.<sup>2</sup> As a result, Nagorno Karabakh was the only autonomous region of the USSR that gained independence according to existing domestic legislation. Following the results of the referendum, an act “On the Results of the Referendum on Independence of the Republic of Nagorno Karabakh” was adopted and signed by independent observers, which confirmed the fact that the preparatory, organizational and implementation procedures were carried out in conformity with the law. According to this act, no violations were recorded by the observers during voting, delivery of bulletins and vote count. “The observers find it necessary to note that the referendum was conducted in the conditions of military aggression against the NKR via continuous firing of the town of Stepanakert and other settlements, with the use of various kinds of weapon, including rockets and artillery. The firing on the voting day resulted in 10 deceased and 11 wounded Armenian citizens. The majority of the women and children spend the nights in basements; the kindergartens, day nurseries, and schools are closed. On the night of December 12, one of the Stepanakert schools was struck by an artillery shell. The town water-pipe is blown up and there is a shortage of bread and

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<sup>1</sup> Law on the Succession from the USSR N 1409-I, Supreme Council USSR, 90-15, 1990 April

30[http://osgenocide.ru/2007/05/18/o\\_porjadke\\_resheniya\\_voprosov\\_svjazannykh\\_s\\_vykhodom\\_sojuznoj\\_respubliki\\_iz\\_ssr.html](http://osgenocide.ru/2007/05/18/o_porjadke_resheniya_voprosov_svjazannykh_s_vykhodom_sojuznoj_respubliki_iz_ssr.html), Art. 3

<sup>2</sup> Акт о результатах референдума о независимости Нагорно-Карабахской Республики. [Act about the results of the Independence referendum of Nagorno Karabakh].

<http://www.nkr.am/ru/referendum/42/>

medicines”<sup>1</sup>. On December 10, 1991, the Central Electoral Committee of the Nagorno Karabakh Republic adopted an “Act on Referendum”, which confirmed the fact that 22,747 persons of Azerbaijani origin who did not participate in the referendum were previously notified and given the appropriate documents on the referendum<sup>2</sup>. Then parliamentary elections were held in the Republic of Nagorno Karabakh. On January 6, 1992, the Supreme Council of the Republic of Nagorno Karabakh adopted the “Declaration on State Independence of the Republic of Nagorno-Karabakh” with a view to regulating relations between the Azerbaijani and Armenian nations, ensuring the right of people’s self-determination and reiterating Nagorno Karabakh’s experience of self-governance as it existed during 1918-1920<sup>3</sup>.

During this period the USSR was on the verge of collapse; the wave of independence started and did not pass by Transcaucasia as well. Armenia and Azerbaijan were among the post-soviet republics which declared their independence.

On August 30, 1991, the Azerbaijan SSR’s Supreme Soviet adopted a Declaration on “Reestablishment of the State Independence of the Republic of Azerbaijan” as it existed in 1918- 1920. On October 18, 1991, the Republic of Azerbaijan, referring to the abovementioned declaration confirmed its independence by the adoption of its Constitutional Act on State Independence, which politically and legally meant that the Azerbaijan SSR

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<sup>1</sup> Акт о результатах референдума о независимости Нагорно-Карабахской Республики. [Act about the results of the Independence referendum of Nagorno Karabakh].

<http://www.nkr.am/ru/referendum/42>

<sup>2</sup> Id.

<sup>3</sup> Avakian, Shahen. Nagorno Karabakh Legal Aspects. *mfa.am*. 3<sup>rd</sup>

edition.[http://www.mfa.am/u\\_files/file/Legal%20Aspects\\_Nagorno Karabakh\\_en\\_2010.pdf](http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno_Karabakh_en_2010.pdf)

withdrew from the USSR<sup>1</sup>. This Constitutional Act forms an inseparable part of the 1995 Constitution of Azerbaijan. The same Constitutional Act considered the establishment of the Soviet power in Azerbaijan as “annexation by the Soviet Russia” which occupied the territory of Azerbaijan and “overthrew Azerbaijan’s legal government”<sup>2</sup>. Thus, the Republic of Azerbaijan declared itself the legal successor of the 1918 Democratic Republic<sup>3</sup>, announced the establishment of the Soviet power in Baku illegal, and rejected the whole Soviet political and legal heritage. When the Republic of Azerbaijan rejected the Soviet legal heritage in 1991, the international subject to which the territories were passed in 1920 ceased to exist. By rejecting the legal heritage of the Azerbaijan SSR of 1920-1991, the Republic of Azerbaijan has lost all claims to the territories passed to Soviet Azerbaijan in July, 1921 - namely Nagorno Karabakh- even if we would consider the transfer of July 4<sup>th</sup> legitimate. Baku clearly understood that if it were to accept the Soviet legal heritage (1920-1991), it would have to accept the status of the Nagorno Karabakh as legal. In that case, the USSR law “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR” had to be applied. However, even rejecting the legal heritage of Soviet Azerbaijan the facts and current principles of international law show that Azerbaijan has no legal ground for a claim over NK. The article 4 of the Azerbaijani Constitutional act provides that the Constitutional Act stipulating that all previous acts being in force in Azerbaijan before gaining state independence will be in force as far as they do not contradict the sovereignty and territorial integrity of Azerbaijan. This can be interpreted only in one way, the acts being

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<sup>1</sup> Конституционный акт азербайджанской республики о государственной независимости азербайджанской республики .[ Constitutional Act of the Republic of Azerbaijan on the Independence of The Republic of Azerbaijan].

<http://www.azerbaijan.az/portal/History/HistDocs/Documents/ru/09.pdf>

<sup>2</sup> Id., Art. 1

<sup>3</sup> Id., Art. 2

in force in 1918-1920, before Azerbaijan was sovietized, as the first article of the same act, as we have already mentioned declared the soviet power in Azerbaijan as an annexation by Bolshevik forces<sup>1</sup>. The article 15 of the same act comes to prove this: “On the Territory of the Republic of Azerbaijan, Azerbaijan’s Constitution and laws have exclusive legal force“<sup>2</sup>.

On 23 August, 1990 Supreme Council of Armenian SSR also adopted Declaration on Independence; on 21<sup>st</sup> of September, 1991 referendum was conducted and Armenia became an independent state as well. On 23 November 1991, Azerbaijan abolished the autonomy of Karabakh, an act that the USSR Constitutional Oversight Committee declared unconstitutional. During all this time the tension evolved into a war; Karabakh became the scene of what gradually increased to a full-scale war. The 1994 ceasefire, ending six years of armed conflict, left Armenian forces in *de facto* control of most of historical NK prior to its 1923 division. This includes the Nagorny Karabakh oblast created in 1923, as well as Karvachar, Jabrail, Kovsakan, Kashunik and Kashatagh. Thirty-five percent of Aghdam and 25 percent of Fizuli are also under the control of Armenian and Karabakh armed forces<sup>3</sup>. Azeri forces occupy the Shahumyan (Goranboy) region, as well as parts of the Mardakert and Martuni regions. In total, 570 000 Armenian refugees and up to 575 609 Azeri refugees

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<sup>1</sup> Конституционный акт азербайджанской республики о государственной независимости азербайджанской республики .[ Constitutional Act of the Republic of Azerbaijan on the Independence of the Republic of Azerbaijan], Art. 4 §2

<http://www.azerbaijan.az/portal/History/HistDocs/Documents/ru/09.pdf>

<sup>2</sup> Id., Art. 15

<sup>3</sup> “The Artsakh Question: an Analysis of Territorial Dispute Resolution in International Law”. *Goliath Business knowledge on demand*. 01-May-08

[http://goliath.ecnext.com/coms2/gi\\_0199-8139141/The-Artsakh-question-an-analysis.html](http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html)

remain displaced<sup>1</sup>. After the cease fire political negotiations commenced under the auspices of the OSCE. OSCE Minsk group became the mediator in the negotiations. Since then Armenia and Nagorno-Karabakh Republic has been relying on the widely admitted principle of international law self determination<sup>2</sup>, while Azerbaijan claims territorial integrity and inviolability of frontiers as a basis for negotiations. Thus, at a first glance this seems a clash and contradiction between two principles of international law.

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<sup>1</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008

<sup>2</sup> “The Artsakh Question: an Analysis of Territorial Dispute Resolution in International Law”. *Goliath Business knowledge on demand*. 01-May-08

[http://goliath.ecnext.com/coms2/gi\\_0199-8139141/The-Artsakh-question-an-analysis.html](http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html)

## **Chapter II**

### **Azerbaijan as a Successor of 1918<sup>th</sup> Democratic Republic; the Principle of *uti possidetis juris***

On August 30, 1991, the Azerbaijan SSR's Supreme Soviet adopted a Declaration on "Reestablishment of the State Independence of the Republic of Azerbaijan" as it existed in 1918- 1920. On October 18, 1991, the Republic of Azerbaijan, referring to the abovementioned declaration confirmed its independence by the adoption of its Constitutional Act on State Independence, which politically and legally meant that the Azerbaijan SSR withdrew from the USSR<sup>1</sup>. This Constitutional Act forms an inseparable part of the 1995 Constitution of Azerbaijan. The same Constitutional Act considered the establishment of the Soviet power in Azerbaijan as "annexation by the Soviet Russia" which occupied the territory of Azerbaijan and "overthrew Azerbaijan's legal government"<sup>2</sup>. So, it rejected the legal heritage of the Azerbaijan SSR of 1920-1991, the Republic of Azerbaijan has lost all claims to the territories passed to Soviet Azerbaijan in July, 1921 - namely Nagorno Karabakh- even if we would consider the transfer of July 4<sup>th</sup> legitimate. However, as we have already shown, the inclusion of NK within the territory of Azerbaijani SSR was not legal as well. Thus, Azerbaijan as a successor of 1918<sup>th</sup> Democratic Republic does not have legal claim over NK Territory.

To prove this it is worth to discuss the Vienna Convention of 1978 on Succession of States in Respect of Treaties. As it is stipulated in the convention on succession of States does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights

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<sup>1</sup> Reestablishment of the State Independence of the Republic of Azerbaijan

<http://www.azerbaijan.az/portal/History/HistDocs/Documents/ru/09.pdf>

<sup>2</sup> Id., Art. 1

established by a treaty and relating to the regime of a boundary<sup>1</sup>. This means that the newly formed state should recognize the borders and their regimes as they were at the times of predecessor state, in this case the predecessor state was Democratic Republic of Azerbaijan. If there is some discrepancy concerning the borders this can be reconciled further according to the accepted procedures of international law. We have shown that before 1921 Nagorno Karabakh was never an integral part of Azerbaijan, so Azerbaijan as a successor of 1918-1920 Democratic Republic can have legal claims only over the territory which occupied Azerbaijan during this period of time, because succession is a replacement of a state in the responsibility for the international relations of the territory with another one, which implies the transfer of rights and responsibilities as well<sup>2</sup>.

Azerbaijan claims that upon its secession from the Soviet Union under the principle of *uti possidetis juris*, it inherited Nagorno Karabakh within its borders<sup>3</sup>. Consequently, Armenia has 'occupied' Azeri territory in violation of its obligation to respect the territorial integrity enshrined in articles 2 and 33 of the UN Charter<sup>4</sup>.

Today one of the main or probably the most essential issue in territorial disputes is the application of the principle of *uti possidetis juris* in non-colonial context. The resolution of number of conflicts that has arisen after the collapse of the USSR or Soviet Federal Republic

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<sup>1</sup> Vienna Convention of 1978 on Succession of States in Respect of Treaties, Art. 1.

[http://untreaty.un.org/ilc/texts/instruments/english/conventions/3\\_2\\_1978.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf)

<sup>2</sup> Kocharyan, Vigen. *Միջազգային իրավունք*. [International Law], Yerevan: Publisher of the Yerevan State University, 2002.

<sup>3</sup> Sarvarian, Arman. "The Artsakh Question: An Analysis of Territorial Dispute Resolution in International Law". *Melbourne Journal of International Law* 7(2008).

<http://www.austlii.edu.au/au/journals/MelbJIL/2008/7.html>

<sup>4</sup> UN Charter, Article 2; 33

<http://www.un.org/en/documents/charter/chapter1.shtml>

of Yugoslavia requires the proper analysis of this concept to find out whether *uti possidetis* is a general principle that can be applied in all the cases when a new state comes into existence. The doctrine *uti possidetis* (Latin for "As you possess, so may you possess.") was originated at Roman times and was implemented in land disputes. When two parties claimed ownership of a real property, the provisional possession was granted to the possessor until it was solved in litigation. *Uti possidetis* did not address the final disposition of the property but, rather, shifted the burden of proof during the proceedings to the party not holding the land<sup>1</sup>. In international law the principle of *uti possidetis* was implemented in decolonization of Latin America. These states preferred to validate the territorial status quo by the application of the principle of *uti possidetis*. However, even for the Latin America this principle was not absolute; it was prohibited to apply it when it would lead to the boundary changes, controlled by new states, when those changes were the result of war or aggression<sup>2</sup>. There are two versions of the *uti possidetis* principle. By *uti possidetis juris*, borders are defined according to legal rights of possession based upon the legal documents of the former colonial power at the time of independence. By *uti possidetis de facto*, borders are defined by territory actually possessed and administered by the former colonial unit at the time of independence, irrespective of the legal definition of former colonial borders<sup>3</sup>. The second attempt of implementation of this principle was used in decolonization of African States. The resolution

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<sup>1</sup> Ratner S. Drawing a Better Line: *Uti Possidetis* and the Borders of New States // American Journal of International Law. Vol. 90 (1996).

<http://www.jstor.org/stable/2203988>

<sup>2</sup> Gevorgyan, Levon. Актуальные проблемы международно-правового регулирования территориальных споров. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

<sup>3</sup>Radan, Peter. Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission. Melbourne University Law Review.2000.

<http://www.austlii.edu.au/au/journals/MULR/2000/3.html#fnB27>



adopted by the first ordinary session of the assembly of heads of state of the Organization of African Union stipulates, that “all Member States pledge themselves to respect the borders existing on their achievement of national independence”<sup>1</sup>. The collapses of the former Yugoslavia, the Soviet Union and Czechoslovakia served as another opportunity to test the durability of *uti possidetis*. When former Yugoslavia republics began to declare their independence in 1991, the international community was unanimous that the internal borders of former Socialist Federal Yugoslavia could not be altered by the use of force<sup>2</sup>. This was first case when *uti possidetis* was implemented out of the decolonization context. The Creation of Arbitration Commission of the European Community Conference on Yugoslavia (mostly referred as Badinter Commission, after the name of its president) served as a head start for this principle to become a universal one. Commission referred to the judgment of the UN International Court of Justice based on the case Burkina Faso v. Mali when making its decision. The ICJ discussing the principle of *uti possidetis* stated that:” The principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining independence, wherever it occurs. The obvious purpose of it is to prevent the independence and stability of new States to be endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power<sup>3</sup>”. This very wording gave rise to the

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<sup>1</sup>Resolution of the Assembly of Heads of States of the Organization of African Union. Border Disputes among African States, AHG/Res. 16(I) (1964), Art.2.

[http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_17\\_21\\_JULY\\_1964\\_ASSEMBLY\\_HEADS\\_STATE\\_GOVERNMENT\\_FIRST\\_ORDINARY\\_SESSION.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_17_21_JULY_1964_ASSEMBLY_HEADS_STATE_GOVERNMENT_FIRST_ORDINARY_SESSION.pdf)

<sup>2</sup> Ratner S. Drawing a Better Line: *Uti Possidetis* and the Borders of New States // American Journal of International Law. Vol. 90 (1996).

<http://www.jstor.org/stable/2203988>

<sup>3</sup> International Court of Justice, Frontier Dispute (Burk. Faso v. Mali), 1986 I.C.J. 554 (Dec. 22, 1986), Art. 20.

general implication of the principle of *uti possidetis*. However, if that same wording is scrutinized more thoroughly, then it would be clear, that this approach is erroneous. At first, court took into its consideration that “the two Parties have, as noted above, expressly requested the Chamber to resolve their dispute on the basis, in particular, of the "principle of the intangibility of frontiers inherited from colonization", the Chamber cannot disregard the principle of *uti possidetis juris*, the application of which gives rise to this respect for intangibility of frontiers<sup>1</sup>”. Besides, the court continued:” Although there is no need, for the purposes of the present case, to show that this is a firmly established principle of international law where decolonization is concerned, the Chamber nonetheless wishes to emphasize its general scope, in view of its exceptional importance for the African continent and for the two Parties. In this connection it should be noted that the principle of *uti possidetis* seems to have been first invoked and applied in Spanish America, inasmuch as this was the continent which first witnessed the phenomenon of decolonization involving the formation of a number of sovereign States on territory formerly belonging to a single metropolitan State<sup>2</sup>”. So, within the context of the whole paragraph, it becomes obvious that the court, comparing two decolonization processes in Latin America and Africa, meant to show that *uti possidetis* is not a principle of regional international law, as it is in the case of diplomatic asylum, rather than a principle of general international law, thus can be applied in any decolonization process<sup>3</sup>. So, the Commission, only referring to a separate part of the Court’s decision totally distorted its meaning. The Badinter Commission also announced, that “Socialist Federal Republic of Yugoslavia’s internal borders became protected international borders pursuant to the international law principles of respect for the territorial status quo and *uti possidetis*, and

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<sup>1</sup> International Court of Justice, Frontier Dispute (Burk. Faco v. Mali), 1986 I.C.J. 554 (Dec. 22, 1986), Art. 20.

<sup>2</sup> Id.

<sup>3</sup> Gevorgyan, Levon. *Актуальные проблемы международно-правового регулирования территориальных споров*. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

could only be altered by agreement.<sup>1</sup>” However, there are international practices that prove the contrary. For example, as we have already shown, the principle of *uti possidetis* was to be applied in the African Continent, it was first of all referred as a political rather than legal principle<sup>2</sup>. Thus, this principle was used because the member states of the Organization of African Union consented to and it was agreed upon, but not vice versa, as it is insisted on in the decision of Badinter Commission. The politics of that time required from African leaders to confirm the territorial division imposed by the European colonists for the sake of the resolution of the problems of the African Continent<sup>3</sup>. Thus, the implementation of *uti possidetis* was a well-measured political decision.

Thus, the thorough understanding of the principle of *uti possidetis*, comes to prove, that it does not necessarily imply the inviolability of frontiers. Moreover, in order this principle be used in a territorial dispute, it should be agreed upon by parties to the conflict mutually. But this is not the case with Nagorno Karabakh conflict.

Moreover, when discussing the principle of *uti possidetis*, it should be taken into account that the principles of international law are interrelated and have a great impact on one another. Thus, the application of the principle of *uti possidetis* is much more entangled when the authority over the territory is gained through unlawful activities, and this very authority further on decides the internal borders. In this case we face a contradiction between the

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<sup>1</sup> Radan, Peter. Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission. Melbourne University Law Review.2000.

<http://www.austlii.edu.au/au/journals/MULR/2000/3.html#fnB27>

<sup>2</sup> McWhinney E. Self-Determination of Peoples and Plural-Ethnic States: Secession and State Succession and the Alternative, Federal Option // Recueil des Cours. Vol. 294 (2002).

<sup>3</sup> McWhinney E. *Self-Determination of Peoples and Plural-Ethnic States: Secession and State Succession and the Alternative*, Federal Option // Recueil des Cours. Vol. 294 (2002).

principle of *uti possidetis* and the principle of *ex injuria jus non oritur*<sup>1</sup>. According to this principle, illegal action (“*ex injuria*”) cannot serve as a source (“*non oritur*”) for the rights and privileges (“*jus*”) of a state<sup>2</sup>. For example, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty<sup>3</sup>, because it was its responsibility to ensure the conformity of its internal laws with the agreement. In its advisory opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council resolution 276 (1970) the Court mentioned that “one of the fundamental principles governing that relationship is that the party which disowns or does not fulfill its obligations cannot be recognized as retaining the rights which it claims to derive from the relations<sup>4</sup>. By virtue of *ex injuria jus non oritur*, it is prohibited to establish an authority over a territory as a result of the use of force or the threat to use force<sup>5</sup>. The unanimous recognition of the rights of Lithuania, Latvia and Estonia to reestablish their independence by the international community is an evidence to prove the principle *ex injuria jus non oritur*; they were annexed to the USSR by the unlawful decision

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<sup>1</sup> Gevorgyan, Levon. Актуальные проблемы международно-правового регулирования территориальных споров. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

<sup>2</sup> Id.

<sup>3</sup> Vienna Convention on the Law of Treaties of 1969, Article 27.

[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>4</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ, (1971), par. 87-116.

<http://www.icj-cij.org/docket/files/53/5597.pdf>

<sup>5</sup> Gevorgyan, Levon. Актуальные проблемы международно-правового регулирования территориальных споров. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

between the USSR and Nazi Germany<sup>1</sup>. These Baltic republics were recognized territories before the annexation, and were even admitted as member states of the League of Nations<sup>2</sup>. It is worth to mention that in 1991, when the UN was discussing the issue of admission of these three states into UN, in its resolution it highlights the reestablishment of the independence, rather than the achievement<sup>3</sup>. Thus, these states considered the establishment of the Soviet power in their territories in 1940 as “annexation by the Soviet Russia” which occupied the territory of Baltic States. Thus, they rejected to recognize the agreement of soviet times binding for them as well as the Baltic States rejected the conversion of the USSR's internal borders into interstate frontiers<sup>4</sup>.

So, if through using the method of analogy we discuss Nagorno Karabakh conflict within this context the outcome is obvious. As the facts have shown Nagorno Karabakh was never within the borders of Azerbaijan before 1923. Even more, it was a separate legal entity with whom Azerbaijan entered into contractual relations<sup>5</sup>; the status of NK as a separate disputable territory was confirmed by the decision of the League of Nations on the denying

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<sup>1</sup> Kerian, Garik. *Միջազգային հարաբերությունները և դիվանագիտությունը երկու աշխարհամարտերի միջև քննած ժամանակաշրջանում(1919-1939)*. [International Relations & Diplomacy Between Two World Wars (1919-1939)]. Yerevan: Publisher of the Yerevan State University, 2006.

<sup>2</sup> League of Nations Archives, Admission of Armenia, Georgia and the Baltic States, Finland excepted.

<sup>3</sup> Gevorgyan, Levon. *Актуальные проблемы международно-правового регулирования территориальных споров*. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

<sup>4</sup> Ratner, S. Drawing a Better Line: *Uti Possidetis* and the Borders of New States // American Journal of International Law. Vol. 90 (1996).

<http://www.jstor.org/stable/2203988>

<sup>5</sup> Avakian, Shahen. Nagorno Karabakh Legal Aspects. *mfa.am*. 3<sup>rd</sup> edition.

[http://www.mfa.am/u\\_files/file/Legal%20Aspects\\_Nagorno\\_Karabakh\\_en\\_2010.pdf](http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno_Karabakh_en_2010.pdf)

the adoption of Azerbaijan as a member state<sup>1</sup>. And only in 1923 NK was included within the territory of Azerbaijani SSR by the unlawful decision of Bolshevik party of the third state<sup>2</sup>. So, the annexation of Nagorno Karabakh with the Azerbaijani SSR was an illegal action (“*ex injuria*”), and it cannot be a source (“*non oritur*”) for the rights and privileges (“*jus*”) of Azerbaijan. Thus, as Alexander Iskandaryan highlights in his speech during the interview, the fact that nowadays NK is considered a part of Azerbaijan is the result of inertia<sup>3</sup>. Like Baltic States, Azerbaijan should recognize its borders as they were between 1918-1920ss. As the facts have shown NK was never included within Azerbaijani borders during these times. The authority over Nagorno Karabakh was obtained only as a result of conversion of interstate borders by the political party of the USSR. The principle of *nemo dat quod non habet* (Latin: no one gives what he does not possess) one more time proves our statement<sup>4</sup>. This principle by virtue implies that a state can vest those rights on another that he really possesses. Consequently, the new state can inherit only the rights that belonged to its predecessor.

Surely, the implementation of the principle *ex injuria jus non oritur* is limited by other principles of international law, mainly the principle of inviolability of frontiers. International Court of Justice (ICJ) in its decision of the case of Temple of Preah Vihear (Cambodia v. Thailand), stipulated that “When fixing borders between two states, the aim is finality and stability....If it were possible to change the fixed borders all the time, that borders would not

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<sup>1</sup> RA National Archive. Fund 430. List 1. Work 1218.

League of Nations: The Records of the First Assembly, The Meetings of the Committees, Fourth Committee.

<sup>2</sup> Kotanjyan, Hayk. *Political Problems of Security: Perestroyka in the USSR- Karabakh, Armenia, South Caucasus-Afghanistan*. Yerevan: Drastamat Kanayan Institute for National Strategic studies, MOD, RA, 2010.

<sup>3</sup> Iskandaryan, Alexander. Personal Interview. 18 May 2011.

<sup>4</sup> Gevorgyan, Levon. *Актуальные проблемы международно-правового регулирования территориальных споров*. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

be secure at all<sup>1</sup>”. In another case ICJ provided that “Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries.<sup>2</sup>” But when are the boundaries considered agreed upon? It is obvious that when a state is exposed to annexation and then its internal borders are decided by the metropolis, and the state has not consented to that annexation, moreover, it protested those internal boundary changes, those boundaries cannot be considered as agreed upon. The last case is very similar with the Nagorno Karabakh conflict. Azerbaijan announced the soviet period as an occupation by the Red Army. Nagorno Karabakh was included within Azerbaijani borders as a result of internal boundary changes, to which Armenians did not consent to, moreover, Armenians protested this decision both immediately after it was announced, and throughout the whole period of Soviet authority<sup>3</sup>.

Another concept that should be discussed to have a complete apprehension of the implementation of *uti possidetis* in the case of Nagorno Karabakh conflict is the historical title over a territory. In the history there are different applications of this concept. However, for the purpose of our study it is more appropriate to refer to the decision of the International Court of Justice (ICJ) on the case of Western Sahara. In this case the legality of the claim of Morocco and Mauritania over the territory of Western Sahara was discussed,

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<sup>1</sup> Temple of Preah Vihear (Cambodia v. Thailand), ICJ Reports 4 (1962), Art. 34.

<http://www.icj-cij.org/docket/files/45/4871.pdf>

<sup>2</sup> Territorial Dispute (Libyan Arab Jamahiriya/Chad), ICJ Reports 2 (1994), Art. 72.

[http://www.worldcourts.com/icj/eng/decisions/1994.02.03\\_jamahiriya.htm](http://www.worldcourts.com/icj/eng/decisions/1994.02.03_jamahiriya.htm)

<sup>3</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր*

*Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-

2008

taking into account that those claims were based on historical and ethno-cultural connection<sup>1</sup>. In 1884-1975 this territory was a Spanish Colony, and when it was at the verge of decolonization it could manage to convey the case to the ISJ, thus postponing the referendum and applying the principle of *uti possidetis* within its colonial borders<sup>2</sup>. Even though, the Court denied the petition of Mauritania and Morocco, however, its decision derived from the concept of historical title. Thus, the Court highlighted that: "... the Court concluded that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus, the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory<sup>3</sup>". So it can be concluded that the historical title over a territory, or at least cultural, ethnic and religious circumstances have a great impact on the further status of a territory, and that it should be taken into consideration while deciding it. Thus, the Court mentioned that "Court cannot accept the view that the legal ties, the General Assembly had in mind...., were limited to ties established directly with the territory and without reference to the people who may be found in it. Such an interpretation would unduly restrict the scope of the question, since legal ties are normally established in relation to people.<sup>4</sup>"

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<sup>1</sup> Gevorgyan, Levon. *Актуальные проблемы международно-правового регулирования территориальных споров*. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

<sup>2</sup> Gevorgyan, Levon. *Актуальные проблемы международно-правового регулирования территориальных споров*. [Actual Problems of International-Legal Regulation of Territory Disputes]. Yerevan 2011.

<sup>3</sup> Western Sahara, Advisory Opinion, ICJ Reports 12 (1975), Art. 162.

<http://www.icj-cij.org/docket/files/61/6195.pdf>

<sup>4</sup> Id., at Art. 85



So, when applying this rule to the facts of our conflict we notice that Armenians have historically had title over the disputed territory of Nagorno Karabakh. As we have shown in the first chapter, historically this territory have tight connection with Armenian people. Even in 1919 the population of Nagorno-Karabakh, 95 percent of which were Armenians, convened its first congress, which proclaimed Nagorno-Karabakh an independent political unit, elected the National Council and the Government<sup>1</sup>. Moreover, since the point, when the territory became the subject of the conflict between Azerbaijani and Armenians, the latter has had an effective control over the territory. The majority of the population were and are Armenians, there are hundreds even thousands of monuments of Armenian culture<sup>2</sup>. Besides, Armenians have established all the necessary elements of the state required under the Montevideo Convention: territory, population, government and capacity to enter into legal relations<sup>3</sup>. Armenians have had an effective control over the territory even in 1918s, which serves as an evidence, that NK was never a part of Democratic Republic of Azerbaijan.

Thus, the study shows that Azerbaijani claim that upon its secession from the Soviet Union under the principle of *uti possidetis juris*, it inherited Nagorno Karabakh within its borders is not justified. Besides, as Yegishe Kirakosyan mentioned, *uti possidetis* is not a fundamental principle of international law as compared with the self determination, and the latter is in the higher position of the hierarchy of the principles of international law. So, the

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<sup>1</sup>“The Artsakh Question: an Analysis of Territorial Dispute Resolution in International Law”. *Goliath Business knowledge on demand*. 01-May-08

[http://goliath.ecnext.com/coms2/gi\\_0199-8139141/The-Artsakh-question-an-analysis.html](http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html)

<sup>2</sup> Iskandaryan, G, Ghazaryan, H., Malkhasyan, M., Petrosyan, S., Kotanjyan, V. *Հիմնական փաստեր Ղարաբաղյան հակամարտության մասին*. [Main Facts on the Nagorno Karabakh Conflict], Yerevan 2006-2008.

<sup>3</sup> Montevideo Convention on the Rights and Duties of States, 1933.

<http://www.taiwandocuments.org/montevideo01.htm>

contradiction between these two principles are done merely for political reputation, in order to convince the Azerbaijani population and the international community who is not aware of the facts and roots of the conflict<sup>1</sup>.

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<sup>1</sup> Kirakosyan, Yegishe. Personal Interview. 11 May 2011.

# Conclusion

The resolution of Nagorno Karabakh conflict is vital for Armenia. Moreover, it plays an essential role in establishing security and peace in the region. Thus, all the international community is interested in solving this conflict, which, at a first glance seems too entangled and complicated. Since 1994 continuous negotiations between parties to the conflict within the framework of OSCE have been held, but the outcome is not visual. This study comes to show that all the confusion and chaos around this conflict is artificial and due to mostly political levers, rather than legal and scientific. We have shown that Azerbaijan never had an effective sovereignty over Nagorno Karabakh. The League of Nations in particular never recognized the Republic of Azerbaijan of 1918-1920, arguing that it had disputes with its neighbor states concerning the borders. So, taking into account, that in 1991 Azerbaijan rejected the Soviet legal heritage of 1920-1991 and affirming the fact that the Republic of Azerbaijan is the successor of the Democratic Republic of Azerbaijan of 1918-1920, lost all pretensions to the territories passed to Soviet Azerbaijan in July 1921, namely Nagorno Karabakh, even if the latter's transfer would have been legitimate. However, we have turned to Soviet times and through applying the available facts to the principles of international law we have concluded that the transfer of Nagorno Karabakh to Azerbaijani SSR was illegitimate, because a political party of a third state is not entitled under the international law to decide the status of borders of entirely separate and independent states. Therefore, the Nagorno Karabakh Republic was formed on territories over which the Republic of Azerbaijan had no sovereignty. We discuss the Azerbaijani point of view as well; Azerbaijan always claims that under the principle of *uti possidetis* it has inherited Nagorno Karabakh after the collapse of USSR, even though it has declared itself as a successor of 1918 Democratic Republic. Referring to different cases within this context, and making analogy we have come

to a conclusion, that in the case of Nagorno Karabakh the principle of uti possidetis is not applicable. Moreover, we have discussed further events which, even though unlawfully, but affected the status of the region- the period of USSR. We have seen that the transfer of Nagorno Karabakh to the Azerbaijani SSR by the Communist Party of Russian SSR Moscow was unlawful. Even in case we pretend it was lawful, the process initiated by NK for its independence was in compliance with the existing legislation of the USSR. After the collapse of the Soviet Union, two states were formed: the Republic of Azerbaijan - on the territory of the Azerbaijan SSR - and the Republic of Nagorno-Karabakh - on the territory of the Nagorno-Karabakh Autonomous Region /Oblast/. The establishment of both states has a similar legal basis. Therefore the establishment of Nagorno-Karabakh Republic, on the basis of its peoples' right to self-determination is entirely lawful, and does not contradict to the principle of territorial integrity of Azerbaijan, because there is no legal basis for Azerbaijan to claim NK as a part of its territory. Thus, it is unlawful from Azerbaijan to include Nagorno Karabakh in its claim for territorial integrity. Even a brief study of the legal background of the problem provides a basis to believe that Nagorno Karabakh, apart from its historic and cultural rights, also has full legal foundations for its independence. This study elucidated that Azerbaijan does not have legitimate claim over the territory of NK, because

- NK was a separate legal entity during 1918-1920 and Azerbaijan's claim over NK is not justified, because Azerbaijan declares itself as a legal successor of Democratic Republic of 1918,
- Azerbaijan's authority over NK during Soviet period was also illegal,
- Nagorno Karabakh declared its independence according to applicable legislation, so nowadays Azerbaijan has no right to declare NK as a part of its territory, even if we regret the fact that the transfer of NK to Azerbaijan in 1921 was unlawful.

However, even though we show that legally and scientifically this problem has one possible just solution, the problem exists nowadays. As Sergey Minasyan mentioned, this

problem is much more political, rather than legal, so political measures should be undertaken to achieve a solution<sup>1</sup>. This is high time to undertake active measures to pace the process of gaining the solution to the problem instead of pursuing policy directed to status quo which entails grave political and economic consequences for Armenia and Nagorno Karabakh. As possible steps for strengthening our position and proving its conformity with the peremptory principles of international law, we think that:

Armenia should undertake measures to solve problems concerning the passports of NK residents. According to Montevideo Convention the fourth element of the states is the ability to communicate with other actors of international relations. It would be much easier if the residents of NK were acknowledgeable in the world as the citizens of the Republic of Nagorno Karabakh. Today, however, its residents hold passports of the Republic of Armenia. So efforts should be made to overcome these difficulties and to issue passports of NK, in order Nagorno Karabakh be identified by the International Community. The institute of dual citizenship should be applied in order not to limit the opportunity of NK residents to cross borders.

Besides, efforts are required to make it possible for the international community to obtain grounded information from Armenian sources: during the research on the Internet we have come across information, which present only the Azerbaijani point of view which is mostly distorted. As we have shown, the Azerbaijani government always falsifies the information or refers to those parts of available information which can be interpreted in a manner favorable for them. So, some programs should be launched to upload the proper information on the Internet.

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<sup>1</sup> Sergey Minasyan. Personal Interview. 27 May 2011.

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