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International Law and the Nagorno-Karabakh War: Opinion on Political Aspects

Abstract: The opinion report considers relations between international norms, Azerbaijan's national legal system and political understandings of the Nagorno-Karabakh conflict. It discusses classification of Armenian actions in a context of the international law's development and an impact of international regulations on national criminal codes. Therefore, it presents the Azerbaijani perspective on major political aspects of the Nagorno-Karabakh War and international response to Armenian occupation of Azerbaijan's territories. Moreover, it evaluates Armenian actions in the region with reference to the definition of genocide and international policy of its prevention. In general, the opinion report shows how the Azerbaijani society understands the conflict and how it may be classified on the basis of the Soviet law (as acts of terror has started in the late 1980s), the international law and the contemporary Criminal Code of the Republic of Azerbaijan. As a result, it is not only a report that introduces the Azerbaijan's perspective on the issue, but it can also be recognised as an interesting source to understand how the Azerbaijani people label actions of their neighbouring nation.

Keywords: *Nagorno-Karabakh War; the United Nations; international law; genocide; legal system; criminal code; Azerbaijan; Armenia*

Historically Nagorno-Karabakh is the part of Azerbaijan, the Armenian occupation of that territories and creation there false “separatist” (Huseynov, 2003) organisation are the undeniable appearance of the international law norm's disorder. The international law (IL) states that each and every sovereign country fights against the criminal acts

for the common interest of whole international community, also it fights against all dangerous disorders of different spheres of international relations and national criminal laws.

If we look to the problem in this context we can clearly see that the territorial pretension of Armenian separatists against to the territories of the Republic of Azerbaijan is one of the crimes against the international order. We should note that the international criminal law is the new sphere of the IL and it still developing and unifying criminal codes of different nations. One of the first international attempts in 1832 included – as the main regulation – the prevention of “drugs trade, trade of slaves and similar crimes” (Aliyev, 2001). But there was no prohibition of separatism, terrorism, actions against territorial integrity or sovereign nations, but there was a discussion on the common struggle against the drugs trade.

But the IL regulations are developing and new projects are introduced. It means that the international legislations continue their long evolution. Questions on occupation of territories and aggression are among the most significant issues of the contemporary IL. Actions against Azerbaijan’s integrity have a long history, and since the end of the 18th Century Armenians have occupied Azerbaijani lands. The international community was not able to effectively oppose these imperial actions. In fact, in the distant history we may look for the beginning of today’s situation in Nagorno-Karabakh, where Armenian occupation is supported by foreign forces that have never respected the IL norms.

In this opinion report, I present my considerations on the Nagorno-Karabakh conflict in the context of national legislations and international norms. Firstly, let me discuss the Criminal Code of the Republic of Azerbaijan (2007). It claims that the obligation of all people is to protect and maintain peace. In the second chapter it clearly states that its duties are “to guarantee the peace and security of people, to protect property, human rights and civil liberties” from all actions against them (*The Collection of Codes*, 2004, p. 20). Therefore, the Azerbaijan’s legal systems is unambiguously representing the humanitarian perspective.

What are the parallels between the domestic law and international norms? We may notice that the core of this relationship is prevention of crimes against humanity. It shows how the IL influences national legislations of individual states. In the case of crimes against humanity, all countries – willingly or unwillingly – become subject to international norms. Therefore, international norms results with obligations and duties that have to executed by all governments. Yet, it is not only influencing the international community. The rulings of international or arbitration courts and the resolutions of the United Nations Security Council or even unilateral declarations create different obligations for states. The basis of it is a mutual or multilateral consent

of governments on their contents. However, in the case of newly-established countries we follow the rule of implied acceptance, what means that every nation has to accept some basic and fundamental principles, and it has to follow norms of the customary international law.

The IL requires mutual or multilateral consent, but it also create conditions to reach a consensus between states. However, how we can ask for any consensus in the situation when Armenia pursue an aggressive policy, supports acts of terror and occupies one fifth of Azerbaijani territories? Should be this country treated with the same respect as peaceful nations? The Armenian armed forces have used the weakness of international norms and they have taken advantage of transitional conditions in international politics to occupy Nagorno-Karabakh and other Azerbaijani lands. The IL's ineffectiveness can be noticed that aggressors like Armenia are not obliged to respect international norms and even the UN Security Council is not able to execute their obligations.

As a result – despite international agreements – we return to the times when nation's security was guaranteed by a military power and a deterrence policy. It means that the foreign policy has to solve two issues: (1) how to provide the state's security and (2) how to provide the security and to not cause an arms race (Abbasbeyli & Najafov, 2007, p. 149).

In the case of Azerbaijan relationships between national and international regulations play a significant role. The codes has to implement the IL norms to the domestic legal system. Therefore, the Azerbaijani government tried to find a solution of the Nagorno-Karabakh conflict based on international standards. It is seen in the Code of Criminal Procedure of the Republic of Azerbaijan (2003, p. 25; *The Collection of Codes*, 2004, p. 426) that directly refers to international agreements as a source of possible legal solutions. In the Article 2.3 it accepts the supremacy of international covenants and agreements, while in the Article 3.4 it refers to international regulations in the case of a conflict between legal systems of different countries. It proves that Azerbaijan fully respects IL norms and humanitarian principles – we can notice, that codes of the Republic are passed with compliance to standards shared by the international community.

On the other hand, we should also assume that Armenia and its legal system should be – willingly or unwillingly – become subject to the IL, and that it, alike other nations, has to execute its international duties. But, Armenia ignores its obligations and it continues aggressive policy. As a result, almost a million of Azerbaijan's citizens is forced to live as refugees. Still, the Republic and its leadership decided to follow the path of peace and respect to human rights, even if one fifth of its territory is occupied by the neighbouring nation that have violated our territorial integrity, sovereignty

and inviolability of frontiers. The President of Azerbaijan, Mr Ilham Aliyev stated that: “Azerbaijan is a strong country, it has a very strong army and we are always ready to liberate our lands”. It means that the nation’s army is well-equipped and able to respond to an invasion – and it is guaranteed by the Article 51 of the United Nations Charter. However, President Aliyev prefers humanitarian approach, universal human values and tolerance than a war, and he wishes to solve the Nagorno-Karabakh conflict and other disputes with Armenia on the basis of peace and mutual respect. He understands that in the 21st Century, when we face globalisation processes, we should focus on cooperation, peaceful coexistence and intercultural dialogue.

Let me return to the core of my considerations. The Criminal Code of the Republic (2007, p. 118) directly implements international regulations in the chapter six on crimes against peace and humanity. It penalises “planning, preparation, initiation or conducting an aggressive war” with an imprisonment from eight to ten years (*The Criminal Code*, 2007, p. 118). Exhorting to an aggressive war can be punished with three years of imprisonment on the basis of the Article 101. Therefore, the Code gives practical meaning to international norms.

In this context we should recall the beginning of the conflict in Nagorno-Karabakh. The separatist acts of terror in Khankendi (Stepanakert), historically the main city of region and one of major cities of Azerbaijan, have begun in late 1980s, before the decomposition of the Soviet Union. Shall we consider them as crimes against peace and humanity? Could the Soviet leaders prevent separatists like Zori Balayan, Heinrich Pogosyan, Leonard Petrosyan, Robert Kocharyan or Serzh Sargisyan from their actions against Azerbaijani territorial integrity? Of course, they could prevent the conflict, because separatists acted against norms of the Soviet criminal code and they could be prosecuted as criminal offenders. But it did not happen. It could prevent imperial invasion of Nagorno-Karabakh and other Azerbaijan’s territories, forced migrations and Armenian pseudo-Christian fanaticism. However, I would like to emphasise that neither international regulations, nor internal Soviet laws allowed Armenians to act against Azerbaijan when both were not independent states but parts of the Soviet Union. Even if not punished, these actions were clearly illegal.

When Armenian separatists started their war against the political leadership of Azerbaijan tried to solve the conflict with peaceful means and on the basis of domestic and international norms. But Armenian response was to intensify acts of terror that were pointed at Azerbaijani authorities and international peace-keeping agencies. Separatists tried to force Azerbaijan to renounce their rights, that may cause a deconstruction of the republic and a humanitarian disaster in the Caucasus region. It is the reason why some Armenian separatists were prosecuted for the crimes against humanity under the Article 102 of the Criminal Code, however, as not being an

independent country the government was not able to institute legal proceedings against war criminals. The lack of immediate response to Armenian actions has consolidated separatists' occupation and their illegal policies. To strengthen their power, they attacked international peace-keeping forces and continued actions against Turkish and Azeri people in the region. Their operations aimed at terrorising inhabitants of Nagorno-Karabakh and creating a popular fear of ethnic cleansings (and cause a psychological stress among non-Armenian population of the region).

How it influences our considerations on relationships between national and international acts of law? We have already established that the Azerbaijan's Criminal Code implements main international regulations into the national legal system. It – alike major international covenants – recognises Armenian actions as a genocide, which in the Article 103 is defined as an attempt “to destroy or murder any national, ethnic, racial or religious group – as whole or in part”, including actions against public health and living conditions, birth prevention or forced removals (*The Collection of Codes*, 2004, p. 45). Terrorist operations of Armenian separatist meet these criteria, and the Republic of Azerbaijan – as the independent member of the international community – argues to internationally recognise these actions as a crime against peace and humanity.

In this opinion report I refer Azerbaijan's and international legal norms to the case of Nagorno-Karabakh conflict and Armenian violence and crimes against Azerbaijanis in that region. To understand these relationships we should also discuss the context of United Nation's acts of law. During its First Session on December 11, 1946, the UN General Assembly stated in the resolution that any acts of terror against national or ethnic groups are violating moral standards, the spirit and objectives of the UN. As a result, the General Assembly and the Economic and Social Council cooperated on the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), adopted on December 9, 1948 (as the General Assembly Resolution 260) and entered into force on January 12, 1951. The Article 2 defines the genocide as “acts committed to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physics destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group” (CPPCG, 1948, p. 280).

As I have emphasised before, these regulations are implemented into Azerbaijani legal system, e.g. in the Criminal Code, Articles 103 and 104 (*The Collection of Codes*, 2004, p. 17). Moreover, the Code penalises actions against peace or social and political stability, what also represents norms of the IL. Yet, when we discuss the origins of the Nagorno-Karabakh conflict we should rather consider a state of the then Soviet

law – we know that the Soviet Union has ratified the CPPCG on May 3, 1954 (with reservations only to the Article 12 on Non-Self-Governing Territories), thus the convention was effective source of law in the Nagorno-Karabakh region in the late 1980s and in the early 1990s. Therefore, we are allowed to discuss Armenian actions with reference to the international definition of genocide, and not just in a context of Azerbaijan's national legislations.

In this opinion report I have clearly presented reasons why Armenian actions in Nagorno-Karabakh should be internationally recognised as crimes against peace and humanity. The Armenian policy was in fact an example of imperialism. Its result was a forced migration of thousands of Azerbaijanis, political violence, repressions and acts that may be considered as a genocide. However, the international community has not protested Armenian crimes, and – despite the Khojaly Massacre of March 2, 1992 – Armenia become a member of the United Nations. Moreover, despite continuous violations of international norms, Armenian policy is still realised and a part of Azerbaijan's territory is still occupied.

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