

NAGORNO-KARABAKH. FACTS AND LAW

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ABSTRACT

The article is dedicated to the legal analysis of the Nagorno-Karabakh (Artsakh) issue. The roots of the problem date back to the beginning of the 20th century, when Soviet rule was established in Transcaucasia. The Soviet power, which was essentially a dictatorship from the day of its creation, included the territory of Nagorno-Karabakh (Artsakh) into Azerbaijan in 1921, without taking into account the rights and real wishes of the people of Artsakh and violating the established norms of customary international law. The article addresses the legality of this decision from the point of view of the international legal norms of the 20th century and the international practice. The legitimacy of the proclamation of the Nagorno-Karabakh Republic and compliance with the legislation of the former USSR, the realization of the right of the people of Nagorno-Karabakh to self-determination and the interrelation of the principle of territorial integrity of Azerbaijan becomes a subject of special examination. The legal analysis of the Nagorno-Karabakh conflict has acquired special significance, especially after the 44-day large-scale war unleashed by Azerbaijan on September 27, 2020, as a result of which a significant part of Nagorno-Karabakh was occupied by Azerbaijan and thousands of people were displaced and killed.

Keywords: Nagorno-Karabakh (Artsakh), International Law, territorial integrity, self-determination.

On September 27, 2020 Azerbaijan started a war against Nagorno-Karabakh, targeting peaceful population, civilian settlements and infrastructure, historical and cultural objects, including the capital Stepanakert. These are undoubtedly grave violations of International humanitarian law; moreover, given that it was done in the face of new COVID-19 raging the world, it should have been seriously condemned by the international community. This was the second war unleashed by Azerbaijan in the last four years, though Azerbaijan, since 1994, has continuously violated the trilateral ceasefire agreement signed between Azerbaijan, Nagorno-Karabakh and Armenia on May 12, 1994 [1]. It is noteworthy that According to the 1994 July agreement, Azerbaijan undertook to “maintain the ceasefire until a major political agreement is signed” [2].

It is an established fact that during the 44-day war Turkey not only supported Azerbaijan by providing arms and ammunition, but also recruited mercenaries from terrorist organizations of the Middle East and sent them to Azerbaijan to take part in hostilities against the Republic of Artsakh. These facts are already confirmed, addressed by the President of France Emanuel Macron, many members of the European Parliament, the

Secretary General of the League of Arab States Ahmed Aboul Gheit, the General Prosecutor of the Russian Federation, many other politicians, scientists [3], and even various world-renowned periodicals which have published interviews with terrorists and their families. It is obvious that the Turkish authorities are trying to turn the region into a new hotbed of international terrorist organizations at the highest level [4], which will have catastrophic consequences not only for the region but also for the entire world. However, in response to all calls from the international community to end the war against Artsakh and move to peaceful negotiations, the President of Azerbaijan Ilham Aliyev countered that the goal of the war was to return Artsakh, which he mentions to be an Azerbaijani territory, to restore Azerbaijan's territorial integrity [5]. Here I will not refer to the principle of prohibition of the use of force and the threat of its use; I will not speak about the moral-political aspects of Ilham Aliyev's such statements, and I will merely discuss the question of whether the establishment of the Nagorno-Karabakh Republic (Republic of Artsakh) would violate the territorial integrity of Azerbaijan.

Without going into all the details of the history of Artsakh, I will merely mention that Artsakh (Karabakh) is an inseparable part of historical Armenia. The rich preserved historical and cultural heritage is a vivid evidence of that. Artsakh was part of the Armenian Bagratuni Kingdom (9–11th centuries), and then the Zakarid Armenia (12–13th centuries). In the following centuries, Artsakh came under the control of the Eastern conquerors, remaining Armenian and maintaining a semi-independent status. According to the 1813 Gulistan peace treaty, Artsakh-Karabakh came under the Russian rule [6]. It should be noted that before 1923 Artsakh had never been under the control of Azerbaijan, as the country of Azerbaijan was established in 1918 as a result of the collapse of the Russian Empire, within the sovereign territory of the latter, within the provinces of Baku and Elizavetpol. Never – before 1918 – was there a country called Azerbaijan in any part of the world, at any time in history [7]. So all the claims of the Azerbaijani authorities that by fighting against Artsakh they are trying to restore historical justice and to return Artsakh to the sovereignty of Azerbaijan are false.

Nagorno-Karabakh conflict arose in 1917, during the formation of three ethnic republics of Transcaucasia – Armenia, Azerbaijan and Georgia – as a result of the collapse of the Russian Empire. The population of Nagorno-Karabakh, 95 percent of which were Armenians, convened its first congress, which proclaimed Nagorno-Karabakh an independent political unit, as well as elected the National Council and the Government. In response to the peace initiatives of the people of Nagorno-Karabakh, Azerbaijani Democratic Republic launched a military action. From May 1918 to April 1920, Azerbaijan and Azerbaijan-supporting military units of Turkey used violence and carried out massacres against the Armenian population (in March 1920 about 40,000 Armenians were killed and deported in Shushi only). Yet it was not possible to make the people of Nagorno-Karabakh obey Azerbaijan's power in this way. In August 1919, in order to prevent a military conflict, Karabakh and Azerbaijan signed a preliminary agreement by which they agreed to discuss the problem of the status of the region at the Paris Peace Conference [8].

This would have been the most effective solution to the Nagorno-Karabakh conflict, which would be in line with the international practice of the period in question. In particular, the Paris Peace Conference (1919–1920) established the creation of a number of new nation-states, among them the former Czechoslovakia, the former Yugoslavia, Finland, Poland and others. Many territorial disputes were resolved under the auspice of the Conference. It is noteworthy that the ethnicity-based territorial disputes were resolved by the decision of the Conference by holding a referendum in those territories [9], and the will of the population was established as a legal basis for territorial changes. Unfortunately, the establishment of Soviet power in Transcaucasia was accompanied by the creation of new political order, as a result of which the Nagorno-Karabakh conflict was left out of the agenda of the Paris Peace Conference. Nonetheless, Nagorno-Karabakh was also recognized as a disputed territory between Azerbaijan and Armenia by Soviet Russia. In 1920 according to an agreement signed between Soviet Russia and the Republic of Armenia, Russian troops were temporarily stationed in Nagorno-Karabakh [10].

Immediately after the establishment of the Soviet regime in Armenia, on November 30, 1920, the Azerbaijan Revcom (Revolutionary Committee – the main Bolshevik instrument of power at that time) made a declaration recognizing territories over which Azerbaijan had claims – Nagorno-Karabakh, Zangezur and Nakhijevan – as inseparable parts of Armenia. The National Council of Azerbaijan SSR, on the basis of the agreement between the Azerbaijan Revcom and the governments of Azerbaijan SSR and Armenian SSR, (Declaration of June 12, 1921) proclaimed Nagorno-Karabakh an integral part of the Armenian SSR. Based on the statement of Soviet Azerbaijan waiver of Nagorno-Karabakh, Zangezur and Nakhchivan and the agreement between the governments of Armenia and Azerbaijan from June of 1921, Armenia also declared Nagorno-Karabakh as her integral part. The text of the decree issued by the Armenian government was published in both Armenian and Azerbaijani media (“Baku Worker” organ of the Central Committee of the Azerbaijan Communist Party, June 22, 1921). Thus, a legal confirmation of the unification of Nagorno-Karabakh with Armenia took place [11].

From the point of view of international law, even though Armenia and Azerbaijan were sovietized in 1920, they were *de jure* (legally) independent countries that made statements on the ownership of disputed territories and confirmed their decision by interstate agreement. On the one hand, the Azerbaijani SSR had renounced its ambitions for those territories and recognized the sovereignty of the Armenian SSR over them; on the other hand, the Armenian SSR declared them as its integral part. As noted by Robert Jennings, former President of the International Court of Justice, a well-known expert in international law, “If the recognizing State be the only other possible claimant, the recognition may be decisive” [12].

This measure of the establishment of title or sovereignty over disputed territories is fully in line with the requirements of customary international law and with the international jurisprudence of the first half of the 20th century. Particularly, in the case of Eastern Greenland between Norway and Denmark in 1933 the Permanent Court of International Justice

ruled that by participating in various multilateral treaties where Greenland is listed as a Danish colony Norway has confirmed that it recognizes the whole of Greenland as Danish and thereby cannot challenge Danish sovereignty over entire Greenland [13]. In other words, though Norway did not make any statement about renouncing its ambitions for Eastern Greenland, recognizing Danish sovereignty over the latter (as in the case of Soviet Azerbaijan) by merely participating in treaties in which Greenland (without any demarcation between Eastern and Western, as the dispute was referring to the Eastern part of Greenland) was stated as the Danish colony, Norway was deprived of the opportunity to claim any sovereignty over Greenland in the future. International courts have upheld this position in other cases also [14].

For example, in the case referring to the Temple of Preah Vihear between Cambodia and Thailand the International Court of Justice (ICJ) considered the fact that the Prince of Thailand, Damrong visited the disputed Temple of Preah Vihear, where the French flag was waved¹. As noted by the Court: “Furthermore, when Prince Damrong on his return to Bangkok sent the French Resident some photographs of the occasion, he used language which seems to admit that France, through her Resident, had acted as the host country” [15]. The Court considered this fact as tacit acquiescence and recognition of the title of Cambodia over the disputed territory by Thailand [16] Thus, as mentioned above, even the indirect or tacit acquiescence of the state disputing the territorial sovereignty regarding the recognition of the territorial title of a rival state is extremely important for the establishment of the territorial title of a rival state. This approach is interrelated with the principle of estoppel of customary international law, according to which the state is obliged to be consistent in its position on legal or factual situations) [18].

Returning to the Nagorno-Karabakh issue, one should note that, unlike Norway and Thailand, the Azerbaijani SSR not indirectly or tacitly, but rather openly renounced its claims to those territories, recognizing the sovereignty of the Armenian SSR over the latter. Thus, under international law, Azerbaijan had been deprived of the opportunity to make further claims on Nagorno-Karabakh, because under international law, states, as sovereigns, recognizing or agreeing on any issue, are obliged to be consistent in their position. The UN International Court of Justice has confirmed this position in numerous cases [19]. In the well known Nuclear Tests [20] case the Court stated: “It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration” [21].

¹ At that time Cambodia was called French Indo-China and was under French rule. Jennings R.Y., *The Acquisition of territory in International Law with new introduction by Marcelo G. Kohen*, Manchester University press, 2017. PP. 63–64:

Considering the above-mentioned resolution of the National Council of the Azerbaijani SSR on Nagorno-Karabakh on 1921 June 12 in the light of the Court's position, we can state unequivocally that the latter create legal obligations, and the agreement signed between the governments of the Azerbaijani SSR and the Armenian SSR is a clear proof of how the UN International Court of Justice in Nuclear tests case noted: "When it is the intention of the State making the declaration that it should become bound according to its terms...." [22].

Taking into account the above-mentioned agreement between the governments of the Azerbaijani SSR and the Armenian SSR, the resolution made on 1921 June 12 of the National Council of the Azerbaijani SSR Declaration and the Decree adopted by the Government of Armenia, the Caucasus Bureau of the Communist Party of Russia (RK(b)P) also confirmed the fact that Nagorno-Karabakh is part of the Armenian SSR in the capital of Georgia, Tbilisi, on July 4, 1921. However, at Moscow's urging, with Stalin's direct intervention, on the night of July 5, the Caucasus Bureau of the Russian Communist Party reconsidered the previous day's decision and decided to include Nagorno-Karabakh in Soviet Azerbaijan and establish an autonomous region in the territory, without even following the procedure [23]. This decision was unprecedented in the history of international law, when the party organ of a third country (RK(b)P) – without any legal basis or authority – determines the status of the disputed territory, without taking into account the valid agreement between the disputing states, the wishes of the population of the territory, other requirements of international law.

Meanwhile, not only did the Paris Peace Conference (1919–1920) confirm that territory could be transferred from one state to another with the consent of the local population [24], but as early as the end of the 18th century, new international legal principles and norms began to be established according to which a referendum must be held in the transferred area. In other words, the territory was transferred from one state to another with the consent of the local population. For example, Avignon in 1791, Savoy in 1792 and Nice in 1793 were transferred to France as a result of referendums [25]. However, the Bolshevik government, which was compelled on the Russian people by force, and the successor of the latter the USSR, which was essentially a dictatorship from the day of its creation, viewed the solution to territorial problems in the area of threat or use of force, without taking into account the will of the population. And in this respect, the illegal transfer of Nagorno-Karabakh to Azerbaijan is not the only example. Thus, in 1940 Estonia, Latvia and Lithuania were illegally annexed by the USSR; their accession to the USSR was not a voluntary decision, but the result of annexation [26].

Another such example is the decision of the Government of the USSR in 1954 on the transfer of the Crimean peninsula from Soviet Russia to Ukraine. In this case, too, the USSR authorities did not make any attempt to find out the real wishes of the Crimean population in the form of a referendum or at least through consultations with the population [27] this decision was imposed on Soviet Russia and controversy over its true motives continues to this day.

There is no doubt that the decision of the Caucasus Bureau of the Communist Party of Russia (RK(b)P) to include Nagorno-Karabakh in Soviet Azerbaijan was invalid. Russia, without being the sovereign of Karabakh in the period in question, could not concede or transfer it to anyone, as it was still in April of 1918 when the Transcaucasian Democratic Federal Republic (TDFR) declared Transcaucasia's independence from Russia, and Nagorno-Karabakh was declared an independent administrative unit within the latter [28].

Moreover, the Transcaucasian Commissariat, the legal predecessor of the TDFR, did not recognize the Soviet government back in 1917 [29]. In May of 1918 the TDFR was divided into three independent states: the Republic of Armenia, the Republic of Azerbaijan, and the Republic of Georgia. Nagorno-Karabakh was also recognized as a disputed territory between Azerbaijan and Armenia by Soviet Russia. According to the agreement signed between Soviet Russia and the Republic of Armenia in August of 1920, Russian troops are temporarily stationed in Nagorno-Karabakh [30]. That is, Soviet Russia was not the sovereign of the Transcaucasus since 1917; it openly recognized the fact that it had no authority to decide the fate of any territory in that region. Naturally, the ruling Communist Party of Soviet Russia or its branch, the Caucasus Bureau, did not have such authority either. This follows from the principle in international law known as *nemo dat quod non habet* (English: no one can give more than he has), which means the legal successor cannot receive more rights than the legal predecessor had [31].

That is, Russia, especially (RK (b) K) in 1921, having no title to Nagorno-Karabakh, could not concede it to any state. In this regard, it is worth mentioning the Island of Palmas case [32]. In particular, referring to the US assertion that the title to the island passed to the US in 1898 by virtue of the Paris Agreement, according to which Spain ceded it to the United States, the special arbitrator noted: "Obviously, Spain could not transfer more rights than it had".

Based on these studies, we come to the conclusion that the decision of the Caucasus Bureau of the Communist Party of Russia to include Nagorno-Karabakh in Soviet Azerbaijan on July 5, 1921, was initially an invalid document, as it was contrary to the customary principles of international law. So, it could not replace or change the above-mentioned agreement reached between Azerbaijani SSR and the Armenian SSR governments. This decision could not be a legal basis for Azerbaijan to acquire a territorial title over Nagorno-Karabakh, as, according to the well-known legal principle, *ex injuria jus non oritur* (the law does not arise as a result of illegal actions). And in fact, it could not replace or change the above-mentioned agreement reached between Azerbaijani SSR and the Armenian SSR governments. This decision could not be a legal basis for Azerbaijan to acquire a territorial title over Nagorno-Karabakh, as, according to the well-known legal principle, *ex injuria jus non oritur* (the right does not arise as a result of illegal actions).

This was followed by the nearly 70-year history of the Transcaucasian region within the USSR. In December 1922 Azerbaijani and Armenian SSR were included in the formation processes of the USSR, and only on one part of the territory of Karabakh (on July

7, 1923) by decision of the Central Executive Revolutionary Committee of Azerbaijan SSR the Nagorno-Karabakh Autonomous Oblast (NKAO) was formed within Azerbaijan SSR, by which, in fact, the Karabakh conflict was not resolved, but temporarily frozen. Moreover, everything was done so that Nagorno-Karabakh Autonomous Oblast would have no common border with Armenia [33].

Yet during the entire Soviet period, the Armenians of Nagorno-Karabakh never put up with this decision, and for decades struggled for reunification with the motherland.

The people of NKAO and authorities of Armenian SSR had sent numerous applications to the Soviet central authorities asking about the reconsideration of the decision on incorporating Nagorno-Karabakh into Azerbaijan, which were ignored or rejected, causing persecutions against the initiators. Among these applications are the application of the Government and the Communist Party Central Committee of Armenian SSR from 1945 to the Government of the USSR and the All-Union Communist Party Central Committee, more than 2.5 thousand in 1963 and more than 45 thousand signed letters in 1965 from the NKAO population addressed to Soviet leadership, offers of NKAO working groups within the USSR-wide discussions on a new constitution in 1977 [34].

In 1988 Gorbachev was elected General Secretary of the CPSU Central Committee and announced a so-called “reconstruction” policy [35], which aimed to end the dictatorship of the USSR, establish democracy, political pluralism in the country, end the “cold war” and create a competitive economy. The policy of “reconstruction”, on the other hand, enabled the initiation of independence and national liberation movements in some republics of the USSR. For example, the three Baltic states – Estonia, Latvia and Lithuania – declared independence in 1990–1991 before the actual collapse of the USSR. Their demands for independence were based on the illegal annexation of their countries by the USSR in the 1940s. This viewpoint was also confirmed in the numerous UN resolutions adopted on these three countries [36], particularly in the Declaration adopted by the European Communities on 27 August 1991, which specifically states: “Communities and its member states warmly welcome the restoration of independence and sovereignty of the Baltic states lost in 1940 ...” [37]. These three states were able to regain their sovereignty over the territories which historically belonged to them only as a result of changes in circumstances in the USSR, when the democratic reforms initiated by Gorbachev started.

Like people of Estonia, Latvia and Lithuania, the people of the Nagorno-Karabakh Republic also took the advantage of the favorable conditions, and once again raised the issue of the Nagorno-Karabakh Republic's reunification with Armenia in February 1988. However, in response to the demand for self-determination of the people of Nagorno-Karabakh, the Azerbaijani authorities organized massacres of the Armenian population and ethnic cleansing throughout Azerbaijan, particularly in Sumgait, Baku and Kirovabad [38]. On December 10 of 1991, the people of Nagorno-Karabakh secured the independence of the Nagorno-Karabakh Republic through a referendum, which fully complied with the norms of international law as well as the letter and spirit of the USSR law of that time. The UN International Court of Justice in its Advisory opinion Accordance

with International Law of the Unilateral Declaration of Independence in Respect of Kosovo noted “there is no provision in international law that prohibits the adoption of declarations of independence” [39]. Moreover, in this case the Court noted “During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law” [40].

What refers to USSR legislation at the time period of Nagorno-Karabakh's declaration of independence, the Supreme Council of the USSR adopted a law “On the sequence of issues related to the secession of the Soviet Republics from the USSR” on April 3 of 1990, according to Article 2 of which “the decision to secede from the USSR is made as a result of free will of the peoples of the Soviet Republic by holding a referendum”. Article 3 of the same law adds: “In the Soviet Republic, which has autonomous republics or regions, a separate referendum is held in each autonomous formation”. The peoples of the “autonomous republics and formations” retain the right to resolve the issue independently, which refers to remaining in the USSR or leaving the Republic (it was about secession from the USSR), as well as raising the issue of their state and legal status” [41]. Thus, in October 1991, Azerbaijan seceded from the USSR, and Nagorno-Karabakh continued to be part of the USSR for some time. Only two months later, on December 10, 1991, did the people of Nagorno-Karabakh confirm the declaration of an independent Nagorno-Karabakh Republic through a referendum, leaving the existing USSR as an independent state. In other words, according to the above-mentioned law, the population of Nagorno-Karabakh did not leave the USSR with Azerbaijan, but continued to remain in the USSR, and then, through free will, by holding a referendum, chose a state-legal status, creating an independent state. As a result, two equal state formations were formed in the territory of the former Azerbaijani SSR: the Nagorno-Karabakh Republic and the Republic of Azerbaijan [42] in accordance with the relevant legal regulations of the USSR.

What comes to the aspirations of the president of Azerbaijan Ilham Aliyev to establish Azerbaijan's control over Nagorno-Karabakh through war, the unleashing of war already violates all the basic principles of international law, casting doubt not only on the effectiveness of international organizations, but also the existence of international law, returning the world to the distant Middle Ages, when war was the legitimate means of the state to advance its own interests. If we add to this the involvement of mercenary terrorists, gross violations of humanitarian law, the use of prohibited weapons in the war against Artsakh, it becomes clear that the international community must strongly condemn such actions by Azerbaijan to exclude violations of the principle of use of force or threat of force, the de facto legitimization of aggression, the further destruction of nation-states by forming empires or joining the empires in order to resist the aggressors and their supporters.

ЛІТЕРАТУРА

1. <https://www.mfa.am/hy/interviews-articles-and-comments/2016/04/25/statem/6084>
2. https://www.mfa.am/hy/interviews-articles-and-comments/2019/05/12/interviews_articles_and_comments/9549
3. <https://eadaily.com/ru/news/2020/10/05/gensek-ligi-arabskih-gosudarstv-eto-vsyo-ploho-konchitsya-dlya-turcii>
4. <https://www.reuters.com/article/us-armenia-azerbaijan/assad-blames-turkey-for-nagorno-karabakh-fighting-russia-sees-terrorism-risk-idUSKBN26R0T2>
5. https://www.1tv.ru/news/2020-10-07/394619-eksklyuzivnoe-intervyu_pervomu_kanalu_dal_prezident_azerbaydzhana_ilham_aliev
6. <https://www.president.am/hy/Artsakh-nkr/>
7. <https://www.britannica.com/place/Azerbaijan>
8. <https://www.president.am/hy/Artsakh-nkr/>
9. Kasowicz A.M., Peaceful territorial change, University of South Carolina Press 1994. P. 65.
10. <https://www.president.am/hy/Artsakh-nkr/>
11. <https://www.president.am/hy/Artsakh-nkr/>
12. Jennings R.Y., The Acquisition of territory in International Law with new introduction by Marcelo G. Kohen, Manchester University press, 2017. P. 58.
13. Legal Status of Eastern Greenland case (Denmark v. Norway Judgment)// PERMANENT COURT OF INTERNATIONAL JUSTICE (5 September 1933). Para 183–186.
14. See, for example, Case concerning the *Temple of Preah Vihear* (Cambodia v. Thailand) // International Court of Justice (Judgment of 15 June 1962). <https://www.icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>
15. Case concerning the *Temple of Preah Vihear* (Cambodia v. Thailand) // International Court of Justice (Judgment of 15 June 1962), para 30–31. <https://www.icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>
16. Ibid, para 30–31.
17. Ibid, para. 33–34.
18. Crawford J., Brownlie's principles of International Law, 8th.edition, Oxford University press, Oxford, 2012. P. 420.
19. Case concerning the Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)// Judgment of 18 November 1960 . I.C. J. Reports 1960. P. 192.
20. Nuclear Tests (New Zealand v. France), Judgment of 20 December 1974. <https://www.icj-cij.org/public/files/case-related/58/058-19741220-JUD-01-00-EN.pdf> .
21. Ibid, para 43.
22. Ibid, para 43.
23. <https://www.president.am/hy/Artsakh-nkr/>
24. Kasowicz A.M., Peaceful territorial change, University of South Carolina Press 1994. P. 65.
25. Ibid. P. 257.
26. Pazartzis Ph., Secession and International law: European dimension: M.G. Kohen, Secession, Cambridge University press. 2006. P. 363.
27. <https://histrf.ru/biblioteka/b/tsarskii-podarok-kak-krym-ukrainie-pieriedavali>
28. <https://www.president.am/hy/Artsakh-nkr/>
29. Худавердян К.С. Армянский вопрос. Энциклопедия, Главная редакция Арм. Энциклопедии, Ереван, 1991. СС. 177–179.
30. <https://www.president.am/hy/Artsakh-nkr/>
31. See Crawford J., Brownlie's principles of International Law, 8th.edition, Oxford University press, Oxford, 2012. P. 227.

32. Island of Palmas case (The Netherlands/United States of America) // United Nations Reports of International Arbitral Awards, (1928). http://legal.un.org/riaa/cases/vol_II/829-871.pdf.
33. <https://www.president.am/hy/Artsakh-nkr/>
34. <https://www.president.am/hy/Artsakh-nkr/>
35. <https://www.gorby.ru/en/gorbachev/biography/>
36. See Estonia, SC res.709, 12.09.1991, GA res.46/4 17.09.1991; Latvia SC res.710, 12.09.1991, GA res.46/5 17.09.1991; Lithuania SC res.711, 12.09.1991, GA res.46/6 17.09.1991. <http://www.un.org>
37. Crawford J., The creation of states in International law, Oxford 2006. P. 689.
38. <https://www.president.am/hy/Artsakh-nkr/>
39. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion // International Court of Justice (2010), §§79, 80. <http://www.icj-cij.org/docket/files/141/15987.pdf>.
40. Ibid. para 79.
41. Information available: <http://docs.cntd.ru/document/902002993> on 14.11.2020.
42. <https://www.president.am/hy/Artsakh-nkr/>

НАГОРНЫЙ КАРАБАХ. ФАКТЫ И ПРАВО

С.Т. Мадоян

АННОТАЦИЯ

Статья посвящена правовому анализу проблемы Нагорного Карабаха (Арцаха). Корни проблемы уходят в начало XX века, когда в Закавказье установилась советская власть. Советская власть, которая со дня своего создания была, по сути, диктатурой, в 1921 году включила территорию Нагорного Карабаха (Арцаха) в состав Азербайджана без учета прав и реальных желаний народа Арцаха и в нарушение установленных норм обычного международного права.

В статье рассматривается законность данного решения с точки зрения международно-правовых норм XX века и международной практики. В статье отдельно исследуется легитимность провозглашения Нагорно-Карабахской Республики и соблюдение законодательства бывшего СССР, реализация права народа Нагорного Карабаха на самоопределение и взаимосвязь принципа территориальной целостности Азербайджана. Правовой анализ Нагорно-карабахского конфликта приобрел особое значение, особенно после 44-дневной широкомасштабной войны, развязанной Азербайджаном 27 сентября 2020 года, в результате которой значительная часть Нагорного Карабаха была оккупирована Азербайджаном и тысячи людей были перемещены и убиты.

Этот факт должен быть решительно осужден международным сообществом, тем более, что это было сделано перед лицом бушующей в мире новой пандемии COVID-19. Более того, на все призывы международного сообщества прекратить войну против Арцаха, начать мирные переговоры, президент Азербайджана Ильхам Али возразил, что целью войны является восстановление территориальной целостности Азербайджана.

Ключевые слова: международное право, Нагорный Карабах (Арцах), право народов на самоопределение, принцип территориальной целостности.