

**NAGORNO-KARABAKH CONFLICT:  
THE PRINCIPLE OF EQUALITY  
AND SELF-DETERMINATION**  
*History of the conflict*

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The history of the Nagorno Karabagh conflict is connected with the policy of establishment of Great Armenia ('from sea to sea') that is being continued by Armenia today. At the beginning of XIX century, a base for further territorial pretensions of the Armenians towards Azerbaijan was laid by the Armenians' migration from Iran and Syria to the territory of Azerbaijan. That very political atmosphere was observed in the world, in particular around such states like Russian Empire, the Ottoman Empire, the USA, Great Britain, France and Germany forced all these states to act extremely cautiously. Russian Empire was interested in establishing of so-called strong point to secure itself from the South. Such station was Armenia located between the Ottoman Empire and Azerbaijan, both of which were moslem Turkic-speaking countries. Russian Empire moving Armenians to the territory of Zangazur, Zangibasar and Vedibasar districts of Azerbaijan to the coastal territories of the lake of Geychah (now the lake of Sevan), as well as to the territory of Irevan and Garabagh khanates of Azerbaijan, promoted the appearance of the further problem reached to the XXI c.

During the centuries the Armenians migrated to the territory of Azerbaijan began to force out the Azerbaijanians from their historical territories of habitation. The first stage of creating "Great Armenia" was planned moppingUp Armenia from the Azerbaijanians.

There were four stages of driving out of the Azerbaijanians from Armenia in XX century are known as:  
1)1905-1907s; 2)1918-1920s; 3)1948-1953s; 4)1988-1990s.

As a result of the Armenians' policy more than 500 thousands of Azerbaijanians were exiled during the years of 1918-1920s. As far back as in 1918 just established the Republic of Armenia began to put forth territorial pretensions against Georgia and Azerbaijan.

After the establishment of Soviet power in Azerbaijan with the support of Moscow, Armenia achieved the autonomy for Upper Garabagh.

Under the decision of the Caucasus Bureau Plenum dated June 5, 1921, Upper Garabagh was left within the Azerbaijan SSR that granted it a wide territorial autonomy.

Legislative fastening of Upper Garabagh status as an autonomous region of Azerbaijan SSR was realized on July 7, 1923 by the decree of Azerbaijan Central Executive Committee on establishment of Upper Garabagh autonomous region firstly with the centre in Shusha and then in Khankandih. In autumn, the first secretary of the Central Committee of Armenian Communist Party Arutyunov brought in the proposal on inclusion of Upper Garabagh Autonomous Region into Armenian SSR. Soviet government did not consider this matter. Last time the problem in a wider scale was raised in 1988.The Initiators of this were pro-Armenian circles of M.S.Gorbachev. On the eve of the fall of Soviet Empire the Center decided to apply to old imperial methods -"divide and rule".

All the territory of the former USSR was covered by the seats of ethnic conflicts such as the conflicts of Upper Garabagh, Georgia and Abkhazia, Predniestria and etc.

As a result, in 1988 the Supreme Soviet of Armenian SSR came to a decision to include the region of Upper Garabagh into the Armenia SSR without Azerbaijan SSR's consent.

After it, the already begun process of expatriation of the Azerbaijanians, for centuries living in the territories which today form a part of Armenia, assumed mass character. Soon after the conflict developed into a large-scale war which was continued till May 12, 1994. In this period, with Russia's assistance, Armenian side actively formed its military forces, the army was equipped by modern kinds of weapons, crew was prepared by Russian and foreign instructors. At the end of 1991 Armenian's army numbered more than 140 thousand people. This military advantage let Armenia occupy the whole territory of Upper Garabagh and to May 1992. Scorched-earth policy has been carried out in all the occupied territories. On the night of 25/26 February, 1992 Armenian aggressors with the participation of Motorized Infantry Detachment no. 366 of Russian army located at that time in Khankandi (Stepanakert) arranged a real genocide in the town of Khojalih. During the night they killed 613 people, where 63 of them were children, 106 women, 70 old men, 55 people were killed with peculiar cruelty, 8 families were annihilated completely, and 150 people missed. Monstrous mockeries over the alive and the dead bodies took place as well.

A part of Khojalih's population was captivated, and another part was missed. Khojalih events are bright evidence of genocide policy carried out by Armenia towards Azerbaijani people. Armenian occupational forces captured the town of Shusha. It was the last town in Upper Garabagh populated by the Azerrbaijanians and thereby, the Armenians reached the border of Upper Garabagh region.

But thereafter, the occupation went on with the towns of Lachin, Kalbajar, Aghdam, Fizulih, Jabrayil, Gubadli, Zangilan located beyond the administrative border of Upper Garabagh region. The occupation of these seven towns henceforth confirmed the Armenian occupational policy in the whole. Armenian invaders had occupied 20% of the territory of the Republic of Azerbaijan to May 1994, and more than 1mln Azerbaijanians became internally displaced persons and forced migrants. 750 settlements, 4 thousand industrial and agricultural enterprises, 180 thousand civil buildings, about one thousand educational objects, 700 medical institutions, mosques, fortresses, historical and cultural monuments were left under Armenian occupation. Casualties were more than 25 thousand people, more than 50 thousand people became disabled persons, and 5 thousand of our compatriots were captured.

In 1993-1994 President of the Republic of Azerbaijan Heydar Aliyev repeatedly addressed with letters to the UN Security Council, OSCE Minsk Group, and heads of states with the purpose to prevent war escalation, against Azerbaijan.

As a result, UN Security Council accepted 4 resolutions (No.822 in April, No.853 in July, No.874 in October and No.884 in November) in 1993, demanding an immediate cessations of hostilities, withdrawal of occupational forces from the occupied territories of the Republic of Azerbaijan, restoration of its territorial integrity and returning of refugees to their own territories was attracted in these resolutions. But Armenia is still ignoring all these resolutions.

And on May 12, 1994 the ceasefire agreement has been reached as a result of hard negotiation.

In early 1992, OSCE Minsk Group was established whose task was the regulation of Upper Garabagh conflict. It consisted of 11 states and the institute of OSCE Minsk Group co-chairmen with participation of Russia, USA and France. Co-chairmen advanced 3 real proposals to date. For now by cochairman put forward three real proposals. The first two proposals - "The Package" and "By stages" were admitted by Azerbaijan side with certain reservations as the base of conflict regulation. But Armenia did not agree with these proposals.

The third proposal conditionally called "Common State" infringing upon the national interests of Azerbaijani side. That's why Azerbaijani side declined present proposal.

The conflict has not been regulated up to now because of the Armenia's nonconstructive position. International organizations which treating indifferent to this conflict are also guilty on some degree. As regards this, former Prime Minister and incumbent President of the Republic of Azerbaijan Ilham Aliyev who addressing to 58th session of UN General Assembly said: 'I have to note with great regret that the passive attitude of the world community to the problem promotes increasing of Armenia's presumption in realization of its destructive policy. Both OSCE Minsk Group and UN Security Council retreated in the face of the aggressor and, thereby prejudiced their ability to carry out serious aims and functions.

Aggressor's impunity prejudices not only international security but also the principles and norms of international law. Such kind of attitude in most cases attitude costs dearly to the international community.

World community has to realize that in the presence of such kind of conflicts with them could make international security hard reached aim of course.

Therefore in order to speak on such notions like collaboration, territorial inviolability of the frontiers it is necessary for the first time to call the aggressor in the person of Armenia to an account.

The origin of the idea on national self-determination goes back to the Age of Enlightenment and is connected with the names of such thinkers as Lock, Gracy, de Vattel, and Russo. Public idea of leading! European states came to denial of] absolutism and tried to substantiate theoretically "people's sovereignty" through the theory of'naturalright'.

There was declared in the first French Constitution adopted on September 3, 1791 that: firstly, all people are free and have equal rights since their birthday; secondly, the aim of each state is 'providing of natural and inalienable human rights' and, finally, the source of sovereignty is based in nation in essence'. Founders of USA who were fighting for independence of North American states from England hold the same opinion; some earlier than in Europe they consolidated an idea of self-determination in their Declaration of Independence announcing the right of people to change or annul the form of government if it had become ruinous for providing of "inalienable rights" granted by the Creator'. They reckoned the right for freedom and aspiration for the happiness.

The term of "Nations self-determination" for the first time was announced during the Berlin Congress in 1878, approximately at the same time the concept of the right to 'self-determination' was put in operation, "Nations right" by the II Congress of International' in 1896..

The present principle appeared in the period when colonialism reached its apogee in the world. In this period the peoples being under the yoke of colonial states were waging a fight against such type of exploitation. United Nations Organization was established in 1945. The "Principle of equality and self-determination of peoples" the aim of which was defence of interests of the peoples of colonies and assistance to their liberation was in its Statue (i.2 art.1).

After 1955 the works were carried out on creating of norms in some concrete fields of international law on the basis of the UN Charter. So, in 1960 was accepted the Declaration on Concession of Independence to Colonial States and Peoples (Resolution no. 1514 (XV) of General Assembly) that which was being considered as an official

interpretation of content of peoples' self-determination principle by UN.

Armenia affirms that they (Garabagh's Armenians) act under the principle of equality and self-determination of peoples to legalize their acts contradicting to international law. They also assert that this principle is directed to the defence of their rights and there is no question of violation of norms of international law.

There is of course a necessity to consider the present principle more thoroughly.

A whole series of documents of such kinds regarding to self-determination problem followed the adoption of UN GA resolution no.1514 (XV): resolution no.1803 (XVII) on Inalienable Sovereignty on Natural Resources dated December 14, 1962, resolution no.2105 (XX) on Fulfillment of Declaration on Granting of Independence to Colonial States and Peoples dated December 20, 1965 (legality of fight of peoples who are under the colonial supremacy for the right of self-determination was admitted and all the peoples were proposed to render them a material and moral support in this document and etc.).

The contents of the principle were firstly disclosed in Declaration on the Principles of International Law Regarding Friendly Attitude and Collaboration between States according to UN Statue dated October 24, 1970 (Declaration on Principles of International Law 1970). The process of decolonization underwent actively in this period that assisted to the determination of the principle trend. 'All the peoples have the right to determine freely their political course without interference from without and carry out their economic, social and cultural development...!'

The international Pact on Economic, Social and Cultural Rights 1966 (Section 1, Art.1, i.1), OSCE Final Act 1975, i.VIII, Paris Charter for New Europe 1990, Vena Declaration and Action Program on modern international law adopted on Worldwide Conference on Human Rights on July 23, 1993 in Vena also announced this as well.

Let us concern the applicability of the present principle towards the Upper Garabagh conflict.

As it was mentioned above the contents of the principle were firstly disclosed minutely in the Declaration on the Principles of International Law in 1970. There announced: 'Every state has to assist to the realization of the principle of equality and self-determination of peoples by means of mutual and independent actions according to provisions of the Statue and to render assistance to UN in carrying out the obligations entrusted by the Statue regarding to fulfillment of present principle with the aim to:

c) Put an end to colonialism immediately, meaning peoples' subjection to foreign yoke, rule and exploitation contradicts to the Statue of United Nations Organizations'.

As it became clear that the principle firstly directs against colonialism. Now we live in XXI century and talking about colonialism is rather ridiculous. The upper Garabagh is an integral part of the Republic of Azerbaijan.

G.B.Starushenko writes: 'It is possible to talk about nation's right only in that case when only one nation lives within self-determined territory'. But we deal with the territory where the nationality of the majority of resident population is the Azerbaijanians.

The declaration of principles of the international law of 1970 states that '...all the nations have a right to determine their political status without any interference in any form...!'. Therefore, as Upper Garabagh refers to Azerbaijan territory, foreign interference is out of question.

In application of this principle even to the colonial nations the right to self-determination should .not be exercised at the expense or to the prejudice of another people (nation) inhabiting in the same territory. Otherwise according to English international law expert I. Brownlie, 'as to violation of settled and generally recognized rules of the international law (jus cogens), the legalization of such violation by subsequent recognition or acquiescence is less likely'; in other words jus ex injuria non oritur (a right cannot arise from delinquency). Armenia did the same. Stating that it favoured the provision of the execution of self-determination principle by Garabagh Armenians, Armenia disrupted the territorial integrity of the Republic of Azerbaijan and violated a number of main principles of the international law including the principle of use of force and threat, the principle of respect for human rights, the principle of inviolability of frontiers, and of course one of the main principles violated by the Armenian side is the principle of territorial integrity. Addressing to the 49th Session of the UN General Assembly, the national leader of the Azerbaijan Heydar Aliyev said: 'The Republic of Armenia under the pretext of realization of right to self-determination of the ethnic Armenian group inhabiting the Upper Garabagh region of Azerbaijan, obviously realizes the plans of the annexation of the territory of Azerbaijan, on the forcible change of its frontiers and banishment of Azerbaijan people from its native land'.

All this is covered up by arbitrary interpretation of people's right to self-determination as a right of any ethnic community to declare its independence itself and enter the territory of another country. Such interpretation of the right to self-determination contradicts the principles of sovereignty and territorial integrity of the state. Any efforts to absolutize the right leads to severe conflicts, which we witnessed in our region and other parts of our country'.

Former UN General Secretary Butros Gali also expressed his concerns on this issue: 'if each ethnic, religious or linguistic group demands statehood, then the separation will be endless and the achievement of peace, security and economic well-fare in the world will be more difficult'.

So, the Armenian side wants to create a right from delinquency. But the declaration of the principles of international law - 1970 (Resolution 2625 (XXV)) states that the General Assembly proceeding on the idea that 'the

principle of equality and self-determination of nations is the significant contribution to the modern international law and that its sufficient application is of paramount importance to the assistance to development of relations among countries based on respect for the principle of sovereign equality, is confirmed that any effort directed to at partial or full violation of national unity and territorial integrity of a state or a country as well as of their political independence is incompatible with the aims and principles of the Charter'.

Except of all these the declaration of the 1970 and the other statutory acts adopted on the basis of the Declaration and the UN Charter, fix the important restrictive rule:

'Nothing in the given above principles should be interpreted as confirmation or encouragement of any actions which may lead to partition of territorial integrity or political unity of sovereign and independent countries observing in their actions the principle of equality and self-determination of nations, as it is stated above, and as a result, having the governments representing all the nation inhabiting on the territory irrespective of race, religion, and colour'.

Thus, it is recognized that only the nations dependent of a colony or foreign country have a right to 'outer' self-determination; it is 'indirectly' recognized that a part independent country's population can exercise the right when it is impossible to realize internal self-determination, that is to participate equally in the administration of the country.

According to the item 1 of the article 54 of the Constitution of the Republic of Azerbaijan of 1995 'Citizens of the Republic of Azerbaijan have a right to impartially participate in the political life of the society and state'. Item 1, article 55 states that the 'Citizens of the Republic of Azerbaijan have a right to participate in the administration of the country'. (The provision is fixed in the General Declaration of Human Rights 1948)

As it is obvious from the above mentioned, all the citizens of Azerbaijan Republic without any distinction as to race, religion and nationality have equal rights and obligations. As it is noted by E.H. Arechaga 'government of the country, which along with others, observes the main postulate of self-determination (that is, presentation of the whole nation in the government) automatically becomes protected by the preventive clause from the claim for self-determination and separation by a part or group of population inhabiting the territory'.

It would be important to touch upon the subject of separation. As it is known, the Azerbaijan side has more than once proposed the highest autonomous status for the Upper Garabagh, which stipulates all the conditions for self-determination within the territorial integrity of the Republic of Azerbaijan. However, the Armenian side sticking to its separatist ideas keeps to the position of separation of Upper Garabagh region from the Republic of Azerbaijan and of making of Upper Garabagh an independent country or of joining it to Armenia. But the Republic of Azerbaijan will never agree with this as this contradicts to both the international law and the national interests of our Republic.

According to Paris Charter for New Europe (the total document of UNOSCE, adopted in Paris on November 21, 1990), member-states of the Council, standing up for the strengthening of the world and security declared the following: 'We again confirm the equality of nations and their rights to master of their own destiny, in accordance with the UN Charter and corresponding rules of the international law, including those which refer to the territorial integrity of states'.

It becomes obvious from the above stated that in the execution of right to self-determination international law does not allow substitution of self-determination separation. The eminent American lawyer Max M. Kampelman notes that, 'unlike the right to self-determination, recognized in international law and reflected on the UN Charter and other important sources, right to separation is not right stipulated in the International law'. Kampelman also noted the inadmissibility of inclusion of right to separation into the principle of self-determination. It is very important in order to avoid the violence and chaos in the world policy.

'The declaration of rights of people referring to national or ethnic religious and linguistic minorities adopted in 1992 by the UN states that 'nothing contained in the declaration authorize any activity contradicting to the goals and principles of the United Nations Organization including the principles of respect for sovereign equality and political independence of the countries', Comments to the mentioned Declaration clearly highlights that 'the right of minorities could not serve as the basis for claims for separation from the country and its partition'. The same conclusion was reflected in the general recommendation No XXI (48) of the UN Committee for the elimination of racial discrimination, which also states 'the international law does not recognize the rights of nations to unilateral separation from either country'.

The international law experts studying this issue say the right of nation to separation is recognized in the following cases:

1) when the people inhabiting the states, the constitution of which directly stipulates the right to separation in the realization of right to self-determination; 2) when the nation inhabiting the territory occupied or annexed after the adoption of UN Charter, i.e. after the year 1945; 3) the right of colonized nations or nations dependent on a foreign country; 4) when the nation inhabiting the states, where authorities do not observe the principle of equality and self-determination of nations.

Basing on the above stated rules of the international law and other sources of modern international law we confidently said that the principle of self-determination is inapplicable to Upper Garabagh conflict. Therefore, the

actions of Armenian side basing on the international law are out of question. The aggression, breach of territorial integrity of the Republic of Azerbaijan, mass violation of human rights in the person of 2mln Azerbaijani refugees and displaced persons. The responsibility for these violations rests on the Armenian side. Armenia should treat the problem with necessary understanding, otherwise such a condition is not in its favor of course.

Being an aggressor Armenia tries to pass the actions contradicting the norms of international law as the actions on national minorities in the person of Armenians inhabiting the Garabagh region of the Republic of Azerbaijan, aimed at the acquisition of independence. But the world community recognizes the fact that it is another unsuccessful policy of Armenia. Armenia not only supports the Armenian separatists but also actively participates in continuing occupation as a maternal country'.

'Finding of constructive solutions depends on all the involved countries. The wrong impression that the blame for the existing situation lies with the governments or with the majority of population and that the adaptation effort should be made only on this part. However even in the superficial examination of the situation in the world it is possible to note existence of a number of minorities, which pursue extremely provocative and violent policy. Sometimes they stake that if their provocative actions at worst leads to a large-scale military conflict with the majority of population threatening the basis of their existence itself an external force, either 'the parental country' or any other foreign formation will come to their aid. Such policy is very dangerous'.

Direct participation of Armenia in the occupation of Azerbaijan territories was also confirmed by PASE D. Atkinson: 'According to the information given to me, in the military battles for Upper Garabagh region beside the local Armenians the Armenians from Armenia also took part. At present, soldiers from Armenia are dislocated in the Upper Garabagh region and adjacent areas, the people living in the region are the holders of Armenian passport, and the Armenian government transfers significant budget funds to the zone'.

PASE spoke very strongly on this issue and unequivocally emphasized in the resolution No 1416 adopted on January 25, 2005 the responsibility of Armenia for the occupation of Azerbaijan according to the international law, and declared the process that followed the separation of Upper Garabagh from Azerbaijan as an illegal.

This one is repeatedly proves that the world community interprets everything as it is, and confirms that violation of such generally admitted rules and principles of the international law as inviolability of frontiers, territorial integrity of the states will not stay unpunished.

Azerbaijan has repeatedly impressed its commitment to the rules and principles of international law in the settlement of conflicts by means of rules and principles of the international law. But the patience of the Azerbaijan people is endless and let nobody try to abuse it.

The Republic of Azerbaijan can any time exercise its rights to restore its territorial integrity basing on the principles and rules of the international law. And this day is not so far....

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**DAĞLIQ QARABAĞ MÜNAQIŞƏSİ: BƏRABƏRLİK VƏ ÖZ MÜQƏDDƏ-RATINI TƏYİNƏTMƏ HÜQUQU.** *Vüqar Pənahov.* Məqalə Ermənistan - Azərbaycan, Dağlıq Qarabağ münaqişəsinin genezisinə həsr olunub. Müəllif beynəlxalq hüququn millətlərin öz müqəddəratını təyinetmə və dövlətin ərazi bütövlüyünün qorunması hüququ kimi prinsiplərini ətraflı təhlil edir.

**НАГОРНО-КАРАБАХСКИЙ КОНФЛИКТ: ПРИНЦИП РАВЕНСТВА И САМООПРЕДЕЛЕНИЯ.** *Вюгар Панахов.* Статья посвящена генезису армяно-азербайджанского нагорно-карабахского конфликта. Автор подробно останавливается на анализе таких принципов международного права, как право наций на самоопределение и соблюдение территориальной целостности государства.