TERRITORIAL INTEGRITY AND SELF-DETERMINATION: CONTRADICTION OR EQUALITY?

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Introduction

The emergence of International Law is closely connected with the formation of independent states. It is intended to govern the conduct of independent states in their relationship with one another via norms and main principles [1]. The main documents on the contents of principles of modern International Law are the 1970 UN Declaration of Principles of International Law and the 1975 OSCE Declaration on Principles Guiding Relations between Participating States. Territorial integrity and self-determination of nations are two principles of the International Law, which raise a lot of debates because of a supposed contradiction.

Territorial integrity refers to the protection of an independent state's territory from aggression of other states. Self-determination is defined as a right of nations to freely decide their sovereignty and political status without external compulsion or outside interference [2, p. 94-97, 89-91]. Thus, territorial integrity is related to the relations among sovereign independent states, while self-determination refers to the relations between an independent state and a people.

The objective of this article is to describe and explain the issue of self-determination, both as a right of nations and as a principle of International Law, as well as its relationship with the concept of territorial integrity of the states. The definite understanding of these principles is of vital importance for us, as we have the question of Nagorno-Karabakh, which by all means has to be solved by application of the self-determination concept.

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The article will consider the definitions of the two principles, their historical background, the relationship between them, as well as will bring a case study on the Nagorno-Karabakh issue.

The purpose of the work is to show that these principles do not contradict to each other; they are equal and merely should be applicable in different situations. The principle of self-determination is indisputably applicable in the case of Nagorno-Karabakh.

International Law

The roots of International Law go deep in history. A lot of evidences can be found in early writings, proving the existence of International Law in the relations of early states (peace treaties, alliances). International law can be defined as interstate law, as it regulates the relations among states. The procedure of the formation of international law is characterized by the fact that the norms of international law, regulating the intercourse between the states, were created on the basis of collaboration among states [3]. So, they should be respected and implemented by the whole international community. It is really difficult to undermine the important role of International Law. Even the most passionate critics accept the effectiveness of the international rules. Nevertheless, some of them argued that if there was a sovereign to enforce the implementation of these rules, they would be much more effective [4]. However, such sovereign does not and cannot exist, as it will violate one of the basic principles of International Law: the sovereign equality of states. The only sovereign to carry out the above-mentioned task is the international community, which unfortunately is not able to properly manage this task.

The principles of territorial integrity and self-determination are integral parts of the International Law. The importance of these principles is enormous in the international community. The first is closely connected with a basic order in interstate relations, while the second is a fundamental human right. Although the principles have equal importance they should be implemented in different

situations. Of course, the points of view to the issue are different, but the reality is indisputable, and no one can deny the facts. The principles have their historical backgrounds and their emergence has been necessitated. However, no matter what was the reason for their emergence, they exist in modern international law and should be followed and respected.

The Criteria for Statehood

The Montevideo Convention on the Rights and Duties of the States was adopted on the 26 December 1933 in Montevideo, Uruguay[1], at the international meeting of the American states. It dealt with the criteria of assessing an entity as a state. These criteria are nowadays considered as traditional for state building and are part of the customary international law. The Montevideo Convention stated four criteria: permanent population, a defined territory, a government and capacity to enter into relations with the other states. In ascertaining the meaning of population the notion of "Nation" should be considered. There was neither minimum number of population, nor the demand to be homogeneous. Population is defined as a group of people, who have a common history, culture, language, religion and the feeling of belonging together. Peoples are often indigenous to the territory they inhabit. Article 3 of the Draft Declaration on the Rights of Indigenous people provides the opportunity for self-determination for indigenous people.

There is no minimum size for the territory and the boundaries should not be absolutely fixed, as there are a lot of states with territorial disputes. It is a principle of International Law that when a frontier dispute arises between the states and territory claimed is claimed on the historical ground, it is important to consider the rules as they existed in that particular period of time.

Government should exercise an effective control over the major part of the territory. The respect to human rights and self-determination are also important in evaluating the effectiveness of the Government. The Government should also have sovereignty, which is not equal to independence.

[1] See www.taiwandocuments.org/montevideo01.htm

The recognition is not necessarily a vital element in considering an entity a state; it's rather a basis for legal interconnection with foreign states. Non–recognition does not imply that International Law is not applicable to that recognition seeking state. Non–recognition by the United Nations follows as a result of applying the following principles:

- The prohibition of aggression
- The prohibition of the acquisition of the territory by means of force
- The prohibition of suppression of human rights and systematic racial discrimination
- The prohibition of the denial of self-determination.

Article 4 of the UN Charter prescribes the condition for the state to become a UN member: membership to UN is open to all peace-loving states, which accept the obligations under the UN Charter and the ability and willingness to carry out these obligations[1].

During the second half of the 20th century the rights of minorities and individuals received more attention. James Crawford adds new criteria to the Montevideo principles: independence, permanence, willingness and ability to observe international law, a certain degree of civilization, legal order.

In order to face the new realities arisen after 1991 the European Commission established the Badinter Commission to analyze the requirements for the new states to be recognized by the European Union. The commission developed new criteria which are more in line with modern expectations with regard to the states. These additional requirements were: respect to the UN Charter, Helsinki Final Act and Charter of Paris; guarantee the rights of minorities; respecting all borders, which can be altered only by mutual agreement; acceptance of commitments of disarmament and nuclear non-proliferation, regional security and stability; commitment to resolve State succession and regional disputes by agreement or arbitration.[2] However, these criteria concern state recognition and are not criteria for statehood.

[1]www.un.org/en/documents/charter/

[2] Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', 16 December 1991, ILM 31, (1992), pp. 1485-87.

Self-determination

To delve into the core of the principles of self-determination it is necessary to investigate the history of these principles, the cases where they have been implicated, and the documents where the principles are set.

The roots of the self-determination concept go back to the political ideas of Aristotle, later John Locke and Jean-Jacques Rousseau. The core philosophical meaning of the principle was that every human being has a right to control his/ her own destiny. Nevertheless, this idea was not accepted in the past. The concept was also included in Marxist doctrine as a right of working class to liberate from capitalism. The further development of the idea brought to its political implication. The rebirth of self-determination was related to the World War I. The greatest advocates of the principle in its political aspect were V. Lenin and W. Wilson. The US president W. Wilson believed that national self-determination was very important in maintaining peaceful relations among nations. According to Wilson, people should not be forced to live under the government they do not want to. These words sound attractive and democratic, although Wilson had some other goals in advocating the principle: to dissolve the Ottoman and Habsburg empires. The further implication of the concept was tied with the necessity to stop the proliferation of Bolshevik regimes in Eastern and Southern Europe. Another reason, why Wilson had employed the concept, was to weaken the European colonial states, by dissemination the principle of self-determination in the colonies of Great Britain, France and other colonial powers. Wilson intended to include the principle in the Covenant of the League of Nations (the first international organization, established after the World War I) as a guarantee of political stability. Nevertheless, other politicians assessed the principle as a source of instability, and it was not included in the League of Nations Covenant. The Soviet leader V. Lenin also advocated the principle, at least on the international level. He argued that peoples under colonial rule had the right to gain their independence [5]. The desire of both leaders to weaken the European colonial powers is obvious. They both had intentions to promote their ideas and disseminate them among other nations.

The idea of self-determination can also be found in the United States Declaration of Independence (1776), which states the natural right of individuals to choose their own form of government. It was also stated that this right should gain more attention in case of oppression. The first written official document on the principle is the Joint Declaration of the US president and UK prime minister of August 14, 1941. Although the document did not explicitly call the principle as self-determination, the third point of the Atlantic Charter accepted the right of all peoples to choose their form of government [6, p. 7]. It derived from the principle that all peoples, without any exceptions, have the right to choose the form of their government.

The term self-determination of people is mentioned officially for the first time in the Charter of the United Nations; in Article 1, paragraph 2 and Article 55 of the Charter. Article 1 states: "The purposes of the United Nations are: …2. To develop friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Article 55 points out the objectives the UN shall promote 'with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, based on the respect for the principles of equal rights and self-determination' [7, pp.21-23]. According to Casesse (2005), the principle of self-determination is rather a goal than an obligation of the UN. However, there was a strong debate over the meaning of these Articles. The main point of hesitation was whether the right of self-determination refers to the states or peoples. UN nominated a special commission to investigate the issue. According to their explanations, the word 'peoples' refers to groups of human beings who may or may not comprise States or nations. The right of self-determination implies that a people have the right to establish any regime which they favor [6, pp. 37-39].

The principle of self-determination is also formulated in the UN General Assembly Resolutions, International Covenants on human rights, as well as in other documents. Every year, since 1980, the General Assembly of the UN has adopted a resolution on the right of self-determination [1, p. 10-12]. The Covenants, pro-

claiming self-determination as a universal human right, are ratified by the large majority of states. It is a juridical rule and should be respected by all the states.

The historian Alfred Cobban has said that not every kind of national revolt can be included under the description of self-determination. The movement for national independence, or self-determination, falls into the same category as utilitarianism, communism, or Jeffersonian democracy. It is a theory, a principle, or an idea, and no simple, unconscious national movement can be identified with it. Struggles like the rising of the French under the inspiration of Joan of Arc or the Hussite Wars are fundamentally different from the national movements of the last two hundred years because of the absence of a theory of national self-determination, which could appear only in the presence of a democratic ideology.

What is most widely implied in the term *self-determination* is the right *to participate* in the democratic process of governance and to influence one's future – politically, socially and culturally [8][1].

Self-determination embodies the right for all peoples to determine their own economic, social and cultural development. Self-determination has thus been defined by the International Court of Justice (in the West-Saharan case) as: *The need to pay regard to the freely expressed will of peoples* [9][2].

The right of self-determination of peoples is a fundamental principle in international law. It is embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1, paragraph 1 of these Covenants provides that: *"All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."* [10][3].

The right of self-determination has also been recognized in other international and regional human rights instruments such as Part VII of the Helsinki Final Act 1975 and Article 20 of the African Charter of Human and Peoples'

[1] http://www.iwgia.org/human-rights/self-determination

[2] http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5

[3] treaties.un.org/doc/Publication/CTC/uncharter.pdf

Rights, as well as the Declaration on the Granting of Independence to Colonial Territories and Peoples. It has been endorsed by the International Court of Justice. Furthermore, the scope and content of the right of self- determination has been elaborated upon by the United Nations Human Rights Committee and Committee on the Elimination of Racial Discrimination as well as international jurists and human rights experts.

The international community fears that the increasing number of small states will destroy the existing basis of international community. Nevertheless, this fear appears to have no solid basis. The changes have occurred throughout the history. A lot of states have emerged and vanished. History is a continuing process and transformation of the existing international community is inevitable. A great number of states feel really alarmed about this principle, however the faults of the past should be corrected; otherwise the future of the international community will be under a great question.

The principle of territorial integrity or uti possidetis

The birth of the modern approach to the principle of territorial integrity dates back to 1648 Peace of Westphalia. The territory of state was considered to be the main factor, determining the security and wealth of the state; and the protection of territory was impetus of the state's foreign policy. The principle was included in the Article 10 of the League of Nations Covenant: "The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" [9 p. 263]. After World War I the principle was stated in several declarations and treaties.

From the historical view, the emergence of the principle was connected with the necessity of great states to maintain status quo in the world order. The importance of this principle is very great in interstate relations. It is worth emphasizing the word interstate, as the principle refers to the relations between independent states, not to the state and people. Its meaning implies to the protection of state territory against foreign aggression. This principle was formulated in the Charter of the UN (Article 2, item 4). The article prohibits the threat or use

of force against the territorial sovereignty of states and its political independence [2, p.4]. The 1960 UN Declaration states: “any attempt aimed at the partial or total disruption of the national unity or territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN” [9, p. 265]. In the 1970 declaration of International Law principles the territorial integrity was not wholly mentioned, but its several parts were explained. The 1975 Helsinki Final Act implies that frontiers can only be changed, in accordance with the International Law, by peaceful means and agreements [12][1]. It should be mentioned that in the 1990s both the EU and NATO members concluded accords with adjacent states, concerning their borders, thus putting the end to territorial aspirations among the member-states. As it can be seen, all the documents on territorial integrity refer to the relations between states.

The issue of Nagorno-Karabakh

The issue of Nagorno-Karabakh is one of the most difficult and controversial issues in modern international relations. The clash of two international law principles in this case seems to be most vivid than ever. The people of Nagorno-Karabakh legally pursued their right of self-determination, while Azerbaijan without any legal and historical background insisted on its right of territorial integrity. Meanwhile Nagorno-Karabakh has neither legally, nor historically been within the Azerbaijani territorial integrity. Artsakh (Karabakh) is an integral part of historic Armenia. As a part of Armenia Karabakh is mentioned in the works of Strabo, Pliny the Elder, Claudius Ptolemy, Plutarch, Dio Cassius, and other ancient authors. The enduring rich historic-cultural heritage is the evident testimony of it. After the division of Greater Armenia (387 A.D.), Artsakh became part of the Eastern Armenian kingdom, which soon fell under the Persian rule. At that time, Artsakh was a part of the Armenian marzpanutyun (province), then, in the period of Arabic rule, it was part of Armenia kusakalutyun (region). It was part of the Armenian kingdom of Bagratids (9-11th centuries), then – part of Zakarid Armenia (12-13th centuries). When in 17-18th centuries Armenians

[1] www.hri.org/docs/Helsinki75.html

fought against the Persian dominancy, the Armenians of Nagorno-Karabakh appealed to the Russian Empire to become a part of it [13][1]. It coincided with the Russian expansion in the south leading to the First Russo-Persian War, which ended with the Treaty of Gulistan in 1813. Under the terms of this treaty Karabakh, along with the other northeastern provinces of Armenia, was transferred from Persian to Russian dominion [14, p. 199]. In 1840, as a result of the administrative reform in the Caucasus, the region was divided into two administrative districts, and Karabakh was incorporated in the Caspian Oblast, then in 1867 - into the Elisabethpol Governorate, which remained undisturbed until the beginning of World War I [15][2]. 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 Azerbaijan over Nagorno-Karabakh.

Nagorno-Karabakh in 1918-1920: After the formation of three Transcaucasia states, Nagorno-Karabakh (95 percent of population of which were Armenians) convened its first congress, which proclaimed Nagorno-Karabakh as an independent political unit, elected a National Council and Government [13][3]. Consequently, during 1918-1920 Nagorno-Karabakh possessed the elements of statehood, including an army and legitimate authorities. Starting this point, the Democratic Republic of Azerbaijan, with the help and support of Turkey, made several attempts to annex the territory of Nagorno-Karabakh. However, Karabakh rejected the encroachments of Turkey and Azerbaijan, referring to the fact that the British command had recognized Nagorno-Karabakh as a separate territory, the status of which would have to be decided at the Paris Peace Conference [15][4].

[1] "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
[2] Avakian, Shahen. Nagorno-Karabakh Legal Aspects. *mfa.am*. 3rd edition.
http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno Karabakh_en_2010.pdf
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http://goliath.ecnext.com/coms2/gi_0199-8139141/The-Artsakh-question-an-analysis.html
[4] Avakian, Shahen, http://www.mfa.am/u_files/file/Legal%20Aspects_Nagorno Karabakh_en_2010.pdf

Thus, from May 1918 until April 1920, when the soviet regime was established in Azerbaijan, Nagorno-Karabakh had never been an integral part of the Democratic Republic of Azerbaijan.

Nagorno-Karabakh during Soviet Period: On November 30, 1920, immediately on the next day after establishing soviet rule in Armenia, the Government of Soviet Azerbaijan (soviet regime in Azerbaijan was installed earlier, on April 26, 1920) adopted a declaration on recognition of Nagorno-Karabakh, Zangezour and Nakhichevan as a part of Soviet Armenia, thus restoring the historical justice [16]. On July 4, 1921 the Central Committee of the Caucasian Bureau with the majority of votes decided to include Nagorno-Karabakh in the Armenian SSR, as well as to conduct a plebiscite in Nagorno-Karabakh, taking into consideration the ethnic factor [16]. However, during the night of July 4 to 5, a new decision was made by Moscow, which implied to incorporate Nagorno-Karabakh into the Azerbaijan SSR, granting it regional autonomy. This was done citing the economic ties and the need to establish peace between the Muslim and Christian populations [14, p. 201]. However, this decision is void, as it was made with prominent legal and procedural violations. 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 adopted legal document. Thus, the status of the territory of Nagorno-Karabakh was decided at the will of a political party of a third country, with no legal power or jurisdiction. The decisions of Bolshevik Party of Soviet Russia were not binding to other Socialist States because the Soviet Union came into existence only in December 1922, which clearly indicates that in 1921 Armenia and Azerbaijan were independent actors of international relations.

On July 7, 1923 Soviet Azerbaijan's Central Executive Revolutionary Committee established the Nagorno-Karabakh Autonomous Oblast (NKAO). It was totally isolated from the Armenian SSR, where the Azeri authorities put into force repopulation programs to further isolate NK Armenians from the Armenian SSR, and to implement assimilation policy. The Azerbaijani authorities carried out systematic policy of deportation, national discrimination and destruction of Armenian

cultural heritage. Despite these deliberate policies, the Armenian population never went along the Azeri rules; petitions and protests continued during the 70 years of the Soviet authorities, culminating in 1980s, during Gorbachov's *Perestroyka.* On February 20, 1988, a session of the Oblast Soviet 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 NKAO from Azerbaijan and transfer it to Armenia" [17]. At the same time, an appeal was sent to the Supreme Soviet of the USSR for the approval of this resolution. On July 7, 1988 the European Parliament also supported the demand of NK to reunite with the Armenian SSR and called on the Supreme Soviet to study the proposals of the Armenian delegates that NK temporarily be governed by the central administration in Moscow, or temporarily be attached to the Russian Federation ,or be temporarily placed under the authority of a 'presidential regional government' [18].[1]

Nagorno-Karabakh after the Collapse of the USSR: On September 2, 1991, Nagorno-Karabakh, in compliance with the internal Soviet law, initiated the process of independence through the adoption of the "Declaration of Independence of the Republic of Nagorno-Karabakh". This act was in full conformity with the existing law. In response to this move, several days later ethnic cleansings and pogroms were perpetrated against the Armenian population in Baku, Kirovabad and other places in Azerbaijan, giving a start to Nagorno-Karabakh conflict. On December 10, 1991 the Republic of Nagorno-Karabakh held its own referendum of independence, which was also in conformity with existing Soviet law. Ninety-nine percent of the votes were in favor of independence. 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 international observers.

On 18 October 1991, the Supreme Council of Azerbaijan adopted a Declaration of Independence which was affirmed by a nationwide referendum in December 1991, when the Soviet Union was officially dissolved. Hence, Nagorno-Karabakh was not a constituent part of Azerbaijan when the latter was recognized by the international community.

[1] www.miak.am/pdf/NK_Long_Version.pdf

Now Nagorno-Karabakh struggles for its legal right of self-determination, which sooner or later will be accepted by the international community. The latest developments in Kosovo (which has a lot of similarities with the Nagorno-Karabakh case) indicates that international community attaches great importance to the principle of self-determination.

Conclusion

Self-determination is a concept that can be traced back to the beginning of government. The right has always been cherished by all peoples, although history has a long record of its denial to the weak by the strong. Both the Greek city-states and the earlier Mesopotamian ones were jealous of their right to self-determination. The development of modern states in Europe and the rise of popular national consciousness enhanced the status of self-determination as a political principle, but it was not until the period of World War I that the right of national independence came to be known as the principle of national self-determination. In general terms, it was simply the belief that each nation had a right to constitute an independent state and to determine its own government.

Nowadays, the principle of self-determination has an important place in modern International law. The principle has been and continues to be a powerful motivation in the international relations. Meanwhile, a declining importance of interstate territorial boundaries is observed, related to globalization and formation of the international community. The fundamental approach should be that all peoples have a full right of self-determination. This is a basic rule, which does not recognize international and domestic boundaries.

For the Nagorno-Karabakh issue it is vital to understand the source of conflict and choose an effective approach. In order to move the question to the field of self-determination, the Republic of Armenia should withdraw from the negotiation process and insist on involving the Nagorno-Karabakh authorities in the resolution of the problem. If this happens, the issue will gain absolutely another character and will probably be resolved on the grounds of self-determination. There is no doubt that the Nagorno-Karabakh people fall under all categories of the principle.

The following can be concluded: first, the principle of self-determination is applicable to all peoples, whether they are under 'colonial, foreign or alien domination' or under 'alien subjugation, domination and exploitation' [6 p. 78]. Second, all peoples have the equal right of self-determination, and should enjoy equal opportunities to exercise this right [19]. It follows that it is unjustified to implement this right on one people, while refusing to others (the modern case of Kosovo and Karabakh). Third, the principles of self-determination and territorial integrity do not contradict. The latter refers to the relationship between states, while the former implies to the relationship between the State and the people. According to Casesse (2005), a right to secession can be implemented if a racial group is forcibly refused to have equal access to government. If so, the latter has a legal basis to use force and is entitled to secede, choosing its political future: whether to integrate with another state or become an independent state. Even if the principle of self-determination is taken in this narrow definition, Nagorno-Karabakh's right of secession is again undeniable.

The followers of the territorial thesis (highlighting the principle of territorial integrity) argue that the issue of oppression can be resolved by other means of removing or reforming the oppressor, in extreme cases by revolutions, and it is not a must to establish a new state [20]. According to them, the main focus should be made on the historical aspect of the issue. Even taking into consideration the mentioned reasonings, the claims of Nagorno-Karabakh find solid ground. Thus, there are a lot of approaches to the question, nevertheless every theory or approach definitely demonstrates the right of Nagorno-Karabakh for self-determination.

The principle of self-determination is closely tied with the political interests; that is why although the principle is applicable to all peoples, it has been and continues to be effectively applied only to certain peoples. There are a lot of approaches connected with the implications of the self-determination. Different documents and authors name and highlight only particular aspects of the principle. The case of Nagorno-Karabakh falls under all of them. The history is another solid argument in our claims. Although international community is reluctant to see new

changes in the world political map, it has "survived" after Kosovo secession. The acceptance of another historical and legal reality is a harmless necessity.

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