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COUNTRY ESTABLISHED FOR AGGRESSION

AGGRESSIVE NATIONALISM, TERRITORIAL EXPANSION ENSHRINED IN ARMENIA'S CONSTITUTIONAL LAW

The second Karabakh war, quite rightly described as Patriotic in Azerbaijan, continues to attract the attention of politicians, political scientists, military theorists, historians and international lawyers. Questions (without answers) raised by specialists of different profiles are already worth a separate publication. Many of the questions are related to the beginning of both the conflict and direct hostilities. The article by permanent author of our magazine, prominent Russian political scientist, PhD in History, Professor Oleg Kuznetsov provides a new perspective, a perspective of constitutional and international law through the prism of the supreme laws of one of the parties to the conflict, Armenia, and examines the causes of both the conflict and hostilities. It is important that the question raised by the author has not only theoretical but also practical significance in the light of the events taking place in the region.

From the editorial board of "IRS-Heritage"

The Armenian-Azerbaijani war over Nagorno-Karabakh ended in Armenia's suffering a crushing defeat by the opposing side in 2020. In conclusion, a trilateral statement on a ceasefire and cessation of hostilities in the zone of the Nagorno-Karabakh conflict was signed in Moscow on November 10, 2020.

President of Azerbaijan Ilham Aliyev regarded the conflict as "a part of history" and offered Armenia to sign a peace accord. **However, the Armenian side continues staging military provocations** along the state border and making statements that run counter to initiatives aimed at establishing peace in the South Caucasus region, **defying the agreements reached on a post-war settlement of the conflict.**

Earlier, the author of this article published a story titled "Agony of the 'third' Republic of Armenia", which was based on the following concepts: **the present-day Armenia (the successor of the Dashnak and Soviet republics) was initially established to materialize the "miatsum" idea, i.e. bring together Caucasus Armenians, in particular, those in Yerevan and Karabakh,** under a single state. However, Azerbaijan's resounding victory and its regaining control over Karabakh upset Armenia's "miatsum" plans. Therefore, the existence of the current Armenian state as it is today was rendered useless. Currently, this agonizing state is attempting to take over Karabakh again, using all existing opportunities and resources at hand.

Many authors have agreed with the mentioned conclusions, but sought to provide some political or even subjective grounds for the current situation regarding Karabakh, trying to draw up conspiracy theories about possible beneficiaries or those behind these developments. However, **the main cause is a far cry from any political issues whatsoever and stems from the field of law, more precisely, the constitutional and legal basis of the present-day Armenian statehood.** Speaking in legal terms, we are shifting toward compulsory or fundamental notions, i.e. the basics, from provisional and situational ones. Comprehending these imperative concepts is pivotal for understanding the logic behind the military moves and statements made by Armenian officials. Thus, the preamble of Armenia's Constitution says that its people proclaim this republic, *"taking as a basis the fundamental principles of the Armenian statehood and nationwide objectives enshrined in Armenia's Declaration of Independence dated August 23, 1990"* [2]. Therefore, the mentioned declaration is the legal basis for Armenia's Constitution, which is articulated in Clause 12 of that document. **Meanwhile, the preamble of the Declaration cites its primary source, which is the joint Order of the Supreme Council of the Armenian SSR and the National Council of Nagorno-Karabakh dated December 1, 1989 "On reunification of the Armenian SSR and Nagorno-Karabakh"** [1]. Thus, this document is also a source of legal content for Armenia's Constitution. Evidently, "reunification" of Armenia and Nagorno-Karabakh is the founding principle of the Armenian statehood and a constitutionally approved nationwide goal. This con-



The source of law for the Constitution is the Declaration of Independence of Armenia

The ruling circles of this country described the Armenian Constitution as an example of democracy and law



tent is quite tricky, since one of the documents refers to another one and the latter refers to another document again. As a result, the gist of the matter appears to be hidden and is not out in the open, but it remains unchanged.

Thus, the **1989 order of the Armenian SSR's Supreme Council and the National Council of Nagorno-Karabakh "On reunification of the Armenian SSR and Nagorno-Karabakh" is, in fact, a cornerstone of the modern system of the Armenian constitutional law.** Therefore, Armenian Prime Minister Nikol Pashinyan's remark claiming that "Karabakh is Armenia. Period" was not another political slogan declared at a rally of supporters and Pashinyan was not trying to annoy Azerbaijan. He was merely reiterating the constitutional basis of the current Armenian statehood, which was created and articulated long before he came to power. Therefore, Yerevan's claims to Karabakh or granting it a "special status", made recently by numerous Armenian officials, do not stem from Armenia's revenge-seeking. These are not deliberate attempts to violate the post-war agreements on the conflict settlement or an aspiration to turn history around. This is rather thought-out and committed execution of duties by Armenian officials at all levels of government, in line with their country's constitutional law. Expressing astonishment or indignation over this would be meaningless. Committing military provocations

along the Armenian-Azerbaijani border to unleash a new war aimed at “reunification of Armenia and Karabakh” is not just a private initiative or some red-tapish voluntarism of certain army commanders, but is actually a constitutionally mandated obligation of all Armenian servicemen. In this context, it is particularly relevant to mention the content of the mentioned order “On reunification of the Armenian SSR and Nagorno-Karabakh”, whose preamble contains references to the decisions passed during sessions of the provincial Council of then Nagorno-Karabakh Autonomous Oblast (NKAO) of the Azerbaijan Soviet Socialist Republic, dated February 20, 1988 and July 12, 1988, as well as decisions of the “Congress of authorized representatives of the province’s population dated August 16 and the meeting of the National Council dated October 19, 1989”. This content provides substantial grounds to conclude that **Armenian nationalism and separatism served as a legitimate tool of the USSR’s geopolitics extensively used by the Soviet leadership in its foreign and domestic policies.**

Clause 3 of the Order, which proclaims “reunification”, applies citizenship of the Armenian SSR to the residents of Azerbaijan’s Nagorno-Karabakh Autonomous Oblast (province), while Clause 4 obliges the Armenian authorities “to represent the national interests of the Armenian population of the Shaumyan district and the Getashen sub-region of Northern Artsakh” [3]. This implies that **in addition to NKAO, there were other territories within Azerbaijan that Armenia reserved a so-called ‘right’ to claim. Later, this was confirmed following the invasion of a significant part of Azerbaijan outside NKAO during the Karabakh war of 1988-1994. Thus, the political and legal principles of an aggression against Azerbaijan were not only masterminded by politicians, but also enacted in Armenia, a Soviet republic, as early as two years prior to the USSR’s collapse. Following the Soviet break-up, these principles were included in the basic constitutional law of independent Armenia.** Therefore, it should be clearly understood that the Armenian aggression against Azerbaijan will persist in the future, given

that it is reflected in the regulatory norms of Armenia’s Constitution.

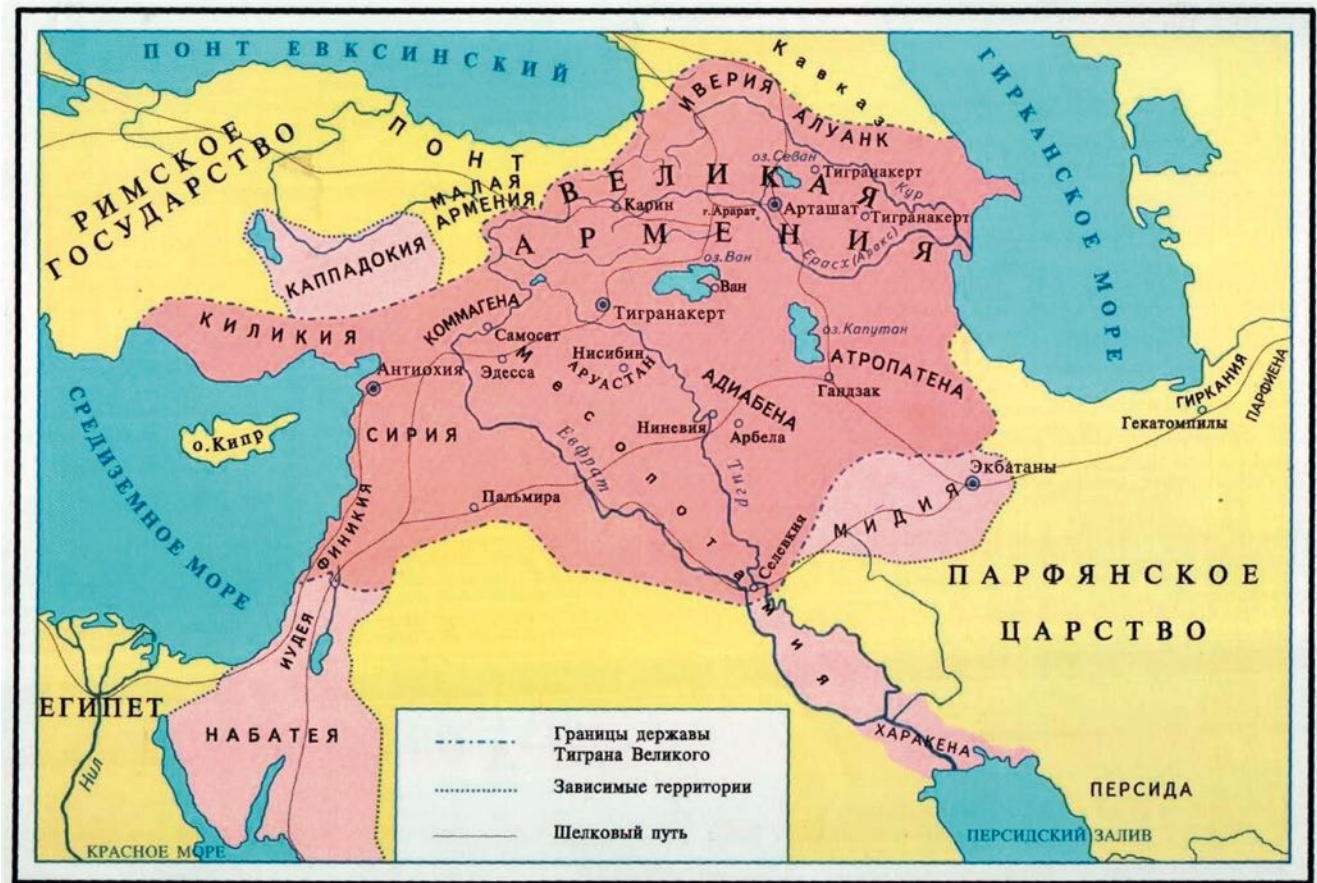
The Constitution and indeed all state symbols of Armenia contain territorial claims to neighboring countries



that it is reflected in the regulatory norms of Armenia’s Constitution.

The above-mentioned facts lead to a conclusion that as long as the current Constitution of the Republic of Armenia exists and it refers to the Declaration of Independence dated August 23, 1990, which, in turn, mentions the 1989 Order of the Supreme Council of the Armenian SSR and the National Council of Nagorno-Karabakh “on reunification”, **Nikol Pashinyan or any other Armenian statesman would never sign a peace deal with Azerbaijan stipulating recognition of the fact that Karabakh is Azerbaijani territory as this would be unconstitutional from the viewpoint of Armenia’s current laws.** Even if such an agreement is signed, the Armenian parliament will not approve it, rejecting it on the grounds that it violates the country’s Constitution. Armenia would put forward the same stance regarding the issue of delineation of the Armenian-Azerbaijani border if the demarcation line coincides with the administrative border between the two former Soviet republics based on the 1975 maps, since this would also de-facto amount to unrevealed Armenian “renunciation” of Karabakh. The “third” Republic of Armenia cannot exist formally and legally without Karabakh or claims to this territory. Armenia’s constitutional (state) law absolutely rules out a legal disclaimer or withdrawal of political claims to Karabakh. The country’s constitution may be repeatedly rewritten, but

Armenian politicians also see the maps of a mythical “Great Armenia” as a legal source for the Constitution



rewriting the Declaration of Independence is impossible as this would amount to voluntary relinquishing the previously proclaimed sovereignty or altering the country's sovereignty as a subject of international law. It is naive to presume that Russia, France, the U.S., Britain, China or any other country would manage to prompt the Armenians to do so politically or diplomatically, unless they make this decision on their own. President Ilham Aliyev, who is proficient in international law, perfectly understands this. Therefore, the President has consistently stressed the need to be ready for a new war while offering Armenia an olive branch of peace.

What other surprises are hidden in present-day Armenia's constitutional law? Let's refer to the text of Armenia's Declaration of Independence dated August 23, 1990. As mentioned above, it indicates "the fundamental principles of the Armenian statehood and nationwide objectives". The overall list of declared features and attributes of statehood inherent to any independent country, in line with the basic principles and norms of international law, includes a clause (No.11)

that goes beyond the general context of international law. It says "the Republic of Armenia supports international recognition of the 1915 genocide of Armenians committed in Ottoman Turkey and western Armenia". This brief political declaration raises at least three questions for any unbiased and educated reader.

The first question concerns the existence of the geographic and political term "western Armenia". In fact, there is no such geographic name on any map. Such a geographic area has not been marked on any political map of the world. Nevertheless, **Armenian ideologists and politicians use the term while referring to the north-eastern part of the present-day Republic of Turkey,** which was once part of the Russian Empire (Kars, Ardagan, Artvin) or it was occupied by the Russian armed forces during World War I in 1916-1917 (Van, Trabzon, Erzurum, Khakkari). In their opinion, these regions should belong to Armenia or Armenians. Thus, **the fact that Armenia's Declaration of Independence cited "western Armenia" as a purely historical-politological definition represents outright territorial claims to**

Modern Armenian politicians constantly declare that they are guided not only by the modern Constitution, but also by the alleged “Armenian laws” of the 18-19th centuries, while admitting that there was no Armenian state at all then



Turkey. Considering that these claims have also been incorporated in its constitutional and state legal system, Armenia’s backing down from these allegations is constitutionally unfeasible.

The second question concerns the legitimacy of using the legal term “genocide” with regard to the 1915 developments that occurred in the Ottoman Empire. As is known, the term “genocide” as a crime against humanity was introduced to international and legal practice by the Convention on the Prevention and Punishment of the Crime of Genocide, as well as the UN General Assembly resolution 260 A (III) that was passed in Paris on December 9, 1948 and enacted on January 12, 1951.

The present-day world legal practice does not envisage so-called “retroactive law”, which would allow applying newly passed legislation to the developments that occurred before it went into effect. The developments that happened in a country that ceased to exist 28 years prior to the emergence of a relevant international piece of legislation cannot be referenced in this regard whatsoever. Thus, Armenia, which is following its current constitutional regulations, has designated activity aimed at violating the premise of international law as its nationwide goal.

The third question deals with the phraseological expression “international recognition of the 1915 genocide of Armenians in Ottoman Turkey and western Armenia” as a term outlining the nationwide objective of the modern Armenian state, formally translated into Russian and English and posted on the Armenian government’s website (www.gov.am). It provides for **possibly am-**

biguous interpretation of the matter, i.e. refers to recognition of the “genocide of Armenians in Ottoman Turkey and western Armenia” either as a single political entity or two different facts treated separately.

Certainly, these questions should be answered by Armenian leaders or experts dealing with the country’s constitutional law (for example, former president Levon Ter-Petrosyan, who undersigned Armenia’s Declaration of Independence). However, **given a host of documents that form the Republic of Armenia’s Constitution today, a conclusion may be made that its content evidently cites and defines specific political and**

legal principles that put forward political and territorial claims to Azerbaijan and Turkey. Such a constitutional nature of the present-day Armenian state was outlined long before the emergence of the Republic of Armenia on the world political map. Only two scenarios for the course of developments would allow changing the current situation. One of these is a drastic constitutional reform to be carried out by Nikol Pashinyan’s government to implement a shift toward “a fourth” Republic of Armenia without mentioning Karabakh in its constitutional documents. The other option is a new war with Azerbaijan that would cause similar political and legal consequences, i.e. dismantling of the “third” Republic of Armenia, as well as significant human casualties and material loss. There is absolutely no other alternative for a final solution to the Karabakh issue in the context of the internationally recognized borders of states. It is Yerevan’s choice. ✨

References :

1. Декларация о независимости Армении // <https://www.gov.am/ru/independence/>
2. Конституция Республики Армения (с изменениями) // https://www.gov.am/u_files/file/Constitution/
3. Совместное Постановление Верховного совета Армянской ССР и Национального совета Нагорного Карабаха от 1 декабря 1989 года «О воссоединении Армянской ССР и Нагорного Карабаха» // <http://theanalyticon.com/?p=13890&lang=ru>