

THE SPEAKER

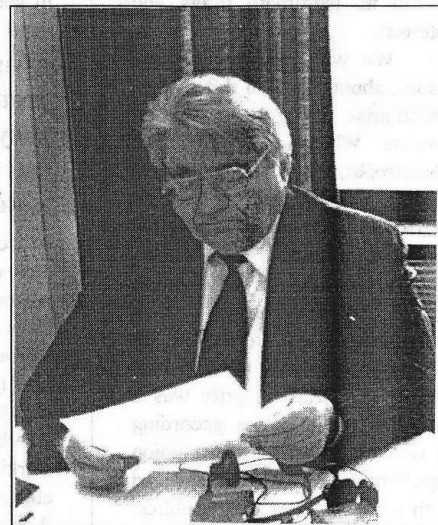
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Issues of International Law Relevant to the Resolution of the Nagorno Karabagh Conflict

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Why are issues of international law important to the resolution of problems?

As part of my Armenian studies, I was working on the history of navigation of Armenians, and I came across the epitaph of an Armenian who died on the Philippine Islands in the 18th century; it read as follows: "You who pass by, tell me what is happening in my homeland; is she free?"

Such longing for and interest in justice and the destiny of the motherland our people have felt through the centuries. It is difficult to recall any other country in the history of mankind that has seen as much suffering, injustice, war, occupation—or, as they are called today, violation of territorial integrity—than Armenia. And it is not coincidental that the Armenian people, the Armenian state whenever it existed, has given special attention to international law. One of my voluminous works, which I am now preparing to pub-

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lish, concerns precisely international relations, Armenia's place in the state system and its contribution to the development of international law. I must say that I have recorded great Armenian contributions in this area throughout history. But now, during the past 500 years, when Armenia was without statehood, it became the object of occupation, and genocide; it was reduced from being a subject of international law to an object. Today, as a full member of the international community, we have problems which must be resolved on the basis of international law. Thus, we demonstrate great interest in and attach great hopes to international law.

Nevertheless, one must not overestimate the value of the role and the significance of international law—that of one of mankind's greatest accomplishments. One must be able to wisely use this law and know how to use it to defend one's own interests.

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Today, many in Armenia are deeply concerned with the news received from Lisbon. Some view it as a great tragedy; others consider it a great injustice. Although the latter view is correct, there is no need to make a tragedy out of it. It is by no means the end of the world. The people of Karabagh is not that segment of the Armenian nation which cannot defend its legitimate rights and interests.

We will talk about those issues, about the legal difficulties, which arise during the negotiating process. When in 1988, during *perestroika*, the Artsakh problem erupted once again (it had begun in 1918), it was intentionally led toward an impasse. Two principles were immediately set forth to collide head-on: self-determination and territorial integrity. At that time, in the Soviet Union, territorial integrity was a constitutional premise according to which the borders of the union republics could only be changed with the consent of the republics. A similar provision, as I recall, was also put forward by the far-sighted Azerbaijani leaders. And the father of *perestroika*, Mikhail Gorbachev and his administration intentionally led the issue to the impasse. Unfortunately, until today, the issue is still deadlocked.

The impasse was created

artificially. In reality, under neither the former Soviet Union's constitutional system nor contemporary international law are these two principles in contradiction. As to who is leading the issue to an impasse—that is clear: those forces which are not interested in a just solution to the conflict. They are many. In addition to the country that has a direct interest in keeping those territories populated by other nationalities under

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its control, other countries have also emerged which for various reasons do not want any change. Here, one may mention the oil interest, religion, Islamic solidarity (although not all Islamic countries unequivocally support Azerbaijan on this matter), and Turkic solidarity. With its very complex geographical position, Armenia finds itself in isolation. Those forces, those states, which one would think should extend a hand to Armenia, are, for various reasons, not doing so.

Regretfully I must note, that the Christian states of Europe have never manifested religious solidarity. Armenians through

their own history already know that European states have put Armenia's interests on the altar of sacrifice for oil interests. It is sufficient to read the works of Winston Churchill or Lloyd George, who have clearly said that what was done to Armenians in 1918-1920 was a disgrace, and a whole nation was sacrificed. Unfortunately, that still continues, despite announcements everywhere about the supremacy of law and the beginning of a new era where the rule of law and justice will reign. Alas, that is not the case.

Under these conditions, naturally, it is extremely difficult for Armenians to defend their interests. But I repeat, right remains right, justice remains justice; they can be encroached, but can not be eliminated. There is the international community, and there are various political means, which I believe, enable the defense of the rights of the Armenian people.

The principles of territorial integrity and self-determination were formulated relatively recently. Territorial integrity as a principle was accepted for the first time, in the statute of the League of Nations. Until then, references were made to legitimacy, legal domination. But those were legitimacies of a totally

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Yuri Barsegov was born in Tbilisi in 1925. He has received his higher education from Moscow Institute of International Relations in 1950. He has also completed his doctoral degree in the same institute. After graduation, he has worked in publishing until his assumption the position of the head of the Department for Conferences and Services at the United Nations secretariat, where he has worked from 1962-68. From 1968 to 1972 he has taught at the Academy of Sciences in Moscow. In 1972, he has returned to the UN as assistant to the Undersecretary General for legal affairs. Mr. Barsegov has been a member of several voluminous works, dozens of pamphlets, and hundreds of articles.

different nature. Let's say if the king or the feudal lord controlled a territory, that territory was his property. He could donate, sell, or gamble it away without regard to the will of the people. The people were simply part of the land. After the First World War, a new era dawned, and new currents emerged. And during this time the principle of territorial integrity was created.

However, even the League of Nations, while promoting and establishing this principle, has noted that this principle is to protect the state from external dangers. The League of Nations affirmed that the principle of territorial integrity can not oppose the will of the population. Already at that time, through the efforts of US President Woodrow Wilson, the socialist parties of Europe, and Lenin, that principle was already in force in some countries; thereafter it was accepted as a universal right within the UN's bylaws. These two principles, although they are interrelated, refer to legal relations from completely different perspectives. The principle of self-determination refers to the interrelationship of a state and a people. The state must accept, must be accountable to the people's will. The loftiest basis of the right to territory is the acquiescence of the governed. Various important people in different countries have expressed this opinion throughout history. This idea took form in the concept of self-determination, according to which all peoples always have the right to determine their own destiny.

The conflict between these two principles continues today. Unfortunately, they were in opposition again in the Lisbon statement of OSCE chairman in office Flavio Cotti. It is a fact that the

OSCE has adopted the well-known basic premises of the declaration of international rights of the UN's Bylaws, wherein these same principles are reinforced. The OSCE has also declared that that organization has adopted 10 principles, one of which is a people's right to self-determination. And, as with the UN, so within the OSCE structure, it is definitely and unequivocally set forth that all these premises are equal, and similar in importance, and each has its place, and no single principle may oppose another.

This concern then has predicated the Karabagh negotiations until today. If we were to study the OSCE decisions (about the call for a Minsk Conference, about the creation of a Minsk Group), those

“The principle of territorial integrity refers to the relationships of states; the principle of self-determination refers to the interrelationship of a state and a people.”

documents clearly and simply state that the negotiations must be based on the UN bylaws, UN and OSCE principles. Within international law, there is no main principle. The Azerbaijani delegation constantly repeats that there is some principle which holds primacy. In reality, there is no such thing. Those assertions are simply not serious. It is clearly stated that it is not possible to subordinate a people's right to self-determination, to change its borders for the interests of an undesirable state, especially when that state has no legal foundation upon which to claim the right to that territory.

Is there an international agreement in which the border between Armenia and Azerbaijan

has been defined? For years, there has been a territorial dispute, recognized as such by both pre-soviet and soviet Azerbaijan and Armenia, as well as the Russian Soviet Socialist Republic, the Paris Peace Conference, and the League of Nations. After the creation of the Soviet regime, the dispute was transferred to a somewhat different plane, nevertheless it so happened that Azerbaijan voluntarily withdrew its intentions towards the three regions of Nakhichevan, Zangezur and Karabakh. After that, it attempted to change its position, and accepted that the first two belong to Armenia, while for Karabakh, it proposed complete and free self-determination. Complete means everything up to secession from a state. That was followed by the Caucasus Bureau's famous decision which both Armenia and Azerbaijan rejected.

That is all of it. So, on what does Azerbaijan base its intentions towards Karabakh, or its declarations in which Azerbaijan's territorial integrity includes Karabakh as a territory legally belonging to Azerbaijan? No one can answer this question.

After Lisbon, the Azerbaijani side has presented the issue as if to say that Armenia is coming forward in opposition to the territorial integrity of all states, and that is dangerous. In reality, Armenia accepts the principle of territorial integrity as a general premise of international right, but it can not accept that that principle can be applied in the case of Karabakh, specifically. That is already a great concession on Armenia's part, if we were to compare Armenia's and Azerbaijan's rights regarding Karabakh. Armenia does not insist that Karabakh come under its jurisdiction, proposing rather that

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Karabagh determine its own status. It must have the opportunity to decide for itself. And this proposal is not new; it was set forth in the 19th century even, as was noted earlier, by Azerbaijan itself.

What happened in Lisbon? The premise had been set that the issue must be resolved solely through peaceful means, based on the principles of international law, the OSCE and the UN. In fact, this part of the text had at one time been agreed to, by Azerbaijan. The provision is a very flexible formulation, which by the way was accepted by Russia, as well, thus putting an end to the butchery in Chechnya. Such a formulation allows each of the sides to continue to hope that in the future, the issue will be resolved peacefully, in a manner that is to its own liking. Specifically, such a statement allows the Chechens to think that they have achieved what they wanted, while, at the same time, Russia can say that Chechnya continues to remain within its jurisdiction. After that, it is up to the politicians to find such a wise and compromising solution which will finally bring about not simply a de facto, but also a de jure peace. Just such a formulation was also accepted by the negotiating sides in the Minsk Group, Karabakh among them. However, after some time, Azerbaijan's appetite grew. In my opinion, someone may have pointed out to Azerbaijan that in the case of Abkhazia or Dniester, the matter of territorial integrity has been noted, but not so in the case of Karabakh. On the other hand, it goes without saying that the hardening of Azerbaijan's position has its basis in the politics of oil. The leadership of Azerbaijan has often publicly announced that it hopes that those countries which receive the right to develop the



Caspian's oil—which may not even legally belong to Azerbaijan—will also help Azerbaijan find ways to resolve the Karabakh conflict. This, then, is the main cause of the current situation. Although the documents note that the mediators must be neutral, but after every new agreement Azerbaijan becomes hopeful that it can dictate to the mediators. And during the negotiations they openly demand, "Why don't you act, why don't you talk about territorial integrity? Don't you see the signals coming from Baku?" And this pressure eventually led to the situation that emerged during the last negotiations.

Nagorno Karabagh has always insisted that the issue of status be discussed. They say this is the most stable path to peace. The co-chairmen were not supportive of this idea, indicating that Azerbaijan does not want such discussion. Instead, Azerbaijan wanted to discuss other issues, such as Shushi, Lachin. According to Azerbaijan, not only must the Azeri population return to Shushi, to which Nagorno Karabagh does not object, but that Nagorno Karabagh must become a bi-communal entity, as is the case in Cyprus. And the Lachin issue is referred to not as a solution to the issue of preserving a permanent link between Armenia and Nagorno Karabagh (in the maps of the

1920s, Nagorno Karabagh and Armenia are not cut off from each other), but as an attempt to keep Nagorno Karabagh as an enclave. And all this, even when Nagorno Karabagh has not been an enclave, either historically or geographically

Thus, the introduction of these issues resulted in a postponement of the discussion of the main issue—the issue of Karabakh's status, which after all has never become a subject of discussion. This fact was also mentioned in the special declaration made by the President of Armenia at the Lisbon Summit. Nevertheless, during the last session, a document appeared, which proposed Specifically, it was proposed that Azerbaijan's territorial integrity, inclusive of Nagorno Karabagh, be accepted, that Nagorno Karabagh's self-determination be realized within Azerbaijan, and there was also reference to security issues.

This formula may have some merits. Let's say there are no marginal questions, etc. But the biggest problem with this suggested formula is that the self-determination as proposed is a self-determination without self-determination. This, in essence, demands the revision of those principles of the Minsk Conference, which until then were

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accepted by all parties. This is illegal. The principle of the neutrality of mediators has been violated, because they did not have the right to present similar ideas, and to recommend to the chairman-in-office the principles which were circulated during the last days of negotiations. This not only harms the negotiations, since it leads one of the parties to a military solution, but it also harms that very young organization, surrounding which there has been much hope. When this newly formed organization openly revisits its basic principles, makes the principle of self-determination conditional on the principle of territorial integrity, reexamines its own and UN's principles, and the provisions of international law, that raises serious concerns among those who want to see this organization strengthen and prosper.

During the Karabakh negotiation process, many other issues of international law have come up.

Specifically such questions as the issue of the borders of Nagorno Karabagh, and the legality of the declaration of Nagorno Karabagh's independence. After all, Nagorno Karabagh did declare its independence from Azerbaijan in strict compliance with Soviet requirements.

There is a constant discussion about providing a political solution to the conflict. This sounds good. But the term "political solution" in international practice and in the literature has a dual meaning. It is referred to as an alternative to a military or forcible solution. We have no objection to this interpretation. With the other interpretation, politics is contradicted with law. In other words, an attempt is made not to provide a legal solution but a political solution. To this, we will, doubtless, never agree. Politics must remain within the limits of law.

International law is on our side. This means that the accom-

plishments of human civilization are on our side. It is true that oil interests are against us. I want to believe that at the end of this millennium, it will be shameful to once again sacrifice our people and then shed tears and say, using Churchill's words, that the tragedy of the Armenian people is that their blood is lighter than oil. I believe that, in our time, such an approach is impossible. This does not mean that we don't have other means—other than international law which means very little for today's political leaders. Not at all. If we choose the right legal position, and find the right means for the solution of problems, if we use the political means appropriately, I believe we can defend our interests. I think Armenian diplomacy, young as it is, is beginning to master those methods which are the preconditions for success.

Questions and Answers

- Will the peaceful resolution of the Chechen issue contribute to the resolution of the Nagorno Karabagh conflict, or conversely, will it lead the Russians to adopt an anti-Armenian policy?

- I believe that any legal solution can be beneficial, and become a good precedent. I think that this path which Russia has taken, is the right path for the resolution of Chechen problem. The Azerbaijani leadership has spoken against the Russian policy, which they call double standards, arguing that they have adopted one policy for Chechnya and another for Nagorno Karabagh. According to the Azerbaijani president, if Russia in the case of Chechnya insists on its territorial integrity, it should also support Azerbaijan's territorial integrity. However, each conflict has its own characteristics. The Chechen formula, which Azerbaijan believes should be accepted, is one model which Azerbaijan, followed by the European governments, has rejected in Lisbon. The Chechen formula entails a solution based on international law. We also want the same; to apply the international law. This does not please Azerbaijan. And after all this they talk about double standards. On the contrary,

their demand directly supports a military solution, even when Russia has declined to use military force in Chechnya.

- To bring Armenia and Nagorno Karabagh out of isolation why don't we actively negotiate with Greece, Bulgaria and Cyprus. Aren't they our natural allies?

- Let me give you a short response. In politics, two times two, alas, is not four.

- Is there an option or possibility to view the issue from the perspective of colonialism?

- It is a good question. Revisionists, who attempt to free themselves from the undesirable right of self-determination, today insist that supposedly, that principle has been created for colonial people. That is an outright lie. In the documents, this is clearly presented as a right of all the people. Sometimes there is also reference to people under colonial or other forms of foreign domination.

- It is indisputable that in the world of big politics, it is the superpowers which have a decisive say. Considering global geopolitical trends, do you consider it possible, nevertheless, that the international community will agree

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to border changes?

- Regretfully, today the general inclination is towards activation of neoimperialism. This is strictly manifested in the Stalinist republics of the former Soviet Union, which were able to acquire the territories of others, and today are speaking of UN principles and against aggressive separatism. I think, priority must be given to the fight against miniimperialism.

- *Peacekeeping forces, it appears, can give some solution to the problem. What can you say about the possibility of an Azerbaijani military offensive this coming spring?*

- Peacekeeping forces, needless to say, are helpful. But they are deployed in places where the peacekeepers will not be shot. And it is clearly stated; first reach an agreement among yourselves, sign the agreement, and only then, will we deploy the peacekeepers. This is the procedure.

As to the possibility of a spring offensive, I don't think that Azerbaijan will make such a move now. Although there is active military preparation going on, together with Turkish military assistance. Relying on its own forces alone, Azerbaijan will abstain from any attacks for now. I also don't think that it will attempt to involve other forces, since that will upset the relative military balance which has been established in the region.

- *What do you think about the prospect of returning to a zero option?*

- Honestly speaking, I am in favor of not distancing the events; peace from the solution of the main problem. Otherwise, one may lose certain opportunities. The situation today is such that it does not suit Azerbaijan either to postpone the solution of the problem. For us, the consequences of the Azerbaijani aggression, in a certain sense are advantageous. Azerbaijan should also draw the necessary conclusions. If she wants to receive petrodollars, then she should be interested in a speedy solution.

- *Our diplomats are declaring that they are prepared to make compromises. What kind of compromises are being considered?*

- Honestly, those diplomats with whom I have spoken, I wouldn't say that they are fullheartedly prepared to make compromises. But any mutual compromise, is already a compromise. It depends what kind of compromises we are talking about. I myself think that we must look for a mutually acceptable solution based on principles. I think, one of the bases for the solution should be that Armenians can not be returned to the control of a country which has committed genocide against those people. We can not forget the massacres of Shushi of 1919-1920, when 20,000 people were murdered; we remember Kirovabat, Shamakhi, Baku and Sumgait. There is a principle in international law which states that a state which commits genocide against its own population cannot govern that population.

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