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***TO THE ISSUE OF THE STATUS OF THE
NAGORNO-KARABAKH***

For more than ten years now, Azerbaijan carries out an explicit policy of international isolation of Armenia. Azerbaijani diplomats quite successfully realize an anti-Armenian propaganda in international organizations with the aim of getting the support of the international community for the resolution of the Nagorno-Karabakh conflict according to their own interests. In general, it should be noted that year by year Azerbaijan acquires more and more allies in international organizations. In these conditions, the Armenian Foreign Ministry should add effectiveness to its work in counteracting the anti-Armenian propaganda of Azerbaijan.

The issue of the effectiveness of the work of Armenian diplomats gets a particular significance with respect to the unilateral declaration of the independence of Kosovo. Such a decision got the support of the United States and the EU Member States. The latter circumstance requires the Armenian authorities the conduct of a carefully thought and designed foreign policy with the aim of creating prerequisites for the application of the Kosovo scenario in the resolution of the issue of Nagorno-Karabakh status.

In recent years the Council of Europe has become a new podium for the anti-Armenian propaganda of the Azerbaijani authorities. As evidence to this could serve the recent statements on the Nagorno-Karabakh conflict made by Terry Davis,

the Secretary-General of the Council of Europe. Thus, on June 25, in response to the Armenian Reporter's request for a comment on how the Kosovo case will impact Nagorno-Karabakh, the Secretary-General Terry Davis stressed: "I will be surprised if the people of Nagorno-Karabakh will not try to use the decision about Kosovo. People in Nagorno-Karabakh will try to use the situation in Kosovo as a precedent, but I think they will be disappointed." So, Terry Davis rejects the possibility of the application of the Kosovo scenario to the case of Nagorno-Karabakh.

Indeed, one of the assurances of the Western countries is that the Kosovo decision will not create a precedent for each conflict has its own specificities¹. However, now when no one has yet discussed the issue of the application of the Kosovo scenario to Nagorno-Karabakh, Terry Davis already tries to dismiss this issue and by doing so to some extent predetermines the ongoing negotiations on the Nagorno Karabakh conflict, which is contrary to the principle of fair mediation.

When asked by the Armenian Reporter what diplomatic measures Armenia is undertaking to ensure that European bureaucrats refrain from such statements, the Armenian Foreign Minister V. Oskanian said, "Lately, the secretary general of the Council of Europe has made statements, carelessly and unconsciously, or perhaps intentionally, which

do not correspond with reality. We have presented a written letter of protest. I have put this issue before the ambassadors that are part of the Ago group and requested that they, on my behalf relay this message to the secretary general. Terry Davis' announcements are unacceptable and in my estimation are careless and do not correspond to today's terminology nor to the current process."²

It is, however, obvious that by such "measures" only it is impossible to create prerequisites for a successful resolution of the issue of the Nagorno-Karabakh status. This objective requires the conduct of a thoughtful and task-oriented foreign policy. In this respect, it seems already today that Armenia should make every effort to make it possible for an impartial international discussion of the possibility of application of the Kosovo precedent to the Karabakh conflict. Of course, the discussion should be preceded by a comprehensive analysis and study of the Kosovo conflict and the clarification of the issue of whether there are really any differences between the Kosovo and the Nagorno-Karabakh conflicts, which is implied by the statement of Terry Davis.

As it is known, the conflict between the Serbs and the Albanians has a long history and the relations between them have been filled with blood and hatred. Probably the only thing that both the Serbs and the Albanians agree to is the most recent cause of the conflict, namely the adoption of the Constitution of Yugoslavia of 1974. President Tito of Yugoslavia, a Croatian by origin, has been always concerned about the excessive influence of the Serbs, who were the majority in Yugoslavia. Under the Constitution of 1974 the autonomous province of Kosovo has gained a status equal to those of the Federal Republics. The authorities of Serbia (Kosovo was formally part of the latter) could not adopt any law concerning the interests of Kosovo without its agreement. Kosovo had its own flag and

constitution. The Serbs believe that the Constitution of 1974 violated their political, historical and cultural rights. The Albanians' point of view is just the opposite. The Constitution deprived them of their status of "main people" of the province, which would give them the right to create the Republic of Kosovo, and therefore, the right to secession.

Shortly after Tito's death in 1980, disturbances in Kosovo set the Albanians and the Serbs on a collision course and also polarized the country politically. Nevertheless, when Yugoslavia began to disintegrate in 1991, and as it fell into four years of warfare, Kosovo remained relatively calm. Only after the Dayton peace, in late 1995, did Kosovo's Albanians opt for a militant policy toward the Serbs. Meanwhile Serbs escalated their oppression of the local population. International diplomatic intervention failed to defuse tensions, and ultimately, NATO initiated military action to stop Serbia. NATO prevailed in the seventy-eight day engagement in 1999, Serbia's forces and administration withdrew and Kosovo was put under UN protection³.

The dispute over Nagorno-Karabakh has its roots far in the past as well⁴. The violent inclusion of Nagorno-Karabakh in structure of Azerbaijan by the Soviet authorities in the beginning of XX century was the historical reason of the military and political conflict emerged between Nagorno-Karabakh and Azerbaijan in 1988. In the process of the collapse of the USSR and formation of the new independent states this conflict gradually developed into a real war between the parties. Only, On May 5, 1994 under the mediation of Russia, Kirgizia, and the CIS Inter-Parliament Assembly in the capital of Kirgizia Bishkek Azerbaijan, Nagorno-Karabakh, and Armenia signed the protocol, which entered the history of the Karabakh conflict settlement as the Bishkek Protocol on base of which the agreement on cease-fire was achieved⁵.

The main issue underlying these conflicts is

the final status of Kosovo and Nagorno-Karabakh, which have remained territorially a part of Serbia (Kosovo) and Azerbaijan (Nagorno-Karabakh). Kosovo and Karabakh authorities seek for independence, while the Governments of Serbia and Azerbaijan want to recover their authority over the conflict territories. All parties to the conflicts try to get the support of the international community for the resolution of the conflicts according to their own interests.

In support for their positions each of the parties to the both conflicts put forward legal arguments as well. The following discussion illustrates that all those arguments reflect diverse understanding of the scope of the right of self-determination⁶ under international law.

It is generally accepted that the right of self-determination, which has evolved from the principle of "equal rights and self-determination of peoples" envisaged by UN Charter (Articles 1(2) and 55), refers to (a) peoples organized as states, and (b) the inhabitants of Non-Self-Governing and Trust Territories. As to the scholars the drafting history suggests that at the time the Charter was drafted, either the Kosovo Albanians, or Karabakh Armenians would not have been regarded as a people with a right to self-determination".⁷

However, it is also generally accepted that the content of the right of self-determination has evolved since then. But there is no consensus on the issue whether the right has continued to evolve to the extent that groups within independent states, like the Kosovo Albanians or Karabakh Armenians, have the right to self-determination.

The research of the corresponding sources of international law, as well as of the states' practice of implementation of the provisions of those sources show that at least for the purposes of external self-determination there has been no development of the concept of a people: states regard the right to exter-

nal self-determination as a right for the entire population of the state.⁸

This is the main argument of the Serbian and Azerbaijani Governments. The Kosovo Albanians and Nagorno-Karabakh Armenians, in their turn, to support their claim of self-determination refer to the 1970 Declaration on the Principles of International Law Governing Friendly Relations and Co-operation between States, annexed to General Assembly Resolution 2625 (XXV). It affirms the right of "all" peoples to self determination. According to the paragraph seven of the Declaration nothing in the Declaration "shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color." The ordinary meaning, context and drafting history suggest that the territorial integrity of a state will be protected if it has a representative system of government. In the absence of such government, it opens up the possibility of secession. Consequently "a group which is not synonymous with the entire population of the state may be regarded as a people with a right to self-determination". Although some scholars have argued that the drafting history reveals that there was a lack of consensus on the inclusion of this paragraph which suggests that it does not represent a codification of international law but at most an attempt to progressively develop the law, and that it subsequently means that the extent to which there is a legal right to self-determination in the circumstances outlined in paragraph seven depends on whether subsequent state practice complies with this provision, and that there is no consistent state practice in that regard, it can be argued that the consent

of the US and most of the EU states to the independence of Kosovo provides such a practice.

Thus the recognition of the independence of Kosovo, without the consent of Serbia, leads to creation of a norm of customary international law, according to which the absence of a representative

system of government opens up the possibility of secession for the “people” under the jurisdiction of the respective state. The Armenian diplomats should take advantage of a situation, proving that there are no legal differences between the Nagorno-Karabakh and Kosovo conflicts.

¹ Source – <http://usinfo.state.gov/usinfo/Archive/2007/Apr/24-469491.html>

² Hakobyan T. *For Azerbaijan, the Council of Europe is a Podium for Anti-Armenian Propaganda*. Armenian Reporter [serial online]. July 14, 2007: A9. Available from: ProQuest Information and Learning, Ann Arbor, Mi. Accessed August 30, 2007. Document ID: 1318042321

³ Rogel C. *Kosovo: Where It All Began*. International Journal of Politics, Culture and Society. Vol. 17. No. 1. Fall 2003. P. 167–182.

⁴ See The Karabakh file: documents and facts on the region of Mountainous Karabakh, 1918–1988 / Gerald J. Libaridian, editor. Cambridge, Mass.: Zoryan Institute for Contemporary Armenian Research & Documentation, 1988.

⁵ See the website of the Ministry of Foreign Affairs of Nagorno Karabakh Republic. www.nkr.am

⁶ In the theory and practice of international law the concepts of “external self-determination” and “internal self-determination” are distinct. External self-determination concerns the right to determine a territory’s international status while internal self-determination concerns the right to determine its form of government and policies.

⁷ Quane H. *A Right to Self-Determination for the Kosovo Albanians?* Leiden Journal of International Law. Vol. 13. 2000. P. 220. For a fuller discussion of the relevant Charter articles, see H. Quane, *The United Nations and the Evolving Right to Self-Determination*, 47 ICLQ 537, at 539–547 (1998).

⁸ *Ibid.* P. 220–222.