Հարգելի՛ ընթերցող.

ԵՊՀ հրատարակչությունը, չհետապնդելով որևէ եկամուտ, ԵՊՀ հայագիտական հետազոտությունների ինստիտուտի համացանցային կայքերում ներկայացնում է իր հայագիտական հրատարակությունները: Գիրքը այլ համացանցային կայքերում տեղադրելու համար պետք է ստանալ հրատարակչության համապատասխան թույլտվությունը և նշել անհրաժեշտ տվյալները:

THE KARABAKH CONFLICT

REFUGEES, TERRITORIES, SECURITY

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The Karabakh conflict
Refugees, Territories, Security

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This paper has been developed as a reference for the experts involved in the process of settlement of the Karabakh conflict in various institutions of UN, OSCE, NATO, CIS and EU. It may also become a useful reference for the experts and politicians dealing with the Karabakh issue in general.

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INTRODUCTION

The Karabakh issue, a conflict born of the desire to realize the right for collective self-rule and governing of one's own fate, having passed the stage of military defense of the said right, can be settled only by continuing the human (***humanitarian***) dimension. The solution to the Karabakh problem within the humanitarian dimension must be considered as a main goal, which should be sought when the other - military and socioeconomic - aspects of the problem, which are in direct and exceptional dependence from the humanitarian aspect of the conflict, are derivative factors. The Karabakh conflict (*the current phase of which started with a humanitarian disaster, the mass-killings and genocide of Armenians in Baku and Sumgait, as well as the ethnic cleansings, displacement, and deportation of 500,000 Armenian citizens of the Azerbaijani SSR between 1988 and 1990*) must first assume the task of reestablishing justice and arranging for reparations for the emotional/moral and material damage caused to individuals. In the activity of settling the conflict, all the parties involved must take into consideration the duty to completely restore justice for those who have been most impacted by the conflict. As such, the conflict that started with a humanitarian disaster can be resolved within the humanitarian

dimension, and according to the founding principles and aims of international law[1].

The current circumstances that are shaped by concrete military-political and socioeconomic components require a definition and elaboration of the term "***humanitarian dimension***". From the military-political and socioeconomic perspective quite a stable reality has been shaped (*in other words, between the two parties to the conflict, the Nagorno Karabakh Republic (NKR) and the Republic of Azerbaijan military-political and moreover socio-economic interactions are practically absent*), which, however, contains a certain element of ***dead-end*** affecting the future dynamic of the conflict. The exit from this state can be achieved by overcoming this dead-end, i.e. by moving forward with the initiatives targeting the humanitarian dimension of the Karabakh conflict.

At the same time it is necessary to make it clear that on the level of heads of states and external political agencies, the interactions between the Republic of Armenia and the Republic of Azerbaijan, which are of a sporadic nature, cannot contain a comprehensive potential for the conflict settlement; moreover, the given thesis is particularly characteristic and attributive to the humanitarian aspect of the conflict because:

[1] *According to the UN Charter, Article 1, "The Purposes of the United Nations are: 1. To maintain international peace and security ... to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace..."*

1. The Republic of Armenia and the Republic of Azerbaijan can in one way or another reach an agreement around military-political issues, which may have a decisive weight for the Nagorno Karabakh Republic. However, from the strictly military perspective, the given thought loosens due to absolute limitations, because in reality the frontline is mainly secured by the Defense Army of the Nagorno Karabakh Republic.

2. The Republic of Armenia and the Republic of Azerbaijan can arrive to certain agreements in the socioeconomic direction and that would have a principal significance for the future activities of the Nagorno Karabakh Republic, but:

3. The Republic of Armenia and the Republic of Azerbaijan cannot agree on the humanitarian and other aspects of the conflict over the territories that lie within the Nagorno Karabakh Republic (in particular, the Republic of Armenia cannot assume responsibility for the settlement of disputes between the Nagorno Karabakh Republic and the Republic of Azerbaijan, including the consequences of the conflict outside of the borders of Armenia).

In the first place, the humanitarian aspects of the conflict are the issues of the refugees and forced migrants, the issue of citizenship of those individuals and correspondingly the concrete individual's relationship of judicial and political rights to this or that subject of international law, represented by a self-ruling government. The given

issue is of unique importance not only because we are talking about tens and hundreds of thousands of people who have been rendered the main victims of the conflict, but also because the extent of the possible settlement of the conflict in the future is subject to the question of what their fate will be and how their rights for normal and secure living conditions are to be secured.

When the issue of non-spreading of the agreements on humanitarian measurements between the Republic of Armenia and the Republic of Azerbaijan is discussed, or even more, about non-spreading of the decisions based on other subjects in international law regarding the activities of the Nagorno Karabakh Republic, then the unique nature of the individual's judicial-political relationship to this or that government is taken into account. If the individual is a refugee, then the given judicial-political tie is between the government of the country that he/she fled and the government that has accepted him/her. If the individual has been forcefully displaced, then the given judicial-political tie is with the government of the country within the territory of which he/she has been displaced, and if the individual is a citizen, then the given judicial-political tie is solely with the government of the country of his/her citizenship.

In all three cases, especially in the case when people in all categories (*refugees, forced migrants, citizens*) are talked about in relation to the conflict, it is not difficult to be convinced that the main

purpose of defining categories is the application of the protection potential of those subjects of international law with which the said individual has judicial-political ties. In other words, the issue of security always has a visible presence in the humanitarian dimension (*especially from the perspective of the basic protection of human rights and freedoms*), and during conflicts and post-conflict times it appears on the top of the priorities' list.

In the context of influence on the settlement of the Karabakh conflict, taking into consideration the importance of refugees and ***Internally Displaced Persons*** (IDP), it is necessary to first and foremost define some situations and limitations that would be further analyzed in this paper, based on the following claims:

1. In the relationship between the Republic of Armenia and the Republic of Azerbaijan, the issue of refugees is the problem of refugees fleeing from Azerbaijani SSR to the Armenian SSR and vice versa. Here, however, it is important to take into account the disparity between the statuses of the Armenian refugees from the Azerbaijani SSR (*here the reference is to about half a million people*) who were displaced from that republic from 1988 to 1990, and the Azerbaijani refugees who left the Armenian SSR between 1989 and 1990 (*according to the basic international-legal standards*). Based on international-legal standards, such as forceful displacement, loss of some or all property and belongings, the real threat to individuals' lives, and the massacres of

Armenians in Sumgait, Baku, and other areas of Azerbaijan, it is possible to argue for the unique characteristics of the Armenian refugees from the Azerbaijani SSR , and the fact that the issue of Azerbaijani refugees from the Armenian SSR ranks lower, since the Azerbaijanis' departure from Armenia was conditioned by moral issues. Moreover, no force was used against them, and they were able to keep all or almost all of their property. In addition, the leadership of Armenian SSR later made reparation payments for the majority of the material losses of the Azerbaijani refugees.

Other than that, a significant part of Azerbaijanis living in the Armenian SSR - more than 80,000 individuals - were able to even favorably exchange their houses with Armenian refugees from the Azerbaijani SSR (*many of them were forced to flee Azerbaijani SSR , but for the time being kept the deeds to their property*). It is necessary to also remind one that those who were left homeless and without any shelter after the December 7, 1988 earthquake in Spitak had to leave the northern areas of the Armenian SSR. They are often ranked, without any basis, within the group of refugees whose departure was related to the Karabakh conflict. This rather large category of people of Azerbaijani ethnicity, about 80,000 people, cannot receive the status of refugee from Armenia for the simple reason that they, like hundreds of thousands of victims of the earthquake in the northern areas of Armenian SSR, after December 7, 1988 were forced to leave for different areas of the previous Soviet Union

(USSR) purely for social-economic reasons, to find a place to stay and work at. Moreover, as victims of a natural disaster, they were given significant reparations from the government of the Armenian SSR.

2. The issue of the Azerbaijanis forcefully displaced from the territories under the control of the Nagorno Karabakh Republic and of the Karabakh Armenians forced to migrate from the territories under the control of the Republic of Azerbaijan is solely a problem between the NKR and the Republic of Azerbaijan and is in no way connected to the Republic of Armenia or any other country. The status of the Karabakh Armenians having moved from the territories of the Nagorno Karabakh Republic currently under the control of the Republic of Azerbaijan (Martuni, Martakert and Shahumyan regions) is one of forced migrants, since the said territories are included in the September 2, 1991 Declaration on proclamation of the Nagorno Karabakh Republic, and most importantly, in the December 10th referendum on the independence of the Nagorno Karabakh Republic.

THE LEGAL STATUS OF INDIVIDUALS
THE INDIVIDUAL'S AND CITIZEN'S RIGHTS AND FREEDOMS
THEIR PROTECTION BY THE STATE

In the modern stage of the historical development and advancement, human rights and freedoms represent a category that can rely on objective facts and correspondingly, can serve as a point of departure for finding approaches acceptable to both conflicting parties, as well as become a productive method for solving international conflicts. Countries that seek the values of democracy as final goals consider human rights and freedoms as model concepts which bring their positions closer, and which, regardless of all the objective differences between them (*ethnic, religious, cultural, etc.*) have a clear legal and lawful base for a civilized dialog. The countries that cherish European civilized values and at the same time keep their socio-cultural, traditional-religious, and other characteristics seek to be part of the European concept of valuing an individual, and intend to build democratic governments where the individual and his/her rights and freedoms are the core value in all branches of the activities of the judicial system and government. All those countries (*The Republic of Azerbaijan, The Republic of Armenia, Russian Federation*) that in one way or another have a connection to the Karabakh conflict and its consequences have clearly indicated their decision to follow the path of spreading democratic values and building democratic governments, as per European standards.

All the conflicts in the ex-Soviet Union, regardless of the fact that at the time of their initiation, development, and mostly due to their status quo as unsolved conflicts, have had and still have a highly ethno-political coloring. Still, the only path for solving those conflicts in a manner that would limit the losses of all parties to the conflict is the general approach that brings all governments closer to their aspiration for democratic development. Here, only the multilateral recognition of human rights and freedoms by various sides, and their protection can serve as a guide for the solution of the given conflicts.

In the indicated direction, the individual's legal status, the role of the government in his/her rights and freedoms and the guarantee of these, the international-legal protection and defense of human rights and freedoms are judicial, constitutional approaches that constitute the general bases for analysis.

The human rights and freedoms that are constitutionally affirmed and holistically summarized form the basis of the legal status of an individual. The latter is considered the "*the core of the normative expression of the main principles of the relationship between the individual and the government*"[2]. The relative stability and unchangeability is a unique characteristic that underlies the undeniable, firm, and objective nature of the legal status of an individual as compared

[2] *Бережнов А.Г. Теория государства и права. М., 2002.,р. 312.*

to his/her position and social status. Therefore, the following principle allows applying it to the provisions discussed in this paper:

"The comparison between the above-mentioned quality of the legal status (*stability, relative unchangeability*) and the incomparably more dynamic and changeable public life allows the legal status to play an important role especially in situations where negative processes are going on in the public"[3].

It is also very important to define the relationship between the individual's rights and freedoms and his/her obligations in relation to the institute of citizenship. If human rights are the point of departure, i.e. they are universal for all humans regardless the fact whether they are citizens of the state where they live or not, the rights of the citizen include only those rights that are affirmed by his/her citizenship to the corresponding state. Consequently, "the citizen of this or that state has all those rights that refer to the universally accepted human rights, as well as the rights affirmed by the state of which that individual is a citizen. The non-citizen has only rights of the first category." Thus, this "discrimination" is permitted by the international public and is explained by the legitimate wish of each state to offer a complex of rights to those individuals who

[3] *Бережнов А.Г. Теория государства и права. М., 2002.,р. 317.*

are firmly connected to the fate of the state and have full constitutional obligations"[4] .

The constant legal-political connection between an individual and state is reflected in the institute of citizenship. This means that an individual legally belongs to a certain state, and this relationship is regulated by the existence of a framework of mutual rights and obligations, as well as the state protection of an individual both within and outside the state. Being a citizen means to be ready legally, ethically and politically to meet civic obligations, exercise corresponding rights and freedoms and to have a legitimate right to get the state guarantee and protection of those rights.

All the modern democratic states do not only recognize the human and citizen rights in their constitutions, but also directly note the significance of their guaranteed implementation and emphasize the role of the state in the process of protecting those rights. In this regard, it is important to point out that the concept of "***individual's legal status***" is more comprehensive, than the concept of "***individual's constitutional status***". In legal studies an approach is accepted which states that the constitutional rights, freedoms and obligations of a human and a citizen are the core of overall legal status of an individual.

[4] *Баглай М.В. Конституционное право зарубежных стран // Под общей ред. Баглая М.В., Лейбо Ю.И., Энтина Л.М. М., 2000, р.86.*

As to the concept of "***guarantees of human rights and freedoms***", the following theoretical fundamentals should be pointed out:

1. The terminology on guarantees divides them into three groups: legal, ethical-political and material (social-economic);
2. Each type of a guarantee has its specific significance, and together they comprise a system of guarantees of human rights, which highlights the importance of having a multi-faceted approach to ensuring a specific judicial phenomenon.

Legal guarantees have significant and in many cases, decisive connections to the institutional definitions which bring those guarantees to life. Those are judicial guarantees, which are captured in the functions of the defender of human rights and supra-state institutes of judicial-executive nature (e.g. the European Court of Human Rights).

The ethical-political guarantees relate strongly to the impact of public opinion within a state, as well as to the international communication of the state, which clearly demonstrates the interstate standards of assessing internal actions of a certain state from the perspective of international standards exercised within human rights, and the adequacy of universally accepted principles and norms.

Material (social-economic) guarantees depend on intra-state resources, but should be implemented "within the existing possible

limits" (***according to the International Pact on Economic, Social and Cultural Rights, 1966***).

To guarantee and protect the right of an individual and a citizen the state plays a direct, significant and often exceptional role, which implies that it has a direct, significant and often exceptional obligation to carry out within this domain. This is directly referred to in many international documents:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant;
2. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity ***(International Covenant on Civil and Political Rights, Article 2, 1966)***;

3. States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development ***(Declaration on the Right to Development, Article 3, 1986)***;
4. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all

conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice ***(Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 2, 1998)***;

5. "They (*the countries represented in the organization*) express their determination to guarantee the exercise of human rights and fundamental freedoms. They recognize that all civil, political, economic, social, cultural and other rights are priorities and should be implemented through all adequate means" (***Summary of the Vienna meeting of OSCE country representatives, Section "Principles" Point 12***).

The international-legal embodiment of individual's legal status, his rights and freedoms, points to the fact that the legal status of a human, and in some aspects of a citizen (*for instance, in case of election rights*), is protected by principles and norms of international law. In general, the fundamental approaches in international law within the given area, the ratio between international and intra-state

norms and the "labor division" can be represented in the following points[5]:

- Given the circumstances of a concrete country, its internal constitution should include such a scope of human and citizen fundamental rights and freedoms, which corresponds to the international standards and obligations acquired by the given country through becoming a signatory to international treaties and convents;
- Within the framework of human rights the internal legislation should not contradict the fundamental principles and norms affirmed through international statutes;
- There are no absolute freedoms and absolute rights. Those can be limited, but done so only in confirmation with law, which is ratified by the constitution and the corresponding requirements and goals of the international law.

This last point requires more detailed elaboration. The state is not only the major responsible subject in regards with defending and guaranteeing human and citizen rights and freedoms, but it also acts responsible in the event of violation of those rights, which should be in harmony with internal legislation and should not contradict the international obligations of the given country. For example,

[5] *Чиркин В.Е. Сравнительное конституционное право. М., 2002, pp. 135-136.*

according to Article 15 of the European Convention on Human Rights and Fundamental Freedoms, 1950, there are only two cases when a signatory country is granted a right to withdraw from carrying out the obligations under the Convention (***derogation***), and those are in time of war or other public emergency threatening the life of the nation. In the context of this paper, i.e. the main responsibility of the state within the context of human rights, it is interesting to refer to an extract from resolution on one of the most noteworthy cases of the European Court - "Northern Ireland vs. UK", dated January 18, 1978: *It falls in the first place to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 paragraph 1 (art. 15-1) leaves those authorities a wide margin of appreciation*[6].

Thus, taking into account the above-mentioned, following conclusions can be drawn:

[6] *Ireland vs. UK, Resolution dated January 18, 1978. Серия A.T. 25. pp. 78-79, point 207.*

1. The "marrow" of the category "legal status of an individual" is human rights and freedoms. Through the status that defines a certain position of an individual within the society and state, as well as the nature and scope of his relation with the state and which in its turn is based on human rights and freedoms, we arrive to the concept of uniqueness and self-value of an individual. The status in necessary for an individual as far as it is necessary first of all for a democratic country, which becomes so, only in case it recognizes, defends, protects and guarantees human rights to this or that legal-political extent. Thus, the legal status of an individual, his/her right to become a legal subject is the responsibility of the state: it should provide the individual with all the necessary resources on the territory where the given individual lives and for which the state is responsible.
2. Within the context of human rights the two equivalent subjects that are in close legal-political relations are the citizen and the state. This equivalence in a strictly legal context is based on the assumption that the citizen as an individual source and holder of state sovereignty has the whole package of individual, political and social-political opportunities, whereas the state, being the collective representative of this sovereignty, is responsible for strengthening, securing, protecting and guaranteeing the realization of these opportunities for an individual or in

association with others. On the other hand, there are situations when as a citizen of a given country, an individual has considerable responsibilities and the country of his/her citizenship has legitimate rights to demand that this individual carries out these responsibilities.

3. In order to fully implement the opportunities stemming from the legal status of an individual, particularly if it is reflected within the citizen's status, it is necessary to ensure comprehensive, active and permanent participation of the state in the process of effectively implementing these opportunities. This participation is characterized with both a material content (*legal and social-economic guarantees*) and an ideological embodiment in shape of dedication to the declared and practically implemented democratic values.
4. Categories such as "human rights and freedoms", "legal status of an individual", "state guarantees and protection of human rights" are mutually dependent and defined within the context of their constitutional-intrastate and international-legal meaningfulness and realization. Each of them, if considered separately, does not have a foundation for independent and self-sufficient existence. However, all of them as a whole can be effectively used in intra-state practices and international cooperation, as well as serve as a

departure point, process, goal and outcome during inter-state conflicts.

THE CATEGORIES OF REFUGEES AND FORCED MIGRANTS IN THE LEGAL CONTEXT OF THE CONSEQUENCES OF THE KARABAKH CONFLICT

A state that is newly formed and even more, that already exists and is recognized and which has declared its main goal and major objectives as the insurance, defense and guarantee of human and citizen rights, is compelled to follow this principle. Moreover, it needs to take a full responsibility for its citizens not only at the given moment, but at least it should feel responsible for all those people who throughout history of the development of that state have been its citizens and later, because of the faults of the leadership, have become people deprived of the stability of legal-political connection to the developing state. (e.g. in case of USSR).

The above-mentioned responsibility is not only reflected through moral-political choice (*whether admit one's guilt or not*), but contains also a clear legal component with implying social-economic consequences (material remuneration, etc.)

The legal component is based on the fact of deporting citizens from the borders of a transforming state, which later gets a new constitutional definition but without any participation whatsoever from its citizens who were previously deported. This refers to mass persecutions of Azerbaijani citizens of Armenian ethnicity in Azerbaijani SSR from 1988 to 1990. People were displaced and deprived of their republican citizenship (*Uniform federal citizenship is established for the USSR. Every citizen of*

a Union Republic is a citizen of the USSR. ***Constitution of the USSR, Article 33, Adopted in 1977***), because they were of "undesirable" ethnicity, which was absolutely not tolerated by the newly establishing "state-persecutor". However, the legal-political relation between an individual and the citizen at the same time and the state, which was interrupted unilaterally and extensively, existed between concrete people and a concrete former soviet republic, namely Azerbaijani SSR. The united Soviet state was still intact and therefore, it can be claimed that the responsibility for the people falling into that category immediately was associated with the central authorities of the USSR, since the last instance of mass deportation of Armenian population from Azerbaijani SSR, on a part of the territory of which later Azerbaijani Republic was formed, happened in early 1990s, when the USSR still existed both de facto and de jure, and the central authorities were still able to supervise the situation on the territory of the USSR more or less effectively and with more or less partisanship. In this case if people were not deprived of their permanent status, but lost only some of their rights as soviet citizens, they could not be considered refugees according to its legal definition. According to definition used in international law, the refugee is defined as "**a person who is outside his/her country of nationality or habitual residence** (*emphasis of the authors*); has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to

avail himself/herself of the protection of that country, or to return there, for fear of persecution."(***Convention Relating to the Status of Refugees, Article 1, 1951***).

Thus, the formal attribute that Azerbaijani citizens of Armenian ethnicity who were displaced from their homes were citizens of a united state does not allow applying the status of refugees to them. However, the impossibility and unwillingness to turn to the republic, which was a part of the Soviet Union (still a united state), for protection was natural for those deported and was unanimous. Concepts, such as "***internally displaced persons***" and "***forced migrants***", were unknown in the Soviet Union, since even the international norms regulating these statuses were shaped much later.

In any way, the de facto situation, i.e. forced deportation from the territory of a former USSR republic, which in conformity with the constitution of the USSR was a "state within a state" (this, actually was rather a formal declaration, than anything else (*A Union Republic is a sovereign Soviet socialist state that has united with other Soviet Republics in the Union of Soviet Socialist Republics.* ***Constitution of the USSR, Article 76, Adopted in 1977***)), its consequence, i.e. forced migration from the individual's habitual residence, as well as the internationally recognized fact of not crossing borders allow us concluding that at the time when the united Soviet Union still existed, the

above-mentioned people could have been granted the status of internally displaced persons.

In 1998 the guiding principles on defining internally displaced persons were officially clarified. In the same year the UN Commission on Human Rights accepted the principles of human rights in a special resolution. UN General Assembly, Economic and Social Council and a number of other international organizations, among which OSCE officially affirmed these principles. The concluding remarks of the report made by the expert group working on the document in 1966 is noteworthy: "*though the mentioned international right applies to persons internally displaced within the given country, in regard with other important aspects it does not serve as a sufficient foundation for guaranteeing their protection and possible assistance*[7]".

In Guiding Principles on Internal Displacement the following definition of IDP is provided: "*...internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized*

[7] *Келин В. Руководящие принципы по вопросу о перемещении внутри страны. М.., 2004, pp. 63-64.*

State border" ***(Guiding Principles on Internal Displacement, Introduction: Scope and Purpose, Point 2)***.

In the Guiding Principles the first principle in Section One is another milestone: "*Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced*".

Before the USSR collapsed the republics involved in decision-making regarding the fate of people under IDP category were Azerbaijani SSR and the Russian Soviet Federative Socialist Republic (RSFSR). Azerbaijani SSR as the perpetrator of mass deportations of its citizens of Armenian ethnicity explicitly demonstrated its position regarding these people. Not back then, not even now did either Azerbaijani SSR or Azerbaijani Republic do anything towards the recognition of their legal-political responsibility for the events, not to mention about moral responsibility. Azerbaijani SSR or the Republic of Azerbaijan have done nothing to prove their willingness to protect the rights and freedoms of their citizens of Armenian ethnicity: not when the displacement was still to launch, not during the deportations, and not even later. *("1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their*

homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration" ***(Guiding Principles on Internal Displacement, Principle 28)***.

"Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation" ***(Guiding Principles on Internal Displacement, Principle 29, Point 2)***.

A denial of legal nature is being put forward that the Guiding Principles and consequently, the non-existence of legal framing of IDP, i.e. that these principles are not legally obliging can only be taken into consideration regarding the former Azerbaijan SSR. However, this is true only in strictly legal terms, and it cannot be used as a political argument for the "major responsibility of the central authorities of the USSR" regarding the mass deportation of Azerbaijani SSR citizens of Armenian ethnicity. The political and moral responsibilities of the former

Azerbaijani SSR were passed down to the Republic of Azerbaijan, since the above-mentioned categories were beyond the dimension of the concept of legal succession. Human rights and freedoms, their defense and reasons for violations cannot be considered as objects of legal succession or non-legal succession. More precisely, for the democratic partnership of states the issue of legal succession cannot be associated with these absolute categories. As early as in 1970 in the resolution on the case concerning the Barcelona Traction, Light and Power Company, Limited, the UN International Court recognized the responsibilities of the state in relation to the international society as a whole (***ergo omnes responsibilities***) such as "prohibition of acts of aggression and genocide" and "implementation of principles and norms regarding fundamental human rights, including protection from slavery and racial discrimination". In other words if the state violates these obligations and duties, any other state according to international law has the right to take the case to court in order to defend those fundamental human rights and can protest against their violation. The current international law recognizes to conventions which regulate relations regarding strictly defined objects, namely, **Vienna Convention on Succession of States in respect of Treaties, signed in 1978 and Vienna Convention on Succession of States in respect of State Property, Archives and Debts, signed in 1983.** "These conventions specify that they can be applied to consequences of legal succession, which means that corresponding

territorial changes are not considered to be subject of legal succession, but are rather its foundation. At the same time based on the principles regarding the applicability of these conventions, it can be inferred that legal succession literally means legitimate transfer of international rights and responsibilities from one state to another, when both are considered subjects of international law. What is positive about these conventions is the fact that in their texts there is a clear reference to succession in conformity with international law, including the international-legal principles underling the UN Charter[8]."

Thus, the current Azerbaijani Republic needs to take the full responsibility for reparation of material and moral damages caused to all the people who have suffered from the ethnic cleansings in 1988-1990 in Azerbaijani SSR, as well as during the proceeding military phase of the conflict which resulted in a new wave of refugees and IDP from Nagorno Karabakh and neighboring regions. As a perpetrator, it is exactly Azerbaijan that should be held responsible for the people who suffered during these events, including those citizens of Azeri ethnicity who, as a result of military actions, had to leave the territories of Nagorno Karabakh.

Modern Germany is not the legal successor of former Nazi Germany as such. However, this did not prevent the state from not only

[8] *Тиунов О.И. Международное право // Отв. Ред. Игнатенко Г. В., Тиунов О.И. М., 2004. pp. 63-64.*

taking the political and moral responsibility for the evil deeds of the Third Reich, but also the responsibility for reparation for all the damages caused to people whose rights and freedoms were violated by the Nazi regime. If modern Germany, which is incommensurably detached from its predecessor according to all criteria, was able make such a big step, why can't modern Azerbaijani Republic in the constitution of which it is mentioned that the "highest priority objective of the state is to provide rights and liberties of a person and citizen" (*Constitution of Azerbaijani Republic, Article 12. The highest priority objective of the state*) take this responsibility even if not for what happened on the territory of the transforming state - Azerbaijani SSR, whose legal successor it is not, but at least for the consequences of these events ***(Guiding Principles on Internally Displaced Persons, Principles 28 and 29)***.

Azerbaijan is not an exception in this regard. An analogous position is claimed by modern Turkey, which is unwilling to recognize and consequently hold legal, moral and material responsibilities for the fact of Armenian Genocide committed by Ottoman Turkey in Western Armenia and other regions of the country in 1915-1920. A country aspiring to access European Union and considering itself ready to declare it acts in conformity with European values, standards and norms, including protection of human rights and freedoms, is reluctant to accept the responsibility for those horrible crimes against humanity and mass violations of fundamental human rights and freedoms during the first

Genocide of the 20th century to which about 2 million people were victims, and the descendants of the survivors from Western Armenia are dispersed all over the world and are yet to get reparations for their lost property from the government of Turkey. Meanwhile, there is a direct, one can even claim, mirror analogy between the process and consequences of Genocide and deportation of Armenians in Ottoman Turkey in 1915-20 and genocide and ethnic cleansings of Armenians in Azerbaijani SSR in 1988-90.

We need to emphasize one more time that the dogmatic references to the fact that the provisions of the Guiding Principles do not apply to this case since those are non-obligatory in nature and in addition, because the Republic of Azerbaijan in not accountable for the actions of the former Azerbaijani SSR, are simply unsubstantiated. A state that has a constitutional provision and a directly functioning norm of a high legal validity stated on the level of "highest priority objective of the state", cannot claim about its non-participation in the past events that happened on its territory and which have led to currently valid consequences. These consequences are reflected in still continuing uncertainty regarding the status of people deported from the territory of Azerbaijani SSR and compelled to resettle on the territories of other USSR republics and in consequently persisting infringement and restriction of the whole complex of rights and freedoms of these people.

This refers to about 500.000 people of Armenian ethnicity who have left the territory of Azerbaijani SSR during the above-mentioned period. In addition, currently there are about 2 million Armenians living in different countries of the world who had left this former Soviet republic in different times or are descendants of natives of Azerbaijani SSR, who consider this country their historical homeland. At first the new settlement site for these people was Armenian SSR where the majority of people displaced from Azerbaijani SSR because of their ethnicity, were provided with shelter and certain material remuneration. However, later because Armenia was in a very difficult social-economic situation, going through a phase of considerable economic crisis and at the same time experiencing a large-scale blockade by Azerbaijan and Turkey, the majority of the above-mentioned people found "economic asylum" on the territory of former RSFSR and modern Russian Federation. In addition, a considerable part of former citizens of Azerbaijani SSR, mainly residents of Baku and near-by areas, found a temporary shelter on the territory of former Turkmen Soviet Socialist Republic. As a result of assault and battery of Armenians in January, 1990, in Baku, these people were taken on board ferries and rushed to the nearest Turkmen port, Krasnavodsk. However, soon many of them again left for other regions of the former USSR, mainly for Russian Federation.

Exodus from Azerbaijani SSR and migration to Armenian SSR was basically an instance of searching for "political asylum", since at that

moment the major and most probably the only concern of these people was basic survival, protection of their lives and lives of their family and friends. Then the economic issues of social and material character were insignificant. People were aware of one fact only - they are migrating within the state of their habitual residence and citizenship and their exodus is compelled by the impossibility of staying in any political-legal relation with Azerbaijani SSR, the perpetrator of forced migration. Economic disorder was the reason for a second wave of mass migrations to nearby regions of Russian Federation with comparatively more stable economy - Northern Caucasus, Krasnodar and Stavropol regions. Part of them migrated to Moscow and its suburbs. Thus, considering the perimeters of migration of the majority of people who still do not have a clear legal status, it can be noted that the states involved in the definition of these statuses and the further fate of these people are Russian Federation, the Republic of Azerbaijan and the Republic of Armenia.

A significant part of the deported population migrated directly to the territory of RSFSR. Some of them got a temporary status, and later became citizens of the Russian Federation. However, another considerable part of people in this group who directly moved to Russia, are still on its territory with an uncertain legal status.

It is worth to cite the opinion of a Russian expert on legal provisions of migration regarding the issue of uncertain legal status (*Gannushkina S. A., Head of the department "Migration and Rights" of*

the legal center "Memorial"): "...refugees from Azerbaijani SSR in 1989-90 are victims of ethnic assaults, who came to the capital of their state, Moscow, or other parts of Russia. They did not cross borders of the state of their citizenship. The authorities are reluctant to recognize them as IDP. They are referred to first as belonging to one, and then to another category. And now it is very difficult for them. In the Moscow region many of them did not get Russian citizenship, and the reasons were various. First, in Moscow it was very difficult to get registered at the address of residence and the resolution of the Ministry of Internal Affairs, which allowed those who had the status of a refugee to submit application for citizenship without such registration, appeared rather late. Second, some of them did not even want to get Russian citizenship. In addition, there were people who claimed that they were automatically considered Russian citizens (*Article 13.1 RF Law on RF Citizenship, 1991*), since they had not crossed the borders of their state, residing in Russia during soviet times. When in 1997 the new edition of law on refugees was ratified, in the Federal Migration Service (FMS) they started talking about the fact that the status of refugees from Azerbaijan is not clarified, since the edition clearly defined the procedure for granting this status and those people did come up under the provisions of this law. They did not even apply for grating a status. The leadership of FMS decided that it wouldn't hurt to undertake something that would allow them throwing off the heavy burden of responsibility off FMS. There were even talks about

sending them back to Azerbaijan. We started acting vigorously, got information from UNHCR about Azerbaijan as a country of exodus. UNHCR clearly defended our position that the refuges should not return to Azerbaijan[9]". The uncertainty of the position of Russian authorities on many issues, regarding people forced to migrate from the former Soviet republic and till now having no clear status in their country of habitual residence is apparent. Other experts in the field also point out this uncertainty, characterizing the legal positions of the Russian Federation regarding IDP. They emphasize that "in Russian legislation the concept of "internally displaced persons" is absent in the same meaning as it has in the Preamble of Guiding Principles. The term "forced migrant" which is circulated in the Russian legislation and the definition of which is provided by Article 1 of the RF law on forced migrants (ratified in 19.02.1993. Currently it is executed in conformity with the edition of this law in 20.11.1995)" has only linguistic resemblance with IDP, as defined in Guiding Principles. If speaking of content criteria, according to definition, forced migrant is the citizen of Russian Federation, who has been forced to leave his place of residence as a result of aggressions and persecutions in any form aimed at him/her or members of his family." Obviously, the definition of a forced migrant is based on the model

[9] *Ганнушкина С. А. Правовые и социальные прблемы лиц, перемещенных внутри страны (ВПЛ) // Материалы 13-ого семинара, проведенного Правозащитным центром Мемориал, 27-29 апрелья 2002 г.*

definition of a refugee in the Convention relating to the Status of Refugees adopted in 1951, and similarly in order to recognize somebody as a forced migrant he/she should go through a certain procedure analogous to the procedure necessary to grant a status of one seeking for a political asylum. Thus, a forced migrant is a separate legal status of a person and it is "*the basis for providing him/her with guarantees in conformity with the mentioned law, federal laws and other normative legal acts of Russian Federation as well as in conformity with laws and other normative legal acts of the subjects of Russian Federation*" (Paragraph 2, Article 5). In other words, given the absence of the concrete concept of a forced migrant, the person internally displaced within the boundaries of his/her country, cannot use the rights and guarantees securing him/her a protection and assistance of the state. Meanwhile, in contrast with refugees, who need a special status, since they have lost the protection of their own country and need to seek it on the territory of another one, IDP does not need this status, since they remain the citizens of that country and should enjoy the very rights that other citizens have. They only need additional guarantees facilitating the realization of these rights and the resettlement in case of forced migration.[10]"

[10] *Петросян М. Руководящие принципы по вопросу о перемещении внутри страны и внутренний распорядок Российской Федерации: Сравнительный анализ // Келин В. Руководящие принципы по вопросу о перемещении внутри страны: Приложение. М., 2004, pp. 90-92.*

Thus, the significant part of Armenian population of the former Azerbaijani SSR that has directly migrated to the Russia Federation and has one or another official status has already got a permanent status of a RF citizen or goes under the status of a refugee, but not that of IDP, since such a status is exclusive to a RF citizen only.

A larger group of people after deportations resided on the territory of Armenian SSR, stayed there for a prolonged period of time and only then moved from the Republic of Armenia to RF. It appears that these people have crossed internationally recognized borders, and thus, cannot be regarded as IDP. De facto, many among this group are persons without citizenship (stateless person), since the last status they have hold was that of a citizen of the former Azerbaijani SSR and through it of a citizen of the former USSR. Later they did not get either citizenship of the Republic of Armenia or RF and with time they lost their status of a refugee, which is granted for a strictly limited period (*according to Article 7 of the RA Law on Refugees the period of granting the status of a refugee is up to 3 years*). The Convention relating to the Status of Stateless Persons adopted in 1954 defined the term "**stateless person**" as "**a person who is not considered as a national by any State under the operation of its law.**" According to Article 12 of this Convention, "**the personal status of a stateless person shall be governed by the law of the country of his domicile** (*i.e. the legal formulation of his/her residence – authors' annotation*) **or, if he has no domicile, by the law of the country of his**

residence". In addition Article 32 specifies that "**The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.**"

In 1961 the Convention on the Reduction of Statelessness was adopted, the major provision of which is the desirability that the contracting states will grant their nationality to those persons who otherwise have no any other option to get it.

A legitimate question arises: which of the three states is able and willing to take the responsibility for recognition, execution, provision, protection and guarantee of a permanent legal status for people who have largely suffered from the conflict? In other words, which of the three countries has the capacity, legitimate right, and a strong willingness of central authorities to provide citizenship to people whose rights and freedoms are restricted and who at the moment have unclear legal status? And the third question, closely connected with the last two: to which of the three countries these people want to tie their fate and consequently get the corresponding citizenship?

Equivalence of these questions and the fact that they are already very urgent are implied from the position discussed earlier in the paper, namely, equal rights of humans and states within the framework of

protection of human rights and freedoms and provision of collective human rights through protection of collective and state interests.

Azerbaijani Republic does not possess any of the elements from the above-mentioned trio (*ability, legal right and willingness*) and more importantly, people under discussion do not have a slightest desire to connect their destinies with a state that has not yet renounced what has happened and still continues its aggression towards this group. Moreover, with increasing anti-Armenian hysteria, xenophobia and racism in modern Azerbaijan, talking about a realistic possibility of peaceful co-existence of Armenians and Azeri is simply absurd in the foreseeable future[11].

The Republic of Armenia has a legitimate right, since chronologically the last status grated to these people after their status of a citizen of Azerbaijani SSR was the status of a refugee, which Armenia granted them already after the formation of the Republic of Azerbaijan and the Republic of Armenia, i.e. after the recognition of their borders

[11] *Many facts prove that armenophobia in current Azerbaijan has taken ugly shapes of misanthropy. It will suffice to remember the most recent fact of dismissing all the personnel of the Ministry of National Security who have even a remotest kinship to Armenians or have had any Armenian in their ancestry. This is a fact that is sadly analogous to such cleansings in the ranks of SS army and security agencies of Nazi Germany in 30s and 40s of the last century, as a result of which all the officers in whose lineage Jewish ethnicity was disclosed were repressed. In Azerbaijan in the highest ranks anti-Armenian politics is being practiced and announcements are made which do not correspond even to the simplest ideas of tolerance and protection of human rights and freedoms. See also Бабаян Д. Запад и нагорно-карабахский конфликт // Центральная Азия и Кавказ, No 6, 2004, pp.21-22.*

proper by international society. Whether with or without the status of a refugee, people were leaving the Republic of Armenia for RF, and it was on the territory of the last that they got neither temporary nor permanent status. Based on all the above-mentioned, it can be claimed that the Republic of Armenia has the legal basis for grating these people with its nationality, since first, the Republic of Armenia is the legal successor of Armenian SSR, thus all the rights and responsibilities regarding this issue were transferred to the modern Republic of Armenia and second, the last status of these people, though a temporary one, was that of a refugee granted and recognized by the government of the Republic of Armenia, and it can be renewed and later transformed into the status of a citizen of the Republic of Armenia. In this context we need to emphasize that people were leaving the country for RF because of socio-economic reasons, however, under the operation of the second point of Article 2 of the federal law of RF on refugees adopted in 1993 (*edition of the federal law dated 28.06.1997 No. 95-F3 and 21.07.1998 No. 117-F3*) this law is not applied to foreign citizens and stateless persons, who have left their countries of nationality (country of their previous residence) for economic reasons. It is also worth to note that one of the foundations for refusing to consider the application for a status, according to Article 5 F3, is the fact that the person from a foreign country has arrived from a state where he/she had a chance to be recognized as a refugee.

However, the Republic of Armenia does not have the necessary economic resources for adequately accepting these people back in case of providing them with citizenship. Besides, it has already provided citizenship to several thousand former citizens of Azerbaijani SSR and has provided with minimal resources to an extent that was possible given its difficult socio-economic situation. And the most important, these people, particularly those on the territory of RF, are not very willing to return to the territory of the state where their socio-economic rights and freedoms have a very limited chance of realization. The lack of knowledge in the state language, which can limit their opportunities of education and employment; small lands of Armenia and in this regard the issue of employment for people the majority of whom were engaged in agricultural sector, etc are only some of the issues.

On the other hand, RF has almost everything: opportunities, which though somewhat limited, are still there, and legal right, since RF is the legal successor of the former Soviet Union. In addition, a significant part of former Azerbaijani SSR citizens found shelter in RF and has either got the status of the RF citizen or are in a legal position conducive to getting it. These people are willing to connect their destinies with the state that has provided them with a shelter, especially if compared with other former soviet republics in question. However, in case of RF there is a lack of political will to be demonstrated both by central authorities and more specifically by regional authorities and those of separate subjects of

the Federation. The absence of political will results in total absence of political rights and freedoms for these category of people, which are secured by the status of citizenship, as well as significant limitation of their socio-economic freedoms and Infringement of individual rights. This is particularly unacceptable, since these people should not be in constant fear for their lives and lives of their families and friends; they cannot be repressed forever, for already more than 15 years in their most important inherent rights.

All this shows the necessity of coming up with a qualitatively different formulation on the current status of the category of people in discussion and on this basis, promotion of the concept of immediate recognition, execution, protection and guarantee of their rights and freedoms. Only such a concept can provide answers to some open questions:

1. Which state should take the responsibility for providing the whole complex of rights and freedoms of the above-mentioned people?
2. How can this help overcome the major injustice, i.e. the infringement of rights and freedoms of these people and how can this contribute to the settlement of disputes regarding the Karabakh conflict?

Considering at least its own moral obligation in regard with these people, The Nagorno Karabakh Republic (NKR) should recognize their

right for getting NKR citizenship through a possibly simple procedure. In addition, the Nagorno Karabakh Republic can provide these people with an opportunity to resettle on the territories that are under its control, since first, these people have suffered from this conflict in both moral and material terms and secondly, up to the time of their forced migration, which was characterized with genocide and ethnic cleansings, they were citizens of Azerbaijani SSR and USSR (*Article 33 of the Constitution of USSR adopted in 1977: "**Uniform federal citizenship is established for the USSR. Every citizen of a Union Republic is a citizen of the USSR. The grounds and procedure for acquiring or forfeiting Soviet citizenship are defined by the Law on Citizenship of the USSR**.*) This means that before their deportation they were in a consistent legal-political relation with Azerbaijani SSR and through it with USSR. Therefore, they have the right to resettle on the territory of the former Azerbaijani SSR, since at the moment they have the status of a refugee, which is of temporary nature and grants them with an opportunity to return to the territory of their former citizenship. The territories controlled by the Nagorno Karabakh Republic, namely the Lower Karabakh, are considered such and currently, the armed forces of NKR can ensure safe residence and development for these people. Lower Karabakh, unlike other territories under the jurisdiction of the Nagorno Karabakh Republic, has more opportunities suggestive for allocation and provision of adequate conditions for effective functionality of the people in this

category, than those regions of the Republic that were repressively restricted within the borders of former Nagorno Karabakh Autonomous Region (NKAR) during the soviet times. To compare, one needs to remember that during soviet times the number of Armenians originally from NKAR but residing in other regions of Azerbaijani SSR exceeded the Armenian population of NKAR, though this was due not only to the objective social-economic reasons and limited natural and material resources, but also due to the explicit policy of resettling Armenians from NKAR exercised by the authorities of Soviet Azerbaijan, which resulted in the fact that by the end of 1980s about 80% of the Armenian population of NKAR had left the region. However, the mentioned territories of Lower Karabakh are not sufficient reparation for the former citizens of Azerbaijan SSR, who left this republic in 1988-90 as a result of mass persecutions and genocide. The quantitative analysis of the immoveable of Armenian residents of Baku, Kirovobad, Sumgait and other cities, shows that there are about 100-110 thousands of apartments and private mansions left deserted as a result of deportation. Considering the fact that Armenians of Azerbaijani SSR had a certain professional stance, for instance, traditionally they comprised the majority of leading specialists in oil industry of Azerbaijani SSR, and high level of education, they were socially and economically much better off than the rest of the population of Azerbaijani SSR, including the Azeri resettling on the territory of Lower Karabakh at the end of 1980s. For example, some of

them had 2-3 apartments. Thus, the above-mentioned remuneration is not sufficient for their losses. At the same time, there can't be any talk of them returning to their former places of residence, since there is a permanent practice of committing large and small genocides against the Armenian population by various authorities of Azerbaijan throughout the whole last century. Even if the existence of central authorities during soviet times which had a considerable control over authorities of various instances, was not enough to prevent perpetual repressions and discriminations of Armenian population in Azerbaijan, which eventually resulted in genocidal actions against Armenians in 1988 in Sumgait and later in 1990 in Baku and other Armenian-populated areas of Azerbaijan, how can the modern Azerbaijan where armenophobia and misanthropy are promoted in state politics, secure the safety and normal residence of former Azerbaijani citizens? Thus, the only way out of this deadlock is the ethnic demarcation and the only territories, where the previously repressed citizens of former Azerbaijani SSR can enjoy safe residence are the territories of Lower Karabakh, which are under the jurisdiction of the Nagorno Karabakh Republic.

In addition, considering that the Nagorno Karabakh Republic can guarantee their safety and thus, take these people under its state protection, there appears a need for formulating political-legal relation between these people and NKR in the form of their citizenship to this country.

The category of people who have left their former country of nationality, i.e. Azerbaijani SSR and consequently, USSR, has a right to get citizenship of NKR based at least on the fact that once NKAR was a part of Azerbaijani SSR (*at least formally. Let's leave aside the legitimacy of such an inclusion*[12]) and thus, to some extent, is the legal successor of Azerbaijani SSR, since:

1. The modern Azerbaijani Republic has refused to be the legal successor of Azerbaijani SSR and adopting the Declaration of Independence on August 30th, 1991, declared that the Azerbaijani Republic that existed in 1918-1920 is its legal predecessor;
2. Armenians, along with the Azeri, were a state-constituent nation, established in 1920 as Azerbaijani SSR and this is based on a sole fact that they were the only organized national entity on the territory of Azerbaijan and remained the only state entity that carried responsibility for all Armenians living on the territory of Azerbaijani SSR prior to August 30th. Therefore, Armenian refugees admittedly have the right to get the citizenship of the Nagorno Karabakh Republic.

[12] *For details see Манасян А.С. Карабахский конфликт в ключевых понятиях и избранные темы в расширенном формате. Ереван, 2002.*

The majority of the Azeri population of NKAR left their places of residence, e.g. certain districts of Shusha, after the Declaration on Proclamation of the Nagorno Karabakh Republic on September 2nd, 1991 and Referendum for independence on the 10th of December of the same year. Incidentally, they had a chance to participate in the referendum: nobody prohibited them to do so. However, they ignored it. Notwithstanding the active opposition of these people against the legal right of the majority of the population of NKR to form an independent state, NKR has to ensure the return and reintegration of this category of people into the civil society of Karabakh as citizens enjoying full rights.

The following military-political aspect needs a special emphasis: if the Declaration of September 2, 1991 and the referendum of December 10 of the same year, which confirmed the earlier Declaration, were aimed at establishment of NKR within the imposed and arbitrarily established borders of NKAR as a certain gesture of good will on the side of NKR [13], then later, the conflict transformed from a political-legal dimension to the dimension of open military opposition, since the official Baku refused to accept the peaceful declaration of independence of NKR within NKAR

[13] *Though in reality the former citizens of Azerbaijani SSR, representatives of the second state-forming nation, Armenians had a chance to participate in the referendum on independence in December 10, 1991, only on the territory of NKAR and Shahumyan region, since by that time as a result of ethnic cleansings they had been exiled and deported from the territories where they historically had been residing (including some areas of NKAR- several villages in Hadrout region and Berdadzor sub-region, and several villages in Getashen region).*

plus Shahumyan and Getashen regions. This compelled NKR to enter into the military phase of defending its legitimate right to self-determination through organization of self-defense.

The leadership of Azerbaijani Republic attempted not only to deprive the second state-forming nation of the former Azerbaijani SSR of its right to choose an independent path of political development, but tried to totally deport and eliminate it physically. Thus, the full responsibility for perpetrating military actions and consequently, for the following outcomes, including the issue of material reparation of casualties to the refugees and IDPs regardless of their nationality or current habitual residence, lies with the leadership of Azerbaijan. It was the Azerbaijani leadership with support of army forces of former Soviet Union and later Russian troops that came to substitute them, that started active military actions against the fully blockaded, enclaved population of Nagorno Karabakh, which given the existing conditions were not in a position to initiate war. It is the leadership of Azerbaijani Republic that is to blame for the use of new types of armaments and military technology throughout the course of the military actions, starting with heavy armored technology up to artillery, military choppers, and airplanes which resulted in enormous casualties, in particular within the peaceful populations. Azerbaijan, in connivance with leadership of the Ministry of defense of RF, essentially appropriated and took over the armament and military technology of the military bases of the former USSR that were deployed

on its territory. This was a direct violation of the obligations that Azerbaijan complied to by joining the Treaty on Conventional Armed Forces in Europe in 1990, after it signed the Tashkent agreements on May 15, 1992, which included the principles and procedures for the implementation of the **Treaty on Conventional Armed Forces in Europe and Protocol on Maximum Levels for Holdings of Conventional Armaments and Equipment**[14].

However, as it is known, notwithstanding the overwhelming quantitative and technical superiority of the armed forces of Azerbaijan, in the result of effective military actions during the military phase of the conflict the Defense Army of NKR was able to conquer the territories of former Azerbaijani SSR, which Azeri Army used as military bases and from where the peaceful settlements of NKR were being bombarded. It should be reminded once again that these were the territories of former Azerbaijani SSR and not of modern Republic of Azerbaijan. The NKR forces stayed there and have exercised quite an effective control over these territories up to date. The dispute about these territories is ongoing and the issue of jurisdiction is still open, since during the period of active opposition which started exactly after the December 10 referendum, i.e. in 1992, the mentioned territories were taken over first by one, then by

[14] *Минасян С. Проблемы ограничения и контроля над вооружениями на Южном Кавказе // Центральная Азия и Кавказ, № 6, 2004, pp. 39-48.*

the second, i.e. the subject of control was being occasionally changed from NKR to the Republic of Azerbaijan and back. Thus, there was a high probability that the situation could have been reverse, i.e. Azerbaijani Republic could have gained control not only over the mentioned territories, but also those of former NKAR proper, where nowadays the Nagorno Karabakh Republic controls the territories of former Azerbaijani SSR.

However, from a legal perspective, the current situation is more appropriate, since the Republic of Azerbaijan is not the legal successor of the former Azerbaijani SSR, and thus, it cannot claim the territories of Azerbaijani SSR in absolute terms that do not accept any counterarguments. Such a counterargument in the legal aspect is the factor of "effective control" over those historical territories of NKR, which was never exercised either by Azerbaijani Democratic Republic of 1918-1920, or the modern Azerbaijani Republic, as well as neither of them had legitimately established or internationally recognized borders to which the current leadership of Azerbaijan claims its ownership. In particular, after the formation of Azerbaijani Democratic Republic in 1918, and the first appearance of a previously unknown state on the world map in the result of Turkish aggression in Transcaucasia, it came up with unsubstantiated territorial claims from all the neighboring states, claims on territories from Baku to Batumi. In 1919 it even presented a corresponding document to the League of Nations. However, the League

did not consider this document legitimate, which in fact was also the main reason why it refused to recognize the Azerbaijani Democratic Republic de jure, and this state left the world political map without internationally recognized and legitimate borders. The Republic of Azerbaijan as declared such in 1991, basically came back to the legal realities of 1918-1920, thus becoming the legal successor of the Azerbaijani Democratic Republic, which had neither internationally recognized borders, nor any rights to the territories currently under the jurisdiction of NKR. Moreover, even the access of Azerbaijan, as well as other former Soviet republics, to the UN, OSCE and a number of other international organizations, is simply the consequence of inertia of referring to USSR as an international judicial personality. This does not necessarily suggest that these organizations recognize the borders and territories claimed by official Baku.

THE CENTRAL ROLE OF THE INDIVIDUAL, AND THE PRIORITY OF THE INDIVIDUAL'S RIGHTS AND FREEDOMS AS THE BASICS FOR THE PEACEFUL "TERRITORIAL DIVORCE" BETWEEN STATES

The conventional definition of "interstate conflict", which comprises handling categories such as "state", "national security", "national interests", etc. suffers from **etatism.** Often the essence of the conflict, the real cause of its eruption, the core of the process of its development and the requisite outcome which should be strived for, are neglected. All the conflicts on the post-soviet territory in one way or another possessing an inter-state characteristic due to their origin, which is only on the surface, had an international or ethnic resistance. This superficial approach emphasizing exceptionally, or almost exceptionally, the ethnic dimension of the origin of the conflict and stressing the exceptional will of the political elite of the conflicting states, does not suggest an adequate understanding of the conflict and even more so, does not offer an effective and mutually-beneficial (of course, relatively so) option for the conflict resolution. In other words, the state overshadows the individual with his/her rights and legitimate interests.

The mentioned conflicts on the post-soviet territory were in a nutshell gross violations of human rights and freedoms, the restriction of those rights that were large-scale and perfidious, and this fact was not obvious on the first stages of these conflicts or rather were not fully realized. People stopped feeling secure and as a result, their political-

legal status was in conflict with their realistic expectations. Formally they were bound in political-legal relations with the state which failed not only to ensure their security and take responsibility for this guarantee, but were also the source of this state of "insecurity" and threats to personal security. The fact of contradiction between the political-legal status of an individual and the state of his/her security was most clearly presented in the political-legal practice of the former Azerbaijani SSR starting from the early stage of the Karabakh conflict up to the date when its last citizen was exiled because of his/her ethnicity. The Armenians of Karabakh did not start a conflict with Azerbaijani SSR in the sense that is being pushed in its traditional state dimension. In other words, on its initial stage the demands of the Armenian population of Karabakh were essentially strictly legal in their nature both formally (*observance of all the existing constitutional-legislative norms, observance of legal procedures, etc.*) and substantially (*those were demands for observing, protecting and guaranteeing their rights infringed in not so remote past and still vigorously continuing*). This was not a territorial conflict as such: the Armenians of NKAR were already a state-constituent nation in this artificially formed, and from the perspective of its territorial formation, illegitimate state - NKAR.

The issue of territories appeared much later, when the legitimate right of a state-forming nation on political-legal self-determinations was held under suspicion by the newly formed Azerbaijani Republic, to

which neither newly declared NKR, nor the former NKAR had or could have any political or legal relations. The very territories, which Azerbaijani Republic refers to as "occupied" by Armenians, was highlighted on the map of the conflict with one fundamental, conceptual goal only, which was a key to conflict settlement - to become a means, an instrument, a material-natural and economic provision of recognition, practice, protection and guarantee of the rights and freedoms of the part of the population of the former Azerbaijani SSR, which has suffered from the conflict the most regardless their ethnicity. These people were in a steady political-legal relation with the Azerbaijani SSR and had no direct relation to the legitimate demands of the Armenians of Karabakh. The Armenians of Karabakh themselves never doubted the status of these people as citizens of Azerbaijani SSR, and the only reason for their exile from the territory of their legal-republican affiliation was the war initiated by Azerbaijan. Thus, both the former Azerbaijani SSR and the modern Azerbaijani Republic proceeded and continue to proceed from the premise that the conflict has merely ethno-political reasons and given all the signs, will proceed further constructing its suggestions for the conflict resolution on these positions.

For ethno-politically-centered states of the contemporary era the major issue is that of territories. They keep themselves aloof from the legal dimension of the conflict and the legal categories are being used only while mentioning about territories (*"20% of territories and 1 million*

refugees") or while dealing only with a chosen group of norms of international law, which are often interpreted unilaterally and restrictedly (*e.g. the principle of territorial integrity*). It is particularly bizarre when it happens with states that are members of UN, OSCE and Council of Europe where the issues of security and practice of human rights are indispensable, and where the ethnic interpretation of conflicts is considered an unacceptable principle, where the territorial interpretation of any conflict situation between states is regarded as a rudiment from the past, e.g. of the times of Cold War, and consequently, individual and collective human rights become a top one priority.

It is not doubted that in the process of settling a conflict the human, his/her rights and freedoms are the most crucial factors, as well as their protection, their safe functionality and development in all possible dimensions of this concept.

In the contemporary studies of international relations the recognition of primary significance of the safety and security of an individual in its comprehensive understanding is obvious. Theoretical research, applied studies, official documents of democratic countries as well as the norms of international rights in this sphere are all evidences of this. We will try to clarify the connection between science, official doctrine and "ideal situation" regarding international relations and international law in the field of security and protection of human rights.

A. George and R. Keohane categorized all the national interests regarding security in the following three groups:

1. Physical survivor;
2. Freedom – the capacity of residents of a state to choose the form of government and establish a complex of individual rights, which are affirmed by law and protected by state;
3. Economic welfare, implying maximum increase of economic welfare[15].

Canadian researcher K. Holsti suggests a hierarchy of goals, clearly distinguishing among fundamental, intermediary, and perspective. Fundamental goals reflect those values that Holsti calls "core". Those should be protected by all means and all the time. Those are safety, autonomy, independence of the political entity, i.e. state, its political, social, religious and cultural institutions and the welfare of its citizens[16].

"The doctrine of national security of the United States distinguishes among three levels of national interests: (a) vital national interests, including security of the territories of the US and its allies and safety of American citizens..."[17] It is necessary to note that the Doctrine of National Security of the United States of America is quite a dynamic concept, comprised of perspectives on issues regarding the security of

[15] *Olson W.C. et al. The Theory and Practice of International relations. New Jersey, 1983.*
[16] *Holsti K.J. International Politics. A Framework for Analysis. New Jersey, 1987.*
[17] *Современные международные отношения // Под ред. Торкунова А.В. М., 2000, pp. 286-287.*

this country. Annually on the highest political ranks involving the President of the US a document called "National Security Strategy" is being adopted where the most important interests of the country and the most likely sources of threats and challenges are being identified[18]. However, in its foundation it is permanent, regarding the hierarchy of values and interests. Here an individual, his/her rights and freedoms are always among the fundamental values.

Russian research in this field has gone through a process of formation and now has arrived to the same position of recognizing the fundamental values in democratic countries. For instance, in Panarin's concept on general security the core is the above-mentioned multi-dimensionality of the security of a single individual, that has found its reflection in the following:

1. "Securing the physical safety, resisting factors that can threaten life and health of an individual;
2. Economic security, i.e. securing employment opportunities and sufficient remuneration for the work done, protection of savings and property;
3. Social security - a deserving status in the society and state and public institutions guaranteeing protection of the two above-mentioned aspects of security;

[18] *Коновалов А.А. Современные международные отношения и мировая политика // Под ред. Торкунова А.В. М., 2004, p. 274.*

4. Ethnic-cultural security as an opportunity to maintain and freely develop ethnos and culture with which the individual identifies himself/herself;
5. Security of dignity - a qualitative denominator indicating that in a democratic society for a free individual the value of security is no less significant than the security itself. If for security one needs to pay with humiliation, denial of his/her principles and repression of individualism, then this concept turns into a purely biological specific category.[19]"

In 2000 the new edition of the "National Security Concept of Russian Federation" was issued, where the national security concept of the Russian Federation is referred to as "a system of views on ensuring the security of the individual, society and the state (*the prioritization of the subjects of security are obvious* - authors' emphasis) from external and internal threats in all spheres of life in the Russian Federation."

Article 19 of the Charter for European Security adopted in 1999 states, "We reaffirm that respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security."

[19] *Коновалов А.А. Современные международные отношения и мировая политика // Под ред. Торкунова А.В. М., 2004, p. 271.*

Thus, there is a certain consensus regarding the issue of prioritizing the interests of an individual while discussing security issues on doctrinal, national and international levels. The status of the security of an individual is based on three factors: humanitarian (directly human, personal), social-economic and military-political. This glossary is in full conformity with the Charter of European Security of OSCE adopted in 1999. Article 9 of the Charter states, "*We will build our relations in conformity with the concept of common and comprehensive security, guided by equal partnership, solidarity and transparency. The security of each participating State is inseparably linked to that of all others. We will address the human, economic, political, and military dimensions of security as an integral whole.*"

It is true that the Charter does not mention about the fundamentals, but only about the dimensions of the individual security and through it the security and the state of protection of the society and state. It is necessary to have a foundation for this provision. This can and should be the institution of rights and freedoms of an individual and a citizen. In this context the reciprocity of these two legal subjects - an individual and a state, is obvious. Moreover, it is obvious that there is a certain rapprochement between the levels of recognizing their statuses as legal subjects, which is reflected in so-called system of corresponding rights and responsibilities. The individual has a right to recognize his/her legal personality regardless where he or she is (***Article 6: Everyone has the***

right to recognition everywhere as a person before the law. Universal Declaration of Human Rights; Article 16: Everyone shall have the right to recognition everywhere as a person before the law. International Covenant on Civil and Political Rights), a right to recognize that the state is responsible for human rights and freedoms, a right to recognize that a concrete state should grant the individual with nationality, which provides him/her with a complex of rights and freedoms of an individual and a citizen. An individual also has a right to safe development within this state, where she/he together with other individuals are the carriers of the sovereignty and the only source of power of the given state, and the state, which is engaged in practice and realization of this rights in one way or another and has certain responsibilities towards this end. In contrast, the state also has a right to secure the observance of the laws and other normative-legal regulations by these individuals and thus the individuals also get certain responsibilities corresponding to these rights (*for instance, Article 2 of the Convention relating to the Status of Stateless Persons states: "**Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.**"*)

Obviously the internal law of democratic countries tends to be homocentric. For already a considerable time the international law also reflects the same tendency, emphasizing more and more the significance

of ensuring the interests and rights of an individual. Defining an individual as an object and not subject of law is already in the past. "Even in the not so remote past an individual was regarded as an object of international law. In one of the reports presented during the preparation process of the Hague Conference for the Codification of International Law in 1930 it was mentioned that individuals are not considered as subjects, but only objects of international law.[20]"

The contemporary understanding of law, which is formulated in a liberal-legal concept elaborated and suggested by academician V. S. Nersisyants, is anchored on a homocentric approach, which is reflected in the principle of formal equality. According to this concept, the mentioned principle is a whole comprising three implicative characteristics of law - universal measures of regulation, liberty, and justice. "This tri-unity of essential characteristics of rights (*three components of the principle of formal equality*) can be defined as three modules of a common substance. Like three mutually connected and implicative meanings of one substance, one of them simply cannot exist without the others. The universal equal measure typical of law is exactly the equal measure of

[20] *Лукашук И.И. Концепция права международной ответственности // Государство и право, No 4, 2003, p. 85.*

liberty and justice, and those two are impossible without and beyond equality (universal equal measure).[21]"

Such an interpretation of law has human rights and freedoms in its core. All the three principles of formal equality of the liberal-legal concept, i.e. measures of regulation, liberty and justice, have their real reflections through which it becomes possible to practically realize and effectively develop human rights and freedoms. The measure of liberty is reflected in human rights. "Within the framework of formally securing the freedom an individual' self-determination is realized, and the conditions for real use of social benefits in various spheres of political, economic and socio-cultural life are established.[22]" In internal law it is accepted to approach human rights from a complex perspective, when the separate categories of these rights as a whole acquire a systemic character. The complex of human rights and freedoms comprise personal, political and socio-economic rights and freedoms. It is worth to note that the basic approach to divide rights and freedoms into categories and at the same time to necessitate their unified, systemic perception underlies the International Bill on Human Rights (***Universal Declaration of 1948 and International Convents in 1966***).

[21] *Нерсисянц В.С. Основные концепции права и государства в современной России. Материалы "круглого стола" в центре теории и истории права и государства ИГП РАН // Государство и право, No 5, 2003. p. 6.*
[22] *Лукашева Е.А. Теория права и государство. М., 1995, p. 235.*

Personal rights define the freedom of an individual in the sphere of her personal life, his/her legal protection from any kind of intervention of illegal character. These are right to life, personal immunity, right to respect, protection of dignity and honor and liberty of conscience.

Political rights belong only to the citizens of a state and can be realized only within the framework of that state. They reflect the opportunities of an individual to take part in the political life of the state (*right to participate in the activities of political entities; right to elect and be elected; right to take part in national referenda, etc.*) It is important that "the political rights are **indispensable conditions** (*authors' emphasis*) for the realization of all the other rights of citizens, since they underlie the foundation of the democratic system and appear as means of control over power.[23]"

Ideally socio-economic rights should provide an individual with a sufficient level of living standards (right to employment, social security, freedom of entrepreneurship, right to private property, etc.)

If an analogy is drawn between the concepts "***dimensions of security***" and "***human rights and freedoms***" several implications become obvious. Security, if it is regarded as a state of protection of an individual in all its dimensions, can be reached only in case of approaching its perception and realization through recognition and practice, protection

[23] *Лукашева Е.А. Теория права и государство. М., 1995, p. 239.*

and guarantee of human rights and freedoms. The state carries the main responsibility for the provision of the mentioned components of human rights and for the creation of real conditions in the sphere of providing security to an individual. All these show the necessity of establishing confiding relations between an individual and state, especially in the case when there is a chance of establishing constant political-legal relations between them, i.e. citizenship, and even more so, if such a connection already exists. And what does confiding relation mean? The terminology used in international-legal cooperation of countries (measures for securing trust between states both in documentation and in activities of many international organizations, e.g. OSCE) can be applied to the internal communication between a state and an individual. The mentioned connection between the dimensions of security (*in OSCE terminology humanitarian, socio-economic and military-political dimensions*) and human rights and freedoms (*correspondingly personal, socio-economic and political*) reveals a seeming variance. If there is an obviously mirror reflection between the human (***humanitarian***) and socio-economic dimensions of security and personal, socio-economic rights and freedoms, a similar relations between military-political dimension of security and political rights of a citizen of a specific country are somewhat doubtful.

It was noted earlier that in the sphere of international cooperation between countries regarding military-political partnership a new term -

measures for securing trust - is being largely used. Former enemies attempt to find common interests, overcome the existing mistrust between each other and undertake certain measures towards securing bilateral partnerships and developing further towards the negotiation of the potential conflict. However, in internal political practice, on the level of a state and individual, this is no less significant. The situation when there is mistrust between an individual and a state, certain distancing of the legal subjects from each other, is particularly acute in the national-legal practices of post-soviet republics. Such a situation is possible in two cases:

1. An individual and state are already connected with political-legal relations characterized as stable;
2. An individual and state are not yet connected with such relations, but there are certain prerequisites and conducive factors for the development of such relations.

It is necessary to focus on the second case, since it clearly refers to violations of rights of all those deported from the former Azerbaijani SSR, who are yet to be granted a concrete legal status.

If in the international arena the military-political dimension of security has a considerable significance for a state, in its internal policy the recognition, exercise, protection and guarantee of human rights should share an equal importance. Therefore, it is necessary that a state find certain ways to engage in a constructive dialog with an individual,

and secure measures of trust between them. The unique importance of the necessity of adopting a comprehensive approach towards the resolution of any conflict becomes obvious as well, which takes into consideration all the aspects of the concept "security" and the complex of human rights and freedoms.

Political and economic disparity between the positions of the parties regarding the resolution of Karabakh conflict and different argumentation to support their legal claims are results of state-centric, conventional perception of international relations, as well as dogmatic interpretation of the principles and norms of international law, especially within the framework of international-legal institution of recognizing a state as a subject of international law, whereas in a much general context, it is the result of impaired subjective composition of the parties involved in the process of seeking common grounds[24]. The political and economic interpretation of the conflict and the construction of geopolitical and geo-economic principles into its resolution are important. However, the experience of 11 years shows that those are not sufficient for the final settlement of the Karabakh conflict. Therefore, the only real alternative for the effective use of legal approach is the return to the sources of national and international laws, to the human rights and freedoms. It is exactly this legal approach, which focuses on the principle that is not

[24] *Минасян С. НКР в системе "непризнанных государств" // Голос Армении, 15.02.2005.*

being disputed between the parties (and actually, it cannot be disputed given the current state of the parties), i.e. recognition and protection of human rights, that is necessary for overcoming strictly geopolitical and geo-economic deadlock where the conflict has currently phased to. Legal approach is possible, and actually it is the only approach that can bring to one or another scenario of resolution. However, it is possible only if the parties do not feel "deprived" regarding one or another issue and at the same time, this is the only approach that will allow restoring the rights of the people that have suffered the most of the conflict regardless their ethnicity.

All this is impossible though if there is no real involvement of one of the equal and in many ways decision-making parties - NKR.

THE MILITARY-POLITICAL CONSTITUENT OF THE SETTLEMENT OF THE CONFLICT

If the legal aspect of the conflict has a tendency and real prerequisites for the resolution of the conflict in a direction that has been discussed in earlier chapters of the paper, i.e. protection of rights and freedoms of people who have suffered the most from the conflict, the military-political constituent of this conflict can be discussed only in terms of "settlement or regulation". This can be inferred from the current developments in and outside the region, from the "weakening" and "strengthening" of factors that effect the conflict and the situation around it, mostly of a military-political character, which is less constant than the more fundamental, and for this very reason more constant, legal categories, which are reflected in the ideal comprising the values of human rights and freedoms. The mentioned difference between legal and military-political toolbox should not be interpreted as an attempt to isolate laws from politics. It simply highlights the necessity of the principle to strive for what's due, i.e. legal resolution, through what exists, i.e. military-political settlement.

The military-political constituent of the Karabakh conflict necessitates the idea of creating and supporting security and protection of the interests of the parties involved. In this respect the territories of Lower Karabakh, which are currently under the jurisdiction of NKR, play a very significant role in the issue of security. This statement does not

attempt to limit the significance of these territories only to the issues of security and stability. However, when Azerbaijan refuses to consider the humanitarian and political-legal dimensions of the Karabakh conflict as decisive, when due to actively showcasing revanchist and military propaganda the leadership of Azerbaijan does not take the political and legal initiative with due seriousness, it is at least short-sighted not to consider the territories of Lower Karabakh as one of the most important elements of security and development of NKR, as well as a guarantee for restraining from new military actions. These territories are not only the necessary pre-conditions for security of the NKR population, but also of all the people mentioned above, i.e. refugees and IDPs, former citizens of Azerbaijani SSR , who in a near future may become citizens of NKR and resettle in these territories.

This is incited first of all by the increased militarization of Azerbaijan and the readiness of its leadership to force a military solution of the conflict. The militarization of Azerbaijan is characterized with gross violations of all the international obligations it has undertaken according to various protocols and mechanisms of control over arms and military actions, which are adopted and ratified by Treaty on Conventional Armed Forces in Europe (CFE Treaty). For instance, in recent years a strange picture has developed regarding the quantity of the major types of armament, which are being annually reported to CFE Treaty Parties. In the first years after the end of military actions in

Nagorno Karabakh Azerbaijan reported of a number of tanks, armored combat vehicles (ACV) and artillery pieces, which considerably increased the maximum allowed quota. Whereas nowadays Baku declares exactly the number which is allowed according to the Protocol on national limits on conventional armaments and equipment set by CFE Treaty. However, it has not demonstrated any actions taken towards disarmament. Thus, it can be assumed with confidence that the level of armaments and equipments in Azerbaijan considerably increase the allowed limits of CFE Treaty[25]. Azeri researchers also note, "Since this agreement (CFE Treaty - *authors' note*) sets strict restrictions on the quantity of military personnel, armament and military equipment, Azerbaijan is compelled to hide the real numbers.[26]" Officially Azerbaijan explains this with the impossibility of providing information about the armament of the troops that are deployed in the territories neighboring with NKR [27]. In addition, since according to the national limits set by CFE Treaty, the number of armored combat vehicles (ACV) in regular forces of Azerbaijan should not exceed 220, about 200 entities

[25] *For details see Минасян С. Военно-технические аспекты региональной безопасности и проблемы контроля над вооружениями на Южном Кавказе // Регион, No2 (6). Ереван, 2005.*

[26] *Юнусов А. Азербайджан: в ожидании перемен под бременем истории // Кавказ: вооружон и разобщен / Под ред. Матвеевой А., Хизкока Д. Safeworld, ЦАСТ: Лондон – Москва, Февраль 2004. p. 69.*

[27] *Lachowski Z. Arms Control in the Caucasus // Armament and Disarmament in the Caucasus and Central Asia. SIPRI: Stockholm, 2003, pp. 34-36.*

were transferred from the Ministry of Defense to the internal and frontier troops of the country, so that on paper the quantity of the mentioned kinds of armament formally looks within the limits set by the treaty. Thus, actually the level of militarization of modern Azerbaijan has reached the point where according to the Chief Commander of the Headquarters of the Military Forces of Armenia General – Major Michael Harutyunyan, today in Azerbaijan the number of tanks and ACVs exceeds the allowed limit by 1.5 – 2 times and the number of artillery pieces by 2 - 2.5 times. Therefore, it is only natural that in a situation where the international society cannot suggest any practical mechanisms for restricting the increasing militarization of Azerbaijan, which is against all the norms and procedures regarding arms control, NKR is compelled to make up for the existing disparity between the military potentials of the two countries in one way or other, taking into consideration the discrepancy among their socio-economic, demographic and other indicators.

In the current situation the military-political equilibrium can be characterized as a quantitative and qualitative equality between the conflicting parties, where along with the purely technical denominators an important role has been assigned to the geographical factor and the existing configuration of the NKR borders, which is conducive for defensive actions. At the same time these territories are the frontline of military actions. Certainly the quantitative excellence of Azeri forces that

is expressed in more quantities of military equipment and number of military personnel is leveled with the qualitative excellence, i.e. combatant efficiency, of the Defense Army of Nagorno Karabakh, which is the major guarantee of security for the NKR population, and the armed forces of Armenia. However, it is necessary to consider the comprehensive ratio of various types and systems of armament, as well as the possibility of their effective use in case of renewing the military conflict. Azerbaijan's superiority in attacking armament is compensated with the efficiency (of course, from a military perspective) of the current defensive positions of the armed forces of NKR. Several prominent military experts have noted that "this system of quantitative-qualitative equilibrium is rather stable against the internal and external influences: for instance, a simple increase in the quantity of armed forces and quality of military equipment of one of the parties as much as twice, will bring about an increase in the quantitative and qualitative criterion for less than twice.[28]" In other words, the configuration of the defensive positions of the Defense Army of NKR allows eliminating or compensating for the threat to the regional security, which is initiated by Azerbaijan's uncontrolled and mass purchase of armament and military equipment. For the initiator of new military actions, in this case most probably Azerbaijan, the probability of possible losses turns out to be much higher,

[28] *Кенжетаев М. Оборонная промышленность Республики Армении // Экспорт вооружений, No 3, 1997, pp. 7-11.*

which is actually the very reason why it restrains from such actions. Thus, the significance of the territories of Lower Karabakh as a security and stability factor on the frontier of Azerbaijan – NKR conflict, becomes even higher.

Moreover, it should be noted that from the perspective of full functionality in all aspects of life and security of NKR, the territories of Lower Karabakh are also very important, since it borders with the Islamic Republic of Iran. It is even redundant to point out how important it is for the security and further normal development of the NKR population to have alternatives for overcoming the economic isolation.

FROM MILITARY-POLITICAL OPPOSITION TO HUMANITARIAN-LEGAL DIALOG

With the Declaration on Proclamation of the Nagorno Karabakh Republic on September 2, 1991, NKR got a legitimate status granted by the only source of its power and carrier of its sovereignty – its people. They participated in the Referendum held on December 10, 1991 and Nagorno-Karabakh was officially declared an independent state by the Declaration of the Supreme Council of NKR dated January 6, 1992. The legitimacy of its formation is in full conformity with both the constitution of the former Soviet Union and the principles and norms of the international law, and this fact is quite obvious.

NKR was formed on the territories including some of the territories of NKAR and those regions nearby that historically were considered part of Nagorno Karabakh, and not within the framework and borders of former NKAR. NKAR was formed on illegitimately restricted territories which were artificially defined by the leadership of Azerbaijani SSR after 1921 since the early 1988[29]. The NKAR itself was an odd formation in

[29] *The Caucasian Bureau of Russian Communist Party in its decree dated June 5, 1921, resolved, "Nagorno Karabakh will be left within the borders of Azerbaijani SSR and will be granted absolute autonomy." However, in conformity with the decree on "Formation of Autonomous Region of Nagorno-Karabakh" ratified by Azerbaijani Central Executive Committee on July7, 1923 it changed into an autonomous region: "an autonomous region will be formed from the Armenian part of Nagorno-Karabakh... " Thus, with the willful decision of the leaders of Soviet Azerbaijan the Autonomous Region of Nagorno-Karabakh (ARNK) was formed which did not include southern (Kubatlu, Zangelan, Fizuli, Jambdail), western (Lachin, Kelbajar), central (Khanlar, Shahumyan) and northern*

terms of state-legal formulation of the rights of one of the state-constituent nations of Azerbaijani SSR. Autonomy in soviet interpretation is not even a state-like formation, but a Lenin-Stalin-like way of "settling national antagonism." And if so, how can one treat this artificial model of ethno-political interpretation of territorial demarcations, which totally ignores a personality and their rights and freedoms as a fundamental basis. NKAR was the offspring of the Soviet Union and vanished together with it.

The modern NKR refers to the experiences of the quasi-state existence of NKAR not with the goal of defining its territorial framework for state sovereignty as seen from a soviet perspective (state will elevated to the level of law), but solely for promoting the introduction of a new approach, which is particularly typical of a democratic state. The source of the sovereignty and carrier of the power of NKR is its people and not a single ethnic group. Thus, the people themselves should define the limits, i.e. spatial framework, of the state-legal sovereignty of the collective formation, which is being established according to its legitimate will and which is there to define its way of political self-governance and development. In this interpretation of state-legal sovereignty, territories

(Karhat/Dashkesan, Getabek, Shamkhor) regions of Karabakh, notwithstanding the fact that in all these regions the majority of population was Armenian at the moment of the ratification of the decree. Later in 1936 ARNK was renamed as NKAR. For details see Минасян А.С. НКР в системе "непризнанных государств" // Голос Армении, 15.02.2005.

are not regarded as values if they are considered in isolation from human rights and freedoms. Individuals, as subjects of law have recognized and protected rights and freedoms, granted by the power of collective formation represented by the state. They are united in a politically formed union, which defines its territorial aspirations by observing all the democratic procedures and in conformity with constitutional-legal norms of the given political union and principles of the international law.

NKR can restrain from unilaterally defining the status of the territories which are formally beyond the borders as defined by the Declaration of September 2, 1991 and the Referendum of December 10, 1991, though the interpretation of the territory of NKR as the territory of former NKAR itself is erroneous in its core. It should be noted again that based on the modern understanding of statehood and sovereignty of a nation, the democratic perception of legitimacy of a new subject of international law, and the perspective of absolute recognition and protection of the rights and freedoms of individuals, living within its borders, NKAR was nothing. The source of the conflict itself and the main reason for its falling into a military opposition was the fact of large-scale and treacherous violation of human rights, which was not only a violation of the rights of a single individual (*individual rights*), but also a violation of collective rights of the majority of population on a given territory (*rights to self-determination, development and safe vital functions.*) Thus, the main goal of NKR and its mission in the state-legal

dimension is the elimination of the on-going unfair approach, which is reflected in the restriction of the legitimate rights of the former citizens of Azerbaijani SSR to political-legal choice, to the possibility of connecting their future to the destiny of a state which is ready to take genuine responsibility for the protection and insurance of their rights and freedoms. The former territory of NKAR[30] is the hotbed, the source of expansion of the sovereignty of the people of NKR and any resolution regarding the spatial framework of this sovereignty should take into consideration this implication.

We have already spoken about the infringement of the rights of a certain category of citizens of former Azerbaijani SSR, exiled from its territory and now having appeared in an uncertain political-legal state on some third countries. Two main categories of such people were mentioned: first including people having directly moved to RF, but for one or another reason, which have been discussed in earlier chapters, not having been granted with a permanent status. The second category includes people who have moved to the territory of former Armenian SSR, but later left its legal successor - Republic of Armenia, and currently these people are in the position of stateless persons.

[30] *It should be emphasized that the concept "territories of NKAR" is rather a linguistic phrase than anything else, since in the former Soviet Union, particularly in regard with a region, there was neither a perception of borders as defined in strict conformity with the international-legal meaning of this term, nor any other clearly defined principles of state-legal sovereignty for an autonomous region, but rather an administrative-territorial framework defining the responsibilities of the party on various levels of soviet authorities.*

Both these categories have a common characteristic: the fact of restriction of and deprivation from their right to proper choice of political-legal self-determination. In other words, nowhere were these categories of people provided with a right to political choice, right to vote in referenda on independence and referenda on adopting a new constitution in the newly formed republics. Consequently, their other rights, such as individual and socio-economic, have suffered to a certain degree as well and cannot be considered as fully recognized and protected by one or another state. It is clear, that people did not get a right to vote and electoral rights, since they were not citizens of the given country, and it is well-known that only people who are in a stable political-legal relation with the state are eligible for getting political rights. The authors have discussed earlier the factors affecting the fact that these people did not get citizenship of the states where they currently reside. However citizenship is not only a logical outcome of the already existing, more or less stable political-legal relations, but is also prescribed by universal documents of international law (***Article 15 of the Universal Declaration of Human Rights, 1948; Articles 16 and 24 of the International Covenant on Civil and Political Rights, 1966; Article 32 of the Convention relating to the Status of Stateless Persons, 1954 and Article 34 of the Convention relating to the Status of Refugees, 1951***). Human rights and freedoms cannot be limited because of the political interests of any country or the lack to political will to provide the people residing on

its territories with at least the significant part of the rights and freedoms from the whole complex of this institution. Limitations are possible, but only as mentioned earlier, in the case when the given rights and freedoms are suspended in their realization in accordance with the conditions which have been contracted as principles (*for instance, as it is noted in the Convention for the* ***Protection of Human Rights and Fundamental Freedoms, 1950***). However, if certain rights and freedoms are absolutely missing (in this particular context, we refer to political rights and freedoms of an individual), in this case the right of every individual to be grated citizenship within a reasonable period of time when he/she has been residing on the territory of a certain country, is being violated.

For the two categories of former citizens of Azerbaijani SSR and USSR this situation has lasted for more than 15 years, which is certainly beyond the definition of "reasonable period" and requires immediate adjustments. The only state subject, which can take the rights and obligations to grant these people with the whole complex of rights and freedoms, which also means grating them with the status of a citizen with all the inherent political-legal consequences, is NKR. This argument is based on the following facts and strong implications. Each of the conflicting parties held its own referendum on independence and thus became a subject of international relations and international law (*here we do not consider the political context of the institute of recognition by international law*). All the referenda were held in the same timeframe: in

Armenia on September 21, 1991, in NKR on December 10, 1991 and in Azerbaijan on December 15, 1991. We do not discuss the declarations of independence of these countries, since for us the referenda are more important: they directly and more democratically express people's will. The referendum held in Azerbaijan on December 15, 1991 did not include NKR, since on September 2nd of the same year it declared about its independence and on December 10th, this declaration was affirmed by the will of people. We do not use the categories "***referendum on territories***" and "***it did not include territories***", since territories that should have ensured the state-legal expansion of the sovereignty of state as such were not clearly defined. At that moment there were territories that were being controlled by the parties more or less effectively, and given this fact, the situation was characterized with occasional transfer of these territories from one party to another. Then the only thing the parties could claim with some certainty was the fact that NKR controlled the territory of its capital – Stepanakert, and the nearby areas, and Azerbaijani Republic was in full control only of its capital Baku and perhaps several large areas lying close to it. Another "common" feature of the referenda in the two countries is the fact that the people who had suffered of the conflict the most, who had been deported from the territories of former Azerbaijani SSR , did not get to vote during the referenda, though the reasons for this were absolutely different.

The declarations and referendums about the independence of NKR and the Republic of Azerbaijan could not address territorial issues and clearly define the state-legal expansion of the sovereignty of the newly formed states. This is in no way an implication that the proceeding open military actions between the parties and the current outcomes of these actions provide a comprehensive answer to the territorial question. This would be an absolutely erroneous statement, especially from the legal aspect of the conflict.

We are not interested in the military-political constituent of the conflict, but rather in its legal progressive development and this is why we turn to the next phase of legal actions of the parties - the constitutional-legislative construction of their legal systems, the adoption of constitutions. First, constitution is the fundamental political-legal document of the state, which has legal supremacy, direct operation and expansion on the whole territory of the state. Second, the format of the adoption of a constitution - referendum, is also important for our research.

The constitution of a modern democratic state is the foundation of its legislation. "***Constitution has a constructive nature, since it is adopted by people or on behalf of people, who is the carrier of the***

sovereignty of the state and the only source of power, and its provisions have a primary significance.[31]"

The constitution of the Republic of Azerbaijan was adopted on November 12, 1995 through a referendum. So, if the time factor is taken into consideration, it means that within a half year after singing the cease-fire agreement in 1994, this Constitution can be expanded to the whole territory of the state and its activities cannot have a discreet and random nature. In this case a question should be asked: what are the territories of the Republic of Azerbaijan according to its Constitution in terms of the borders within which the state-legal sovereignty of this subject of international law can expand?

For instance, in the Constitution of Georgia it is mentioned, "Georgia is an independent, unified, and indivisible law-based state, ratified by the referendum carried out on March 31st, 1991 throughout the territory of the country, including the then Autonomous Soviet Socialist Republic of Abkhazia and the former autonomous oblast of South Ossetia..." (***Chapter 1, Article 1***). The Constitution of Moldova adopted on June 29, 1994 and amended on June 19, 1996, also states that "the frontiers of the country are sanctioned by an organic Law under the observance of unanimously recognized principles and norms of international law." (***Article 3 - The Territory, Point 2***). And it is

[31] *Енгибарян Р.В. Тадевосян Э. В. Конституционное право. М., 2002. р. 49.*

redundant to explain why we have brought the example of these countries. Given these examples the Article 11[32] of the Republic of Azerbaijan Constitution looks very theoretical, no specifics are provided. The answer to the question what territories should be considered the Azerbaijani Republic territories and correspondingly, what NKR territories are, should be looked for somewhere else, rather than the military-political and economic aspects of the conflict.

The Constitution of the Republic of Azerbaijan adopted in 1995 defined the spatial framework of its sovereignty. As a document of highest legal supremacy, which is directly operated and expanded in all the territory of the state, as well as a document adopted in the most democratic way possible - referendum, we consider it as a legal foundation. Here's yet another question: does the Constitution of Azerbaijani Republic apply to all the territories of the former Azerbaijani SSR? Without any hesitation, the answer is no, since the Republic of Azerbaijan is not even the legal successor of the former Azerbaijani SSR. In this case, the legislation of which state should expend to the territories

[32] ***Article 11: Territory***
(1)The territory of the Azerbaijani Republic is sole, inviolable, and indivisible.
(2) Internal waters of the Azerbaijani Republic, sector of the Caspian Sea (lake) belonging to the Azerbaijani Republic, air space over the Azerbaijani Republic are integral parts of the territory of the Azerbaijan Republic.
(3) No part of territory of the Azerbaijani Republic may be estranged. The Azerbaijani Republic will not give any part of its territory to anybody; state borders of the Azerbaijani Republic might be changed only by free decision of its peoples made by way of referendum declared by the Parliament [Milli Majlis] of the Azerbaijani Republic.

that are not under the jurisdiction of the Republic of Azerbaijan Constitution? Certainly- the legislation of NKR.

The territories of the former Azerbaijani SSR were left as they were (*this inference is based on their most recent status that had been recognized*). In fact, these territories are under the jurisdiction of NKR and operate in conformity with its legislation.

CONCLUSION

Applying the adequate international norms, NKR can realize its legitimate right to apply those norms to the situation of uncertainty regarding its IDPs and former citizens of Azerbaijani SSR of Armenian ethnicity, who currently hold the status of refugees. Here our argumentation is based on the temporary nature of this status, which implies that certain consistent ways should be sought to secure a permanent status for these people in the form of grating them with citizenship and inherent positions defined in the existing international-legal acts.

The reasonable continuation of this policy would be granting people with the status of refugees and IDPs with a right to resettle on the territories under the jurisdiction of NKR already as full citizens of this state. NKR should not reconcile with the temporary status of these people, who in their turn cannot always stay with this transitional status of their political-legal existence. Moreover, if the Republic of Azerbaijan does not want to deal with NKR in this respect, the last can act independently, since the Azerbaijani Republic is reluctant to act based on any of the criteria, such as the current frontiers, which define the territories under the NKR jurisdiction; the existence of quasi-borders during the times of Azerbaijani SSR, which artificially and illegally restricted the territories of NKAR; refusal to engage in negotiations

regarding the clarification of all the issues dealing with a real possibility of assisting people who suffered the most from the military conflict.

CONTENTS

Tigranouhi Rouhinian

Tigranouhi Rouhinian was born in Iran in 1934. She was the youngest of four children in the family of Matevos Davidian and Aghavni Melikian. Matevos Davidian was a constructor, and that was the reason why his family lived in small towns of various regions of Iran. Like in many Armenian families outside Armenia, Tigranouhi's Armenian education was provided at home. It was extremely important for her family that the children learn read and write in Armenian, appreciate their ancestors and be patriotic. In 1954 Tigranouhi married Dr. John Rouhinian and they had two children: Edmond and Katia. In Iran Tigranouhi worked hand in hand with her husband. In Teheran she assisted the children's hospital and addressed the needs of many kids. In 1971 they had to move to the US because of her husband's professional aspirations. Following the example of their parents, they were also supporting young Armenians. In Los Angeles Tigranouhi became a member of Armenian Benevolent Union, and it is already 30 years she has been a full member. She has first visited Armenia in 1992, after which she decided to do everything in her capacity to help her homeland. Tigranouhi has bequeathed her children to continue the family tradition. Tigranouhi supports several kindergartens in Artsakh and a school in the Nork region of Yerevan. She has supported several publications of the Russian-Armenian University. She has also offered scholarships to two students at the same university. In the United States she sponsors and assists the Western Diocese of Armenian Church and the Sheepfold Foundation, which particularly deals with women's issues.

Edmond Rouhinian

Edmond Rouhinian is the senior of Dr. John Rouhinian's and Tigranouhi Rouhinian's (Davidian) two children. He was born in 1956 in Teheran. There he studied in the Christian school and attended the Ararat scout organization. In 1971 together with his parents he moved to California, US. During high school years he became a member of Armenian Youth Federation, where he was able to get Armenian education and relate to Armenian culture more closely. This allowed him to appreciate his past and his ancestors more. In 1981 Edmond graduated from the Long Beach University. With a BA in business and finances, he founded the *Mortgage* Company, which he manages till today. Following the example of his parents and grandparents he started sponsoring and assisting different Armenian and non-Armenian organizations. He is a board member of the Armenian Church of Holy Cross and has supported various youth activities. He is a well-known Maecenas in the US, Lebanon and Nagorno Karabakh. He is married to Marina Beckarian, who he met in Lebanon. They have two sons: Sevak John and Shant Narek.