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INTERNATIONAL LEGAL STATUS OF IREVAN

SITUACIÓN JURÍDICA INTERNACIONAL DE IREVAN

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RESUMEN

Territorial disputes between countries are typically rooted in questions of national identity and historical pride where territorial claims are raised as defending their cultural heritage or seeking a sense of legitimacy and national cohesion. These have important geopolitical implications, being able to trigger conflicts, affect bilateral and regional relations, and shape the world order and the international legal system. In this sense, the Republic of Azerbaijan has been affected on several occasions, such as with the Turkmenchay and Batumi treaties, which resulted in the loss of territories, demographic and cultural changes, and regional dynamics; implications that persist to this day and have had a lasting impact on the history and politics of Azerbaijan. The objective of this work is to carry out a brief analysis of the implications of these treaties from a socio-geopolitical context to support the position of Azerbaijan in its claims. For this, the analysis of historical documents was mainly used to later substantiate the legal aspects of the subject.

Keywords: Azerbaijan-Armenian conflict, international law, territory dispute

RESUMEN

Las disputas territoriales entre países típicamente están arraigadas en cuestiones de identidad nacional y orgullo histórico donde los reclamos de territorios surgen como de la defensa de su patrimonio cultural o en busca de un sentido de legitimidad y cohesión nacional. Estas tienen importantes implicaciones geopolíticas, pudiendo desencadenar conflictos, afectar las relaciones bilaterales y regionales, y dar forma al orden mundial y al sistema legal internacional. En este sentido la república de Azerbaiyán se ha visto afectada en varias ocasiones como con los tratados de Turkmenchay y Batumi lo que resultó en la pérdida de territorios, cambios demográficos y culturales, y en las dinámicas regionales; implicaciones que persisten hasta la actualidad y han tenido un impacto duradero en la historia y la política de Azerbaiyán. El objetivo de este trabajo es realizar un breve análisis de las implicaciones de estos tratados desde un contexto socio-geopolítico para sustentar la postura de Azerbaiyán en sus reclamos. Para ello se utilizó principalmente el análisis de documentos históricos para posteriormente fundamentar los aspectos jurídicos del tema.

Palabras clave: conflicto entre Azerbaiyán y Armenia, derecho internacional, disputa territorial

INTRODUCTION

The Irevan Khanate, also known as the Erivan Khanate or the Khanate of Yerevan, was a historical political entity that existed from the late 18th century to the early 19th century. It was located in the territory of present-day Armenia, including the city of Yerevan. The Khanate of Irevan emerged as a result of the weakening of the Persian Safavid Empire and the expansion of the Russian Empire in the Caucasus region. In 1747, Mirza Muhammad Khan became the ruler of the region and established the khanate with its capital in Irevan (Yerevan). During its existence, the Irevan Khanate was caught in conflicts between the Persian and Ottoman Empires, as well as the expanding Russian Empire. The khanate switched hands multiple times between these powers, resulting in shifting alliances and territorial changes.

In this regard US historian David Fromkin writes in his book " A Peace to End All Peace ": There was a secret agreement between David Lloyd George, who was the Prime Minister of Great Britain in 1916-1922, and Anwar Pasha, a military and political figure who played an important role in the history of the Ottoman Empire. That contract was held in London ("House of Lords Record Office - Beaverbrook Collection - Lloyd George Research F-6-1-Papers I-16 (b)") and writes:

> *"According to the agreement, Arabia will be independent. Armenia and Syria will gain an autonomous status within the Ottoman Empire. Mesopotamia and Palestine, like Egypt, will come under Ottoman rule before the war, but will be under the protection of the British, and freedom of passage through the Dardanelles will be guaranteed.* (Fromkin, 2009, p. 234).

According to this agreement, two states in the Caucasus - Azerbaijan and Georgia - would become independent although those two states would remain under British control. Baku oil in particular would be under the control of the Ottomans and the British. This agreement was in force until the Batumi conference, but things changed at the same conference when British intelligence revealed Anwar Pasha's secret intentions to build an Ottoman Empire from the Adriatic Sea to India (Thomson, 1965, p. 48). The idea of the creation of the Armenian state entered the agenda, and the Ottomans were faced with the choice of giving the capital to independent Armenia. Several participants protested in the Batum conference for the transfer of the city of Iravan belonging to the Republic of Azerbaijan, which was fighting for independence, and also against the Ottoman pashas giving the city of Gyumri to the Armenians as the capital. This way they started pressuring Rasulzadeh. Ronald Grigor, a professor of political science at the University of Chicago, writes about this event: *"Iravan was a Muslim city until the Batum conference"* (Holmes, 1995, p. 5). On May 28th, 1918, at 20:00 in the evening, negotiations began in Batum. Vehib Pasha said: *"We have to satisfy the demand of the Armenians at least a little. In any case, we have to give them a territory."*

The area intended for the Armenians consisted of the Yeni Beyazid and Uchmiadzin regions. On May 30th, 1918, the Turkish delegation began to apply these conditions as a result of their negotiations with the Armenians. A. Khatisyan, who strongly opposed this, claimed that the lands granted to the Armenians were small and that these proposed borders would cause permanent enmity between the Turkish and Armenian peoples. He claimed that if they were given a very small part of the territory where Caucasian Muslims live, relations with Muslims would improve and Armenians would defend the rights of Muslims in these territories. Vehib Pasha suggested that the Muslim population living in the territory of Armenia be transferred to Turkey so that more territory could be left to the Armenians. Recognizing that the "Armenian problem" was an international problem, he claimed that the Ottomans would recognize his independence. The Armenians had no choice but to accept these conditions (Pashayev, 1999).

According to the signed agreement, the territory of Armenia was 9 thousand km square, while the population was 326 thousand people. The territory of Armenia included Basarkecher Governorate (Nor Beyazid), three-fifths of Iravan Governorate, part of Uchmiadzi, and part of Iskanderu, including 230,000 Armenians, 80,000 Muslims, 5,000 Yezidi Kurds, and 11,000 other nationalities. This way the Republic of Armenia included one-ninth of all Armenians living in the Caucasus.

However, these actions would have relevant consequences in the region. Considering the above, the objective of this paper is to carry out a brief analysis of the implications of the signing of the Batumi and Turkmenchay treaties from a socio-geopolitical context to support Azerbaijan's position in its territorial claims. For this, the analysis of historical documents was mainly used to later substantiate the legal aspects of the subject.

DEVELOPMENT

The Batumi agreement did not include an agreement regarding the compromise of Yerevan and the assumption of any obligations by the Armenians. Yerevan was given on the basis of a gentleman's agreement between the Armenian National Council and the Azerbaijani National Council. In 1918, the National Council of Azerbaijan compromised Iravan due to the lack of a capital to create an

Armenian state. In return, the Armenian National Council undertook to renounce its claims to the mountainous part of Yelizavetpol Governorate, the current Nagorno-Karabakh. There is no article in the Batumi agreement that includes that agreement. This contract is called a verbal contract in the Romano-Germanic legal system. Verbal contracts become legally binding immediately from the moment the words are uttered and are usually confirmed ("sealed") with a "shaking of hands". This way, "stipulation is an oral contract concluded through a question of the future creditor (centum dare spondes? - do you promise to give a hundred?") and a corresponding answer (spondeo, I promise) to the question asked by the person who agrees to be a debtor under the obligation" (Johnston, 2022; Novitsky, 2008, p. 123; Zimmermann, 2001; Hasanly, 2011).).

Professor Rahib Akbarov (2008) writes:

> "Only the population of the Yerevan governorate has the right to be the successor owner and at the same time own the property (ownership has two important elements: the thing itself and the intention, will to own it). On the other hand, there is an official state document, the Protocol of the meeting of the National Council, which is recorded in writing (literally) in accordance with the rules of legal procedure. In other words, the transfer of land to the Armenian Federation was formalized in the Protocol as an indisputable legal fact that does not need proof. As a result, the transfer of Iravan governorate to the Armenian national federation was not only determined on the basis of a verbal (verbal) agreement, but also formalized by a unilateral written (literal)".

It should be noted that the property right is the most widely used right among the rights to the object. In general, property rights (including land) and rights to other things are attributed to property rights (Akbarov, 2008, pp. 98–99).

It is important to highlight that the main basis of European Continental law is based on the decision adopted by the Constituent Assembly of France on September 29, 1790. In other words, territorial issues, lease rights and legal inheritance of lands in the world today are regulated by this decision. According to this decision, countries that already applied European principles in their state administration had the "perpetual" lease right is prohibited and the maximum lease term was set at 99 years.

In 1918, when the meeting No. 3 of the National Council was chaired by F. Khoyski and the Protocol was adopted, the position of the local population, who acted as owners of the city of Yerevan, was not taken into account. (Malikli, 2020). n.It is important to mention that although the compromise of the city of Yerevan was verbal, it was later documented in the legal framework with protocol number 3. At this time, the lack of study of the opinion of the people of Iravan, who are the legal heirs, leads to the fact that this step of the APC is not a permanent use of land between the two states, but a lease agreement. The law of the European Continent requires that the lessee returns it to the lessor in a complete and intact form as soon as the 99th year is over, or signs a new lease agreement, or terminates the agreement. Within the framework of modern legal systems and also for individual national legal fields, the general principles of law are a priority and cannot be changed or interpreted. That is, the norms defined by each national legislator in separate legal fields cannot contradict the general principles of law (normative acts of the Republic of Azerbaijan or any other states).

In modern international law, there are rules for the voluntary concession of a state's territory to another state, i.e., regulation by means of a legal institution called "sessi" (institio: training, teaching), which takes its source from Roman law (Braginsky & Vitryansky, 1999, pp. 23–24; Hermalin et al., 2007; Kronman, 1985; Rosenfeld, 1984). The legitimacy of the Protocol No. 3 of the National Council of Azerbaijan dated May 29th, 1918, is unfounded, a decision completely contrary to international and national legal norms and should be annulled according to the relevant procedures. As a conclusion of the interpretation of the legal norms, it should be noted that the period of acquisition of the property regulated on the basis of the Romano-Germanic legal system on the basis of lease and the termination of the right of ownership is determined for a maximum period of 99 years, unless other circumstances are stipulated in the contract. This period ended on May 29th, 2017. In the Romano-Germanic legal system used by the Republic of Azerbaijan, according to the Cyvrite law, which the Roman patricians referred to at the time, ancient Roman lands that were mancipated (land as the most valuable item) in court were only considered "eternal".

Rahib Akbarov (2008) rightly writes that "the National Council of Azerbaijan has no legal obligations towards Armenia, and neither in domestic law (national law) nor in international law (supranational law) is there any Protocol No. 3 of the National Council of Azerbaijan of May 29th, 1918. Also, no legal limitation rules preventing cancellation (denouncing) have been established. According to the legal content of the protocol, these types of contracts - a) right of free use; b) the right to rent (use) land; c) concession of the right of demand ("session"); d) loan agreement (temporary and gratuitous use) is described as a legal construction.

In our opinion, taking into account the above, the government of the Republic of Azerbaijan should ensure the denunciation of the Protocol of the meeting of the National Council No. 3 of May 29, 1918, and in accordance with

legal procedures and with the norms of international law, it should file a claim against Armenia regarding the legal succession of the population of the Khanate of Iravan. (Hille, 2010).

The law also contains articles on the right of one of the contracting parties to terminate the contract in case of breach of obligations. This case was taken into account in Roman law when deciding the limits of the borrower's liability for the good keeping of the thing. Since the contract was concluded in his interest, strict liability was imposed on him, that is, the borrower was responsible for "omnis culpa" (for all kinds of fault), that is, only not because of willful damage to the lender ("dolus") and gross negligence ("culpa lata"), but also because of trivial negligence ("culpa levis").

The borrower was obliged to keep the thing provided for his use, to use it properly, that is, to use the thing in accordance with its economic purpose and the instructions of the contract, and in this case to show good entrepreneurial care (diligentia). In other words, a good hostess should not allow inattention, or carelessness. If the borrower showed full attention, prudence, and care, the borrower was not responsible for the lender if the damage to the lender was caused by chance. Then, accidental damage to the item was charged to its owner.

After the Armenians acquired the city of Yerevan as a result of a concession (loan right), they made a commitment that the Azerbaijanis there would not be touched, the historical buildings would not be damaged, and most importantly, the objects and lands belonging to Azerbaijan in Yerevan would not be damaged. However, time showed that the Armenians did not fulfill any of their commitments. Therefore, due to the fact that the Armenians violated all the obligations they undertook in exchange for the transfer of the Azerbaijani lands in and around Yerevan and continued the policy of occupation, both the relevant articles of the Batumi Agreements and the decision of the National Council of the Azerbaijan Democratic Republic dated May 29th, 1918 on the transfer of Yerevan lost their legal force. The decision of the National Council of Azerbaijan, which is the indirect legal successor of the territory of the former Iravan Khanate, went beyond the limits of its authority. That resulted in the granting of territories and made without seeking the opinion of the legal heir (the Iravan Khanate and its population) being a direct violation of the property rights of the people of Iravan. In the current situation, the problem should be interpreted objectively and correctly, the legal succession of Yerevan as a khanate should be ensured taking into account the national composition of the population of the khanate. Considering this point of view, the real owner of the lands included in the Iravan Khanate is the Azerbaijani people living in these areas. (Balayev, 2013). The right to self-determination in the South Caucasus: Nagorno Karabakh in context. Lexington Books

It is also important to note that after the Treaty of Turkmenchay reached Griboyedov and other Russian soldiers and diplomats from Petersburg, the 4th and 13th articles were completely changed, and the 14th article was replaced by the Armenians (in fact, there is no word "Armenian" in the sentence). The full sentence is as follows: "both sides have subjects who have moved from one state to another or will move in the future, can resettle and live in any place permitted by the government they are passing through". This is only related to the refugees; a small part of the refugees were Armenians. The rest were Turks who moved to Iran from the khanates. Articles 12 and 15 were not in the Petersburg copy (Kozmenko, 2021).

The Treaty of Turkmenchay was concluded between Russia and the Qajar for a period of 90 years. Almost 200 years have passed so the contract has lost legal force. The states that concluded the treaty - the Russian Empire and the state of the Qajar - no longer exist. Of course, Russia is considered to have abandoned the Turkmenchay and Gulistan agreements after this period. The former ambassador of Azerbaijan to Iran, Alyar Safarli, believed that an independent Republic of Azerbaijan has been established in Northern Azerbaijan, and the people of Azerbaijan have established an independent state. The south was under the protection of Iran. Then, if one of the contracting parties withdraw from their contract, the other party must automatically withdraw as well.

According to international law, the Treaty of Turkmenchay (Yeşilot, 2010). has lost its legal force long ago because it was based on a dead contract and dead signatures. Looking at the issue from the point of view of legal succession, the socialist revolution of 1917 in Russia, unlike the bourgeois revolution of the same year, did not declare itself the successor of the Russian Empire. As we examine the legal side of the agreement, it becomes clear that Iran must return some territories to Azerbaijan. If today the Caspian Sea is not considered an internal sea of Russia, by this logic, the legal ownership of both states over the territories of Azerbaijan mentioned in the agreement is automatically lost, and in essence, these two participating states remain only with the status of invaders over foreign territories. Therefore, the legal heir of the city (governia) of Yerevan remains the population of this city. Without asking their opinion, handing over those territories to another party without obtaining their consent is contrary to international law and at the same time an illegal step. This illegality

has not been studied throughlythroughly since even today, the legal ownership rights over Yerevan are considered to be Yerevan residents themselves.

CONCLUSION

The Milli Majlis, the supreme legislative body of the Republic of Azerbaijan, should denounce the Protocol No. 3 of the Azerbaijan National Council of May 29th, 1918 and declare its decision to the UN member states. For this, an authorized "Liquidation Commission" should be created within the framework of legal procedures; and after study the case the results of the legal investigation should be submitted to the Milli Majlis of the Republic of Azerbaijan. As the historical and political heir of the Republic of Azerbaijan, concession of the right of demand, that is, the right of procedural demand, is within the powers of the Republic of Azerbaijan, and this right should be used within the framework of international law. The involvement of world-renowned lawyers and scientists in the investigations conducted within the framework of legal procedures would also help to resolve the case. The Batum obligations undertaken by the Armenians should also be revealed as a legal fact. In return for the humanitarian step of the members of the National Council of Azerbaijan who voted for this Protocol, the usurping essence of Armenia should be revealed. In this sense, the agreement has lost its legal force since throughout the 20th century, ethnic cleansing, deportation and targeted killings were organized against the Azerbaijani people in Armenia. Also, mass deportations took place and historical monuments were destroyed, and not even one Azerbaijani lives in Yerevan today.

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