

INSTITUTION BUILDING IN DE FACTO STATES AS A PRECONDITION FOR CONFLICT RESOLUTION

INTERNATIONAL FORUM FOR THE CHALLENGES OF PEACE OPERATIONS

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Dr. Alexander Tsinker

President of International expert Center for Electoral Systems (ICES)

Head of Institute on Eastern Europe and CIS

Israel

Formal establishment and international recognition of new states in the UN history took place differently. In some cases it was quite a civilized "divorce", in others the attainment of independence passed through bloody conflicts and violent wars.

Most of the new states over the past years were established after the breakup of large federal states - such as Yugoslavia and the Soviet Union. As a result, not only recognized, but also unrecognized or partially recognized states emerged often referred to in specialized articles as de facto states. Among them - Abkhazia, Kosovo, Nagorno-Karabakh, Transnistria, and South Ossetia.

Since the emergence of the de facto states two parallel processes related to them can be observed. On the one hand – the ongoing discussions in various international forums and groups, aimed at resolving “frozen” conflicts; on the other – the state institutionalization of the de facto states’ structures.

In my view, these processes are mutually dependent. It is imperative to know who is negotiating on behalf of the above-mentioned entities and how legitimate they are to represent interests of citizens of the states unrecognized by the international community. On the other hand, the success of the de facto states’ authorities in the negotiations may significantly affect the efficiency of the state institution building.

Being in Yerevan, I would like by the example of the Nagorno-Karabakh conflict, for the resolution of which negotiations within the framework of the Minsk Group are underway, to discuss the role of electoral processes and democratic institution building of the state authority in the issues of pursuing ways to resolve conflicts – as a part of the UN peacekeeping and peacebuilding programs.

The Nagorno-Karabakh conflict, which de jure started in February 1988, has gone through several stages, some of which trace back to the times of the Soviet Union (then the conflict was considered to be its internal affair by the international community). After the collapse of the USSR, Baku with the intention of keeping the out-of-control territory by force launched hostilities against the Nagorno-Karabakh Republic (NKR) proclaimed in September 1991, in compliance with the then effective USSR legislation. Armenia was dragged into the war on the side of the NKR. Large-scale fightings ended in May

1994 with the signing of a trilateral (Azerbaijan, Armenia and the NKR) Ceasefire Agreement valid to this day.

Since the inception of the OSCE Minsk Group (March 1992), Nagorno-Karabakh was presented to the tripartite talks, and it could be stated that Stepanakert was de jure recognized as a party to the conflict. However, over the last 14 years, the NKR has been forced out of the negotiation process, which has been conducted to no avail so far between Baku and Yerevan through the mediation of the OSCE Minsk Group. This is a paradoxical situation where the format of talks does not fit into that of the conflict.

For almost a quarter century Nagorno-Karabakh lives "its own life" separate from Azerbaijan. And it is not about some abstract life or survival, it is about the fact that people work and rest, create a family and have children, establish their own governing bodies. While establishing the NKR, great attention was paid to the formation of institutional and legislative framework of the Republic – as an essential component of democratic development and practical exercise of democratic power elected by direct expression of will of its main player – the people.

The Karabakh citizens were building the state and power institutions with the society and the elite reaching a consensus that was expressed during the two key referenda on: Independence of Nagorno-Karabakh in 1991, and the adoption of the NKR Constitution in 1996. At the same time, the consensus was based on the issues of self-determination and the rights of citizens, security and neutralization of external challenges.

Thus, the Nagorno-Karabakh Republic was originally formed as a democratic state, where elective procedures were an integral part of political life. If we accept the "democratization as a precondition for resolving conflicts" thesis, then democratization through elections – is not only a political abstraction, but also an effective way to add more weight to the independence requirements.

For us, the study of electoral procedures in the de facto states is of both academic interest and practical value. In this regard, the experts of the International expert Centre for Electoral Systems, which I have the honor to head, as a mission of international observers twice followed the presidential and parliamentary elections of Nagorno-Karabakh in 2012 and 2015.

The history of the electoral processes in Nagorno-Karabakh started in 1991. Then on the same day, parliamentary elections and the aforementioned referendum on Independence were held.

In the war period from 1991 to 1994, State Defense Committee was operative in the NKR, which exercised both the functions of the executive branch and the military administration. Meanwhile, the Parliament was not dissolved, and immediately after the end of active hostilities, the NKR leadership rejected the mobilization model of government and fully returned to civilian government electing the Parliament of second convocation in 1995. In addition, it was decided to introduce the presidential system of government in the country, and in 1996, the first nationwide presidential elections were held in the NKR.

Thus, since the mid-1990s clear-cut “game rules” – stable to this day – were formulated in the NKR:

- refusal of the military-mobilization or dictatorial model of government;
- change of power at all levels only through elections, and not only alternative, but also real competitive ones;
- possibly balanced and equal access for election participants to the electronic mass media – elections should be maximally open to the press;
- availability of the Electoral Code which would meet the exacting international requirements;
- invitation of international observers to the nationwide elections.

Since 1991 there have been 6 parliamentary elections in the NKR all in all. Since 2005, elections have been held on the basis of mixed proportional-majoritarian voting system, which enabled to actually make up a multi-party political system in the NKR. At the recent 2015 parliamentary elections, in which already 7 parties took part, representatives of 5 parties were elected to the NKR National Assembly, 3 of which formed a stable coalition.

More than 100 international observers from 30 countries monitored the recent elections together with us. More than 40 journalists from over 40 mass media covered the voting process. The international observers unanimously noted the conformity of the elections to the generally accepted norms of the voting right.

Our Experts have more than once observed the elections in the South Caucasus countries – Azerbaijan, Armenia and Georgia, that’s why we have what to compare these processes with. This might seem strange to you, but the highest level of organization and conduct of the entire election process we have recorded in the NKR.

Despite the unrecognized status of Nagorno Karabakh, foreign observers from various international organizations specialized in electoral processes have been present at all the presidential and parliamentary campaigns. For instance, in 2007, the representatives from the US “Public International Law and Policy Group” organization, which was nominated for the 2005 Nobel Peace Prize and has got a long-term practice in monitoring election processes in the post-conflict countries, including Kosovo, arrived in the NKR at the presidential elections. Among the experts monitoring the elections, one can meet incumbent MPs of the OSCE member-states and MEPs, political scientists and lawyers, retired high-ranking diplomats.

Such an impressive group of international observers at the NKR elections indicates that in this de facto state greater importance is attached to the process of the legitimization of power not only in the eyes of the electorate, but also the international community.

At the same time, numerous international organizations and all the countries, including the OSCE member-states, do not recognize the elections in the NKR and constantly make statements about it on the eve of the following elections. Here a question quite naturally arises: if the international community and its structures do not de jure recognize these elections, then what is the point in making the great effort to hold them in the NKR meanwhile trying to comply with the most exacting requirements?

To my mind, the answer is obvious. The Nagorno Karabakh leaders endeavor to prove all their opponents in the international community that the de facto state lives in line with democratic laws, and power institutions are legitimate in the eyes of the society.

Imposing stringent requirements on holding elections, the NKR leadership aims to demonstrate that the alternative of gaining power through elections is either infighting between “field commanders”, or usurpation of power. Also they show, that the electoral processes in the NKR, not solving the problem of the status, guarantee the internal peace and stability in the territory of the de facto state.

We think that the presence of international observers at the elections and their positive opinions, although at the informal level, confirms the legitimacy of not only the authorities, but also the legitimacy of its mandate from the society to hold negotiations, which is highly important for the practical implementation of the UN peacemaking and peacebuilding programs.

In this context, I assume, that it is time for the UN agencies, for instance, the Electoral Assistance Division, to take under its control the electoral processes also in the de facto states. This process could be carried out through close cooperation with various international organizations experienced in such activities.

I would like to remind you that in 2005 the UN adopted a Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers. So far 47 international organizations, including our International expert Center for Electoral Systems (ICES), have signed this document and put into action.

In conclusion, I would like to express the view that all of the above-said, with a focus on a particular example of the Nagorno-Karabakh Republic, indicates that the observation of the electoral processes, including those in the de facto states or countries in conflict can become an important factor of peacekeeping and an integral part of peacebuilding.