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THE LEGAL ASPECT OF NAGORNO-KARABAKH ISSUE

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The usual disclaimer applies!

CONTENT

PREFACE

The transformation of Artsakh (hereinafter "Nagorno-Karabakh[1]" and "Artsakh" will be used interchangeably) conflict is a sine qua non for security, wellbeing, prosperity as well as for the peaceful co-existence among the nations of the South Caucasus. The conflict was widely discussed in political, historical-irredentist and military context in both Armenian and Azerbaijani literature and beyond. Nevertheless, the legal aspects of the conflict still remain overlooked. Here a question might arise: does the international law matter or has it ever been taken seriously especially against the backdrop of the maxims of Realism, i.e., power, self-aggrandization, war being a natural condition, anarchy of the international system and so on. I will answer the question posed by me by citing in my view one of the most fascinating books – The State in the Third Millennium by Hans-Adam II, the Prince of Liechtenstein, which I had the honor to translate from English to Armenia:

> *"Let us take the time that humans have lived on earth and imagine it as one year. If homo erectus two million years ago represents January 1, or the beginning of human development, then only on December 29, 12,000 years ago, did a few people try out agriculture for the first time in a small area. When, on December 31, or 4,000 years ago, agriculture finally spread and started to shape human society, this agrarian-style society was already coming to an end".*[2]

Indeed, we live in a fascinatingly changing world. International organizations and international law are *de novo* institutions in international relations however effective or ineffective they might seem to be. Back a century ago it was hard to imagine that archenemies like France and Germany will create international bodies and give partly their sovereignty up to the jointly created institutions. Similarly, it was difficult to imagine that sovereign states will succumb to the decision of international courts that have no (military) power to enforce them. Napoleon and Hitler would probably laugh to hear that! One may argue that aggressive acts of individual states such as Turkish occupation of a part of Cyprus or totally illegal and bloody 44-Day

[1] Artsakh is Armenian endonym for Karabakh. Historical Artsakh was much bigger than Nagorno-Karabakh Autonomous Oblast in Soviet times and the de facto independent Nagorno-Karabakh Republic.

[2] Liechtenstein, Hans-Adam, Van Eck Publishers, 2009, p. 48.

War waged by Azerbaijan against the people of Artsakh pose a real challenge for international legal order, thus putting the very raison d'être of international law under jeopardy. However, I would counterargue that international law faced similar challenges less than a century ago, when the politics of a few aggressive states put an end to the existence of the League of Nations. Nevertheless, international law did not vanish and the League of Nations was superseded by even more effective and rule-based international entity – the United Nations!

It is probably impossible to predict the essentials of the legal system of the future as it was hard to imagine the creation of the United Nations in the beginning of the 20th century. However, regardless of the essentials of the current and future international legal orders the events occurred after the emergence of the Artsakh conflict will never become a water under the bridge. If Karabakh issue is ever to be settled before any international court, it will most likely pay due regard to the so-called "**critical date**", which refers to the moment when the potential rights of the parties manifested themselves to such an extent that subsequent acts could not alter the legal position of the parties. Therefore, the legal aspects of the conflict are of critical importance and the noble and righteous struggle for the right to self-determination of the people of Artsakh shall be corroborated by sound and valid legal arguments.

The mission of the present work is to assemble the important legal issues related to Artsakh issues in one place. Admittedly, it is full with legalese. However, and most importantly, it does not transcend the boundaries of international law and does not discuss the political, moral and emotional aspects of the issue. Hopefully, it will accomplish its mission by serving as a guidebook for the policymakers and an auxiliary material for the students of International Law and Political Science.

I gift this book to all the martyrs who struggled for the people of Artsakh and for their cherished dream – to see peace and prosperity in and the international recognition of Artsakh. They struggled with arms; however, my struggle is and will be through and for the sake of international law, its primacy and preeminence.

List of Abbreviations

CC of CPR – Central Committee of the Communist Party of Russia
CCA – Court of Conciliation and Arbitration
CEPA – Comprehensive Enhanced Partnership Agreement
CERC – Central Executive Revolutionary Committee
CIS – Commonwealth of Independent States
CoE – Council of Europe
CSCE – Conference on Security and Co-operation in Europe
CSTO – Collective Security Treaty Organization
EAEC – European Atomic Energy Community
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
EU – European Union
ICC – International Criminal Court
ICJ – International Court of Justice
ICRC – International Committee of the Red Cross
ICTY – International Criminal Tribunal for the former Yugoslavia
NATO – North Atlantic Treaty Organization
OIC – Organization of Islamic States
OSCE – Organization of Security and Cooperation in Europe
PCA – Permanent Court of Arbitration
The UK – The United Kingdom
The USA – The United State of America
UN – United Nations
UN GA – United Nations General Assembly
UN SC – United Nations Security Council
UNESCO – United Nations Educational, Scientific and Cultural Organization
USSR – Union of Soviet Socialist Republics

1. ARTSAKH AND THE LEAGUE OF NATIONS

1.1. What was the status of Nagorno-Karabakh at the time of the first Republic of Armenia (1918-1920)?

First of all, it shall be mentioned that Nagorno-Karabakh was part of Tsarist Russia from 1813 when it was ceded by Persia under Gyulistan Treaty. Its status was uncontested till 1917. On November 15, 1917 the Soviet of Peoples' Commissars adopted one of the first documents of the Soviet rule – the Declaration of the rights of the peoples of Russia. The document was signed by the peoples' commissar on the nationalities affairs Stalin and the president of the Soviet of Peoples' Commissars Lenin. The Declaration set up the following principles of the state system of the Soviet Russia and its national policy: equality and sovereignty of the peoples of Russia, their right for a free self-determination up to separation and forming of independent states, abolishment of all national and national-religious limitations and privileges and a free development of national minorities and ethnographic groups inhabiting the territory of Russia.[3]

Artsakh has never been part of the Democratic Republic of Azerbaijan and the latter has never been recognized by international community. During 1918-1920 the legislative power in Nagorno-Karabagh was exercised by the Assemblies of Armenians of Karabagh. The First Assembly of Armenians of Karabagh was convened on July 22, 1918, which declared Nagorno-Karabagh as an independent administrative and political entity and the following conventions reaffirmed this position. Moreover, the Seventh Assembly even concluded a Provisional Agreement with the Democratic Republic of Azerbaijan which was comprised of 26 points. The parties agreed that the problem

[3] Boris Yeltsin Presidential Library, Declaration of the rights of the peoples of Russia, November 15, 1917, available at https://www.prlib.ru/en/history/619724#:~:text=The%20Declaration%20set%20up%20the,all%20national%20and%20national%2Dreligious

shall be solved in Paris peace conference. This agreement is tantamount to de facto mutual recognition of two internationally unrecognized republics. On April 23, 1920, the Ninth Assembly of Armenians of Karabagh declared Nagorno Karabagh as an inalienable part of the Republic of Armenia.[4] The assembly declared that Azerbaijan violated the Provisional Agreement through attacking Shushi (town in Artsakh). Nagorno-Karabakh was recognized as a disputed territory between Armenia and Azerbaijan also by Soviet Russia. Russian troops were temporarily deployed in Nagorno-Karabakh according to the agreement signed in August, 1920 between Soviet Russia and the Armenian Republic.[5] Immediately after the establishment of the Soviet regime in Armenia, on November 30, 1920, the Azerbaijan Revolutionary Committee (the main Bolshevik instrument of power at that time) made a declaration recognizing territories over which Azerbaijan had claims – Nagorno-Karabakh, Zangezour, and Nakhijevan, as inseparable parts of Armenia. The later fact is stated in "Communist" newspaper published on December 7, 1920.[6]

It shall be mentioned that both Armenia and Azerbaijan have never been members of the League of Nations despite the applications thereof. Nevertheless, the situation was not identical. Armenia was de jure recognized by Argentine Republic. The Secretariat of the League had an information that the USA unofficially recognized Armenia.[7] On October 18, 1920, Avetis Aharonian replied to the request submitted by the League of Nations by sending the authentic copies of documents certifying the recognition of Armenia by certain other States. He drew the Secretary-General's attention to the fact that the most solemn act in connection with the recognition of Armenia by the Allied Powers is the Treaty of Peace

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[4] Avakian, Shahen. 2013. Nagorno-Karabagh: Legal Aspects. Fourth edition, p. 10 Yerevan

[5] Ibid.

[6] The official Website of the President of Armenia, Nagorno-Karabakh issue, available at https://www.president.am/en/Artsakh-nkr/

[7] United Nations Library & Archives, File R1451/28/9055/4395 - Admission of Armenia to the League - Secretariat - Memorandum summarising the history of Armenia, and her application for admission to the League, available at https://archives.ungeneva.org/admission-of-armenia-to-the-league-secretariat-memorandum-summarising-the-history-of-armenia-and-her-application-for-admission-to-the-league

between these Powers and Turkey[8], signed in Sèvres on August 10, 1920. In the preamble to this treaty Armenia is mentioned as one of the Allied Powers. It seems, therefrom, that Armenia has been recognized de jure by the other Allied Powers, viz., the British Empire, France, Italy, Japan, Belgium, Greece, Hedjaz, Poland, Portugal, Romania, the Serb-Croat-Slovene State and Czecho-Slovakia. Moreover, the Treaty signed in Sèvres on August 10, 1920, between the Principal Allied Powers and Armenia in execution of Article 93 of the Treaty of Peace with Turkey stated explicitly that Armenia had been recognized as a sovereign and independent State by the Principal Allied Powers. In Article 88 of the Peace Treaty of Sèvres, Turkey declared to recognize Armenia as a free and independent State, in accordance with the action already taken by the Allied Powers.[9] Moreover, on April 11 the Council of the League of Rations replied that it was of opinion that the constitution of a State of Armenia upon a free, secure and independent basis was an object which will receive, and which will deserve to receive, the sympathy and support of enlightened opinion throughout the civilized world. Overall, the League of Nations had a sympathy towards Armenia. The major issue that hindered the acceptance of Armenia was the fact under Article 22 of the Covenant of the League of Nations[10] the mandatory power in charge of Armenia was yet to be decided since the Senate of the USA refused to accept a Mandate for Armenia on May 31, 1920, while President Wilson accepted the post of Arbitrator of the frontiers of Armenia.[11] Last but not

[8] The Country has recently changed its official name from Turkey to Türkiye

[9] United Nations Library & Archives, File R1451/28/9055/4395 - Admission of Armenia to the League - Secretariat - Memorandum summarising the history of Armenia, and her application for admission to the League, available at https://archives.ungeneva.org/admission-of-armenia-to-the-league-secretariat-memorandum-summarising-the-history-of-armenia-and-her-application-for-admission-to-the-league

[10] United Nations in Geneva, The Covenant of the League of Nations, Article 22, available at https://www.ungeneva.org/en/covenant-lon#:~:text=The%20Covenant%20of%20the%20League%20of%20Nations%20is%20Part%20I,the%20mandates%20of%20peace%20treaties

[11] United Nations Library & Archives, File R1451/28/9055/4395 - Admission of Armenia to the League - Secretariat - Memorandum summarising the history of Armenia, and her application for admission to the League, available at https://archives.ungeneva.org/admission-of-armenia-to-the-league-secretariat-memorandum-summarising-the-history-of-armenia-and-her-application-for-admission-to-the-league

least, Armenia had already been included in the list of signatories to the Charter of the League of Nations and also signed the document on the protection of minorities, put forward by the League of Nations.[12]

On the other hand, however, Azerbaijan was not recognized by any state. The Memorandum of the Secretary General of the League of Nations reads the following:

> *"By a letter dated 1st November 1920, the Secretary-General of the League of Nations was requested to submit to the Assembly of the League an application for the admission of the Republic of Azerbaijan to the League of Nations. This letter issues from the Azerbaijan Delegation attending at the Peace Conference, which has been in office at Paris for more than a year. The Members of the Delegation now at Geneva state that their mandate is derived from the Government which was in power at Baku down to the month of April last. It may be convenient to recall briefly the circumstances which preceded the establishment of this Government. Establishment of the State of Azerbaijan. The Transcaucasian territory in which the Republic of Azerbaijan has arisen appears to be the territory which formerly composed the Russian provinces of Baku and Elisabethopol. It is situated on the shore of the Caspian Sea, which forms its boundary towards the east. Its northern boundary is the frontier of the province of Daghestan; on the north-east it is coterminous with the area known as the Northern Caucasus, on the west with Georgia and Armenia and on the south with Persia. Its population according to the last Russian statistics, is estimated at 4.615.000 inhabitants, including 3.482.000 Musulman Tartars, 795.000 Armenians, 26.580 Georgians and scattered minorities of Russians, Germans and Jews.* ***It may be interesting to note that this territory, occupying a superficial area of 40.000 square miles, appears to have never formerly constituted a State****, but has always been included in larger groups such as the Mongol or Persian and since 1813 the Russian Empire. The name Azerbaïdjan which has been chosen for the new Republic is also that of the neighboring Persian province".*[13]

[11] Ibid.

[12] Ibid.

[13] United Nations Library & Archives, File R1453/28/8466/8466 - Admission of Azerbaidjan to the League - Delegation of Azerbaidjan, Geneva - Transmits documents concerning the independence of Azerbaijan, the recognition of that independence by various states, and general information on the Republic of Azerbaijan. Assembly Document 108, available at https://archives.ungeneva.org/admission-of-azerbaidjan-to-the-

More importantly, unlike the case with Armenia, the letter and spirit of the report submitted by the Fifth Committee to the Assembly of the League of Nations regarding the application of Azerbaijan was not positive. It rejected the Azerbaijani application on the following grounds:

1. The government that applied for the membership led by the Musavat party was unable to exercise an effective control over the entirety of the territory of Azerbaijan.
2. Azerbaijan had territorial disputes with its two neighbors – Georgia and Armenia. **An important mention must be made that Karabakh was mentioned as a disputed territory between Armenia and Azerbaijan, hence it was never regarded as part of the Azerbaijan Democratic Republic**.

An important extract from the report of the Fifth Committee reads the following:

"*The Delegation takes the liberty of pointing out to the Assembly of the League of Nations that the difficulty referred to by the Committee being only of a temporary and provisional nature, cannot and must not be considered to affect this question in any real or decisive sense. It is an undisputed fact that, until the invasion of the Russian Bolsheviks on April 28th, 1920, the legal Government of Azerbaijan exercised its authority over the entire territory of the Azerbaidjanian Republic, without exception, within the present boundaries as indicated in the map submitted to the Secretary-General of the League of Nations. After this invasion, part of the territory was occupied by the Bolsheviks; and with their Government at their head, the Azerbaidjanian people, concentrated in the town of Gandja, began a bloody struggle against the Bolsheviks, thanks to which, the latter gradually evacuated almost all the territory which they had occupied. At the present time, they hold only the town of Baku and surrounding districts, and occupy but a small part of the railway as far as the station of Adji-Kaboul. All the rest of Azerbaijan, including part of the districts of the provinces of Baku and Kouba, as well as all the districts of the former province of Elizabetpol, is in the hands of the Government of Azerbaijan, which has its headquarters in the town of Gandja, where there is*

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league-delegation-of-azerbaidjan-geneva-transmits-documents-concerning-the-independence-of-azerbaijan-the-recognition-of-that-independence-by-various-states-and-general-information-on-the-republic-of-aze

also a section of the Parliament which was dispersed by the Bolsheviks, and part of the Army. This is equivalent to nine-tenths of the territory of Azerbaïdjan, within its present boundaries; and the Government of Gandja, which is the legal Government of Azerbaïdjan, is able to give sufficient guarantees that it will fulfil all its obligations of an international character, in conformity with the Covenant of the League of Nations. The Delegation makes bold to assure the Assembly of the League of Nations that the struggle carried on by the people of Azerbaïdjan, headed by their Government, against the Russian Bolsheviks, will be continued with unflagging energy until Baku and the surrounding districts are delivered from the invaders. Our people will never come to terms with the Bolsheviks, whom they look upon as usurpers who must be swept away. We may say in passing, that so obvious a peril as Bolshevism threatens not only Azerbaijan, but the whole of the Caucasus. It has overrun the whole of the Northern Caucasus and Kouban, as well as the bordering States of Armenia, which has just been declared a Soviet Republic".

The second objection raised by the Committee relates to outstanding disputes between Azerbaijan and the neighboring States of Georgia and Armenia. Here is another extract from the report of the Fifth Committee:

> *"With regard to this point, the Delegation has the honor to draw the attention of the Assembly to the fact that it is almost impossible to name a new State whose frontiers are absolutely undisputed. On the contrary, we see that not only new States, but even States which have been in existence for centuries, have had, and still have, frontier disputes; but these disputes do not cause them to be deprived of their sovereign rights over their own territory.* ***The Republic of Azerbaidjan, in defending the integrity of her territory against all aggressions is obliged to come into conflict with Georgia over the districts of Zakatal, and with Armenia over Karabagh and Zomghezur".***[14]

In conclusion, from 1918 to 1920 Nagorno-Karabakh was considered to be a disputed territory.

[14] United Nations Library & Archives, Azerbaijan independance and accession, available at https://archives.ungeneva.org/league-of-nations-azerbaijan-independance-and-accession/download

2. ARTSAKH AND THE SOVIET UNION

2.1. What was the status of Nagorno-Karabakh in the Soviet Union and how did it become part of the Azerbaijani SSR?

To answer the questions above, it is convenient to start with the relevant historical events with legal significance in chronological order. The information was obtained from the compilation of all the historical and legal documents related to Nagorno-Karabakh, which was edited by Doctor of Law, Professor of International Law Dr. Yuri Barsegov.[15]

1. On November 30, 1920, the Government of Azerbaijani SRR issued a Declaration on Renouncement of Territorial Claims from the Armenian SSR. In the Declaration the government recognized the full right to self-determination of people of Nagorno-Karabakh. Furthermore, it was mentioned that the military actions in Zangezur shall be halted and the troops of the Soviet Azerbaijan were being removed from Zangezur.[16]
2. On December 1, 1920 S. Ordzhonikidze delivered a speech before the Baku Soviet and confirmed the renouncement of claims for Nakhijevan, Zangezur and Nagorno-Karabakh by Soviet Azerbaijan. This was confirmed in Ordzhonikidze's telegram to J. Stalin.[17] The mentioned renouncement was confirmed in J. Stalin's article published in "Pravda" newspaper (issue N273) on December 4, 1920.[18]
3. On March 10, 1921 People's Commissar for Foreign Affairs G. Chicherin made a statement before the CC of the CPR regarding the Turkish demands. He stated that Turkey will cede Batumi in exchange for Nakhijeva's transfer to Azerbaijan without the right

[15] Barsegov, Yuri. Nagorny-Karabakh in the International Law and World Politics, Documents and Commentary, KRUG publishers, 2008. Volume 1.
[16] Ibid., p. 599.
[17] Ibid., p. 602-603.
[18] Ibid., p. 604.

for any further transfer to any other republic.[19] He further noted that he had accepted those preconditions set by Turkey.[20]

4. On June 12, 1921 the People's Commissar of Armenian SSR A. Miasnikyan officially announced Nagorno-Karabakh as inalienable part of Armenian SSR based on the Declaration of the Revolutionary Committee of Azerbaijani SSR.[21]
5. On July 4, 1921 the Caucasian Bureau of the CPR convened a plenary session in Tbilisi where the following issues were voted:

Table 1. ***Voting during the plenary session of the Caucasian Bureau of the Communist Party of Russia.***

Issue	*For*	*Against*
Karabakh remains in Azerbaijan	Narimanov, Makharadze and Nazaretyan	Ordzhonikidze, Myasnikov, Kirov and Figatner
To organize a plebiscite in the whole territory of Karabakh among both Armenian and Muslim population	Narimanov, Makharadze	
To join the mountainous (Nagorny) part of Karabakh to Armenia	Ordzhonikidze, Myasnikov, Kirov and Figatner	
To organize a plebiscite only in mountainous part of Karabakh and only among Armenian population	Ordzhonikidze, Myasnikov, Kirov, Figatner, Nazaretyan	

As a result of the voting the session decided that Nagorno-Karabakh shall join the Armenian SSR. However, after Narimanov's speech, it was decided to postpone the discussion of the issue and leave the final solution of the issue to the CC of the CPR.

6. On July 5, 1921 the Caucasian Bureau of the CPR in the presence of Stalin decided to hand Nagorno-Karabakh over Azerbaijani SSR (with Susi being the center of the autonomy). Furthermore, it was up to Azerbaijani SSR to determine the boundaries of the autonomy of Nagorno-Karabakh.

This decision of CPR is an unprecedented legal act in the history of international law, when the party organ of a third country (the CPR)

[19] Ibid., p. 619.
[20] Ibid.
[21] Ibid., p. 629.

without any legal basis or authority determines the status of a territory that it has no de jure control of. Both Armenian and Azerbaijani SSR were included in the formation of the USSR only in 1922. Hence, the party operating in one state "determined" the status of the territory of the third country. In addition, on July 7, 1923 Nagorno-Karabakh Autonomous Oblast was formed within Azerbaijan SSR by decision of the CERC of the Azerbaijani SSR.[22]

2.2. Was the self-proclamation of independence by Artsakh legal and in accordance with the domestic legislation of the Soviet Union?

First of all, a mention must be made that the independence referendum of Artsakh was held on **December 10, 1991**.[23] Before that date, on **April 3, 1990** the Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR had already been adopted.[24] The law derives from the Article 72 of the Constitution of the USSR.[25] According to the mentioned law (Article 3) in a Union republic which includes within its structure autonomous republics, autonomous oblasts, or autonomous okrugs, the referendum is held separately for each autonomous formation. The people of autonomous republics and autonomous formations retain the right to decide independently the question of remaining within the USSR or within the seceding Union republic, and also to raise the question of their own legal

[22] Ministry of Foreign Affairs of the Republic of Armenia, Nagorno-Karabakh issues, available at https://www.mfa.am/en/nagorno-karabakh-issue

[23] President of the Artsakh Republic, State Independence Declaration of the Nagorno-Karabagh Republic, available at http://president.nkr.am/en/nkr/nkr2

[24] Seventeen Moments in Soviet History, Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR, available at https://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/

[25] Marxists Internet Archive, Constitution of the Union of Soviet Socialist Republics, Article 72, available at https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf

status. Before the referendum organized in Artsakh **on 18th of October 1991** the National Council of Azerbaijan adopted a Constitutional Act on Azerbaijan's State Independence. Some 258 of the 360 deputies voted to approve the declaration of independence; the remaining deputies either did not attend the session or abstained. Furthermore, the mentioned document defined Azerbaijan as a legal successor of the Democratic Republic of Azerbaijan and not the Soviet Azerbaijan.[26] In addition, Article 3 of the Constitutional Act states that the agreement on formation of the USSR of December 30, 1922 is not effective after the signature of the Constitutional Act![27] **This is in vivid contrast with the March 17 referenda held in the several republics of the former USSR.** The question put to voters was the following: "Do you consider necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics in which the rights and freedom of an individual of any nationality will be fully guaranteed?" By this time, voters in the three Baltic republics of Estonia, Latvia and Lithuania had overwhelmingly declared themselves in favor of independence from the Soviet Union and their respective parliaments had issued decrees to that effect. Over 80 percent of the Soviet adult population (148.5 million people) took part in the referendum. 76.4 percent voted "yes." **Six republics — Armenia, Georgia, Moldavia, and the Baltic republics — did not participate**.[28] 94.12% of the voters of Azerbaijani SSR supported the idea of the preservation of the USSR![29] They voted "yes".

[26] Azerbaijan.az, Constitutional Act on Azerbaijan's State Independence, available at https://azerbaijan.az/portal/History/HistDocs/Documents/en/09.pdf

[27] Ibid.

[28] Seventeen Moments in Soviet History, March Referendum, available at https://soviethistory.msu.edu/1991-2/march-referendum/

[29] Database and Search Engine for Direct Democracy, Soviet Union, March 17, 1991: Continuation of the USSR as a federation of equal and sovereign states, available at https://www.sudd.ch/event.php?lang=en&id=su011991

3. ARTSAKH AS A STATE

3.1. Is international recognition absolutely indispensable for an entity like Artsakh to be considered as a state?

The answer to the question above is not unequivocal. The legal literature is divided by two competing theories: **declaratory** and **constitutive**. The former asserts that the creation of a state hinges on the fulfillment of legal criteria and is a matter of law.[30] Therefore, an entity becomes a state once/if it fulfills certain criteria and is **effective enough**. The constitutive theory/approach views the recognition of the other states as a precondition for an entity to be considered as a state.[31] Putting otherwise, according to the constitutive theory the recognition per se constitutes a state, thus qualifying it to be an **international personality**. Nevertheless, the constitutive theory being ontologically positivist and relativist is quite problematic and incoherent entailing a number of questions that are to be addressed. For example, if an entity becomes a state only and only after the recognition of the other entities that had already been recognized as states, then absolute recognition is not always possible. The State of Israel, the People's Republic of China, the Republic of Armenia and a couple of other UN members are not recognized by all the other UN member states. For example, the Republic of Armenia is not recognized by the Islamic Republic of Pakistan[32] due to the latter's full support of Azerbaijani politics with regard to Artsakh conflict. Similarly, a number of UN members, primarily Arab states, refuse to recognize the State of Israel.[33] Another complication relates to the (minimum) number

[30] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 4., p. 61

[31] Ibid.

[32] Senate of the Islamic Republic of Pakistan, Senate Foreign Relations Committee Visit to Azerbaijan, 2008, p. 10 available at https://web.archive.org/web/20090219074354/http://foreignaffairscommittee.org/includes/content_files/Report%2021%20-%20Visit%20to%20Azerbaijan.pdf

[33] Jewish Virtual Library, Israel International Relations: International Recognition of Israel, available at https://www.jewishvirtuallibrary.org/international-recognition-of-israel

of states indispensable for an entity to be qualified as a state. Putting briefly, there is no any international legal document where such number is mentioned. The Turkish Republic of Cyprus (TRC) serves as a brilliant example. It is recognized by only one UN member state – the Republic of Turkey. Hence a question arises: is it enough for the TRC to be considered a state and if not, what is the minimum number required? In addition, a mention must be made that the International Committee of Jurists entrusted by the Council of the League of Nations issued an advisory opinion upon the legal aspects of the Aaland Islands question in 1920. It stated that the recognition of Finland by other states does not per se constitute the latter's being a state.[34] Here is an extract from the mentioned advisory opinion:

> *"On the 31st December, 1917, the Soviet of Commissaries of the People at Petrograd proposed to the Executive Central Committee of the Soviets of deputies of workmen, soldiers and peasants of all the Russians that the political independence of the Republic of Finland should be recognized. The latter body accepted the proposal on the 4th January. On the 4th January Finland was recognized by the Swedish Government and on the 5th by the French Government; recognition by Denmark and Norway followed on 10th January, and by Switzerland on 22nd February. Numerous other recognitions were given later. Nevertheless, these facts by themselves do not suffice to prove that Finland, from this time onwards, became a sovereign State".*[35]

By the same token, the Arbitration Commission on the situation regarding the disintegration of Yugoslavia issued an opinion in 1991 stating that the **existence and/or disappearance of the states is a matter of fact and the effects of the other states are of a purely declaratory nature**.[36]

[34] International Law Students Association, League of Nations—Official Journal. Report Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question, p. 6 available at https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland1.pdf

[35] Ibid., p. 6

[36] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 4., p. 62

Importantly, Montevideo Convention on the Rights and Duties of States signed in 1933 during the Seventh International Conference of American States is predicated upon the declaratory rather than the constitutive theory of statehood. Although regional in nature and with limited geographical applicability, the Montevideo Convention became a paramount source of reference in the academic literature. The Article 1 of the Montevideo Convention states that an entity shall possess the following qualifications for being qualified as a state:

1. a permanent population;
2. a defined territory;
3. a government;
4. a capacity to enter into relations with other states.[37]

Before observing whether Artsakh corresponds to those four criteria, one had better unbundle them one by one. The permanent population refers to people. The definition of people is by no means uniform. UNESCO International Meeting of Experts on Further Study of the Concept of the Rights of Peoples defined people as a group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity.[38] It is beyond any reasonable doubt that Armenians who were majority in Karabakh as of 1989 (76.9% of the entire population of Nagorno-Karabakh Autonomous Oblast)[39] have all the mentioned four features to constitute people! In addition, there is no criterion for minimum number of people to qualify for being a state. Tiny countries such as the Principality of Liechtenstein or the Principality of Monaco with population much smaller than Artsakh are internationally recognized as sovereign states and joined the UN.

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[37] International Law Students Association, Montevideo Convention on the Rights and Duties of States, Article 1, available at https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf

[38] United Nations Educational, Scientific and Cultural Organization, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Paris, 1989, available at https://unesdoc.unesco.org/ark:/48223/pf0000085152

[39] Ministry of Foreign Affairs of the Republic of Armenia, Nagorno-Karabakh issues, available at https://www.mfa.am/en/nagorno-karabakh-issue

The second criterion – a defined territory does not imply a clearly defined territory. Many UN member states have territorial disputes with the neighboring states and the lack of territorial delineation did not prevent the majority of the states to recognize them as sovereign equals. Secondly, like in case of population, no minimal size criterion is set in any international legal document for the surface area of an entity to be qualified as a state. Tiny islands like Tuvalu, Vanuatu or Nauru are UN member states.

The third requirement implies an effective control over the territory. Notably, the type of government be it a democratic constitutional state or a monarchy without a constitution is of no importance and only effective control matters. However, even if the government loses control over part of the territory, the status of the lost part remains unchanged. In other words, ineffective governance over part of territory does not trigger the other states to rescind or to limit the recognition of already recognized state. Somalia and Syria, often labelled as a "failed state" are good examples to substantiate this point. The ineffective or no control of the Somalian government over part of the already recognized territory of Somalia does not preclude the right of the latter to be an international legal personality and a subject of international law. Beyond any reasonable doubt, the government of the Republic of Artsakh has an effective control over a clearly defined territory, with the exception of those territories that are currently under Azerbaijani control as an aftermath of 44-Day War in 2020.

The fourth criterion, i.e., the capacity to enter into relations with other state implies legal rather than political and/or economic capacity. To be considered as a state an entity should have the ability to act without the legal interference of the other states.[40] Notably, the Republic of Artsakh entered into relations with the other non-recognized states such as Pridnistrovian Moldovan Republic, Republic of Abkhazian and Republic of South Ossetia without the legal interference of any other state, including Armenia, since Armenia itself never recognized the independence of those states. Special importance is attached to the

[40] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 4., p. 64

establishment of inter-parliamentary ties. In particular, Friendship Group with Nagorno Karabakh was established in the Sejm of Lithuanian Republic on February 26, 2013. On July 5, 2017, the parliamentary friendship group was expanded and transformed into a circle of friendship between Lithuania and Artsakh, which included deputies of the parliament, political and public figures of Lithuania. On March 19, 2013 friendship group with Nagorno Karabakh was established in France with the involvement of French politicians, parliament deputies and senators. A note on Parliamentary Group for Friendship with Nagorno-Karabakh is also available on the official website of the Parliament (Seimas) of the Republic of Lithuania.[41] Furthermore, in 2014 the start of the process of establishing a Friendship Group with Artsakh was announced in the European Parliament during the solemn events on the occasion of 23rd anniversary of independence of the Republic of Artsakh, in which Ashot Ghulyan, the Chairman of National Assembly of Artsakh also took part. [42] In addition, a note must be made that Artsakh has Permanent Representations in the following states: Armenia, Russia, the USA, Canada, France, Germany and Australia.[43]

To conclude, **it must be noted that contemporary international law is generally based on the declaratory theory/approach rather than the constitutive one.**[44] Hereby, an entity can be qualified as a state if several criteria are met. The analysis above showed that Artsakh possesses all the four qualifications that are indispensable to be considered as state under the Montevideo Convention on the Rights and Duties of States.

[41] Parliament of the Republic of Lithuania, Parliamentary Group for Friendship with Nagorno-Karabakh, available at https://www.lrs.lt/sip/portal.show?p_r=9314&p_k=2

[42] Ministry of Foreign Affairs of the Republic of Artsakh, International cooperation, available at http://www.nkr.am/en/international-cooperation

[43] Ministry of Foreign Affairs of the Republic of Artsakh, Permanent Representations, available at http://www.nkr.am/en/karabakh-permanent-representations

[44] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 4., p. 62

3.2. Do the entities have to meet certain criteria for being recognized as sovereign states under the international law?

The international law, including the customary international law, did not set any criteria necessary for the entities to meet for being recognized as states by the other members of international community. Nevertheless, individual states may set such criteria and it is the sovereign right thereof. A notable example is the Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" (December 16, 1991) adopted by the EU Council of Ministers upon the European Council's request.[45] The criteria set under the guidelines are the following ones:

- respect for the provisions of the UN Charter and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights,
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE,
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement,
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability,
- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.[46]

It shall be noted, however, that the EU and its Member States recognized all the 15 former Soviet Republics in consideration of the

[45] Dipublico.org, Derecho internacional, Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, December 16, 1991, available at https://www.dipublico.org/100636/declaration-on-the-guidelines-on-the-recognition-of-new-states-in-eastern-europe-and-in-the-soviet-union-16-december-1991/

[46] Ibid.

internal administrative boundaries of the USSR notwithstanding the porous and unclear boundaries, conflicts and frontier skirmishes that they had and still have[47] among themselves. Furthermore, it did not rescind its recognition both after the well-known events in Crimea and after the 2022 military actions in the eastern part of Ukraine, while the international recognition of Artsakh is still pending.

3.3. Is the self-proclamation of Artsakh as an independent republic legal and in accordance with the relevant international legal practices?

In 2008, the UN GA requested an advisory opinion[48] from the ICJ regarding the legality of Kosovo independence. In its Advisory Opinion delivered on July 22, 2010, the Court concluded that "the declaration of independence of Kosovo adopted on February 17, 2008 did not violate international law".[49] Firstly, the Court rendered a decision regarding its competence to give an advisory opinion on the mentioned matter. It concluded that there were "**no compelling reasons for it to decline to exercise its jurisdiction**" in respect of the request[50]. The Court also concluded that "the scope of the principle of territorial integrity is confined to the sphere of relations between States" and taking into account the State practice during the eighteenth, nineteenth and early twentieth centuries "**points clearly to the conclusion that international law contained no prohibition of declarations of independence**".[51] The

[47] BBC, Kyrgyzstan-Tajikistan border clashes claim nearly 100 lives, By Alys Davies, September 19, 2022, available at https://www.bbc.com/news/world-asia-62950787

[48] United Nations digital library, Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law : resolution / adopted by the General Assembly, available at https://digitallibrary.un.org/record/638712?ln=en

[49] International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, overview of the case, available at https://www.icj-cij.org/en/case/141

[50] Ibid.

[51] Ibid.

Court has also found that prohibition of declarations of independence that can be found in the UN SC resolutions do not condemn the declaration of independence per se, since those resolutions condemning an act of independence were adopted in the context of an unlawful use of force or a violation of a *jus cogens* norm.[52]

Although the above-mentioned opinion is not legally binding, it is, nevertheless, of great value and has both legal and political resonance that is difficult to underestimate. One shall bear in mind that the ICJ is the only international court with general jurisdiction. Therefore, there is no more authoritative source which one may rely on to determine the legality of any action under the international law. Juxtaposing the case of Artsakh with the aforementioned legal opinion issued by the Court one may deduce that the declaration of independence of the Republic of Artsakh is fully in conformity with the international law. It is also worth noting that the legal reasoning of Azerbaijan with regard to the legality of declaration of Kosovo independence stated in the written statement and signed by ambassador of the Republic of Azerbaijan to the Kingdom of the Netherlands Dr. Faud Iskandarov is in vivid contrast with the legal reasoning of the Court. In particular, the declaration of independence of the Republic of Kosovo was labelled as an act of secession and "one should be seriously concerned about the attempted unilateral solution of the Kosovo problem through the declaration of independence by its Provisional Institutions of Self-Government'.[53]

Last but not least, the Republic of Armenia may also request the UN GA to ask for an advisory opinion from the ICJ regarding the legality of the Declaration on Proclamation of the Nagorno Karabagh Republic of September 2, 1991 and State Independence Declaration of Nagorno-Karabakh Republic of January 6, 1992.[54]

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[52] Ibid.

[53] International Court of Justice, Case concerning accordance with international law of the unilateral declaration of independence by the provisional institutions of self-government of Kosovo request by the General Assembly of the United Nations for an advisory opinion written statement of the Republic of Azerbaijan 17 April 2009, available at https://www.icj-cij.org/public/files/case-related/141/15668.pdf

[54] President of the Artsakh Republic, State Independence Declaration of Nagorno-Karabakh Republic January 6, 1992, available at http://president.nkr.am/en/nkr/nkr2

3.4. Is there a precedent when a state that had been considered as a part of another state declared its independence and became a UN member despite the objections of the state that continued claiming that territory as its inalienable part?

There are many states both in and outside the UN that have a limited recognition. For example, the Demographic People's Republic of Korea (also known as North Korea) does not recognize and at the same time claims the Republic of Korea (also known as South Korea) and vice versa. Both of them are UN member states. Another example is the State of Israel, which despite being a member of the UN is not recognized by all the UN members and is claimed by the State of Palestine, which is one of two non-member observer states at the UN (together with the Holy See). Kosovo is another sovereign state with limited recognition; however, it is not a UN member. As of March 2020, Kosovo has received 115 diplomatic recognitions as an independent state, 15 of which have been withdrawn. 97 out of 193 United Nations members, 22 out of 27 EU members, 26 out of 30 NATO members, and 34 out of 57 OIC member state have recognized Kosovo as an independent state.[55] Kosovo is still considered to be a part of Serbia by a number of the UN member states, including Russia, which availing itself of its powers emanating from its permanent membership in the UN SC blocks Kosovo accession to the UN. If one labels the state that declared its independence as "a daughter state" (such as Kosovo, for example) and the one that claims sovereignty over the daughter state a "a parent state" (such as Serbia, for example) then it must be mentioned that **throughout the history of the UN there was only one case when the "daughter state'' was accepted to the UN notwithstanding the (fierce) resistance and objections of the "parent state''**. That notable exception was **the People's Republic of Bangladesh**, which used to be part of the Islamic Republic of Pakistan. It

[55] World Population Review, Countries That Recognize Kosovo 2022, available at https://worldpopulationreview.com/country-rankings/countries-that-recognize-kosovo

became a full member of the UN on September 17, 1974 despite the Pakistani opposition. No other "daughter state" was accepted to the UN without the prior consent of the "parent state". In all the other cases (such as Ethiopia-Eritrea or Sudan-South Sudan) the UN membership was followed by the (reluctant) recognition of independence by the parent state. However, any juxtaposition between the Republic of Artsakh and Bangladesh or South Sudan is fallacious due to two reasons: 1. The Declaration of Independence of Artsakh, as it is shown above is predicated on the Soviet legislature, 2. The Republic of Azerbaijan does not consider itself a successor of the Azerbaijani Soviet Socialist Republic. In fact, it considers itself a successor of Azerbaijan Democratic Republic, which did not have effective and recognized control over Artsakh. Hence, in case of the Republic of Artsakh, the parent state(s) is (are) currently non-existent Soviet Union and the Soviet Azerbaijan in particular and not the Republic of Azerbaijan.

4. ARTSAKH AND THE RIGHT TO SELF-DETERMINATION

4.1. Armenia and Artsakh often refer to the "right to self-determination'' principle. How important is people's right to self-determination under the international law? How is it defined under the international law?

Self-determination is an opportunity to freely determine the nation's political status and to pursue economic, social and cultural development. The short answer to the question above is – "**extremely important".** Let us see why.

1. The right to self-determination is mentioned in the very first article of the UN Charter.[56]
2. The right to self-determination is mentioned in the very first article of 1966 UN Covenant of Human Rights.[57]
3. In East Timor case the ICJ concluded that the right to self-determination has *erga omnes* character.[58] Putting it simpler *erga omnes* character implies that the norm is enforceable towards everybody infringing the effective realization of that right. It also implies statutory rather than the contract-based nature of the right.
4. It is well-engrained in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter.[59]

[56] United Nations, United Nations Charter, Chapter I: Purposes and Principles, Article 1, available at https://www.un.org/en/about-us/un-charter/chapter-1

[57] United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, Article 1 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[58] International Court of Justice, Case concerning East Timor (Portugal v. Australia) judgment of June 30,1995, available at https://www.icj-cij.org/public/files/case-related/84/084-19950630-JUD-01-00-EN.pdf

[59] United Nations Digital Library, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the

5. It is mentioned in the 1975 Helsinki Final Act of the CSCE.[60]
6. It is mentioned in a big number of other international legal documents.

In particular, Article 1.2 of the UN charter reads the following:
The Purposes of the UN are:

> ***"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,*** *and to take other appropriate measures to strengthen universal peace".*[61]

Furthermore, Article 1.1 of the 1966 UN Covenant of Human Rights reads the following:

> *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".*[62]

In addition, an important extract from the ICJ judgment on East Timor case already containing several citations to other legal documents, of international significance reads the following:

> *"In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice,* ***has an erga omnes character"****.* [63]

Charter of the United Nations, October 24, 1970 available at https://digitallibrary.un.org/record/202170?ln=en

[60] Conference on Security and Cooperation in Europe, Final Act, Helsinki, 1975, available at https://www.osce.org/files/f/documents/5/c/39501.pdf

[61] United Nations, United Nations Charter, Chapter I: Purposes and Principles, Article 1, available at https://www.un.org/en/about-us/un-charter/chapter-1

[62] United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, Article 1 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[63] International Court of Justice, Case concerning East Timor (Portugal v. Australia) judgment of June 30,1995, available at https://www.icj-cij.org/public/files/case-related/84/084-19950630-JUD-01-00-EN.pdf

As one may see the principle of self-determination **it is one of the essential principles of contemporary international law"**.[64]Last but not least, the Helsinki Final Act of the CSCE reads the following on equal rights and self-determination of peoples:

> *"The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle".*[65]

And finally, an extract from the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States reads the following:

> *"Every State has the duty to promote, through joint and separate action,* ***realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter****, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:*
>
> *a. To promote friendly relations and co-operation among States; and*
>
> *b. To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;*
>
> *and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle,*

[64] (see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I. C. J. Reports 1971, pp. 31- 32, paras. 52-53; Western Sahara, Advisory Opinion, I. C. J. Reports 1975, pp. 31-33, paras. 54-59)

[65] Conference on Security and Cooperation in Europe, Final Act, Helsinki, 1975, p. 7 available at https://www.osce.org/files/f/documents/5/c/39501.pdf

as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter".

Nevertheless, the "elephant in the room" is whether the right to self-determination implies legal and legitimate right of succession from the "parent" state or not. In its advisory opinion entitled "Accordance with International Law of the Unilateral Declaration of Independence" in Respect of Kosovo the ICJ refrained of clearly answering that question stating that " **outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of "remedial secession" were actually present in Kosovo**".

As for the author's personal opinion regarding the implication of the right to secession from the right to self-determination, it shall be noted that it entirely coincides with the legal argumentation of The Kingdom of

the Netherlands in reply to the question posed by the ICJ judges. Furthermore, the author is convinced that the independence declaration of Artsakh is completely legal not only in consideration of people's right to self-determination, but also under the Soviet Union legislation discussed under the relevant question of the present work. An extract from the legal argumentation of The Kingdom of the Netherlands is verbatim presented below. The full text is available in the annex.

In the view of the Kingdom of the Netherlands, the secession of a territory from a sovereign State without the latter's consent outside the colonial context may be permitted on the basis of the right of a people to self-determination. The right to self-determination includes the right of peoples "freely to determine their political status" (Articles 1 of the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights (1966 Covenants)), "freely to determine, without external interference, their political status" (General Assembly Resolution 2625 (XXV) (Resolution 2625), "freely [to] determine their political 1 status" (Section I.2 of the 1993 Vienna Declaration and Program of Action, as adopted by the World Conference on Human Rights), or "in full freedom, to determine as they wish, their internal and external political status, without external interference, ' and to pursue as they wish their political, economic, social and cultural development" (Part VIII of the Final Act of the Conference on Security and Co-operation in Europe to whJ.ch reference is made in the Preamble to Resolution 1244) (see also para. 3.4 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009). 5. Resolution 2625 lists modes of implementing the right to self-determination of peoples. It mentions (a) the establishment of a sovereign and independent state, (b) the: free association or integration with an independent state, and (c) the emergence into any other political status: freely determined by a people. Secession of a territory: from a state necessarily precedes the establishment by a people of a sovereign and 'independent state, or the: free association or integration of a people with another state. The text of the Resolution does not limit the choice by a people for a particular mode of implementing the right to self-determination to the colonial context. Likewise, the text of the Resolution does not require a people obtain the consent of the state from which that people seek~ to secede. Any limitation of a people's right to choose a particular mode of implementing the right to self-determination can only be inferred, a contrary, from the savings clause in Resolution 2625. Pursuant to this clause, the principle of equal rights and self-determination of peoples is not to be construed "as authorizing or

encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States". However, it follows also from this clause that the principle of territorial integrity does not prevail if States are not "conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color" (see also para. 3.7 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009). 6. The 1996 Covenants - or any of the other instruments mentioned in paragraph 4 above do not further elaborate the modes of implementing the right to self-determination by a people. However, nothing in these instruments limit the choice for a particular mode to specific situations, such as the colonial context, or subject the choice for a particular mode to the consent of the state from which a people seek~ to secede. This view is corroborated by the travaux préparatoires of the 1966 Covenants. In the course of the negotiations, "[s]uggestions were made which would indicate the substance of the right of self-determination in a concrete form. For instance, the right of self-determination should include the right of every people or nation 'to establish an independent State', to 'choose its own form of government', to 'secede from or unite with another people or nation', etc. These suggestions were not adopted, for it was thought that any enumeration of the components of the right of self-determination was likely to be incomplete. A statement of the right in abstract form, as in paragraph 1 of the article, was thought to be preferable." 1 7. Thus, it must be concluded that the instruments recognizing the right to self-determination of peoples includes the exercise of this right through secession; and, furthermore, that these instruments neither limit the exercise of this right through secession to the colonial context nor to the consent of the state from which a people seeks to secede. What is lacking in these instruments are only the conditions that must be satisfied for a people to be permitted to choose one mode of implementing the right to self-determination rather than another. It is on this point that the legal opinions and the practice of states need to be ascertained. The Kingdom of the Netherlands has expressed its legal opinion as regards the conditions that must be satisfied before a people may choose a mode of implementing its right to self-determination that amounts to the exercise of the right to external self-determination and, by implication, secession during these proceedings (see paras. 3.9-3.11 of the Written Submission of 17 April 2009 and paras. 6-8 of the Oral Statement of 10 December 2009 of the Kingdom of the Netherlands). 8. In this respect, we have noted that it is hardly surprising that there are not many instances of the

lawful exercise of the right to external self-determination outside the context of non-self-governing territories and foreign occupation. First, the post-colonial right to external self-determination only emerged in the second half of the last century. Second, conditions must be satisfied before a people may resort to external self-determination. In the course of these proceedings, many instances have been cited where the people concerned did, indeed, fail to meet these conditions and could not lawfully exercise the right to external self-determination. Yet, there are several instances where the international community has accepted the exercise of the right to external self-determination outside the colonial context and without the consent of the state from which the people concerned seceded. We have cited the establishment of 1 UN Doc. A/2929 (1955), p. 15 (para. 15); see also M.J;. Bossuyt, Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights (198;7), at 34. 3 Bangladesh and Croatia as examples (see also para. 10 of the Oral Statement of the Kingdom of the Netherlands of 10 December 2009).[66]

4.2. Does international law distinguish between internal and external right to self-determination?

The short answer to the question above is a resolute "no"! There is no such classification in international law. Such differentiation that is often referred in academic literature does not arise from customary international law but from the famous *Quebec* case heard before the Canadian Supreme Court. Putting it more precisely it is the interpretation of the international law by the Canadian Supreme Court, i.e., the labels were chosen by the Supreme Court after researching the international law sources and text. Even though the case was heard before not an international court, but a national one, the logic of argumentation of the Canadian Supreme Court is a good "food for thought".

The questions brought before the Supreme Court are listed below:

1. Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of

[66] International Court of Justice, Reply to Questions of Members of the Court by The Kingdom of the Netherlands, December 21, 2009, available at https://www.icj-cij.org/public/files/case-related/141/17890.pdf

Quebec from Canada unilaterally?

2. Does international law give the National Assembly, legislature or government of Quebec the right to affect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to affect the secession of Quebec from Canada unilaterally?
3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to affect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?[67]

The logic of argumentation of the Canadian Supreme Court is worth academic attention and is of great legal significance as it is based on the extensive research of international legal texts. The Court interprets the right to internal and external right to self-determination as follows:

> "*The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination -- a people's pursuit of its political, economic, social and cultural development within the framework of an existing state.* ***A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances"***.[68]

Nevertheless, the Court does not define the circumstances that are to be qualified as a "most extreme case". As for the legality of the right to external self-determination when the effectuation of the right to internal self-determination is impossible and implausible the **Court concluded that the international law is unclear on that point** stating that it is not relevant to the case of Quebec.[69]

[67] Supreme Coutr of Canada, Reference: Secession of Quebec, Case number: 25506 available at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do

[68] Ibid.

[69] Ibid.

5. ARTSAKH AND THE UNITED NATIONS

5.1. What are the United Nations Security Council Resolutions on Nagorno-Karabakh conflict about? Can Armenia be considered an occupying power according to the four resolutions of the UN SC?

The UN SC adopted overall four resolutions (822; 853; 874 and 884) referring to Nagorno-Karabakh conflict. The resolution N822 was adopted immediately after Kelbajar district became under the effective control of Armenian forces during the First Karabakh War. The UN SC noted with alarm "the escalation in armed hostilities and, in particular, the latest invasion of the Kelbajar district of the Republic of Azerbaijan **by local Armenian forces**".[70] **In the subsequent resolution the Republic of Armenia was never mentioned as an occupying power by the UN SC and the exhorted subjects were the local Armenian forces.** Furthermore, in resolution N884 which was adopted after the Zangelan district and the city of Horadiz fell under the effective control of the local Armenian forces, the UN SC called upon the Government of Armenia "to use its influence to achieve compliance by the Armenians of the Nagorno-Karabakh region of the Azerbaijani Republic with resolutions 822 (1993), 853 (1993) and 874 (1993), and to ensure that the forces involved are not provided with the means to extend their military campaign further".[71] This is the only exhortation to the Republic of Armenia indicated in the aforementioned four resolutions. It should also be mentioned that the wording of the UN SC could have been stricter and it does not always use such restrained wording. For instance, in resolution N216 which was adopted regarding the situation in Southern Rhodesia,

[70] United Nations Digital Library, Resolution 822 (1993) / adopted by the Security Council at its 3205th meeting, on April 30, 1993, available at https://digitallibrary.un.org/record/165604?ln=en

[71] United Nations Digital Library, Resolution 884 (1993) / adopted by the Security Council at its 3313th meeting, on November 12, 1993, vailable at https://digitallibrary.un.org/record/176731?ln=en

the UN SC labels the local authorities "illegal racist minority regime".[72] On the other hand, no strong wording was used by the UN SC with regard to the local Armenian forces of Artsakh.

Although the UN SC used "Nagorno-Karabakh region of the Azerbaijani Republic" wording, however it is not unequivocal that it considered Artsakh as part of Azerbaijan. The Vienna Convention on the Law of Treaties of 1969 can be used to interpret the UN SC resolution although there is no consensus with that regard among the scholars of international law. According to the Article 2 of the mentioned Convention the term "treaty" means "an international agreement concluded between States in written form and governed by international law[73], whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". In Aegean Sea case the ICJ stated that the title of a document is immaterial to determine and even the minutes of the summits can be regarded as treaties.[74] Therefore, there are solid grounds to claim that the UN SC resolutions should be regarded as treaties from the viewpoint of international law. The Vienna Convention on Law of Treaties applies three approaches while interpreting the essence of an international treaty – textual, contextual and teleological. Particularly, according to the Article 31 of the Law of Treaties a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes the following:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

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[72] United Nations Digital Library, Resolution 216 (1965) / [adopted by the Security Council at its 1258th meeting], of November 12, 1965, available at https://digitallibrary.un.org/record/90483?ln=en

[73] United Nations, Vienna Convention on the Law of Treaties 1969, Article 2, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

[74] International Court of Justice, Aegean Sea Continental Shelf (Greece v Turkey), Judgement [1978], ICJ Report 3, available at https://www.icj-cij.org/public/files/case-related/62/062-19781219-JUD-01-00-EN.pdf

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.[75]

Coming back to Karabakh conflict, it shall be mentioned that except the UN SC resolution N874, each and every resolution was adopted when new territories fell under the effective control of local Armenian forces. For example, as it was already mentioned the resolution N882 was adopted when Qelbajar district (the Armenian endonym is Qarvajar) fell under the effective control of the local Armenian forces; resolution N853 is about Aghdam (the Armenian endonym is Akna) and finally the resolution N884 is about Zangelan district (the Amrnian endonym is Kovsakan) and the city of Horadiz. **At the same time, a mention must be made the UN SC has never adopted any resolution that anyhow condemns the presence of the local Armenian forces in the territory that was used to be a part of Nagorno-Karabakh Autonomous Oblast of the Soviet Azerbaijan and never recommended or demanded their withdrawal from the mentioned territory.** Therefore, one may infer that the UN SC has no reservation with regard to the deployment of the local Armenian forces in the territory that used to be part of the Oblast.

5.2. Are the United Nations Security Council resolutions adopted with regard to the situation in Nagorno-Karabakh legally binding?

According to the ICJ the legality of the UN SC resolutions might be determined based on the wording used therein. Normally, "strong" words such as "demands", "decides", "under Chapter VII" signal that the UN SC intends its resolution to be binding. One might claim that the binding decision is supplemented with the power of use of force when the UN SC uses "by all necessary means" wording. At the same time, in non-binding resolutions the Council frequently uses less strict wording such as

[75] United Nations, Vienna Convention on the Law of Treaties 1969, Article 2, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

"recommends", "calls for" or "appeals".[76] As for the resolutions concerning the Nagorno-Karabakh conflict, both strong and relatively softening vocabulary is used. However, the close observation proves that the strong wording clearly does not outweigh in the Artsakh-related resolution. It is worth noting that in resolution N884 it **called upon** the Republic of Armenia and did not demand anything from it.

In addition, it shall be noted that the language of the UN SC resolutions with regard to Nagorno-Karabakh conflict was quite mild due to the diplomatic efforts of France, which is a permanent member of the UN SC. Armenian media outlet named "Civilnet" referring to the unclassified documents on Nagorno-Karabakh conflict stated that the Ambassador Jean-Bernard Mérimée of France "asserted that the language being suggested by, inter alia, the U.S., was too specific in view of the limited information Council members had about the situation." The French envoy further suggested treating the Armenian capture of Kelbajar not under the Chapter VII of the UN – an "act of aggression," but under Chapter VI – a dispute that should be settled peacefully."[77]

5.3. Is it possible to legally bypass the UN SC resolutions?

In 1950, the UN GA adopted, in the author's deep conviction, the most controversial resolution in the history of international law: Uniting for Peace. It was adopted in the context of the Korean War in order to circumvent the veto power of the USSR. The resolution enables the UN GA to propose military intervention in the event of disunity in the UN SC.[78] Although the UN GA did not attempt to arrogate to itself powers akin to those rooted in the Chapter VII of the Charter, it stands to reason

[76] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 13., p. 264.

[77] Civilnet, From the Archives: How France Influenced UN's Karabakh Resolution, June 7, 2020, available at https://www.civilnet.am/en/news/381658/from-the-archives-how-france-influenced-uns-karabakh-resolution/

[78] United Nations General Assembly Resolution A/RES/377(V) 3 November 1950, available at https://www.un.org/en/sc/repertoire/otherdocs/GAres377A(v).pdf

that originally resolution 377 A (V) was hardly reconcilable with the Charter.[79] Furthermore, the word "recommend" emphasizes the non-binding nature of the resolution. During the history of the UN, the "Uniting for Peace" was invoked 11 times. The last time it was invoked in response to the recent events in Ukraine. As a result, the 11th emergency session of the UN GA was convened, during which the resolution A/RES/ES-11/1 was adopted with 141 votes in favor, 5 against, and 35 abstentions (including RA). Nevertheless, according to the 1962 advisory opinion issued by the ICJ, coercion by military force is the exclusive competence of the UN SC[80]. Nevertheless, the UN GA has a wide range of tools, including the organization of peacekeeping operations at the request, or with the consent, of the states concerned.[81]

5.4. Did the UN GA adopt any resolution on Nagorno-Karabakh? If yes, what is the gist of the resolution?

The UN GA Resolution 62/243, entitled "The Situation in the Occupied Territories of Azerbaijan", is a resolution of the UN GA about the situation in Nagorno-Karabakh, which was adopted on March 14, 2008 at the 62nd session of the GA. It became the fifth UN document concerning Nagorno-Karabakh and the first and hitherto the only UN GA resolution on Nagorno-Karabakh (see the annex). The draft was adopted by a recorded vote of 39 in favor to 7 against and with 100 abstentions.[82] The resolution, inter alia, "reaffirms continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan

[79] United Nation, Audiovisual Library of International Law, Christian Tomuschat, Uniting for Peace General Assembly resolution 377 (V) New York, 3 November 1950, available at https://legal.un.org/avl/ha/ufp/ufp.html

[80] International Court of Justice, "Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962 : I.C. J. Reports 1962, p. 163, available at https://www.icj-cij.org/public/files/case-related/49/049-19620720-ADV-01-00-EN.pdf

[81] Ibid., p. 163.

[82] United Nations, Meetings coverage and press releases, available at https://www.un.org/press/en/2008/ga10693.doc.htm

within its internationally recognized borders and demands the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan".[83] However, two important facts must be mentioned. Firstly, the resolutions of the UN GA are **not legally binding.** Secondly, out of 192 members of the UN (as of 2008) only 39 member states or 20% of all the member states voted for the resolution. **All the three co-chairs of the OSCE Minsk group (Russia, France and the USA) which also hold permanent membership in the UN SC voted against the resolution which means that they do not agree with the letter and spirit of the latter. It may also be argued that the resolution would have been voted down in the UN SC had it been brought before the latter.** In particular, the representative of the USA made the following statement:

> *"The political-level representatives of France, the Russian Federation and the USA, as co-chairs of the OSCE Minsk Group dealing with the Nagorno-Karabakh conflict, had jointly proposed to the two parties a set of basic principles for the peaceful settlement of the conflict, on the margins of the OSCE Ministerial Council in Madrid in November 2007. Those basic principles were founded on the provisions of the Helsinki Final Act, including those related to refraining from the threat or use of force, the territorial integrity of States and the equal rights and self-determination of peoples. The proposal transmitted to the two sides comprised a balanced package of principles currently under negotiation. The sides had agreed that no single element was agreed until all elements were agreed by the parties. Unfortunately, the draft resolution before the Assembly selectively propagated only certain of those principles to the exclusion of others, without considering the co-chairs' proposal in its balanced entirety, he said. Because of that selective approach, the three co-chairs must oppose the unilateral draft resolution. They reiterated that a peaceful, equitable and lasting settlement of the Nagorno-Karabakh conflict would require unavoidable compromises by the parties, reflecting the principles of territorial integrity,*

[83] United Nations, A/RES/62/243, available at https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F62%2F243&Language=E&DeviceType=Desktop&LangRequested=False

non-use of force, equal rights of peoples and other principles of international law''.[84]

The representative of France said he would vote against the draft resolution unilaterally presented by Azerbaijan, although his delegation fully supported the common position of the European Union on the question of the Nagorno-Karabakh conflict.[85] The representative of Slovenia, speaking on behalf of the European Union in explanation of position before the vote said that while recognizing the right of Member States to bring issues to the attention of the UN GA for consideration, the Minsk Group should retain the lead in settling the Nagorno-Karabakh conflict. The European Union reiterated its support for all the principles, without exception, set up within the Minsk Group, and valued the views of the Group's co-chairs. It reaffirmed that the settlement of Nagorno-Karabakh dispute was an important part of the Union's European Neighborhood Policy and featured prominently in the related action plans. The European Union was ready to support all steps that contributed to a peaceful resolution of the conflict, and called on the parties concerned to avoid any actions that could lead to heightened tensions and undermine the ongoing mediation efforts.[86] A mention must be made that no permanent member of the UN SC voted for the resolution. The bulk of the 39 countries that supported the resolution are the members of the OIC. Similarly, no EU member state supported the resolution. It was not supported by any of the CSTO members either (an alliance where Armenia is also a member together with Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan). The table below shows the voting of the member states on UN GA Resolution 62/243.

[84] United Nations, Meetings coverage and press releases, available at https://www.un.org/press/en/2008/ga10693.doc.htm

[85] Ibid.

[86] Ibid.

Table 2. ***Voting of the UN members on UN GA Resolution 62/243***

In favor	*Against*	*Abstention*	*Absent*
Afghanistan, Azerbaijan, Bahrain, Bangladesh, Brunei Darussalam, Cambodia, Colombia, Comoros, Djibouti, Gambia, Georgia, Indonesia, Iraq, Jordan, Kuwait, Libya, Malaysia, Maldives, Moldova, Morocco, Myanmar, Niger, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Serbia, Sierra Leone, Somalia, Sudan, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Yemen.	Angola, Armenia, France, India, Russian Federation, the USA, Vanuatu.	Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Finland, Germany, Ghana, Greece, Grenada, Guatemala, Guyana, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nepal, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Saint Lucia, Samoa, San Marino, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, the UK, Uruguay, Venezuela, Zambia.	Belarus, Belize, Benin, Bhutan, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Dominica, Eritrea, Ethiopia, Fiji, Gabon, Guinea, Guinea-Bissau, Iran, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Malawi, Mali, Marshall Islands, Mauritania, Micronesia (Federated States of), Nauru, Palau, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Syria, Tajikistan, Tonga, Tunisia, Turkmenistan, United Republic of Tanzania, Viet Nam, Zimbabwe.

6. ARTSAKH AND THE INTERNATIONAL COURTS

6.1. Can Artsakh lodge an application with International Court of Justice?

The short answer is – "in theory yes"! Article 35(1) of the UN Charter paves a way for a non-member state of the UN to consider the ICJ as an avenue for dispute solutions. Article 35 reads the following:

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.[87]

In the virtue of powers conferred upon the UN SC by the Article 35 of the UN Charter and subject to the provisions of the mentioned Article, on October 15, 1946 the UN SC adopted resolution N9 entitled "Admission of states not parties to the Statute of the Court". The resolution N9 stipulated that in order to have access to the Court, a State not party to the Statute must previously have deposited in the Registry of the Court a declaration by which it accepts the Court's jurisdiction, in accordance with the UN Charter and subject to the conditions of the Statute and Rules of Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a UN member under Article 94 of the Charter. Resolution N9 further states that such a declaration may be either particular (and relate to a dispute or disputes which have already arisen) or general (and relate to all

[87] United Nations, Chapter VI: Pacific Settlement of Disputes, available at https://www.un.org/en/about-us/un-charter/chapter-6

disputes or to one or several classes of disputes which have already arisen or which may arise in the future).

In the past, particular declarations have been filed by Albania (1947) and Italy (1953), and general declarations by Cambodia (1952), Ceylon (1952), the Federal Republic of Germany (1955, 1956, 1961, 1965 and 1971), Finland (1953 and 1954), Italy (1955), Japan (1951), Laos (1952) and the Republic of Viet Nam (1952).

Article 93 of the UN Charter reads the following:

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.
2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined **in each case by the General Assembly upon the recommendation of the Security Council**.[88]

Hence, it is inferred that it is up to the UN GA and the UN SC to decide the fate of the application of a non-member state wishing to become party to the ICJ Statute. The UN GA strongly relied on the UN SC recommendations. Switzerland (as from July 28, 1948), Liechtenstein (as from March 29, 1950), San Marino (as from February 18, 1954), Japan (as from April 2, 1954) and Nauru (as from January 29, 1988) fell into this category before joining the UN. The conditions imposed have hitherto been the same in each case. They were laid down for the first time in Resolution 91(I) adopted by the GA on December 11, 1946 as a result of a request by the Swiss Federal Council.[89] Those conditions are the following:

1. Acceptance of the provisions of the ICJ Statute,
2. Acceptance of the obligations of the UN member under Article 94 of the UN Charter,
3. An undertaking to shoulder the Court expenses as assessed by the UN GA in consultation with the government of the applicant state.[90]

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[88] Ibid., Article 93.

[89] International Court of Justice, States not members of the United Nations parties to the Statute, https://www.icj-cij.org/en/states-not-members

[90] United Nations Digital Library, Conditions on which Switzerland may become a Party to the International Court of Justice, 1947, available at https://digitallibrary.un.org/record/209868#record-files-collapse-header

However, the declaration mentioned above is a necessary, but not a sufficient condition for a non-member state to lodge an application to the ICJ. In practice, there are two ways for the non-member states to access the Court:

1. An access provided/mandated by the UN SC
2. Special provisions contained in the treaties in force.[91]

In 1947, to settle the dispute over Corfu channel the UN SC recommended the UK and the People's Republic of Albania to refer the matter to the ICJ.[92] At that time Albania was not yet a member of the UN (it joined in 1955). Notably, the Corfu Channel case was the first ever case heard before the ICJ.

As for the special provisions it shall be noted that the non-member states can lodge an application only when the subject matter which is articulated in the treaties was adopted before the ICJ Statute's entry into force (October 24, 1945). Such condition was set by the ICJ in Legality of Use of Force case (Yugoslavia v. Spain). The ICJ noted that the words "treaties in force" were to be interpreted as referring to treaties which were in force at the time that the Statute itself came into force, and that consequently, even assuming that the applicant was a party to the Genocide Convention when instituting proceedings, paragraph 2 of the Article 35 of the Statute did not provide it with a basis for access to the Court under Article 9 of that Convention, since the Convention only entered into force on January 12, 1951, after the entry into force of the Statute.[93]

In conclusion, Artsakh can access the ICJ, however the chances are highly theoretical and hinge on the whim of the UN GA and the UN SC.

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[91] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 12., p. 243.

[92] United Nations, The Corfu Channel question, available at https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/en/sc/repertoire/46-51/Chapter%208/46-51_08-11-The%20Corfu%20Channel%20question.pdf

[93] International Court of Justice, Legality of Use of Force (Yugoslavia v. Spain), Overview of the case, available at https://www.icj-cij.org/en/case/112

6.2. Can Artsakh issue be discussed/solved in any competent international court? What are the legal remedies to which the governments of Armenia and Azerbaijan may resort?

First of all, let us discuss all the international courts where the case might theoretically be heard. It is logical to start from the ICJ. All the UN members are ipso facto members of the ICJ and the statute of the latter is annexed to the UN Charter. The ICJ (aka the World Court) has jurisdiction to hear the matter in the following cases:

1. The parties to conflict sign an agreement enabling the ICJ to hear the case (also known as *compromise*)
2. It is explicitly mentioned in the international treaty such as, for example, under Article 30 of 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
3. Under the Article 36 of the Statute of the ICJ the state declared that it recognizes as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
   - the interpretation of a treaty;
   - any question of international law;
   - the existence of any fact which, if established, would constitute a breach of an international obligation;
   - the nature or extent of the reparation to be made for the breach of an international obligation.[94]

However, neither Armenia nor Azerbaijan made the aforementioned declaration under the Statute of the ICJ. Hence, the ICJ may have a jurisdiction over any legal dispute between Armenia and Azerbaijan only when both parties agree to submit the matter to the Court. Under such circumstance Armenia has no choice to enter the World Court but to find

[94] International Court of Justice, Statute of the International Court of Justice, available at https://www.icj-cij.org/en/statute

a convention or an equivalent legal instrument that had also been ratified by Azerbaijan provided that the instrument clearly enables the reference of the matter to the World Court.

Another international legal forum is the PCA, which shares the same premises with the ICJ, the Hague Academy of International Law and the Peace Palace Library in the Hague. In short, neither Armenia nor Azerbaijan signed the PCA founding documents (the Conventions on Pacific Settlement of International Disputes). It is interesting to note that in the China v. Philippines case, which involved a territorial dispute in South China Sea, the PCA ruled in favor of the Philippines. However China refused to comply with the decision of the Arbitration.[95] Moreover, the Vice Foreign Minister of China stated that China does not recognize and implement the award as the decision of the Arbitration is "just a piece of waste paper".[96]

The OSCE enables its member states to solve their disputes peacefully through the CCA. However, unlike Armenia, Azerbaijan did not sign the Stockholm Convention on Conciliation and Arbitration within the OSCE.[97] In addition, it is interesting to note that since 1994 when the Convention entered into force the Court, the annual budget of which is 95000 Swiss Francs, has not yet heard any single case![98]

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[95] Permanent Court of Arbitration, Case N° 2013-19 In the Matter of The South China Sea Arbitration - Before - An Arbitral Tribunal Constituted under Annex Vii to The 1982 United Nations Convention on The Law Of The Sea - between - The Republic of The Philippines - and - The People's Republic of China, available at https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf

[96] Ministry of Foreign Affairs of the People's Republic of China, vice Foreign Minister Liu Zhenmin at the Press Conference on the White Paper Titled China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea 13 July 2016, available at https://www.fmprc.gov.cn/mfa_eng/wjbxw/t1381980.shtml

[97] Organization of Security and Cooperation in Europe, list showing signatures and ratifications or accessions with respect to the Convention on Conciliation and Arbitration within the OSCE, January, 2020, available at https://www.osce.org/files/f/documents/8/2/40119_2.pdf

[98] Organization of Security and Cooperation in Europe, Court of Conciliation and Arbitration, Key resources, Thumbnail cover of the "Factsheet: Court of Conciliation and Arbitration" (OSCE) Factsheet: Court of Conciliation and Arbitration, available at https://www.osce.org/files/f/documents/e/9/459919.pdf

The only Court before which Armenia and Azerbaijan may bring cases against each other is the ECtHR. However, the power of the ECtHR is limited to the scope of the ECHR (*Ratione materiae* principle). In principle, it may render decisions only regarding those cases that involve human rights violations in accordance with the Convention and is not competent to adjudicate on the issues that traditionally fall within the domain of high politics (for example interstate territorial disputes).

6.3. What are the international conventions that Armenia and Azerbaijan may invoke to bring legal cases before the competent international courts against one another?

As it was mentioned above, courts may adjudicate on the issues if such provision is clearly stated in the legal instrument. Moreover, the courts shall not transcend the scopes of the invoked legal instruments. The general information regarding the most relevant international conventions that can possibly be invoked before the ICJ are summarized in the table below. The conventions mentioned in the table below are ratified by both Armenia and Azerbaijan.

Table 3. General information on Conventions that are likely to be invoked before the ICJ in the context of Nagorno-Karabakh conflict.

Convention and the date of entering into force	*Ratification date (Armenia)*	*Ratification year (Azerbaijan)*	*Scope*	*Article enabling to bring the matter before international Court*
International Convention on the Elimination of All Forms of Racial Discrimination (4 January1969)[99]	June 23, 1993	August 16, 1996	Being a third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races. Under the Convention racism and racism-motivated hate speech is legally punishable.	Article 22
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 June 1987)[100]	September 13, 1993	August 16, 1996	The Convention aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. It also requires member states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids member states to transport people to any country where there is reason to believe they will be tortured.	Article 30
Convention on the Prevention and Punishment of the Crime of Genocide (12 January 1951)[101]	June 23, 1993	August 16, 1996	It is the first legal instrument to codify genocide as a crime, and the first human rights treaty unanimously adopted by the UN GA, on December 9, 1948, during the third session of the UN GA. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.	Article 9

[99] United Nations, Human Rights office of the High Commissioner, The Core International Human Rights Instruments and their monitoring bodies, available at https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies

[100] Ibid.

[101] Ibid.

United Nations Convention against Transnational Organized Crime (29 September 2003)[102]	July 1, 2003	October 30, 2003	It is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on September 29, 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols. The purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively, including terrorism.	Article 35

[102] United Nations Treaty Collection, United Nations Convention against Transnational Organized Crime, available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&clang=_en

6.4. Is it possible to bring all the perpetrators of the war crimes during the Karabakh conflict and especially the 2020 Nagorno-Karabakh war before the International Criminal Court? Why the perpetrators are not yet punished?

To answer the question above, first of all it is necessary to illustrate the legal base regulating the ICC activities as well as its mission and objectives. The summarized relevant information about the ICC is presented in the table below.

Table 4. ***General information about the International Criminal Court***[103]

Raison d'être	Prevention of and retribution for the most serious crimes of concern to the international community (crimes under Article 5 of the Rome Statute)
Legal base	Rome Statute, signed on June 19, 1998 in Rome, Italy and is in force from July 1, 2002.
Principles	Nullum crimen sine lege, nulla poena sine lege and ratione materiae.
Venue	Hague, the Netherlands
Individual criminal responsibility	This Rome Statute shall apply equally to all persons without any distinction based on official capacity. In particular, **official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence**. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person (Article 27 of the Rome Statute). However, the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime (Article 26 of the Rome Statute).
Official languages of the Court	Arabic, Chinese, English, French, Russian and Spanish.

[103] International Criminal Court, Rome Statute of the International Criminal Court, available at https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf

Working languages of the Court	English and French
Place of trial	Unless otherwise decided, the place of the trial shall be the seat of the Court
Crimes within the jurisdiction of the Court	1. Crime of Genocide; 2. Crimes against humanity; 3. War crimes and 4. Crime of aggression
Subjects eligible to bring cases before the Court	1. The UN SC, 2. The prosecutor of the Court (motu propio), 3. Any state party to the Statute
Applicable punishments	Imprisonment; life imprisonment; fine; A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.
Bodies of the Court	The ICC is governed by the Assembly of States Parties, which consists of the states that are party to the Rome Statute. It elects officials of the Court, approves its budget, and adopts amendments to the Rome Statute. The Court itself is composed of the following four organs: the Presidency, the Judicial Divisions (an Appeals Division, a Trial Division and a Pre-Trial Division), the Office of the Prosecutor, and the Registry.
States that voted against the Statute	A conference was convened in Rome in June 1998, with the aim of finalizing the treaty to serve as the Court's statute. On July 17, 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to seven, with 21 countries abstaining. The seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, the USA, and Yemen.
Responsibilities of states party to Rome Statute	1. Recognize the ICC as a complementary to national criminal jurisdictions, 2. Recognize the jurisdiction of the Court over the crimes listed under the Article 5 of the Rome Statute 3. To act in accordance with the international law, especially with respect to the State or diplomatic immunity of a person or property of a third State which remains immune until and unless the Court obtains the cooperation of that third State for the waiver of the immunity
Criticism	ICC is often criticized for having a so-called “Africa-bias”. The bulk of the cases brought before the Court hitherto are related to African states.

Both Armenia and Azerbaijan are not state parties of the ICC. Azerbaijan did not sign and consequently did not ratify the Rome Statute. Armenia, on the other hand, signed, but did not ratify the Statute. In accordance with the internal constitutional procedures of Armenia, the Constitutional Court has to check the correspondence of the international agreements with the Constitution of Armenia. On October 13, 2004 the Constitutional Court of Armenia found that the Rome Statute is inconsistent with the Armenian Constitution as once/if the Statute is ratified, the President of Armenia will not be able to carry out its constitutional function, i.e., to discretionally pardon those citizens who are prosecuted or convicted by the Court for the crimes listed under the Article 5 of the Rome Statute.[104] The Constitution of Armenia has been amended twice since 2004, however every convict under the Constitution still retains the right to seek pardon[105] and The President of the Republic shall decide on the issue of granting pardon to convicts in the cases and under the procedure prescribed by law.[106] A mention must be made that the Constitutional Court of Armenia later acted inconsistently with its own decision. In particular, on March 16, 2018 the Constitutional Court found that the CEPA signed on November 24, 2017 between the EU and the EAEC and their member states of one part and the Republic of Armenia of the other part is in line with the Constitution of Armenia.[107] Notably, in the Article 6.2 of the CEPA the following is stated:" The Parties consider that the establishment and effective functioning of the International Criminal Court constitutes an important development for international peace and justice. The Parties shall aim to enhance cooperation in promoting peace and international justice by ratifying and

[104] Armenian legal information system, The Decision of the Constitutional Court of the RA on the correspondence of the Rome State to the Constitution of the RA (in Armenian), available at https://www.arlis.am/DocumentView.aspx?docid=4820

[105] Office of the President of the Republic of Armenia, the Constitution of the Republic of Armenia, Article 70, available at https://www.president.am/en/constitution-2015/

[106] Ibid., Article 135

[107] Armenian legal information system, The Decision of the Constitutional Court of the RA on the correspondence of the Comprehensive Enhanced Partnership Agreement to the Constitution of the RA (in Armenian), available at https://www.arlis.am/DocumentView.aspx?docID=120651

implementing the Rome Statute of the International Criminal Court and its related instruments, taking into account their legal and constitutional frameworks".[108]

Coming back to the above-mentioned question, it has to be mentioned that the charges against the alleged perpetrators can be brought only in case of the referral by the UN SC to the ICC as it is evident from the table 4. That is theoretically possible, however in consideration of the decision-making rules of the UN SC which requires concurring votes of all the five permanent member states and along with the affirmative vote of at least nine members (out of 15), the likelihood of such referral is very low. It must also be mentioned that according to the Article 11.2 of the Rome Statute "If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3".[109] This is the essence of *ratione temporis* principle, i.e., the effect of time on a tribunal's powers pursuant to a treaty. Therefore, even if both Azerbaijan and Armenia (the latter also as part of its obligation under the CEPA) ratify the Rome Statute in future, the Court will be powerless to adjudicate over the issues related to 2020 Nagorno-Karabakh war if one of the states refuses to cooperate with the Court.

However, also another question might arise necessitating a legally sound answer. Can Armenia and Azerbaijan prosecute one another's Head of State, Head of Government or the Foreign Minister or any other high-ranking officials invoking their respective domestic legislation. A few crimes are often considered as crimes against the international community and there is a belief that each and every state has a right to prosecute the alleged perpetrators even if there is no clear link between the allegedly committed crime and the state who decided to prosecute the alleged

[108] Ministry of Foreign Affairs of the Republic of Armenia, Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part and the Republic of Armenia, of the other part, available at https://www.mfa.am/filemanager/eu/CEPA_ENG_1.pdf

[109] International Criminal Court, Rome Statute of the International Criminal Court, available at https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf

perpetrator. Such crimes fall under the so-called "universal jurisdiction". In Eichmann trial the Jerusalem District Court, for example, stated, inter alia, the following:

> *"The abhorrent crimes defined in this Law* ***are crimes not under Israeli law alone****. These crimes which offended the whole of mankind and shocked the conscience of nations are grave offences against the law of nations itself ("delicta juris gentium"). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, in the absence of an International Court, the international law is in need of the judicial and legislative authorities of every country, to give effect to its penal injunctions and to bring criminals to trial. The jurisdiction to try crimes under international law is universal".*[110]

The decision of Belgium to prosecute **the Minister of Foreign Affairs of the Democratic Republic of Congo** accusing the latter in violation of preemptory norms of international law is of great theoretical importance for legal studies. Before the prosecution, in 1993 Belgium had already adopted legislation granting its national courts to adjudicate over anyone for a range of committed crimes regardless of the venue of the crimes, including in cases when the committed crime had nothing to do with Belgium itself![111] Congo brought a case against Belgium before the ICJ. The ICJ concluded that the Minster of Foreign Affairs is immune from criminal prosecution. The Court observed that, contrary to Belgium's arguments, it had been unable to deduce from its examination of state practice any form of exception to the rule granting incumbent Ministers for Foreign Affairs immunity from criminal jurisdiction when they were suspected of having committed war crimes or crimes against humanity.[112] Nevertheless, the Court did not comment on legality of invoking the so-called "universal jurisdiction" for the justification of prosecuting the alleged perpetrators for the crimes having no effective linkage with the

[110] District Court of Jerusalem - Attorney General v. Adolf Eichmann – Judgment, Case 24060, available at https://www.legal-tools.org/doc/aceae7

[111] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 5., p. 90

[112] International Court of Justice, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), available at https://www.icj-cij.org/en/case/121

prosecuting state! In a nutshell, the Head of State, Head of Government and the Minister of Foreign Affairs have (almost) absolute immunity under customary international law. However, the ICJ stated that the Minister of Foreign Affairs (presumably and logically Head of State and/or Head of Government as well) can be prosecuted in one of the following cases:

1. Foreign Minister can be prosecuted in her home state;
2. Foreign Minister be prosecuted if her home state agrees to waive the immunity;
3. Foreign Minister be prosecuted by international criminal courts;
4. Foreign Minister can be prosecuted after the expiration of her terms for the crimes committed before/after the period in office for the private acts.[113]

However, the arrest of the former Head of State of Chile Augusto Pinochet Ugarte in London for alleged human rights violations in his native Chile were not in line with the logic of the Court.

To conclude, according to the legal argumentation of the ICJ, Armenia and Azerbaijan have no right to indict and prosecute one another's Heads of States, Heads of Governments and the Foreign Ministers unless it is in accordance with one of the four above-mentioned exceptions. Nevertheless, the state practice is not always in accordance with the legal argumentation of the ICJ.

As for the other officials having less immunity, the international law distinguishes between sovereign acts (jure imperii) and commercial acts (jure gestionis). People are normally immune for sovereign acts. Sovereign acts are distinguished by commercial acts in the following manner: if the act is unlikely to be performed by private entity it is considered as a sovereign act. Nevertheless, in consideration of the high likelihood of congruence, the nature and the purpose of the activity is also considered quite often. Therefore, from the purely legal perspective, the prosecution by both Armenia and Azerbaijan against one another's citizens for jure imperii are likely to be a violation of international law.

[113] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 6., p. 110

7.1. How does the Additional Meeting of the CSCE Council in 1992 relate to Nagorno-Karabakh issue?

The Additional Meeting of the CSCE Council in 1992 was significant for the following reasons:

1. The Ministers expressed their firm conviction that a conference on Nagorno-Karabakh under the auspices of the CSCE would provide an ongoing forum for negotiations towards a peaceful settlement of the crisis on the basis of the principles, commitments and provisions of the CSCE.
2. Minsk was chosen as the venue of the Conference. That is why, the group spearheading the OSCE's efforts for finding a peaceful solution of the conflict later became known as the "Minsk Group".
3. It was agreed that the following states will participate in the Minsk Conference: s Armenia, Azerbaijan, Belarus, Czech and Slovak Federal Republic, France, Germany, Italy, Russian Federation, Sweden, Turkey and the United States of America.
4. **It was further agreed that elected and other representatives of Nagorno-Karabakh will be invited to the Conference as interested parties by the Chairman of the Conference after consultation with the States participating at the Conference. Therefore, there are all the grounds to aver that Artsakh was deemed as a party to the conflict.**[114]

[114] Ministry of Foreign Affairs of the Republic of Artsakh, Helsinki Additional Meeting of the CSCE Council, March 24, 1992, available at http://www.nkr.am/en/documents/helsinki_additional_meeting_csce_council

7.2. How does the CSCE Summit of 1994 relate to Nagorno-Karabakh issue?

The wording of the 1994 Budapest document was rather neutral and the only remarkable issue there was the possible deployment of CSCE peacekeeping mission. The main points of the documents related to Nagorno-Karabakh issue are summarized below and the relevant part of the Budapest Document is available in the annex:

1. Deploring the continuation of the conflict, endorsement the mediation by the Minsk Group and the appreciation of the efforts of the Russian Federation,
2. Decision to determine the co-chairmen of the Minsk Conference,
3. directing the co-chairmen of the Minsk Conference to take immediate steps to promote, with the support and co-operation of the Russian Federation and other individual members of the Minsk Group, the continuation of the existing cease-fire,
4. A request for a mandate from the UN SC to establish a multinational peacekeeping force,
5. Deployment of the CSCE peacekeeping force after doing the preparatory work.[115]

Nevertheless, the planned Minsk Conference was never convened and the OSCE multinational forces have never been deployed on the line of contact between Artsakh and Azerbaijan hitherto.

[115] Organization of Security and Cooperation in Europe, CSCE Budapest Document 1994 Towards a Genuine pPrtnership in a New Era, Part II: Regional Issues Intensification of CSCE action in relation to the Nagorno-Karabakh conflict, available at https://www.osce.org/files/f/documents/5/1/39554.pdf

7.3. Why did Armenia express its dissensus during the OSCE summit in 1996? How does the summit relate to Nagorno-Karabakh issue?

In 1996, the OSCE held its summit in Lisbon. The member states adopted a common position not to support participating States that threaten or use force in violation of international law against the territorial integrity or political independence of any participating State.[116] Furthermore, the member states reaffirmed their support to territorial integrity of Moldova and Georgia. In particular, Article 20 of the Lisbon Summit Declaration related to Georgia reads the following:

We reaffirm our utmost support for the sovereignty and **territorial integrity of Georgia within its internationally recognized borders**. We condemn the 'ethnic cleansing' resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia. Destructive acts of separatists, including obstruction of the return of refugees and displaced persons and the decision to hold elections in Abkhazia and in the Tskhinvali region/South Ossetia, undermine the positive efforts undertaken to promote political settlement of these conflicts. We are convinced that the international community, in particular the United Nations and the OSCE with participation of the Russian Federation as a facilitator, should continue to contribute actively to the search for a peaceful settlement.[117]

Similarly, Article 21 of the Lisbon Summit Declaration related to Moldova reads the following:

> "*We note that some progress has been made towards a political settlement in Moldova. Real political will is needed now to overcome the remaining difficulties in order to achieve a solution based on the* ***sovereignty and territorial integrity of the Republic of Moldova****. We call on all sides to increase their efforts to that end. Recalling the Budapest Summit Decision, we*

[116] Organization of Security and Cooperation in Europe, Lisbon Document 1996, Lisbon declaration on a common and comprehensive security model for Europe for the twenty-first century, Article 6, file:///C:/Users/ACER/Desktop/Book/Annex/OSCE-chairman-in-office.vs.Armenia.pdf

[117] Ibid., p. 8

reiterate our concern over the lack of progress in bringing into force and implementing the Moldo-Russian Agreement of 21 October 1994 on the withdrawal of Russian troops. We expect an early, orderly and complete withdrawal of the Russian troops. In fulfilment of the mandate of the Mission and other relevant OSCE decisions, we confirm the commitment of the OSCE, including through its Mission, to follow closely the implementation of this process, as well as to assist in achieving a settlement in the eastern part of Moldova, in close co-operation with the Russian and Ukrainian mediators. The Chairman-in-Office will report on progress achieved to the next meeting of the Ministerial Council".

Similar wording affirming the territorial integrity of Azerbaijan was prepared to be included in the Lisbon Summit Declaration, however it did not happen, since the first President of Armenia Levon Ter-Petrosyan vetoed the inclusion of such wording in the final declaration.[118] Below an extract from the speech delivered by President Ter-Petrosyan will be presented. The extract from President Ter-Petrosyan's speech translated by the author of the present work from Russian to English, which underlies the legal arguments of the Armenian side, is presented below.

> *"Azerbaijan tries to infringe the overall logic of the negotiation process. In our deep conviction basing the solution of Nagorno-Karabakh issue on the principles proposed by Azerbaijan will jeopardize the population of Nagorno-Karabakh the constant threat of genocide or forced displacement. The experience of anti-Armenian pogroms in Sumgait, in February 1988; in Kirovabad, in November, 1988 and in Baku, in June 1990 as well as the experience of deportation of people from 24 Armenian villages of Karabakh in May-June, 1991 evidently demonstrate that notwithstanding all the assurances Azerbaijan is incapable of guaranteeing security of people of Nagorno-Karabakh. Therefore, we find that respect for the right to self-determination of Nagorno-Karabakh people is the only way to prevent the new tragedy".*[119]

Even though due to Ter-Petrosyan's veto the proposal to transform and settle the conflict within the borders of Azerbaijan was not included

[118] Thomas de Waal, "Armenia and Azerbaijan through Peace and War", New York University press, 2003, p. 256, available at http://library.asue.am/open/1876.pdf

[119] Facebook page of the former President of Armenia Levon-Ter-Petrosyan, Lisbon summit, Ter-Petrosyan uses right to veto, available at https://www.facebook.com/watch/?v=960098731008071

in the Lisbon Summit Declaration, the Chairman-in-Office issued a separate statement regarding the principles of the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group. The statement is presented below in entirety.

> *"You all know that no progress has been achieved in the last two years to resolve the Nagorno-Karabakh conflict and the issue of the territorial integrity of the Republic of Azerbaijan. I regret that the efforts of the Co-Chairmen of the Minsk Conference to reconcile the views of the parties on the principles for a settlement have been unsuccessful.*
>
> *Three principles which should form part of the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group. These principles are supported by all member States of the Minsk Group. They are:*
>
> *– territorial integrity of the Republic of Armenia and the Azerbaijan Republic;*
> *– legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;*
> *– guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.*
>
> *I regret that one participating State could not accept this. These principles have the support of all other participating States.*
>
> *This statement will be included in the Lisbon Summit documents".*[120]

The "one participating State" referred by the OSCE Chairman-in-Office was the Republic of Armenia! At the same time, the Delegation of the Republic of Armenia to the OSCE issued its own statement which reads the following:

> *"With regard to the statement by the Chairman-in-Office of the OSCE, the Delegation of Armenia wishes to express its concern over the following issues:*
>
> *1. The statement does not reflect either the spirit or the letter of the Minsk Group's mandate as established by the Budapest Summit 1994, which*

[120] Organization of Security and Cooperation in Europe, Lisbon Summit Document, Annex 1, Statement of the OSCE Chairman-in-Office, available at https://www.osce.org/files/f/documents/1/0/39539.pdf

proposed negotiations with a view to reaching a political agreement. The problem of status has been a subject of discussion in direct negotiations which have yet to be concluded.

2. *The statement predetermines the status of Nagorno-Karabakh, contradicting the decision of the OSCE Ministerial Council of 1992, which referred this issue to the competence of the OSCE Minsk Conference, to be convened after the conclusion of a political agreement.*
3. *The Armenian side is convinced that a solution of the problem can be found on the basis of international law and the principles laid down in the Helsinki Final Act, above all on the basis of the principle of self-determination.*
4. *In the interests of reaching a compromise solution, the Armenian side is prepared to continue with the most intensive negotiations, both within the Minsk Group and on the basis of direct contacts coordinated by the Co-Chairmen of that Group.*

I request that this statement be annexed to the Lisbon Summit Declaration".[121]

To conclude, the Armenian Delegation headed by the first President of Armenia availed itself of all the instruments within its capacity to prevent the inclusion of wording which was not in line with the letter and spirit of the ongoing negotiation processes in the Lisbon Summit Declaration. In addition, it shall be mentioned that decisions adopted in the framework of the OSCE, even though are not legally binding, have quite high political resonance.

[121] Organization of Security and Cooperation in Europe, Lisbon Summit Document, Annex 2, Statement of the Delegation of Armenia, available at https://www.osce.org/files/f/documents/1/0/39539.pdf

7.4. Did Armenia recognize Nagorno-Karabakh (Artsakh) as part of Azerbaijan by signing the Istanbul Charter for European Security in 1999?

The 1999 Istanbul Summit was the 6th Organization for Security and Co-operation in Europe (OSCE) Summit and was held in Istanbul, Turkey from November 18 until November 19, resulting in the adoption of the Istanbul Summit Declaration and the signing of the Charter for European Security (Charter) which is the first part of the Istanbul document of the OSCE.[122] The Summit also amended Treaty on Conventional Armed Forces in Europe signed in 1990 by adopting The Adapted Conventional Armed Forces in Europe Treaty.

The notion "territorial integrity" is mentioned 7 times in the Charter. In particular, article 16 under "solidarity and partnership" section reads the following:

> *"We reaffirm the validity of the Code of Conduct on Politico-Military Aspects of Security. We will consult promptly, in conformity with our OSCE responsibilities, with a participating State seeking assistance in realizing its right to individual or collective self-defense in the event that its sovereignty, territorial integrity and political independence are threatened. We will consider jointly the nature of the threat and actions that may be required in defense of our common values".*[123]

Furthermore, Article 19 under "human dimension" section reads the following:

> *"The protection and promotion of the rights of persons belonging to national minorities are essential factors for democracy, peace, justice and stability within, and between, participating States. In this respect we reaffirm our commitments, in particular under the relevant provisions of the*

[122] Organization of Security and Cooperation in Europe, Istambul Summit 1999, Istambul document, available at https://www.osce.org/files/f/documents/6/5/39569.pdf?fbclid=IwAR2y5vx6i34ZooscrEcOWNNkjZbNS88LhYmvV6C-du9_oQgUXNpd3qmHZ5s

[123] Ibid., p. 4

Copenhagen 1990 Human Dimension Document, and recall the Report of the Geneva 1991 Meeting of Experts on National Minorities. Full respect for human rights, including the rights of persons belonging to national minorities, besides being an end in itself, may not undermine, but strengthen territorial integrity and sovereignty. Various concepts of autonomy as well as other approaches outlined in the above-mentioned documents, which are in line with OSCE principles, constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State. We condemn violence against any minority. We pledge to take measures to promote tolerance and to build pluralistic societies where all, regardless of their ethnic origin, enjoy full equality of opportunity. We emphasize that questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law".[124]

Finally, and most importantly the notion of territorial integrity was used against the background of conflict in Yugoslavia (Kosovo conflict), conflict in Abkhazia and South Ossetia and conflict in Trans-Dniestrian region of Moldova. To show the vivid difference of wording with regard to Nagorno-Karabakh conflict on the one hand and the conflicts in Kosovo, South Ossetia, Abkhazia and Trans-dniestria on the other hand, the relevant articles shall be referred, compared and contrasted.

Firstly, Article 4 regarding the conflict in Kosovo reads the following:

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*"Against the background of years of repression, intolerance and **violence in Kosovo**, the challenge is to build a multi-ethnic society on the basis of substantial autonomy respecting the sovereignty and **territorial integrity of the Federal Republic of Yugoslavia**, pending final settlement in accordance with UNSCR 1244. We expect this Resolution to be fully implemented and strictly adhered to by all concerned. We will assist all inhabitants of Kosovo. But they, and those who aspire to be their leaders, must work together towards a multi-ethnic society where the rights of each citizen are fully and equally respected. They must fight decisively against the cycle of hate and revenge and bring about reconciliation among all ethnic groups. Over the recent months, we have witnessed a new exodus from Kosovo, this time of Serbs and other non-Albanians. The necessary conditions must be restored so that those who have fled recently can return and enjoy their rights. Those who fought and suffered*

[124] Ibid., p. 5-6

for their rights must now stand up for the equal rights of others. We firmly reject any further violence and any form of ethnic discrimination. Failure to oppose such acts will affect the security of the region".[125]

Secondly, Article 15 regarding the conflict in South Ossetia and Abkhazia reads the following:

"*Reaffirming our strong support for* ***the sovereignty and territorial integrity of Georgia****, we stress the need for solving the conflicts with regard to the* ***Tskhinvali region/South Ossetia and Abkhazia, Georgia****, particularly by defining the political status of these regions within Georgia. Respect for human rights and development of joint democratic institutions as well as the prompt, safe and unconditional return of refugees and internally displaced persons will contribute to peaceful settlement of these conflicts. We underscore the importance of taking concrete steps in this direction. We welcome progress reached at this Summit Meeting in the Georgian-Russian negotiation on the reduction of Russian military equipment in Georgia".*[126]

Thirdly, Article 18 regarding the conflict in Trans-Dniestria reads the following:

"*We welcome the encouraging steps which have been recently taken in the process of the settlement of the Trans-Dniestrian problem. The Summit in Kiev (July 1999) became an important event in this regard. However, there have been no tangible shifts on the major issue - defining the status of the Trans-Dniestrian region. We reaffirm that in the resolution of this problem the* ***sovereignty and territorial integrity of the Republic of Moldova*** *should be ensured. We stand for the continuation and deployment of the negotiation process and call on all sides and in particular the Trans-Dniestrian authorities to demonstrate the political will required to negotiate a peaceful and early elimination of the consequences of the conflict. We appreciate the continuation of the mediating efforts of the Russian Federation, Ukraine and the OSCE in the negotiation process on the future status of the Trans-Dniestrian region within the Republic of Moldova. We take note of the positive role of the joint peacekeeping forces in securing stability in the region".*[127]

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[125] Ibid, p. 46
[126] Ibid, p. 49
[127] Ibid.

However, a mention must be made that a great number of states signing the Istanbul Document later recognized the independence of Kosovo, while Russia did not stick to its commitment to complete withdrawal of the Russian forces from the territory of Moldova by the end of 2002.[128] Meanwhile, the notion "Nagorno-Karabakh" **appears only once** in the whole Istanbul document in Article 20 of Istanbul Summit Declaration. It reads the following:

> "*We received the report of the Co-Chairmen of the OSCE Minsk Group on the evolving situation and recent developments connected with the Nagorno-Karabakh conflict and commend their efforts. We applaud in particular the intensified dialogue between the Presidents of Armenia and Azerbaijan, whose regular contacts have created opportunities to dynamize the process of finding a lasting and comprehensive solution to the problem. We firmly support this dialogue and encourage its continuation, with the hope of resuming negotiations within the OSCE Minsk Group. We also confirm that the OSCE and its Minsk Group, which remains the most appropriate format for finding a solution, stand ready to further advance the peace process and its future implementation, including by providing all necessary assistance to the parties*".[129]

Hereby, it is more than evident that unlike the cases of Kosovo, Abkhazia, South Ossetia and Trans-Dniestria which are referred in the context of the territorial integrity of their respective "parent" states, the case of Nagorno-Karabakh is not referred in the context of territorial integrity of Azerbaijan. In other words, according to the 1999 Istanbul document of the OSCE, Nagorno-Karabakh was not presented as indivisible part of Azerbaijan, unlike for example Abkhazia or Trans-Dniestria, which are noted as territories of Georgia and Moldova respectively. Therefore, if the above-cited Article 19 of the Charter is interpreted as official recognition of Artsakh as inextricable part of Azerbaijan then the following logical question arises: why Artsakh is not mentioned against the background of territorial integrity of Azerbaijan unlike Abkhazia, which was mentioned against the background of

[128] Ibid, p. 50.
[129] Ibid.

territorial integrity of Georgia? Hence, one has solid ground to argue that signature of the Istanbul document of the OSCE is not *ipso facto* tantamount to recognition of Artsakh as part of Azerbaijan. The opposite claims lack tangible legal and logical substantiations.

7.5. How does the 2010 OSCE Astana Summit Declaration relate to Nagorno-Karabakh issue?

Putting shortly, the Astana Commemorative Declaration towards a Security Community adopted by the Heads of States or Governments of 56 participating states of the OSCE is silent about the Nagorno-Karabakh conflict. The word "Nagorno-Karabakh" is absent from the text. Neither, the other conflicts of the CIS region were one by one readdressed unlike, for example, the OSCE Istanbul Summit Declaration. Moldova, however, made an Interpretative Statement under Paragraph iv.1(a) 6 of the OSCE Rules of Procedure attached to the Astana Summit Declaration. In particular, Moldova emphasized the territorial integrity of the Republic of Georgia, however used neutral wording with regard to Artsakh. The relevant reads the following:

> *"It is necessary to restore the full territorial integrity and sovereignty of Georgia, formally resume the 5 plus 2 talks on Moldova and make a progress on the issue of Nagorno-Karabakh. Where do we have better occasion to attempt to find a way forward than at the meeting of our heads of State and government. The conflicts have to be outlined as a priority area of work if the OSCE is to regain relevance and credibility".*[130]

[130] Organization of Security and Cooperation in Europe, Astana Commemorative Declaration towards a Security Community, December 3, 2010, available at https://www.osce.org/files/f/documents/b/6/74985.pdf

7.6. What is the main mission of the Mandate of the OSCE Minsk group Co-Chairmen?

First of all, two important terms are to be clarified: "the OSCE Minsk Group" and "the OSCE Minsk Group Co-Chairmanship". **The permanent members of the OSCE Minsk Group are Russia, the USA, France, Belarus, Germany, Italy, Sweden, Finland, and Turkey, as well as Armenia and Azerbaijan with the ambassadors of the USA, Russia and France being the co-chairs of the Minsk Group.** On a rotating basis, the OSCE Troika (former, current and future Chairpersons-in-Office of the OSCE) is a permanent member too.[131]

On March 25, 1995 the OSCE Chairman-in-Office communicated the Mandate of the Minsk Groups Co-Chairmen. The main mission of the Mandate was to promote a resolution of the conflict without the use of force and in particular facilitating negotiations for a peaceful and comprehensive settlement, according to the rules of procedure as these are stated in the decisions of the 10th meeting of the CSO of the CSCE. The Co-Chairmen, inter alia, are to report to the Chairman-in-Office on the process of negotiations with the parties to the conflict on a draft mandate, Memoranda of Understanding and provisions of guaranties for the safety at all times of personnel involved. The full text of the Mandate is in the annex of the present work.[132]

7.7. What are the so-called "Madrid principles" and do they rescind the independence referendum of Artsakh held on December 10, 1991?

The Madrid Principles, last updated in 2009, are proposed peace settlements of the Nagorno-Karabakh conflict, proposed by the OSCE

[131] Organization of Security and Cooperation in Europe, Minsk Group, available at https://www.osce.org/minsk-group/108306

[132] Organization of Security and Cooperation in Europe, Mandate of the Co-Chairmen of the Conference on Nagorno Karabakh under the auspices of the OSCE ("Minsk Conference"), March 23, 1995, available at https://www.osce.org/files/f/documents/f/f/70125.pdf

Minsk Group. The OSCE Minsk Group is the only internationally agreed body to mediate the negotiations for the peaceful resolution of the conflict. The history of the Madrid principles dates back to 2007. In 2007, the ministers of the US, France, and Russia presented a preliminary version of the Basic Principles for a settlement to Armenia and Azerbaijan in Madrid.

The Basic Principles call for, inter alia, the following:

1. return of the territories surrounding Nagorno-Karabakh to Azerbaijani control;
2. an interim status for Nagorno-Karabakh providing guarantees for security and self-governance;
3. a corridor linking Armenia to Nagorno-Karabakh;
4. **future determination of the final legal status of Nagorno-Karabakh through a legally binding expression of will**;
5. the right of all internally displaced persons and refugees to return to their former places of residence; and
6. international security guarantees that would include a peacekeeping operation.[133]

The full text of Madrid Principles is published by The Armenian Research Center "Ani".[134]

Therefore, one has solid grounds to claim that the Madrid Principles rescind the referendum held in 1991, since as it is mentioned above, another referendum was agreed to organize deciding the future legal status of Nagorno-Karabakh. Notably, the referendum of 1991 had impermeable legitimacy as the Azerbaijani population of Artsakh had the opportunity to participate in referendum and to vote. They opted for boycotting the referendum, which is also a way of political participation.

[133] Organization of Security and Cooperation in Europe, Statement by the OSCE Minsk Group Co-Chair countries L'Aquila 10 July 2009, avalable at https://www.osce.org/mg/51152

[134] ANI Armenian Research Center, Madrid Principles – Full Text, April 11, 2016, available at http://www.aniarc.am/2016/04/11/madrid-principles-full-text/

7.8. What are the OSCE Vienna Mechanisms and have they been ever invoked in the context of Nagorno-Karabakh Conflict?

The Vienna Mechanism[135] was adopted at the 1989 CSCE Conference with the aim of facilitating the exchange of information in the human dimension. In particular, the member states have agreed to respond to the requests sent by other countries through diplomatic channels or through the competent bodies of the CSCE and meet the request of any of the member states by organizing bilateral meetings dedicated to the discussion of issues related to human rights and democracy. In addition, the participating states agreed that each of them has the right to draw the attention of the other participating states to issues related to democracy and human rights in the member countries.

The scope of the Vienna Mechanism was later expanded by the Moscow Mechanism[136], which enables member states to establish groups of independent experts to deal with issues related to the human dimension. It was adopted at the Moscow Conference of the CSCE on October 4, 1991. The essence of the mechanism is as follows:

- Member States propose a list of six experts with high reputation and experience in the field of national minorities, who carry out their functions for a period of six years, but cannot be reappointed more than twice.
- When there is a crisis situation and the protection of human rights becomes problematic, member states may voluntarily invite up to three experts from a pre-approved list of experts, who do not have to be their nationals or experts appointed by them.

[135] Organization of Security and Cooperation in Europe, Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, held on the basis of the Provisions of the Final Act relating to the follow-up to the Conference, Vienna, 1989, available at https://www.osce.org/files/f/documents/a/7/40881.pdf

[136] Organization of Security and Cooperation in Europe, Vienna Document 1999 of the Negotiations on Confidence- and Security-building Measures, November 16, 1999, available at https://www.osce.org/files/f/documents/b/2/41276.pdf

– The task of experts is to contribute to the settlement of issues related to the human dimension. For this purpose, the latter can collect information, carry out a mediation mission, as well as contribute to the establishment of a dialogue between the parties.
– The inviting state shall cooperate with the mission of experts and facilitate its work. It must provide the mission with all the necessary facilities for the independent implementation of its functions, which will allow the mission, in order to carry out the tasks before it, to enter any area without any obstacles, hold discussions and move freely there, meet officials, public organizations and with any group or person.
– The experts must submit their observations to the inviting country within three weeks of the formation of the mission.
– The inviting country or countries may appoint one of the experts from the list as rapporteur to undertake the fact-finding mission and to present the report. The inviting party may also appoint another reporter, who also should not be a citizen of the given state or should not be included in the list of experts proposed by the state.
– The provisions of the previous two points are also subject to implementation in the event that, due to problems arising in human life in one of the member states of the CSCE, another CSCE member state, with the support of at least 9 other states, invites a group of experts.
– At the request of any CSCE member country, the CSCE Committee of Senior Officials or the CSCE Permanent Council may invite a group of experts or a rapporteur.[137]

Apart from the human dimension, Member States cooperate in risk reduction and management. Such mechanisms were introduced after 1989, when the willingness of states to cooperate increased. Mechanisms aimed at reducing risks were negotiated within the framework of the CSCE Conference "Confidence and Security Strengthening Measures"

[137] OSCE, Mechanisms and procedures, Summary/Compendium, 2011, available at https://www.osce.org/files/f/documents/e/e/34427.pdf

and the “Disarmament in Europe” forum, including the following provisions:

- a mechanism for consultation and cooperation on unconventional military operations;
- cooperation on dangerous incidents of a military nature,
- organization of visits and reception of visitors in order to dispel existing doubts about military operations.[138]

These provisions are included in Chapter 3 "Risk Reduction" of the Vienna document adopted in 1999. The Vienna document has been updated many times and the current version is the one adopted in 2011.

It is not unprecedented to invoke the Vienna Mechanisms in the context of Nagorno-Karabakh conflict. On April 6, 1993, Azerbaijan requested an emergency meeting of the Committee of Senior Officials in regard to the situation in Nagorno-Karabakh. Two weeks later, the Armenian Delegation presented clarifications under point 1 of the Mechanism, which was met with a renewed request for holding an Emergency Meeting formulated by Azerbaijan. The meeting took place on April 26, 1993 and was held in accordance with paragraph 2.6 upon the repeated request of Azerbaijan, seconded by Albania, Belgium, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Turkey and the UK.[139]

As a summary, it shall be mentioned that the OSCE mechanisms enable Armenia to attract the attention of the OSCE member states to the politics of Azerbaijan, including, but not limited to the frequent unleashing of short skirmishes and wars on the border with both Artsakh and Armenia that kill a number of soldiers from both sides. The operation of some of the mechanisms is an objective necessity and can become an additional guarantee of reducing tension in the region.

[138] Ibid, p. 55.
[139] Ibid, p. 25

8. ARTSAKH AND THE COUNCIL OF EUROPE

8.1. Did the Parliamentary Assembly of the Council of Europe adopt any resolution on Nagorno-Karabakh? If yes, what is the gist of the resolution?

Both Armenia and Azerbaijan entered the CoE on the same date – **January 25, 2001**.

The PACE had so far adopted three resolutions (Resolution N1047 in 1994, Resolution N1416 in 2005 and Resolution N2391 in 2021) and two recommendations (Recommendation N1251 in 1994 and Recommendation N2209 in 2021) dealing with Nagorno-Karabakh conflict. All the three documents are in the annex of the present work.

1. In Resolution N1047 adopted in 1994 the Assembly acknowledged 1988 as the year of the outbreak of the conflict as well as the existence of 20.000 deaths and one million refugees overall. It also welcomed the trilateral ceasefire agreement of 1994 among Artsakh, Azerbaijan and Armenia and acknowledged the efforts of the CSCE's Minsk Group, the Government of the Russian Federation, the UN SC, the Interparliamentary Assembly of the CIS and its own Committee on Relations with European Non-Member Countries in encouraging the parties to sign the peace agreement. **Most importantly, it urgently called on Azerbaijan and Turkey to immediately end the blockade of their means of communication with Armenia, which they have not fulfilled hitherto.**[140]
2. In Resolution N1416 adopted in 2005 the Assembly, inter alia, suggested **to refer the matter to the ICJ** in accordance with paragraph 1 of the Article 36 of its Statute in case if the negotiations under the auspices of the co-chairs of the Minsk Group fail. The Assembly also called on the Government of

[140] Parliamentary Assembly of the Council of Europe, Resolution 1047 (1994), available at https://pace.coe.int/en/files/16458/html

Azerbaijan to establish contact, without preconditions, with the political representatives of both communities from the Nagorno-Karabakh region regarding the future status of the region, something that Azerbaijan never did. **Like the UN SC, the Assembly mentioned that the Armenian forces (and not the Republic of Armenia) occupied the territory of Azerbaijan.** [141]

3. In Resolution N2391 adopted in 2021 is almost entirely about the humanitarian consequences of the 44-Day war. It shall be highlighted that the Assembly noted with concern the notification by the European Court of Human Rights, communicated to the Committee of Ministers of the CoE on March 16, 2021, in relation to 188 Armenians captured by Azerbaijan.[142]

8.2. What are Chriragov v. Armenia and Sargsyan v. Azerbaijan cases about? What is the position of the European Court of Human Rights on the right to self-determination of the people of Artsakh?

The case Chiragov v. Armenia (Application N13216/05) concerned the complaints by six Azerbaijani refugees that they were unable to return to their homes in the district of Lachin, in Azerbaijan, from where they had been allegedly forced to flee in 1992 during the Armenian-Azerbaijani conflict over Artsakh.

The ECtHR rejected both the preliminary objections of Armenia as well as those on the merits of the case. As for the preliminary objections of the respondent government (Armenia) the Court found that the domestic judicial instances of unrecognized Nagorno-Karabakh Republic

[141] Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), available at https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17289&lang=en

[142] Parliamentary Assembly of the Council of Europe, Resolution 2391 (2021), available at https://pace.coe.int/en/files/29483/html

are unrealistic to consider as possible legal remedies.[143]It also rejected the objection of Armenia concerning the applicants' victim status. The Court also found that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over Artsakh. Furthermore, according to the Court Armenia and Artsakh are highly integrated in virtually all the important matters. **Nevertheless, the Court found that it is not in a position to decide on issues of the creation of a State and on secession or on self-determination.**[144] The Court considered it appropriate to award the applicants aggregate sums for pecuniary and non-pecuniary damage[145] and acknowledged their violated rights under the Article 1 of Protocol N1 attached to ECHR, i.e., to the peaceful enjoyment of his possessions.

The case Sargsyan v. Azerbaijan (Application N40167/06) concerned an Armenian refugee's complaint who was forced to flee from his home in the Shahumyan region in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh. He had since been denied the right to return to his village and to use his property there. In particular, Mr. Sargsyan was from Gulistan village which at the time of application was fully under the effective control of Azerbaijan, a fact that was proven by the applicant and the Government of Armenia (third-party intervener), which was nevertheless denied by Azerbaijan. To solidify his arguments, the applicant presented a DVD with footages from the region as well as letter issued by the Minister of Defense of Artsakh. Akin to Chiragov case the Court dismissed the objection of non-exhaustion of domestic judicial remedies and acknowledged Sargsyan's violated rights under Article 1 of Protocol N1 attached to ECHR.

To conclude, the similarities between Chiragov v. Armenia and Sargsyan v. Azerbaijan cases are striking. In both cases the applications

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[143] European Court of Human Rights, Chiragov and Others v. Armenia [GC] - 13216/05 Judgment 16.6.2015 [GC], available at https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-10619%22]}

[144] Ibid.

[145] Representation of the Government of Armenia before the European Court of Human Rights, The Grand Chamber delivers judgments on "Chiragov and others v. Armenia" and "Sargsyan v. Azerbaijan" cases, available at https://www.echr.am/en/events/chiragov-and-others-v-armenia-gc.html

were considered as admissible despite the fact that the applicants did not exhaust the domestic judicial remedies of Armenia and Azerbaijan respectively. Furthermore, in both cases the Court found the property rights of the applicants violated. However, the Court refrained from commenting on the legality of the effectuation of the right to self-determination of the people of Artsakh. This was expected as determining such issues is beyond the Convention. The cases proved that the ECtHR may hear only cases where prima facie human rights violations are present that fall within the scope of ECHR. Therefore, Armenia and Azerbaijan and the citizens thereof cannot dispute issues of "high politics" before the ECtHR.

9.1. From the legal point of view is Armenia a party of Nagorno-Karabakh conflict?

The short answer is "yes". The first paragraph of the second part (entitled "Regional issues') of the CSCE Budapest document entitled "Towards a genuine partnership in a new era" dated on December 6, 1994 reads the following about the Nagorno-Karabakh conflict:

> "*Deploring the continuation of the conflict and the human tragedy involved,* ***the participating States welcomed the confirmation by the parties to the conflict of the cease-fire agreed on May 12, 1994*** *through the mediation of the Russian Federation in co-operation with the CSCE Minsk Group. They confirmed their commitment to the relevant resolutions of the United Nations Security Council and welcomed the political support given by the Security Council to the CSCE's efforts towards a peaceful settlement of the conflict. To this end they called on the parties to the conflict to enter into intensified substantive talks, including direct contacts. In this context, they pledged to redouble the efforts and assistance by the CSCE. They strongly endorsed the mediation efforts of the CSCE Minsk Group and expressed appreciation for the crucial contribution of the Russian Federation and the efforts by other individual members of the Minsk Group. They agreed to harmonize these into a single coordinated effort within the framework of the CSCE''.*[146]

The ceasefire agreement was signed on May 12, 1994 by the Minister of Defense of Azerbaijan, the Minister of Defense of Armenia and the Nagorno-Karabakh Army Commander (see the document in the annex).[147] Furthermore, in the summary of OSCE Chairman dated on March 31, 1995 (see the appendix) Armenia and Azerbaijan were referred as conflict parties. Here is an extract from the mentioned resume:

[146] Conference on Security and Cooperation in Europe, Budapest document 1994, Towards a genuine partnership in a new era, available at https://www.osce.org/files/f/documents/5/1/39554.pdf

[147] The University of Edimburgh, Peace agreements database, Ceasefire Agreement Signed in Bishkek, available at https://www.peaceagreements.org/view/990

"Delegations were concerned about the situation of "neither war nor peace" in the Nagorno-Karabakh conflict and underlined the importance of strengthening the ceasefire. Delegations were disappointed by the lack of progress in negotiations on the conflict. The Chairman-in-Office confirms previous ***OSCE decisions on the status of the parties, i.e., the participation of the two State parties to the conflict and of the other conflicting party (Nagorno-Karabakh) in the whole negotiation process, including in the Minsk Conference.*** *In addition, interested parties may be invited to the Minsk Conference and its preparatory work for consultations. Delegations urged the parties to re-engage in political negotiation without preconditions and to agree without further delay to an OSCE presence in the region."*[148]

Nevertheless, this does not mean that Armenia was recognized as a party of the war or, putting otherwise, being party of the conflict does not ipso facto mean being party of an undeclared war.

9.2. Did Armenia recognize Artsakh as part of Azerbaijan upon the adoption of The Law on the Administrative-Territorial Division of the Republic of Armenia in 1995 and the subsequent amendment in 2010?

The question above was hotly debated in the Armenian political arena, thus becoming one of the most controversial issues. Being convinced that political arguments on this issue will lead to cul-de-sac as well as bearing in mind the objective and the predominantly legal character of the present work the answer to the question above will be extremely apolitical and purely legal.

Firstly, the Law on the Administrative-Territorial Division of the Republic of Armenia did not mention the word "Artsakh" or "Karabakh" at all. In fact, in 2010 amendment a number of Armenian settlements are noted as adjacent to Azerbaijan. The word "Azerbaijan" appears in 2010 amendment 123 times in aggregate.

[148] Ministry of Foreign Affairs of the Republic of Artsakh OSCE Chairman's Summary, Prague, 31 March 1995, available at http://www.nkr.am/en/documents/1995-03-31-osce-chairman-summary

Nonetheless, even if one assumes that by 2010 amendments Armenia recognized Artsakh as part of Azerbaijan, a few points shall be made that make such argument null and void. The preambulatory clause of the Declaration of Independence of the Republic of Armenia states the following:

> *"The Supreme Council of the Armenian Soviet Socialist Republic*
>
> *Expressing the united will of the Armenian people;*
>
> *Aware of its historic responsibility for the destiny of the Armenian people engaged in the realization of the aspirations of all Armenians and the restoration of historical justice;*
>
> *Proceeding from the principles of the Universal Declaration on Human Rights and the generally recognized norms of international law;*
>
> *Exercising the right of nations to free self-determination;*
>
> ***Based on the December 1, 1989, joint decision of the Armenian SSR Supreme Council and the Artsakh National Council on the "Reunification of the Armenian SSR and the Mountainous Region of Karabakh;"***
>
> *Developing the democratic traditions of the independent Republic of Armenia established on May 28, 1918".*[149]

The Constitution of the RA is anchored on the above-mentioned Declaration.[150] The Preamble of the Constitution of the RA reads the following:

> *"The Armenian people — taking as a basis the fundamental principles of the Armenian Statehood and the nation-wide objectives enshrined in the Declaration on the Independence of Armenia, having fulfilled the sacred behest of its freedom-loving ancestors for the restoration of the sovereign state, committed to the strengthening and prosperity of the fatherland, with a view of ensuring the freedom of generations, general well-being and civic solidarity, assuring the allegiance to universal values — hereby adopt the Constitution of the Republic of Armenia".*

Beyond any doubt the Constitution of the state is above any law or any other legal regulation. This is the case in Armenia and at least in Armenia!

[149] The Government of the Republic of Armenia, The Declaration of Independence, August 23, 1990, available at https://www.gov.am/en/independence/

[150] Office of the President of the Republic of Armenia, the Constitution of the Republic of Armenia, Article 70, available at https://www.president.am/en/constitution-2015/

Secondly, the interstate boundaries and the demarcation thereof are not and shall not be grounded on the internal legal regulations of one state. The internal legal regulations are meant to address the internal issues. The internal legal acts such as the above-mentioned Law on the Administrative-Territorial Division of the Republic of Armenia might be refereed, inter alia, for determining the competent Prosecutor's Office in order to oversee the investigation when/if the crime occurs close to the administrative borders of one of the regions (marzes) of Armenia. In such case, the law is also the only valid source of reference to understand which (regional) court has right to adjudicate on that particular case. Article 46 of the Vienna Convention of the Law of Treaties states that "A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance."[151]

Last but not least, if Armenia itself considers the border delimitation as a *fait accompli* referring to its internal law or if the adoption of the Law on the Administrative-Territorial Division of the Republic of Armenia is interpreted as a recognition of Artsakh as part of Azerbaijan then why both states have agreed to start border delimitation and demarcation process in a meeting between Azerbaijani President Ilham Aliyev and Armenian Prime Minister Nikol Pashinyan mediated by President of the European Council Charles Michel in Brussels earlier in 2022?[152] The reality is that the border between Armenia and Azerbaijan is not duly demarcated hitherto. In conclusion, invoking one's internal law to justify its own position regarding the matters of international significance is illegal under the international law.

[151] United Nations, Vienna Convention on the Law of Treaties 1969, Article 46, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

[152] Caspian News, Azerbaijan, Armenia Agree to Start Delimitation and Demarcation of State Borders By Mushvig Mehdiyev April 8, 2022, available at https://caspiannews.com/news-detail/azerbaijan-armenia-agree-to-start-delimitation-and-demarcation-of-state-borders-2022-4-8-0/

10.1. Was the admission of Armenia and Azerbaijan to the United Nation based on the same legal principle?

In resolution 735 dated on January 29, 1992, the UN SC (see the annex) recommended the UN GA to admit the Republic of Armenia in the UN at the same time stating the following:

> *"It is a privilege for me, on behalf of the members of the Council, to congratulate the Republic of Armenia on the decision which the Council has just taken. By resolution 735 (1992) the Council has recommended to the UN GA the admission of Armenia to membership in the UN. Armenia's solemn commitment to uphold the Purposes and Principles of the UN Charter, which include the principles relating to the peaceful settlement of disputes and the non-use of force, is noted with great satisfaction by the members of the Council''.*[153]

At the same time, UN SC resolution 742 adopted on February 14, 1992 reads the following:

> *"The Security Council has just recommended that the Azerbaijani Republic be admitted to membership in the UN. It is with great pleasure that, on behalf of the members of the Council, I congratulate the Azerbaijani Republic on this happy and historic occasion.* ***We look forward to this further strengthening of the principle of universa1ity.*** *Azerbaijan's solemn commitment to uphold the Purposes and Principles of the UN Charter, which include the principles relating to the peaceful settlement of disputes and the non-use of force, is noted with great satisfaction by members of the Council. All the members of the Council look forward to the day, in the near future, when Azerbaijan will join us as a member of the UN. We look forward to meeting the representatives of Azerbaijan, and to working closely with them''.*[154]

[153] Dag Hammarskjöld library of the United Nations, S/RES/735 (1992) without vote S/23496 (PRST) available at https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/010/95/PDF/NR001095.pdf?OpenElement

[154] Ibid.

As one may see the difference is the principle of universality which is evidently the reaffirmation of the well-known *uti possidetis* principle derived from the Roman Law. This principle that was also frequently invoked in the process of de-colonization that implies the admission of Azerbaijan not on its own merits, but as part of independence movement in the post-Soviet area and on par with the accession of many other states that were granted the UN membership as a result of the dissolution of the Soviet Union. The UN SC referred to *uti possidetis* principle despite the fact that Azerbaijan declared itself the successor of Azerbaijan Democratic Republic in its Declaration of Independence.[155] Notably, as it is mentioned above, the principle of universality was not invoked in case of Armenia. In addition, it shall be noted that Armenian independence referendum held on September 21, 1991 was completely in conformity with the **Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR**.[156] Article 2 of the referred law stipulated that the referendum shall held by secret ballot no sooner than six and no later than nine months after the adoption of the decision to raise the question of the republic's secession from the USSR.[157] **It shall be highlighted that the Armenian independence referendum was the first referendum that was within the legal requirements of the Soviet Constitution, with Kremlin being notified six months before the adoption of the decision to organize a referendum. Hence, it cannot be challenged on any legal grounds.**[158]

[155] CIS legal database, Constitutional Act of the Azerbaijan Republic of October 18, 1991; available at https://base.spinform.ru/show_doc.fwx?rgn=2889 (in Russian)

[156] Seventeen Moments in Soviet History in Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR, available at https://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/

[157] Ibid., Article 3.

[158] Clines, Francis, Armenian Chief Steers With Subtlety, April 15, 1999, New York Times, available at https://en.wikipedia.org/wiki/1991_Georgian_independence_referendum

10.2. Did Armenia and Azerbaijan recognize the territorial integrity of one another?

On December 8, 1991 the leaders of Russian, Belorussian and Ukrainian Soviet Socialists Republics met in Belovezhskaya Pushcha Natural Reserve, about 50 km (31 mi) north of Brest in Belarus, and signed the "Agreement Establishing the Commonwealth of Independent States".[159] It was announced that the new organization would be open to all republics of the former Soviet Union, and to other nations sharing the same goals. On December 21, 1991, all the other post-Soviet states, including Armenia and Azerbaijan signed a protocol of the Agreement Establishing the Commonwealth of Independent States as High Contracting Parties, thus becoming members of the organization.[160] The CIS Charter was adopted on January 22, 1993. The Article 3 of the Charter reads the following:

> *"With the view to attain the objectives of the Commonwealth and proceeding from the generally recognized norms of international law and from Helsinki Final Act, the member states shall build their relations in accordance with the following correlated and equivalent principles:*
>
> - *respect for sovereignty of member states, for imprescriptible right of peoples for self-determination and for the right to dispose their destiny without interference from outside,*
> - *inviolability of state frontiers,* ***recognition of existing frontiers and renouncement of illegal acquisition of territories, territorial integrity of states and refrain from any acts aimed at separation of foreign territory****,*
> - *refrain from the use of force or of the threat of force against political independence of a member state,*

[159] Venice Commission of the Council of Europe, Agreements establishing the Commonwealth of Independent States, available at https://www.venice.coe.int/webforms/documents/?pdf=CDL(1994)054-e

[160] Digital Research in European Studies, Protocole sur l'accord portant création de la Communauté des États indépendants (Alma-Ata, 21 décembre 1991), available at https://www.cvce.eu/en/obj/protocole_sur_l_accord_portant_creation_de_la_communaute_des_etats_independants_alma_ata_21_decembre_1991-fr-3c5af941-61e4-4810-83ee-27bc499c15e3.html

- *settlement of disputes by peaceful means, which can cause no danger to international peace, security and justice,*
- *domination of international law in the interstate relations*
- *non-interference into domestic and foreign affairs of each other*
- *insurance of human rights and fundamental freedoms for all, without distinction as to race, ethnic background, language, religion, political and other views,*
- *fulfilment in good faith of the obligations assumed in accordance with the documents of the Commonwealth, the present Charter being one of them,*
- *concern for the interests of each other and of the entire Commonwealth, rendering assistance in all the spheres of their relations based on mutual accord,*
- *bringing together the efforts and rendering support to each other with the aim to establish peaceful conditions of life for the peoples of the Commonwealth member states, to ensure their political, economic and social advancement,*
- *development of mutually beneficial economic, scientific and technical cooperation, the expansion of integrational processes,*
- *spiritual unity of their peoples, which is based on respect for their uniqueness, close cooperation in preservation cultural values and cultural exchange''.* [161]

Furthermore, 11 out of 15 former republics of the USSR (except for Georgia, Latvia, Lithuania and Estonia) signed the **Almaty Declaration**, where it is mentioned that the independent states recognize one another's territorial integrity and the inviolability of existing borders.[162]

In conclusion, both states *de jure* recognized one another's territorial integrity.

[161] United Nations, Charter of the Commonwealth of Independent States (with declaration and decisions). Adopted at Minsk on 22 January 1993, available at https://treaties.un.org/doc/Publication/UNTS/Volume%201819/volume-1819-I-31139-English.pdf

[162] Council of Europe, Venice Commission, Agreements establishing the Commonwealth of Independent States, Almaty Declaration, December 21, 1991, available at https://www.venice.coe.int/webforms/documents/?pdf=CDL(1994)054-e

10.3. From the viewpoint of international law did the President of Azerbaijan and the Prime Minister of Armenia have the right to sign the joint statement of November 9, 2020?

According to the Article 2 of the Vienna Convention on the Law of Treaties "full powers" means "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty".[163]

Article 7 of the Vienna Convention on the Law of Treaties defines the following three groups of statesmen and officials who in virtue of their functions and without having to produce full powers are considered as representatives of their states:

a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.[164]

Therefore, the President of Azerbaijan and the Prime Minister of Armenia are empowered to sign international treaties on behalf of their respective states under the international law.

Hereby, however one more question might arise: shall the trilateral statement be regarded as an international treaty? To answer the question it has to be noted that Article 2 of the Vienna Convention on the Law of Treaties defines the treaty as an international agreement concluded

[163] United Nations, Vienna Convention on the Law of Treaties 1969, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[164] Ibid.

between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[165] Based on the precedential ICJ judgement, one may deduce that a title of the written instrument is immaterial and everything from minutes, protocols, exchange of notes, memoranda of understanding to covenants, charters and conventions may qualify as treaties as long as the instrument in question showcases a vivid intention to create rights and responsibilities under the international law.[166] In practice, the intention is usually determined based on the wording of the instrument in question. The words such as "will" or "ought" testify the lack of intention to create mutually legally binding obligations, while the words such as "shall", "is to be"', "must", oblige" testify the opposite.[167] **As one may see from the wording of the joint statement, the word "shall" preponderates**.[168] Therefore, there are solid grounds to claims that the trilateral statement sighed on 9 November 2020 by the President of Russia, the President of Azerbaijan and the Prime Minister of Armenia **is tantamount to an international treaty**.

[165] Ibid.

[166] International Court of Justice, Aegean Sea Continental Shelf (Greece v Turkey), Judgement [1978], ICJ Report 3, paragraph 96.

[167] Henriksen, Anders. 2019, International Law, Oxford University Press., Ch. 3, p. 42

[168] The Office of the Prime Minister of Armenia, Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation, available at https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/

11.1. From the point of international law was the use of military force by Azerbaijani armed forces justified during the 2020 Nagorno-Karabakh war?

The question above may seem to be prima facie biased as first of all one has to prove that Azerbaijan is the party that started the 44-Day War. However, in his recent interview with the CNN Turk the President of Azerbaijan Ilham Aliyev indirectly confessed that it was Azerbaijan that started the war. In particular, he said the following: "Azerbaijan started its liberation war and liberated its historical lands from the occupiers".[169]

The use of force is not totally outlawed under the international law. However, it shall be used as a last resort and the cases when the force is allowed to be used are clearly specified (*jus ad bellum*). At the same time, there are certain rules that have to be followed while resorting to the use of force (*jus in bello*). According to the UN Charter which is the most important international legal document, **force can be used only in two cases**: 1. when there is a sanction by the UN SC (Article 42) and 2. when there is a need of individual or collective self-defense (Article 51 and Article 52).[170] In all the other cases the states have to refrain of using force or threatening to use it as it is envisaged under Article 2 of the UN Charter.[171] The prohibition of the use of force is generally considered to be a *jus cogens* rule, which would mean that it does not permit any derogation, neither by consent nor by treaty. The international community reaffirmed its position regarding the unacceptability of the use of force by adopting the UN GA Declaration on the Enhancement of

[169] CNN Turk, 2021, Interview of Ilham Aliyev to CNN Turk TV channel; available at https://www.youtube.com/watch?v=lOKz0ZV3AdQ

[170] United Nations, Charter of the United Nations, available at https://www.un.org/en/sections/un-charter/chapter-vii/index.html

[171] Ibid.

the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations[172] in 1987.

The UN SC not only did not authorize any use of force, but also reiterated again "its full support for the peace process being pursued" in resolution N874.[173] Therefore, the use of force was in violation of the UN SC resolutions.

As for the right of self-defense, it must be mentioned that in *Nicaragua case* the ICJ stated that it exists along with international customary law.[174] Therefore, the classical Caroline Case is worth noting. It established the principle of anticipatory self-defense according to which the use of force is justified only when the following criteria are met:

- ✓ Imminence of threat
- ✓ Necessity to use force
- ✓ Proportionality

It implies that the state may use force as a last resort when there is an imminent threat to its security and all the diplomatic means to prevent it are already exhausted. Taking into account the hawkish rhetoric of Azerbaijani side both before and after the war as well as the latest confession of President Aliyev, one has solid grounds to argue that the war unleashed by Azerbaijan is difficult to justify by invoking any legal argument. It was in violation of the UN Charter, the Madrid Principles of conflict transformation supported by the OSCE co-chairs and the international customary law.

Notably, Azerbaijan acted in a flagrant violation of the UN GA Resolution N3314, where aggression is defined as the " is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with

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[172] United Nations Digital Library, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, available at https://digitallibrary.un.org/record/152626?ln=en

[173] United Nations, Security Council, Res. 874, October 14, 1993, available at https://digitallibrary.un.org/record/174420?ln=en#record-files-collapse-header

[174] International Court of Justice, Military and Puramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, available at https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf

the UN Charter, as set out in this Definition".[175] Furthermore, the definition is used without prejudice to questions of recognition or to whether a State is a member of the UN or not.[176] Most importantly, Article 3 of the Resolution enumerates the acts that qualify as an act of aggression. The exhaustive list is the following:

a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
c) The blockade of the ports or coasts of a State by the armed forces of another State;
d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.[177]

[175] Institute for International Law and Justice, United Nations General Assembly Resolution 3314, December 14, 1974, available at https://iilj.org/wp-content/uploads/2016/08/General-Assembly-Resolution-3314.pdf
[176] Ibid.
[177] Ibid.

It is concluded that the war unleashed by Azerbaijan against the people of Artsakh is an act of aggression prohibited under the international law. In this regard one last point shall be made. The illegal actions under the international law cannot be followed by entitlement of legal rights (*ex injuria jus non oritur* principle). In January, 1920 when the League of Nations was founded it was unlikely to predict the predict new international legal order prevailing in less than 30 years – from October 24, 1945 upon the foundation of the UN. Currently, it is hard to imagine the settlement of Karabakh issue though judicial processes. Nevertheless, if Karabakh issue is ever to be settled before any international court, it will most likely pay due regard to the so-called "**critical date**". Critical date refers to the moment when the potential rights of the parties manifested themselves to such an extent that subsequent acts could not alter the legal position of the parties.[178] This principle was relied upon both by PCA and ICJ. The Netherlands and the USA were in disagreement regarding the ownership of the Island of Palmas. Spain ceded the Philippines to the USA and the Island of Palmas became an object of legal dispute by the Netherlands and the USA. Judge Huber decided in accordance with the law existing in 1898 – the date when Philippines was ceded to the USA thus disregarding the events occurred after that date, i.e., the critical date.[179] Similarly, in Palau Ligitan case it was stated that the Court could not take into consideration acts that took place after the date on which the dispute between the Parties was crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of one Party.[180]

[178] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 4., p. 71
[179] Ibid.
[180] Ibid.

12. ARTSAKH AND INTERNATIONAL HUMANITARIAN LAW

12.1. Is international humanitarian law applicable in case when one of the parties of the armed conflict is not a recognized state? Is it pertinent to 44-Day War?

Jus in bello also referred to international humanitarian law or law of armed conflicts set rules for lawful conduct of military actions. The law of armed conflict does not differentiate between recognized and unrecognized states. For example, in *Tadic* case the ICTY stated that "armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."[181]

Civilians, combatants, prisoners of war and even the cultural heritage are protected under the law of armed conflicts. In *Nicaragua* case the ICJ referred to the law of armed conflicts as a "minimum yardstick" that reflects the elementary considerations of humanity.[182] Those laws are of *erga omnes* character.[183] The table below summarizes the international legal instruments related to the law of armed conflicts that are signed and ratified either by Armenia or by Azerbaijan or by both states.

[181] United Nations International Criminal Tribunal for Former Yugoslavia, Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, October 2, 1995, available at https://www.icty.org/x/cases/tadic/acdec/en/51002.htm

[182] International Court of Justice, Military and Puramilitary Activities in and aguinst Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 114 available at https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf

[183] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 14., p. 281

Table 5. ***The sources of international humanitarian law and the ratification thereof by Armenia and Azerbaijan[184]***

Source	*Ratification by Armenia*	*Ratification by Azerbaijan*
Geneva Convention I "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces	Yes	Yes
Geneva Convention II "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea"	Yes	Yes
Geneva Convention III "relative to the Treatment of Prisoners of War"	Yes	Yes
Geneva Convention IV "relative to the Protection of Civilian Persons in Time of War"	Yes	Yes
Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts	Yes	No
Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts	Yes	No
Protocol III (2005) relating to the Adoption of an Additional Distinctive Emblem	Yes	No
Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods, 1925	Yes	No
Convention on the Prohibition of Biological Weapons, 1972	Yes	Yes
Convention prohibiting Chemical Weapons	Yes	Yes
Hague Convention for the Protection of Cultural Property, 1954	Yes	Yes
Hague Protocol for the Protection of Cultural Property, 1954	Yes	Yes
Second Hague Protocol for the Protection of Cultural Property, 1999	Yes	Yes
Convention Statutory Limitations to War Crimes, 1968	Yes	Yes
Convention on the Prevention and Punishment of Genocide, 1948	Yes	Yes
Convention prohibiting environmental modification techniques (ENMOD), 1976	Yes	No
Convention on Mercenaries, 1989	Yes	Yes
Convention for the Protection of all Persons from Enforced Disappearance, 2006	Yes	Yes

[184] International Committee of the Red Cross, Treaties, States Parties and Commentaries, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountry.xsp

The above-mentioned additional protocols that were ratified by Armenia (unlike Azerbaijan) set more benevolent condition of treatment for the subjects covered under them. Furthermore, the scope of the Additional Protocols is wider vis-à-vis the ICRC I-IV Geneva Conventions. Nevertheless, Azerbaijan still has international obligations under I-V Geneva Conventions even if it does not regard the armed conflict as international, i.e., even if it claims that the conflict is against separatism on its own territory. Particularly, the **common** Article 3 of Geneva Convention III reads the following:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

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1. *Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.*
   To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
   a. *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
   b. *taking of hostages;*
   c. *outrages upon personal dignity, in particular, humiliating and degrading treatment;*
   d. *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
2. *The wounded and sick shall be collected and cared for.*

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.[185]

Geneva Conventions distinguish between civilians and combatants. The combatants, in their turn, can be lawful and unlawful according to the Geneva Conventions. According to the Geneva Conventions the lawful combatants are immune from criminal prosecution, i.e., the fact of being a combatant does not allow the adversary power to commence a military prosecution against the person. In other words, merely participating in the military actions does not per se qualify as a criminal offence. The criteria for being considered a lawful combatant under Geneva Convention III are the following:

1. Members of the armed forces of the warring party as well as members of militias and volunteer corps
2. Members of organized resistance movements
3. The case of *levée en masse*, i.e., when the members of the non-occupied territory spontaneously take up arms to resist the invading force without having time to organize a regular armed unit.[186]

Against the background of the above-mentioned analysis a mention must be made that long after the 44-Day War in Artsakh a number of Armenian prisoners of war are not released by Azerbaijan. The criminal prosecution against the Armenian prisoners of war by the Azerbaijani state[187] is a grave violation of international humanitarian law.

Last but not least, it shall also be noted that Azerbaijan violated the Convention on Mercenaries, which was recorded in the Resolution 2391 adopted in 2021 by the PACE. In particular, it is clearly mentioned in the

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[185] International Committee of the Red Cross, Convention (III) relative to the Treatment of Prisoners of War. Geneva, August 12, 1949 available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument

[186] Henriksen, Anders. International law. Oxford University Press, USA, 2019. Ch. 14., p. 290.

[187] Ministry of Foreign Affairs of the Republic of Armenia, Statement of the Foreign Ministry of Armenia regarding the criminal prosecution against the Armenian prisoners of war by Azerbaijan, July 4, 2021, available at https://www.mfa.am/en/interviews-articles-and-comments/2021/06/04/mfa_statement_POW/10992

Resolution 2391 that Azerbaijan hired Syrian mercenaries with the assistance of Turkey during the 44-Day War in Artsakh.[188] This is in vivid contrast with the Article 5 of the Convention on Mercenaries. By acknowledging the right of peoples to self-determination as a recognized right under the international law it reads the following:

> 1. *States Parties shall note recruit, use, finance or train mercenaries and shall prohibit such activities in accordance with the provisions of the present Convention.*
> 2. *States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the* ***inalienable right of peoples to self-determination, as recognized by international law****, and shall take, in conformity with international law, the appropriate measures to prevent the recruitment, use, financing or training of mercenaries for that purpose.*[189]

[188] Parliamentary Assembly of the Council of Europe, Resolution 2391 (2021), available at https://pace.coe.int/en/files/29483/html

[189] International Committee of the Red Cross, International Convention against the Recruitment, Use, Financing and Training of Mercenaries, December 4, 1989, available at https://ihl-databases.icrc.org/ihl/INTRO/530#:~:text=Historical%20Treaties%20and%20Documents,of%20Mercenaries%2C%204%20December%201989.&text=This%20Convention%20was%20adopted%20on,the%20United%20Nations%20General%20Assembly

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President of the Nagorno Karabagh Republic
Arayik Harutyunyan

07/10/2022

STATE INDEPENDENCE DECLARATION OF THE NAGORNO KARABAGH REPUBLIC

Considering the intrinsic right of nations to self-determination and being guided by the free will of the people of the Nagorno Karabagh Republic expressed at the Republican referendum on December 10, 1991;

Realizing responsibility for the destiny of the historical Motherland;

Being committed to the principles of the September 2, 1991 Declaration On Proclamation of the Nagorno Karabagh Republic;

Striving to normalize relations between the Armenian and Azerbaijani peoples;

Wishing to defend the population of the Nagorno Karabagh Republic from external attacks and physical extermination;

Developing free and democratic self-government experience that Nagorno Karabagh had in 1918-1920;

Expressing readiness to establish equal and mutually beneficial relations with all states and commonwealth of states;

Respecting and being guided by the principles of the Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, the Concluding Document of the Vienna Meeting of the Conference on Security and Cooperation in Europe and other universally recognized norms of international law;

The Supreme Council of the Nagorno Karabagh Republic asseverates the proclaimed independent statehood of the NKR

The Nagorno Karabagh Republic is an independent state that has its national flag, emblem and anthem. The Constitution and laws of the Nagorno Karabagh Republic as well as international legal documents regulating human rights and freedoms prevail on the whole territory of the Republic.

The bearer of sovereignty and the sole source of power in the Nagorno Karabagh are the people of the Republic who exercise their power and will through nationwide referenda or representative organs.

All the inhabitants of the Nagorno Karabagh Republic are citizens of the Nagorno Karabagh Republic. Double citizenship is allowed in the Nagorno Karabagh Republic. The citizens of the Nagorno Karabagh Republic are under the protection of the Republic. The Nagorno Karabagh Republic ensures rights and freedoms of its citizens irrespective of nationality, race and religion.

To protect and secure its citizens the Nagorno Karabagh Republic forms armed forces as well as forces protecting public order and state security. These forces are under the control of the leadership of the Republic. The citizens of the Nagorno Karabagh Republic do military service in the territory of the NKR. Citizens of the Nagorno Karabagh Republic can do military service in other countries and in the armed forces of foreign states stationed within the territory of the Nagorno Karabagh Republic in accordance with interstate treaties and agreements.

Being the subject if international law, the Nagorno Karabagh Republic conducts independent foreign policy, establishes direct relations with other states, partakes in the activities of international organizations.

The land, water and air space, natural, material and spiritual wealth belong to the people of the Nagorno Karabagh Republic. The procedure of utilization and ownership this wealth are regulated by laws of the Nagorno Karabagh Republic.

The basis of the NKR's economy is the equality of all forms of property as well as equal opportunities for all the citizens of the Nagorno Karabagh Republic for full and free participation in economic life.

The Nagorno Karabagh Republic recognizes the supremacy of human rights, guarantees freedom of speech and conscience, political and public activity as well as all civil rights recognized by the international community. National minorities are under the protection of the state. The state structure of the Nagorno Karabagh Republic provides all possibilities for the full participation of national minorities in political, economic and spiritual life of the Republic. Any sorts of discrimination based on nationality, race or religion is prohibited by law

The Armenian language is the state language of the NKR. The Nagorno Karabagh Republic recognizes the right of national minorities to use their languages without any limitations in economic, cultural and educational spheres.

The Declaration on Proclamation of the Nagorno Karabagh Republic and the Universal Declaration on Human Rights will serve as the basis for the Constitution and legislation of the Nagorno Karabagh Republic.

Stepanakert
January 6, 1992.

Declaration on Proclamation of the Nagorno-Karabakh Republic

Joint session of the Nagorno Karabakh Oblast and Shahoumian regional councils of people's deputies with the participation of deputies of councils of all levels

Expressing the will of people, in fact, fixed by a referendum and in the decisions of the NKAO and Shahoumian regional authorities in 1988-1991 s. to strive for freedom, independence, equality and good neighbourly relations;

ascertaining proclamation by the Azerbaijani Republic of the "restoration of 1918-1920 state independence";

taking into consideration that the policy of apartheid and discrimination pursued in Azerbaijan created an atmosphere of hatred and intolerance in the Republic towards the Armenian people, which led to armed conflict, human victims, mass deportation of the population from peaceful Armenian villages;

being guided by the USSR acting Constitution and laws giving the population of autonomous units and compactly living ethnic groups the right to decide independently the issue of their state-legal status in case of a Soviet Republic's secession from the USSR;

considering the Armenian people's strive for unification natural and in line with the norms of international law;

striving for restoration of good neighbourly relations between Armenian and Azerbaijani peoples, based on mutual respect of each other's rights;

taking into consideration the complexity and contradictoriness of the situation in the state, uncertainty of the Union's future, Union's structures of authority and governance;

respecting and following the principles of General Declaration on Human Rights and International Pact on Economic, Social and Cultural Rights, International Pact on Civil, Political and Cultural Rights and with hope for international community's understanding and support,

PROCLAIMS:

THE NAGORNO-KARABAKH REPUBLIC WITHIN THE BORDERS OF THE CURRENT NAGORNO KARABAKH AUTONOMOUS OBLAST AND NEIGHBORING SHAHOUMIAN REGION. (Abr. NKR)

The Nagorno Karabakh Republic enjoys the authorities given to Republics by the USSR Constitution and legislation and reserves the right to decide independently the issue of its state-legal status based on political consultations and negotiations with the leadership of Union and Republics.

The USSR Constitution and legislation, as well as other laws currently in force, which do not contradict the goals and principles of this Declaration and peculiarities of the Republic apply on the territory of the Nagorno Karabakh Republic, until the NKR Constitution and laws are adopted.

Joint Session of the Nagorno Karabakh Oblast
and Shahumian regional councils of people's deputies
with the participation of deputies of councils of all levels

September 2, 1991

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/RES/822 (1993)
30 April 1993

RESOLUTION 822 (1993)

Adopted by the Security Council at its 3205th meeting, on 30 April 1993

The Security Council,

Recalling the statements of the President of the Security Council of 29 January 1993 (S/25199) and of 6 April 1993 (S/25539) concerning the Nagorny-Karabakh conflict,

Taking note of the report of the Secretary-General dated 14 April 1993 (S/25600),

Expressing its serious concern at the deterioration of the relations between the Republic of Armenia and the Republic of Azerbaijan,

Noting with alarm the escalation in armed hostilities and, in particular, the latest invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces,

Concerned that this situation endangers peace and security in the region,

Expressing grave concern at the displacement of a large number of civilians and the humanitarian emergency in the region, in particular in the Kelbadjar district,

Reaffirming the respect for sovereignty and territorial integrity of all States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing its support for the peace process being pursued within the framework of the Conference on Security and Cooperation in Europe and deeply concerned at the disruptive effect that the escalation in armed hostilities can have on that process,

1. Demands the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire, as well as immediate

withdrawal of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan;

2. Urges the parties concerned immediately to resume negotiations for the resolution of the conflict within the framework of the peace process of the Minsk Group of the Conference on Security and Cooperation in Europe and refrain from any action that will obstruct a peaceful solution of the problem;

3. Calls for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict in order to alleviate the suffering of the civilian population and reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law;

4. Requests the Secretary-General, in consultation with the Chairman-in-Office of the Conference on Security and Cooperation in Europe as well as the Chairman of the Minsk Group of the Conference to assess the situation in the region, in particular in the Kelbadjar district of Azerbaijan, and to submit a further report to the Council;

5. Decides to remain actively seized of the matter.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/RES/853 (1993)
29 July 1993

RESOLUTION 853 (1993)

Adopted by the Security Council at its 3259th meeting,
on 29 July 1993

The Security Council,

Reaffirming its resolution 822 (1993) of 30 April 1993,

Having considered the report issued on 27 July 1993 by the Chairman of the Minsk Group of the Conference on Security and Cooperation in Europe (CSCE) (S/26184),

Expressing its serious concern at the deterioration of relations between the Republic of Armenia and the Azerbaijani Republic and at the tensions between them,

Welcoming acceptance by the parties concerned of the timetable of urgent steps to implement its resolution 822 (1993),

Noting with alarm the escalation in armed hostilities and, in particular, the seizure of the district of Agdam in the Azerbaijani Republic,

Concerned that this situation continues to endanger peace and security in the region,

Expressing once again its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic and at the serious humanitarian emergency in the region,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

1. Condemns the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic;

2. Further condemns all hostile actions in the region, in particular attacks on civilians and bombardments of inhabited areas;

3. Demands the immediate cessation of all hostilities and the immediate, complete and unconditional withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of the Azerbaijani Republic;

4. Calls on the parties concerned to reach and maintain durable cease-fire arrangements;

5. Reiterates in the context of paragraphs 3 and 4 above its earlier calls for the restoration of economic, transport and energy links in the region;

6. Endorses the continuing efforts by the Minsk Group of the CSCE to achieve a peaceful solution to the conflict, including efforts to implement resolution 822 (1993), and expresses its grave concern at the disruptive effect that the escalation of armed hostilities has had on these efforts;

7. Welcomes the preparations for a CSCE monitor mission with a timetable for its deployment, as well as consideration within the CSCE of the proposal for a CSCE presence in the region;

8. Urges the parties concerned to refrain from any action that will obstruct a peaceful solution to the conflict, and to pursue negotiations within the Minsk Group of the CSCE, as well as through direct contacts between them, towards a final settlement;

9. Urges the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny-Karabakh region of the Azerbaijani Republic with its resolution 822 (1993) and the present resolution, and the acceptance by this party of the proposals of the Minsk Group of the CSCE;

10. Urges States to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory;

11. Calls once again for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict, in order to alleviate the increased suffering of the civilian population and reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law;

12. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist displaced persons to return to their homes;

13. Requests the Secretary-General, in consultation with the Chairman-in-Office of the CSCE as well as the Chairman of the Minsk Group, to continue to report to the Council on the situation;

14. Decides to remain actively seized of the matter.

UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/RES/874 (1993)
14 October 1993

RESOLUTION 874 (1993)

Adopted by the Security Council at its 3292nd meeting,
on 14 October 1993

The Security Council,

Reaffirming its resolutions 822 (1993) of 30 April 1993 and 853 (1993) of 29 July 1993, and recalling the statement read by the President of the Council, on behalf of the Council, on 18 August 1993 (S/26326),

Having considered the letter dated 1 October 1993 from the Chairman of the Conference on Security and Cooperation in Europe (CSCE) Minsk Conference on Nagorny Karabakh addressed to the President of the Security Council (S/26522),

Expressing its serious concern that a continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region,

Taking note of the high-level meetings which took place in Moscow on 8 October 1993 and expressing the hope that they will contribute to the improvement of the situation and the peaceful settlement of the conflict,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing once again its grave concern at the human suffering the conflict has caused and at the serious humanitarian emergency in the region and expressing in particular its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic,

1. Calls upon the parties concerned to make effective and permanent the cease-fire established as a result of the direct contacts undertaken with the assistance of the Government of the Russian Federation in support of the CSCE Minsk Group;

2. Reiterates again its full support for the peace process being pursued within the framework of the CSCE, and for the tireless efforts of the CSCE Minsk Group;

3. Welcomes and commends to the parties the "Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)" set out on 28 September 1993 at the meeting of the CSCE Minsk Group and submitted to the parties concerned by the Chairman of the Group with the full support of nine other members of the Group, and calls on the parties to accept it;

4. Expresses the conviction that all other pending questions arising from the conflict and not directly addressed in the "Adjusted timetable" should be settled expeditiously through peaceful negotiations in the context of the CSCE Minsk process;

5. Calls for the immediate implementation of the reciprocal and urgent steps provided for in the CSCE Minsk Group's "Adjusted timetable", including the withdrawal of forces from recently occupied territories and the removal of all obstacles to communications and transportation;

6. Calls also for an early convening of the CSCE Minsk Conference for the purpose of arriving at a negotiated settlement to the conflict as provided for in the timetable, in conformity with the 24 March 1992 mandate of the CSCE Council of Ministers;

7. Requests the Secretary-General to respond favourably to an invitation to send a representative to attend the CSCE Minsk Conference and to provide all possible assistance for the substantive negotiations that will follow the opening of the Conference;

8. Supports the monitoring mission developed by the CSCE;

9. Calls on all parties to refrain from all violations of international humanitarian law and renews its call in resolutions 822 (1993) and 853 (1993) for unimpeded access for international humanitarian relief efforts in all areas affected by the conflict;

10. Urges all States in the region to refrain from any hostile acts and from any interference or intervention which would lead to the widening of the conflict and undermine peace and security in the region;

11. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist refugees and displaced persons to return to their homes in security and dignity;

12. Requests also the Secretary-General, the Chairman-in-Office of the CSCE and the Chairman of the CSCE Minsk Conference to continue to report to the Council on the progress of the Minsk process and on all aspects of the situation on the ground, and on present and future cooperation between the CSCE and the United Nations in this regard;

13. Decides to remain actively seized of the matter.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/RES/884 (1993)
12 November 1993

RESOLUTION 884 (1993)

Adopted by the Security Council at its 3313th meeting,
on 12 November 1993

The Security Council,

Reaffirming its resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 July 1993 and 874 (1993) of 14 October 1993,

Reaffirming its full support for the peace process being pursued within the framework of the Conference on Security and Cooperation in Europe (CSCE), and for the tireless efforts of the CSCE Minsk Group,

Taking note of the letter dated 9 November 1993 from the Chairman-in-Office of the Minsk Conference on Nagorny Karabakh addressed to the President of the Security Council and its enclosures (S/26718, annex),

Expressing its serious concern that a continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region,

Noting with alarm the escalation in armed hostilities as consequence of the violations of the cease-fire and excesses in the use of force in response to those violations, in particular the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing grave concern at the latest displacement of a large number of civilians and the humanitarian emergency in the Zangelan district and the city of Goradiz and on Azerbaijan's southern frontier,

1. Condemns the recent violations of the cease-fire established between the parties, which resulted in a resumption of hostilities, and particularly condemns the occupation of the Zangelan district and the city of Goradiz,

attacks on civilians and bombardments of the territory of the Azerbaijani Republic;

2. Calls upon the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic with resolutions 822 (1993), 853 (1993) and 874 (1993), and to ensure that the forces involved are not provided with the means to extend their military campaign further;

3. Welcomes the Declaration of 4 November 1993 of the nine members of the CSCE Minsk Group (S/26718) and commends the proposals contained therein for unilateral cease-fire declarations;

4. Demands from the parties concerned the immediate cessation of armed hostilities and hostile acts, the unilateral withdrawal of occupying forces from the Zangelan district and the city of Goradiz, and the withdrawal of occupying forces from other recently occupied areas of the Azerbaijani Republic in accordance with the "Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)" (S/26522, appendix) as amended by the CSCE Minsk Group meeting in Vienna of 2 to 8 November 1993;

5. Strongly urges the parties concerned to resume promptly and to make effective and permanent the cease-fire established as a result of the direct contacts undertaken with the assistance of the Government of the Russian Federation in support of the CSCE Minsk Group, and to continue to seek a negotiated settlement of the conflict within the context of the CSCE Minsk process and the "Adjusted timetable" as amended by the CSCE Minsk Group meeting in Vienna of 2 to 8 November 1993;

6. Urges again all States in the region to refrain from any hostile acts and from any interference or intervention, which would lead to the widening of the conflict and undermine peace and security in the region;

7. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population, including that in the Zangelan district and the city of Goradiz and on Azerbaijan's southern frontier, and to assist refugees and displaced persons to return to their homes in security and dignity;

8. Reiterates its request that the Secretary-General, the Chairman-in-Office of the CSCE and the Chairman of the CSCE Minsk Conference continue to report to the Council on the progress of the Minsk process and on all aspects of the situation on the ground, in particular on the implementation of its relevant resolutions, and on present and future cooperation between the CSCE and the United Nations in this regard;

9. Decides to remain actively seized of the matter.

B. Application of the Republic of Armenia

Decisions

At its 3035th meeting, on 23 January 1992, the Council, following the adoption of its agenda, decided to refer the application of the Republic of Armenia[372] for membership in the United Nations to the Committee on the Admission of New Members for examination and report, as provided in rule 59 of the provisional rules of procedure.

At its 3041st meeting, on 29 January 1992, the Council discussed the report of the Committee on the Admission of New Members[373] concerning the application of the Republic of Armenia for admission to membership in the United Nations.

Resolution 735 (1992)
of 29 January 1992

The Security Council,

Having examined the application of the Republic of Armenia for admission to the United Nations,[372]

Recommends to the General Assembly that the Republic of Armenia be admitted to membership in the United Nations.

Adopted without a vote at the 3041st meeting.

Decision

At the same meeting, following the adoption of Security Council resolution 735 (1992), the President of the Council made the following statement on behalf of the members:[331]

"It is a privilege for me, on behalf of the members of the Council, to congratulate the Republic of Armenia on the decision which the Council has just taken. By resolution 735 (1992) the Council has recommended to the General Assembly the admission of Armenia to membership in the United Nations.

"This is a significant moment for our Organization, and for Armenia. Armenia's solemn commitment to uphold the Purposes and Principles of the Charter of the United Nations, which include the principles relating to the peaceful settlement of disputes and the non-use of force, is noted with great satisfaction by the members of the Council.

"The members of the Council are confident that Armenia will contribute fully and effectively in all areas of the Organization's activities. We look forward to welcoming its representatives and to working closely with them."

C. Application of the Republic of Kyrgyzstan

Decisions

At its 3036th meeting, also on 23 January 1992, the Council, following the adoption of its agenda, decided to refer the application of the Republic of Kyrgyzstan[374] for membership in the United Nations to the Committee on the Admission of New Members for examination and report, as provided in rule 59 of the provisional rules of procedure.

At its 3042nd meeting, on 29 January 1992, the Council discussed the report of the Committee on the Admission of New Members[375] concerning the application of the Republic of Kyrgyzstan for admission to membership in the United Nations.

Resolution 736 (1992)
of 29 January 1992

The Security Council,

Having examined the application of the Republic of Kyrgyzstan for admission to the United Nations,[374]

Recommends to the General Assembly that the Republic of Kyrgyzstan be admitted to membership in the United Nations.

Adopted without a vote at the 3042nd meeting.

Decision

At the same meeting, following the adoption of Security Council resolution 736 (1992), the President made the following statement on behalf of the members of the Council:[376]

"The Council has just recommended that the Republic of Kyrgyzstan be admitted to membership in our Organization. It is with great pleasure that, on behalf of the members of the Council, I congratulate Kyrgyzstan on this happy and historic occasion. We look forward to this further strengthening of the principle of universality.

"Kyrgyzstan has much to contribute to the work of the United Nations. Its commitment to uphold the Purposes and Principles of the Charter of the United Nations is noted with great satisfaction.

"All the members of the Council look forward to the day, in the near future, when Kyrgyzstan will join us as a member of our Organization. We look forward to meeting the representatives of Kyrgyzstan here at United Nations Headquarters, and to working closely with them."

H. Application of the Azerbaijani Republic

Decisions

At its 3051st meeting, on 11 February 1992, the Council, following the adoption of its agenda, decided to refer the application of the Azerbaijani Republic[389] for membership in the United Nations to the Committee on the Admission of New Members for examination and report, as provided in rule 59 of the provisional rules of procedure.

At its 3052nd meeting, on 14 February 1992, the Council discussed the report of the Committee on the Admission of New Members[390] concerning the application of the Azerbaijani Republic for admission to membership in the United Nations.

Resolution 742 (1992)
of 14 February 1992

The Security Council,

Having examined the application of the Azerbaijani Republic for admission to the United Nations,[389]

Recommends to the General Assembly that the Azerbaijani Republic be admitted to membership in the United Nations.

Adopted without a vote at the 3052nd meeting.

Decision

At the same meeting, following the adoption of Security Council resolution 742 (1992), the President made the following statement on behalf of the members of the Council:[332]

"The Security Council has just recommended that the Azerbaijani Republic be admitted to membership in the United Nations. It is with great pleasure that, on behalf of the members of the Council, I congratulate the Azerbaijani Republic on this happy and historic occasion. We look forward to this further strengthening of the principle of universality.

"Azerbaijan's solemn commitment to uphold the Purposes and Principles of the Charter of the United Nations, which include the principles relating to the peaceful settlement of disputes and the non-use of force, is noted with great satisfaction by members of the Council. All the members of the Council look forward to the day, in the near future, when Azerbaijan will join us as a member of the United Nations. We look forward to meeting the representatives of Azerbaijan, and to working closely with them."

I. Application of the Republic of San Marino

Decisions

At its 3054th meeting, on 21 February 1992, the Council, following the adoption of its agenda, decided to refer the application of the Republic of San Marino[391] for membership in the United Nations to the Committee on the Admission of New Members for examination and report, as provided in rule 59 of the provisional rules of procedure.

At its 3056th meeting, on 25 February 1992, the Council discussed the report of the Committee on the Admission of New Members[392] concerning the application of the Republic of San Marino for admission to membership in the United Nations.

Resolution 744 (1992)
of 25 February 1992

The Security Council,

Having examined the application of the Republic of San Marino for admission to the United Nations,[391]

Recommends to the General Assembly that the Republic of San Marino be admitted to membership in the United Nations.

Adopted without a vote at the 3056th meeting.

Decision

At the same meeting, following the adoption of Security Council resolution 744 (1992), the President made the following statement on behalf of the members of the Council:[393]

"The Council has just recommended that the Republic of San Marino be admitted to membership in the United Nations. It is with great pleasure that, on behalf of the members of the Council, I congratulate San Marino on this happy and historic occasion. We look forward to this further strengthening of the principle of universality.

"San Marino's solemn commitment to uphold the Purposes and Principles of the Charter of the United Nations is noted with great satisfaction by members of the Council. All the members of the Council look forward to the day, in the near future, when San Marino will join us as a member of the United Nations. We look forward to meeting the representatives of San Marino, and to working closely with them."

Ceasefire Agreement

Unofficial translation

P. S. Grachev

Minister of Defense of the Russian Federation

A. V. Kozyrev

Minister of Foreign Affairs of the Russian Federation

V. N. Kazimirov

Responding to the call for a cease-fire, as set out in the Bishkek Protocol of May 5, 1994, and based on the Protocol of 18 February 1994, the conflicting Parties agreed on the following:

1. Ensure the full cease-fire and cessation of hostilities from 00 hours 01 minutes of May 12, 1994. Relevant orders to cease-fire will be given and communicated to the commanders of military units responsible for their implementation, not later than May 11, 1994. On May 12 until 23.00, the Parties shall exchange the texts of their cease-fire orders with a view to their possible mutual complementarities and further harmonization of substantive provisions of similar documents.

2. Request the Minister of Defense of the Russian Federation to convene in Moscow no later than May 12 an urgent meeting of defense ministers of Azerbaijan, Armenia and Nagorno Karabakh army commander to agree on the lines of troops pullback and other urgent military-technical issues and prepare the deployment of an advance team of international observers.

3. This agreement will be used to complete the negotiations in the next 10 days and conclude an Agreement on Cessation of the Armed Conflict no later than May 22 of this year.

4. This agreement will take effect immediately after the Mediator notifies that he has received from the opposing forces completely identical documents signed by authorized representatives.

Minister of Defense of Azerbaijan

Minister of Defense of Armenia

Nagorno Karabakh Army Commander

The text was signed respectively by M. Mamedov in Baku on May 9, S. Sargsyan in Yerevan on May 10, S. Babayan in Stepanakert on May 11, 1994.

United Nations A/RES/62/243

General Assembly

Distr.: General
25 April 2008

Sixty-second session
Agenda item 20

Resolution adopted by the General Assembly on 14 March 2008

[*without reference to a Main Committee (A/62/L.42)*]

62/243. The situation in the occupied territories of Azerbaijan

The General Assembly,

Guided by the purposes, principles and provisions of the Charter of the United Nations,

Recalling Security Council resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 July 1993, 874 (1993) of 14 October 1993 and 884 (1993) of 12 November 1993, as well as General Assembly resolutions 48/114 of 20 December 1993, entitled "Emergency international assistance to refugees and displaced persons in Azerbaijan", and 60/285 of 7 September 2006, entitled "The situation in the occupied territories of Azerbaijan",

Recalling also the report of the fact-finding mission of the Minsk Group of the Organization for Security and Cooperation in Europe to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh and the letter on the fact-finding mission from the Co-Chairmen of the Minsk Group addressed to the Permanent Council of the Organization for Security and Cooperation in Europe,[1]

Taking note of the report of the environmental assessment mission led by the Organization for Security and Cooperation in Europe to the fire-affected territories in and around the Nagorno-Karabakh region,[2]

Reaffirming the commitments of the parties to the conflict to abide scrupulously by the rules of international humanitarian law,

Seriously concerned that the armed conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan continues to endanger international peace and security, and mindful of its adverse implications for the humanitarian situation and development of the countries of the South Caucasus,

1. *Reaffirms* continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders;

[1] See A/59/747-S/2005/187.
[2] A/61/696, annex.

2. *Demands* the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan;

3. *Reaffirms* the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes, and stresses the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict-affected territories;

4. *Recognizes* the necessity of providing normal, secure and equal conditions of life for Armenian and Azerbaijani communities in the Nagorno-Karabakh region of the Republic of Azerbaijan, which will allow an effective democratic system of self-governance to be built up in this region within the Republic of Azerbaijan;

5. *Reaffirms* that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation;

6. *Expresses its support* to the international mediation efforts, in particular those of the Co-Chairmen of the Minsk Group of the Organization for Security and Cooperation in Europe, aimed at peaceful settlement of the conflict in accordance with the norms and principles of international law, and recognizes the necessity of intensifying these efforts with a view to achieving a lasting and durable peace in compliance with the provisions stipulated above;

7. *Calls upon* Member States and international and regional organizations and arrangements to effectively contribute, within their competence, to the process of settlement of the conflict;

8. *Requests* the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the present resolution;

9. *Decides* to include in the provisional agenda of its sixty-third session the item entitled "The situation in the occupied territories of Azerbaijan".

86th plenary meeting
14 March 2008

CSCE

BUDAPEST DOCUMENT 1994

TOWARDS A GENUINE PARTNERSHIP IN A NEW ERA

Corrected version 21 December 1994

II

REGIONAL ISSUES

Intensification of CSCE action in relation to the Nagorno-Karabakh conflict

1. Deploring the continuation of the conflict and the human tragedy involved, the participating States welcomed the confirmation by the parties to the conflict of the cease-fire agreed on 12 May 1994 through the mediation of the Russian Federation in co-operation with the CSCE Minsk Group. They confirmed their commitment to the relevant resolutions of the United Nations Security Council and welcomed the political support given by the Security Council to the CSCE's efforts towards a peaceful settlement of the conflict. To this end they called on the parties to the conflict to enter into intensified substantive talks, including direct contacts. In this context, they pledged to redouble the efforts and assistance by the CSCE. They strongly endorsed the mediation efforts of the CSCE Minsk Group and expressed appreciation for the crucial contribution of the Russian Federation and the efforts by other individual members of the Minsk Group. They agreed to harmonize these into a single co-ordinated effort within the framework of the CSCE.

2. To this end, they have directed the Chairman-in-Office, in consultation with the participating States and acting as soon as possible, to name co-chairmen of the Minsk Conference to ensure a common and agreed basis for negotiations and to realize full co-ordination in all mediation and negotiation activities. The co-chairmen, guided in all of their negotiating efforts by CSCE principles and an agreed mandate, will jointly chair meetings of the Minsk Group and jointly report to the Chairman-in-Office. They will regularly brief the Permanent Council on the progress of their work.

3. As a first step in this effort, they directed the co-chairmen of the Minsk Conference to take immediate steps to promote, with the support and co-operation of the Russian Federation and other individual members of the Minsk Group, the continuation of the existing cease-fire and, drawing upon the progress already achieved in previous mediation activities, to conduct speedy negotiations for the conclusion of a political agreement on the cessation of the armed conflict, the implementation of which will eliminate major consequences of the conflict for all parties and permit the convening of the Minsk Conference. They further requested the co-chairmen of the

Minsk Conference to continue working with the parties towards further implementation of confidence-building measures, particularly in the humanitarian field. They underlined the need for participating States to take action, both individually and within relevant international organizations, to provide humanitarian assistance to the people of the region with special emphasis on alleviating the plight of refugees.

4. They agreed that, in line with the view of the parties to the conflict, the conclusion of the agreement mentioned above would also make it possible to deploy multinational peacekeeping forces as an essential element for the implementation of the agreement itself. They declared their political will to provide, with an appropriate resolution from the United Nations Security Council, a multinational CSCE peacekeeping force following agreement among the parties for cessation of the armed conflict. They requested the Chairman-in-Office to develop as soon as possible a plan for the establishment, composition and operations of such a force, organized on the basis of Chapter III of the Helsinki Document 1992 and in a manner fully consistent with the Charter of the United Nations. To this end the Chairman-in-Office will be assisted by the co-chairmen of the Minsk Conference and by the Minsk Group, and be supported by the Secretary General; after appropriate consultations he will also establish a high-level planning group in Vienna to make recommendations on, *inter alia*, the size and characteristics of the force, command and control, logistics, allocation of units and resources, rules of engagement and arrangements with contributing States. He will seek the support of the United Nations on the basis of the stated United Nations readiness to provide technical advice and expertise. He will also seek continuing political support from the United Nations Security Council for the possible deployment of a CSCE peacekeeping force.

5. On the basis of such preparatory work and the relevant provisions of Chapter III of the Helsinki Document 1992 and following agreement and a formal request by the parties to the Chairman-in-Office through the co-chairmen of the Minsk Conference, the Permanent Council will take a decision on the establishment of the CSCE peacekeeping operation.

Hungarian
OSCE Chairmanship

DOC. 525/95

Vienna, 23 March 1995

TO ALL OSCE DELEGATIONS

Please find attached the Mandate of the Co-Chairmen of the Conference on Nagorno Karabakh under the auspices of the OSCE ("Minsk Conference") adopted by the Chairman-in-Office.

Sincerely,

Márton Krasznai
Representative of the CiO

Mandate
of the Co-Chairmen of the Conference
on Nagorno Karabakh under the auspices of the OSCE
("Minsk Conference")

The Co-Chairmen are appointed by the Chairman-in-Office;

The Co-Chairmen will be guided in their activities by the principles and norms of the OSCE, the United Nations Charter, decisions of the OSCE fora, including the decisions by the Council of Ministers on 24 March 1992 and particularly the Budapest Summit Decision, and as applicable resolutions of the United Nations Security Council.

The Co-Chairmen will in their work be guided by the objectives of the Minsk Conference, i. e. promoting a resolution of the conflict without the use of force and in particular facilitating negotiations for a peaceful and comprehensive settlement, according to the rules of procedure as these are stated in the decisions of the 10th meeting of the CSO of the CSCE.

The Co-Chairmen will realize full co-ordination in all mediating and negotiating activities, harmonizing them into a single coordinated effort within the framework of the OSCE;

The Co-Chairmen will, jointly and in full parity, on the basis of impartiality:

1. make joint efforts in order to strengthen the cease-fire;
2. develop a common basis for negotiations with the parties to the conflict;
3. conduct negotiations with the parties to the conflict for the conclusion of a political agreement on the cessation of the armed conflict, drawing upon the progress achieved in previous mediating activities;
4. promote direct contacts, as appropriate, including substantial talks. among the parties to the conflict;
5. continue working with the parties to the conflict on confidence-building measures, particularly in the humanitarian field, synchronizing them with the political process;
6. assist the Chairman-in-Office in developing a plan for the establishment, composition and operation of a multinational OSCE peace-keeping force;
7. forward to the Chairman-in-Office the received approvals and formal requests by the parties to the conflict concerning the OSCE peace-keeping operation;
8. Report to the Chairman-in-Office on the process of negotiations with the parties to the conflict on a draft mandate, Memoranda of Understanding and provisions of guaranties for the safety at all times of personnel involved;

The Co-Chairmen will:

9. jointly chair the regular consultations of the Minsk Group, dispatch jointly to the Minsk Group members, documents, information and proposals, including proposals on the dates and venues of the Minsk Group meetings and the set of issues to be discussed;

10. jointly and continuously inform and consult with the OSCE Chairman-in-Office and jointly inform, on a regular basis, the Permanent Council of the OSCE on the progress of their work;

11. after consultations with the CiO, jointly inform, the President of the United Nations Security Council and the United Nations Secretary-General on the progress of the Minsk process and on all aspects of the situation on the ground, on the implementation of its relevant resolutions as well as on the present and future co-operation between the OSCE and the United Nations in this regard; when necessary, and after appropriate consultation with the CiO, present to the United Nations considerations and proposals concerning new resolutions that might be adopted by the United Nations Security Council in the interests of the peaceful settlement of the conflict;

12. visit jointly, or when appropriate separately, on an agreed basis, the region of conflict to maintain contacts with parties to the conflict concerning the above-mentioned and other related issues;

13. upon consultation with the CiO, maintain necessary contacts with the ICRC, the UNHCR and other relevant international and regional organizations and institutions.

14. jointly chair the Minsk Conference and the preparatory meetings leading to it.

15. The Co-Chairmen will co-operate with the Personal Representative of the Chairman-in-Office in accordance with provisions, contained in the Mandate of the Personal Representative.

ANNEX 1

STATEMENT OF THE OSCE CHAIRMAN-IN-OFFICE

You all know that no progress has been achieved in the last two years to resolve the Nagorno-Karabakh conflict and the issue of the territorial integrity of the Republic of Azerbaijan. I regret that the efforts of the Co-Chairmen of the Minsk Conference to reconcile the views of the parties on the principles for a settlement have been unsuccessful.

Three principles which should form part of the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group. These principles are supported by all member States of the Minsk Group. They are:

- *territorial integrity of the Republic of Armenia and the Azerbaijan Republic;*

- *legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;*

- *guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.*

I regret that one participating State could not accept this. These principles have the support of all other participating States.

This statement will be included in the Lisbon Summit documents.

ANNEX 2

STATEMENT
OF THE DELEGATION OF ARMENIA

With regard to the statement by the Chairman-in-Office of the OSCE, the Delegation of Armenia wishes to express its concern over the following issues:

1. *The statement does not reflect either the spirit or the letter of the Minsk Group's mandate as established by the Budapest Summit 1994 which proposed negotiations with a view to reaching a political agreement. The problem of status has been a subject of discussion in direct negotiations which have yet to be concluded.*

2. *The statement predetermines the status of Nagorno-Karabakh, contradicting the decision of the OSCE Ministerial Council of 1992 which referred this issue to the competence of the OSCE Minsk Conference to be convened after the conclusion of a political agreement.*

3. *The Armenian side is convinced that a solution of the problem can be found on the basis of international law and the principles laid down in the Helsinki Final Act, above all on the basis of the principle of self-determination.*

4. *In the interests of reaching a compromise solution, the Armenian side is prepared to continue with the most intensive negotiations, both within the Minsk Group and on the basis of direct contacts co-ordinated by the Co-Chairmen of that Group.*

I request that this statement be annexed to the Lisbon Summit Declaration.

Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int
COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1047 (1994)[1]

Conflict in Nagorno-Karabakh

Parliamentary Assembly

1. The Assembly notes with satisfaction that the ceasefire in Nagorno-Karabakh, which came into force on 12 May 1994, has been relatively well complied with and hopes that it will be followed up as soon as possible by a peace agreement between the warring parties.

2. This conflict, which broke out in 1988, has already resulted in almost 20 000 deaths and more than one million refugees.

3. The Assembly notes with satisfaction the efforts of the CSCE's Minsk Group, the Government of the Russian Federation, the United Nations Security Council, the Interparliamentary Assembly of the CIS and its own Committee on Relations with European Non-Member Countries to encourage the warring parties to sign a peace agreement.

4. It welcomes the agreement signed on 26 July 1994 by the Ministers of Defence of Armenia and Azerbaijan and the commander of the army of Nagorno-Karabakh, in which they affirm their commitment to observe the ceasefire and their eagerness to accelerate the signing of a political agreement, and calls urgently on all the warring parties to refrain from any hostile act which might jeopardise the fragile ceasefire that has been in force since 12 May 1994.

5. It declares its readiness to help promote the conclusion of a peace agreement to the best of its abilities, particularly by encouraging dialogue between parliamentarians from the parties concerned.

6. Finally, it calls on the warring parties to organise the return home of refugees on an urgent basis and to respect minority rights as advocated in its Recommendation 1201, and urgently calls on Azerbaijan and Turkey to immediately end the blockade of their means of communication with Armenia.

1. See Doc. 7182, report of the Committee on Relations with European Non-Member Countries, Rapporteurs: Mr Pfuhl and Mr Solé Tura. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 10 November 1994.

Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1416 (2005)[1]

The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference

Parliamentary Assembly

1. The Parliamentary Assembly regrets that, more than a decade after the armed hostilities started, the conflict over the Nagorno-Karabakh region remains unsolved. Hundreds of thousands of people are still displaced and live in miserable conditions. Considerable parts of the territory of Azerbaijan are still occupied by Armenian forces, and separatist forces are still in control of the Nagorno-Karabakh region.

2. The Assembly expresses its concern that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing. The Assembly reaffirms that independence and secession of a regional territory from a state may only be achieved through a lawful and peaceful process based on the democratic support of the inhabitants of such territory and not in the wake of an armed conflict leading to ethnic expulsion and the de facto annexation of such territory to another state. The Assembly reiterates that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirms the right of displaced persons from the area of conflict to return to their homes safely and with dignity.

3. The Assembly recalls Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) of the United Nations Security Council and urges the parties concerned to comply with them, in particular by refraining from any armed hostilities and by withdrawing military forces from any occupied territories. The Assembly also aligns itself with the demand expressed in Resolution 853 of the United Nations Security Council and thus urges all member states to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory.

4. The Assembly recalls that both Armenia and Azerbaijan committed themselves upon their accession to the Council of Europe in January 2001 to use only peaceful means for settling the conflict, by refraining from any threat of using force against their neighbours. At the same time, Armenia committed itself to use its considerable influence over Nagorno-Karabakh to foster a solution to the conflict. The Assembly urges both governments to comply with these commitments and refrain from using armed forces against each other and from propagating military action.

5. The Assembly recalls that the Council of Ministers of the Conference on Security and Co-operation in Europe (CSCE) agreed in Helsinki in March 1992 to hold a conference in Minsk in order to provide a forum for negotiations for a peaceful settlement of the conflict. Armenia, Azerbaijan, Belarus, the former Czech and Slovak Federal Republic, France, Germany, Italy, the Russian Federation, Sweden, Turkey and the United States of America agreed at that time to participate in this conference. The Assembly calls on these states to step up their efforts to achieve the peaceful resolution of the conflict and invites their national delegations to the Assembly to report annually to the Assembly on the action of their government in this respect. For this purpose, the Assembly asks its Bureau to create an ad hoc committee comprising, inter alia, the heads of these national delegations.

1. Assembly debate on 25 January 2005 (2nd Sitting) (see Doc. 10364, report of the Political Affairs Committee, rapporteur : Mr Atkinson). Text adopted by the Assembly on 25 January 2005 (2nd Sitting).

6. The Assembly pays tribute to the tireless efforts of the co-chairs of the Minsk Group and the Personal Representative of the OSCE Chairman-in-Office, in particular for having achieved a ceasefire in May 1994 and having constantly monitored the observance of this ceasefire since then. The Assembly calls on the OSCE Minsk Group co-chairs to take immediate steps to conduct speedy negotiations for the conclusion of a political agreement on the cessation of the armed conflict. The implementation of this agreement will eliminate major consequences of the conflict for all parties and permit the convening of the Minsk Conference. The Assembly calls on Armenia and Azerbaijan to make use of the OSCE Minsk Process and to put forward to each other, via the Minsk Group, their constructive proposals for the peaceful settlement of the conflict in accordance with the relevant norms and principles of international law.

7. The Assembly recalls that Armenia and Azerbaijan are signatory parties to the Charter of the United Nations and, in accordance with Article 93, paragraph 1 of the Charter, ipso facto parties to the statute of the International Court of Justice. Therefore, the Assembly suggests that if the negotiations under the auspices of the co-chairs of the Minsk Group fail, Armenia and Azerbaijan should consider using the International Court of Justice in accordance with Article 36, paragraph 1 of its statute.

8. The Assembly calls on Armenia and Azerbaijan to foster political reconciliation among themselves by stepping up bilateral inter-parliamentary co-operation within the Assembly as well as in other forums such as the meetings of the speakers of the parliaments of the Caucasian Four. It recommends that both delegations should meet during each part-session of the Assembly to review progress on such reconciliation.

9. The Assembly calls on the Government of Azerbaijan to establish contact, without preconditions, with the political representatives of both communities from the Nagorno-Karabakh region regarding the future status of the region. It is prepared to provide facilities for such contacts in Strasbourg, recalling that it did so in the form of a hearing on previous occasions with Armenian participation.

10. Recalling its Recommendation 1570 (2002) on the situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia, the Assembly calls on all member and Observer states to provide humanitarian aid and assistance to the hundreds of thousands of people displaced as a consequence of the armed hostilities and the expulsion of ethnic Armenians from Azerbaijan and ethnic Azerbaijanis from Armenia.

11. The Assembly condemns any expression of hatred portrayed in the media of Armenia and Azerbaijan. The Assembly calls on Armenia and Azerbaijan to foster reconciliation and to restore confidence and mutual understanding among their peoples through schools, universities and the media. Without such reconciliation, hatred and mistrust will prevent stability in the region and may lead to new violence. Any sustainable settlement must be preceded by and embedded in such a reconciliation process.

12. The Assembly calls on the Secretary General of the Council of Europe to draw up an action plan for support to Armenia and Azerbaijan targeted at mutual reconciliation processes, and to take this resolution into account in deciding on action concerning Armenia and Azerbaijan.

13. The Assembly calls on the Congress of Local and Regional Authorities of the Council of Europe to assist locally elected representatives of Armenia and Azerbaijan in establishing mutual contacts and interregional co-operation.

14. The Assembly resolves to analyse the conflict-settlement mechanisms existing within the Council of Europe, in particular the European Convention for the Peaceful Settlement of Disputes, in order to provide its member states with better mechanisms for the peaceful settlement of bilateral conflicts as well as internal disputes involving local or regional territorial communities or authorities which may endanger human rights, stability and peace.

15. The Assembly resolves to continue monitoring on a regular basis the evolution of this conflict towards its peaceful resolution and decides to reconsider this issue at its first part-session in 2006.

Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2391 (2021)[1]

Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict

Parliamentary Assembly

1. The Parliamentary Assembly regrets the tragic humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict. It is a conflict which has seen two major outbreaks of war, the first from the end of 1991 to 1994, and a six-week war in 2020.

2. The Assembly has dealt with many aspects of the conflict over the years, in particular in Resolution 1047 (1994) and Recommendation 1251 (1994) "Conflict in Nagorno-Karabakh", and in Resolution 1416 (2005) "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference".

3. The Assembly recalls that both Armenia and Azerbaijan committed themselves, upon their accession to the Council of Europe in January 2001, to use only peaceful means for settling the conflict. It deeply regrets that this common commitment has remained unfulfilled for all these years, as the negotiations between Armenia and Azerbaijan over the past three decades have yielded no tangible results. Therefore, the six-week war in 2020 constitutes a breach of these commitments and should be duly addressed by the Council of Europe.

4. The Assembly notes that the recent six-week war was brought to an end by the trilateral statement of 9-10 November 2020, signed by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation. It considers that the trilateral statement provides the main elements of a ceasefire and creates a framework for solving many of the humanitarian consequences of the recent six-week war and conflict.

5. The Assembly is appalled by the number of people killed or missing during the six-week war: reportedly over 3 900 Armenian and 2 900 Azerbaijani military personnel killed or missing; 163 Armenian and 548 Azerbaijani civilian casualties; and around 243 Armenians and 7 Azerbaijanis missing. The Assembly welcomes and encourages the efforts of both parties to recover and exchange the dead and recognises the valuable contribution of the International Committee of the Red Cross (ICRC) and Russian peacekeepers. It is also aware of around 3 890 Azerbaijanis and 1 000 Armenians still unaccounted for from the 1991-1994 war and regrets that little progress has been made on these cases. It invites both parties to resume work at the intergovernmental commission level, with the assistance of the ICRC.

1. *Assembly debate* on 27 September 2021 (24th sitting) (see Doc. 15363, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Paul Gavan). *Text adopted by the Assembly* on 27 September 2021 (24th sitting).
See also Recommendation 2209 (2021).

6. The Assembly notes that under Article 8 of the trilateral statement, "[a]n exchange of prisoners of war … is to be carried out", and that both countries claim to have complied with this. However, the Assembly notes with concern the notification by the European Court of Human Rights, communicated to the Committee of Ministers of the Council of Europe on 16 March 2021, in relation to 188 Armenians allegedly captured by Azerbaijan (some of whom have since been returned to Armenia). In this connection, the Assembly:

6.1. notes that under the Geneva Convention (III) Relative to the Treatment of Prisoners of War and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, both Azerbaijan and Armenia have binding obligations to repatriate prisoners of war and release civilian persons without delay after the cessation of active hostilities;

6.2. considers that the clear intention of Article 8 of the trilateral statement was the exchange of all detained persons, without distinction as to the status assigned by one or other of the parties;

6.3. is deeply concerned about the fate of around 30 Armenians, allegedly seen, filmed or photographed in captivity, with no indication as to their current whereabouts. The Assembly is alarmed at allegations made by Armenia that these persons have been subjected to enforced disappearance and possibly killed;

6.4. calls on the Azerbaijani authorities to expedite their investigations into this matter and provide relevant information to the European Court of Human Rights and to Armenia;

6.5. welcomes the recent release of 15 Armenians on 12 June 2021 and a further release of 15 persons on 3 July 2021, bringing the total of those repatriated to over 100;

6.6. remains concerned about the detention conditions of around 48 Armenians captured after the trilateral statement, who are still in captivity, most of whom have faced or are facing speedy criminal trials, which may raise fair trial issues under the European Convention on Human Rights (ETS No. 5);

6.7. calls on the Azerbaijani authorities to release all remaining captives and return them to Armenia without further delay;

6.8. encourages the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to carry out an ad hoc visit, notwithstanding that the ICRC has regular access to these persons.

7. The Assembly is concerned about the many allegations of crimes, war crimes and other wrongful acts levelled against both Armenia and Azerbaijan during the six-week war. It notes the individual cases and interstate cases brought before the European Court of Human Rights, including those by Armenia against Azerbaijan on 27 September 2020 (Application No. 42521/20) and against Turkey on 4 October 2020 (Application No. 43517/20), and by Azerbaijan against Armenia on 27 October 2020 (Application No. 47319/20).

8. Among allegations made by both sides, backed up by reputable international non-governmental organisations and a wealth of information available from different sources, there are worrying allegations and evidence of:

8.1. extrajudicial killings, including, for example, the alleged decapitation or throat-slitting of at least two Armenians and one Azerbaijani;

8.2. a substantial number of consistent allegations of inhuman and degrading treatment and torture of Armenian prisoners of war by Azerbaijanis, as well as a number of allegations of similar treatment of Azerbaijani prisoners of war by Armenians;

8.3. highly disturbing evidence of despoliation of both Armenian and Azerbaijani dead;

8.4. the indiscriminate use of weapons resulting in the killing and injuring of civilians, particularly in places not located in the conflict zone. According to the parties, there were 205 Armenian and 548 Azerbaijani casualties. In this respect, Armenian forces appear to have used ballistic missiles, unguided artillery and multiple rocket launchers, while Azerbaijani forces also appear to have used unguided artillery and multiple rocket launchers as well as loitering munitions and missiles launched by drones. Both sides had a responsibility to respect international humanitarian law and protect civilians from explosive weapons that were certain to have an impact in civilian areas and failed to do so;

8.5. the use by Azerbaijan, with Turkey's assistance, of Syrian mercenaries, and the use by Armenia of Armenians from different countries as foreign fighters.

9. In the light of the highly disconcerting information above, the Assembly calls on Armenia and Azerbaijan to fully investigate the allegations and bring to justice anyone, including at command level, found to be responsible for crimes, war crimes or other wrongful acts. Both countries should co-operate fully with the European Court of Human Rights on the complaints lodged against them, and Turkey is invited to do the same. Unless there is accountability and some form of truth and reconciliation, these allegations will poison relations between the two countries for generations, and the consequences of the conflict will linger. Appropriate investigations should also be carried out in relation to allegations of crimes, war crimes or other wrongful acts which took place during the 1991-1994 war, for which there should be similar accountability.

10. The Assembly is gravely concerned that the conflict region is one of the most contaminated by mines and unexploded ordnance in the world. In consequence, the Assembly:

10.1. considers that it is incumbent on both sides to work together to remove mines, deploring that since the November 2020 ceasefire, 159 Azerbaijanis and 5 Armenians have been killed or injured;

10.2. welcomes the fact that on 12 June 2021, Armenia handed over maps indicating 97 000 mines planted in the region of Aghdam and, on 3 July, maps showing 92 000 mines planted in the Fuzuli and Zangilan districts, while noting with concern that, according to Azerbaijan, portions of the shared maps are said to lack the information necessary for effective demining;

10.3. calls on Armenia to release, without delay, all mine maps in its possession;

10.4. recommends that both Armenia and Azerbaijan step up mine and unexploded ordnance awareness programmes and calls on the international community to provide assistance in terms of equipment, training and funding for the clearance of what could be around a million mines.

11. Concerning the issue of displaced persons in Armenia, the Assembly:

11.1. notes that, according to Armenian sources, around 91 000 Armenians fled from the conflict area during the six-week conflict, 85% of whom were women and children;

11.2. welcomes that, notwithstanding many difficulties including those caused by winter and Covid-19, the Armenian authorities, along with the international community, including, importantly, the ICRC, were able to meet the basic humanitarian needs of displaced persons and provide them with shelter;

11.3. notes, based on Armenian sources, that there are currently around 36 000 Armenians from the six-week war who have not returned to their homes;

11.4. notes the problems facing those displaced, namely the lack of long-term shelter, ongoing cash assistance, education for children and the provision of livelihoods, in particular for women.

12. Concerning those from the Nagorno-Karabakh region who either remained or returned, the Assembly:

12.1. strongly regrets the international community's absence from the region, due to an ongoing disagreement between Armenia and Azerbaijan over the issue of access; in this sense, having in mind its Resolution 2240 (2018) "Unlimited access to member States, including 'grey zones', by Council of Europe and United Nations human rights monitoring bodies", it recalls the legal obligations on Council of Europe member States to co-operate fully and in good faith with international human rights monitoring mechanisms, including those of the Council of Europe and the United Nations;

12.2. recalls that all individuals in the Council of Europe area, including those living in conflict zones, are equally entitled to full protection under the European Convention on Human Rights, including via applicable monitoring mechanisms;

12.3. shares their feeling of abandonment by the international community and notes their concerns over security due to border incidents, the proximity of Azerbaijani troops and the regular sound of shots being fired;

12.4. notes the difficulties they face in terms of livelihoods and the need to rebuild and repair war damage and be provided with new housing, as well as protection of their basic human rights;

12.5. calls on all States involved to ensure unimpeded access by representatives of international independent humanitarian organisations and the media to the Nagorno-Karabakh region.

13. The Assembly welcomes the international community's support for Armenia, and in particular the role played by the United Nations Resident Coordinator Office and High Commissioner for Refugees (UNHCR), as well the support of the European Union. The ICRC plays an essential role as the only international

organisation with access to the whole region affected by the conflict. The Russian Federation also has access to the region and has performed an extremely important role in terms of providing humanitarian aid and security through its peacekeepers.

14. Concerning the issue of displaced persons in Azerbaijan, the Assembly:

14.1. notes that, according to Azerbaijani sources, around 84 000 Azerbaijanis were temporarily displaced during the six-week war;

14.2. welcomes the fact that, notwithstanding the difficulties caused by winter and Covid-19, the Azerbaijani authorities were able to provide all necessary assistance. They did so without calling on the international community for help;

14.3. welcomes the fact that almost all those displaced by the six-week war have returned to their homes, and most of the damage has been repaired;

14.4. understands that the greater challenge now for Azerbaijan is the return of the 650 000 displaced persons from the 1991-1994 war and the fact that 65% of these displaced persons would like to return to their homes; recognises in this respect the enormous challenge faced by Azerbaijan, as the territories are heavily mined and the damage is extensive. Areas such as Aghdam and Fuzuli have been almost totally destroyed;

14.5. welcomes the large-scale smart cities programme being developed by Azerbaijan and calls on the international community to provide assistance so that those displaced are able to return.

15. The Assembly recommends that Armenia and Azerbaijan make good use of Council of Europe expertise when designing and implementing their respective policies in support of displaced persons, thereby ensuring that they comply with Council of Europe human rights and rule of law standards.

16. The Assembly encourages the international community to continue to support Armenia and Azerbaijan and move towards a more mid- and long-term strategy that includes not just recovery, but also peacebuilding and confidence-building measures.

17. The Assembly is greatly concerned by the increase in incidents at various points on the border since May 2021. There have been deaths and injuries and Armenian soldiers have been taken captive. The Assembly therefore calls on both sides to:

17.1. de-escalate the situation and keep to the positions agreed by the parties under the trilateral statement;

17.2. negotiate a process of delimitation and demarcation of the border and examine the possibility of creating a demilitarised zone with the presence of a peacekeeping or military monitoring force.

18. The long-running conflict has had a catastrophic impact on the cultural heritage and property of the region, for which both Armenia and Azerbaijan are responsible. In light of this, the Assembly:

18.1. condemns the damage and destruction for which Armenia is responsible in the former conflict areas returned to Azerbaijan, and in particular the almost total destruction and looting of Aghdam, Fuzuli and other areas over the last thirty years, as well as the transfer of cultural heritage;

18.2. condemns the destruction over the last thirty years of Armenian cultural heritage in Azerbaijan for which Azerbaijan is responsible, notably in Nakhchivan Autonomous Republic, and condemns the damage deliberately caused to cultural heritage during the six-week war, and what appears to be the deliberate shelling of the Gazanchi Church, the St. Holy Saviour/Ghazanchetsots Cathedral in Shusha/Shushi, as well as the destruction or damage of other churches and cemeteries during and after the conflict;

18.3. remains concerned, in the light of past destruction, about the future of the many Armenian churches, monasteries, including the monastery in Khutavank/Dadivank, cross-stones (khachkars) and other forms of cultural heritage which have been returned under Azerbaijan control;

18.4. expresses concern about a developing narrative in Azerbaijan promoting a "Caucasian Albanian" heritage to replace what is seen as an "Armenian" cultural heritage;

18.5. recommends that Armenia and Azerbaijan allow the United Nations Educational, Scientific and Cultural Organization (UNESCO) unlimited access to all cultural heritage sites in both countries to assess the damage and the steps necessary to safeguard what remains;

18.6. invites UNESCO to look into the developing narrative promoting a "Caucasian Albanian" heritage, to ensure it is not being manipulated by either side.

19. Hate speech has been a long-standing problem in both countries, as noted by the European Commission against Racism and Intolerance (ECRI) in its reports, in particular in relation to Azerbaijan, which has also been criticised by the Advisory Committee on the Framework Convention for the Protection of National Minorities. The Assembly:

19.1. is shocked by the level of hate speech and hate crimes by both sides that took place during the six-week war, including the filming of horrific acts and their sharing on social media;

19.2. is aware of various statements to the effect that Azerbaijan is proud of its multiculturalism, but regrets that statements made at the highest level continue to portray Armenians in an intolerant fashion. What is known as the "Military Trophy Park" in Baku raises serious concerns, and the Assembly considers that the use of caricatured and stereotyped mannequins exacerbates intolerance and has no place in a museum or in society;

19.3. recommends that both countries take steps to tackle hate speech, including that by public and high-level officials, as well as hate crimes. Both countries should introduce appropriate legislation with the assistance of the Council of Europe.

20. In view of the many human rights issues linked to the humanitarian consequences of the conflict, the Assembly encourages the Council of Europe Commissioner for Human Rights to work with both the Azerbaijani Ombudsman and the Armenian Human Rights Defender to tackle these issues and to visit the region as soon as possible.

21. The Assembly invites Armenia and Azerbaijan to investigate the allegations raised and invites the delegations of both parliaments to the Parliamentary Assembly of the Council of Europe to start a dialogue on these issues.

INTERNATIONAL COURT OF JUSTICE

ACCORDANCE WITH INTERNATIONAL LAW OF THE UNILATERAL DECLARATION OF INDEPENDENCE BY THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT OF KOSOVO

(REQUEST FOR AN ADVISORY OPINION)

REPLY TO QUESTIONS OF MEMBERS OF THE COURT BY THE KINGDOM OF THE NETHERLANDS

21 DECEMBER 2009

1. Introduction

1. On 11 December 2009, during the oral proceedings on the request for an advisory opinion submitted by the General Assembly of the United Nations on the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, several members of the Court asked questions to participants in the oral proceedings. The Kingdom of the Netherlands wishes to avail itself of the opportunity to reply to the questions posed by Judges Koroma and Cançado Trindade.

2. Reply to the Question posed by Judge Koroma

2. Judge Koroma asked the following question:

> "It has been contended that international law does not prohibit the secession of a territory from a sovereign State. Could participants in these proceedings address the Court on the principles and rules of international law, if any, which, outside the colonial context, permit the secession of a territory from a sovereign State without the latter's consent?"

3. The Kingdom of the Netherlands appreciates this question as it is convinced that the Court will need to interpret treaty provisions relating to self-determination and ascertain the legal opinions and the practice of States to address this matter (see also para. 9 of the Oral Statement of the Kingdom of the Netherlands of 10 December 2009). It may safely be assumed that states with a view on the matter will have expressed that view in the proceedings in their written submission, written comments, oral statement, or reply to this question.

4. In the view of the Kingdom of the Netherlands, the secession of a territory from a sovereign State without the latter's consent outside the colonial context may be permitted on the basis of the right of a people to self-determination. The right to self-determination includes the right of peoples "freely to determine their political status" (Articles 1 of the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights (1966 Covenants)), "freely to determine, without external interference, their political status" (General Assembly Resolution 2625 (XXV) (Resolution 2625), "freely [to] determine their political status" (Section I.2 of the 1993 Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights), or "in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development" (Part VIII of the Final Act of the Conference on Security and Co-operation in Europe to which reference is made in the Preamble to Resolution 1244) (see also para. 3.4 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009).

5. Resolution 2625 lists modes of implementing the right to self-determination of peoples. It mentions (a) the establishment of a sovereign and independent state, (b) the free association or integration with an independent state, and (c) the emergence into any other political status freely determined by a people. Secession of a territory from a state necessarily precedes the establishment by a people of a sovereign and independent state, or the free association or integration of a people with another state. The text of the Resolution does not limit the choice by a people for a particular mode of implementing the right to self-determination to the colonial context. Likewise, the text of the Resolution does not require a people obtain the consent of the state from which that people seeks to secede. Any limitation of a people's right to choose a particular mode of implementing the right to self-determination can only be

inferred, *a contrario*, from the savings clause in Resolution 2625. Pursuant to this clause, the principle of equal rights and self-determination of peoples is not to be construed "as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States". However, it follows also from this clause that the principle of territorial integrity does not prevail if States are not "conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour" (see also para. 3.7 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009).

6. The 1996 Covenants – or any of the other instruments mentioned in paragraph 4 above – do not further elaborate the modes of implementing the right to self-determination by a people. However, nothing in these instruments limits the choice for a particular mode to specific situations, such as the colonial context, or subject the choice for a particular mode to the consent of the state from which a people seeks to secede. This view is corroborated by the *travaux préparatoires* of the 1966 Covenants. In the course of the negotiations,

> "[s]uggestions were made which would indicate the substance of the right of self-determination in a concrete form. For instance, the right of self-determination should include the right of every people or nation 'to establish an independent State', to 'choose its own form of government', to 'secede from or unite with another people or nation', etc. These suggestions were not adopted, for it was thought that any enumeration of the components of the right of self-determination was likely to be incomplete. A statement of the right in abstract form, as in paragraph 1 of the article, was thought to be preferable."[1]

7. Thus, it must be concluded that the instruments recognizing the right to self-determination of peoples includes the exercise of this right through secession; and, furthermore, that these instruments neither limit the exercise of this right through secession to the colonial context nor to the consent of the state from which a people seeks to secede. What is lacking in these instruments are only the conditions that must be satisfied for a people to be permitted to choose one mode of implementing the right to self-determination rather than another. It is on this point that the legal opinions and the practice of states need to be ascertained. The Kingdom of the Netherlands has expressed its legal opinion as regards the conditions that must be satisfied before a people may choose a mode of implementing its right to self-determination that amounts to the exercise of the right to external self-determination and, by implication, secession during these proceedings (see paras. 3.9-3.11 of the Written Submission of 17 April 2009 and paras. 6-8 of the Oral Statement of 10 December 2009 of the Kingdom of the Netherlands).

8. In this respect, we have noted that it is hardly surprising that there are not many instances of the lawful exercise of the right to external self-determination outside the context of non-self governing territories and foreign occupation. First, the post-colonial right to external self-determination only emerged in the second half of the last century. Second, conditions must be satisfied before a people may resort to external self-determination. In the course of these proceedings, many instances have been cited where the people concerned did, indeed, fail to meet these conditions and could not lawfully exercise the right to external self-determination. Yet, there are several instances where the international community has accepted the exercise of the right to external self-determination outside the colonial context and without the consent of the state from which the people concerned seceded. We have cited the establishment of

[1] UN Doc. A/2929 (1955), p. 15 (para. 15); see also M.J. Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights* (1987), at 34.

Bangladesh and Croatia as examples (see also para. 10 of the Oral Statement of the Kingdom of the Netherlands of 10 December 2009).

9. We have also noted that instances where States disintegrated on the basis of consensual agreement differ from the present case, but are not necessarily irrelevant. In some of these instances, the peoples concerned acknowledged that the violation of the right to self-determination in the past had made it impossible for them to continue living together in one state. We have cited the establishment of Eritrea and Slovenia as examples (see also para. 11 of the Oral Statement of the Kingdom of the Netherlands of 10 December 2009).

10. In sum, it follows from the instruments recognizing the right to self-determination of peoples, in particular the 1966 Covenants and Resolution 2625, that a people may secede from the territory of a sovereign state without the latter's consent outside the colonial context.

11. The principle of territorial integrity arguably limits the modes of implementing the right to self-determination by a people outside the colonial context (see also para. 3.6 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009). This limitation is reflected in the savings clause of Resolution 2625, referred to in paragraph 5 above, that seeks to balance the right to self-determination and the principle of territorial integrity. The balancing of conflicting norms of international law is governed by the principle of equity and takes into account the specific circumstances of the case at hand. These considerations have guided the Kingdom of the Netherlands in the formulation of conditions that must be satisfied by a people before a people may secede from a state to exercise its right to external self-determination.

12. In case of the breach of a people's right to self-determination by the State in which the people has sought to exercise its right to self-determination, the balance must shift towards the protection of the right to self-determination. It is a general principle of international law that the international responsibility of a State which is entailed by an internationally wrongful act involves legal consequences (see Article 28 of the Articles on Responsibility of States for Internationally Wrongful Acts). Specific consequences apply in case of a serious breach of obligations under peremptory norms of general international law, a category of norms which arguably includes the right to self-determination (see also para. 3.2 of the Written Submission of the Kingdom of the Netherlands of 17 April 2009). If the various modes of implementing the right to self-determination, as enshrined in the abovementioned instruments, are to have any meaning, a people must at least be free to choose any of these modes in the case of a serious breach of that people's right to self-determination.

3. Reply to the Question posed by Cançado Trindade

13. Judge Cançado Trindade asked the following question:

> "United Nations Security Council resolution 1244 (1999) refers, in its paragraph 11 *(a)* to 'substantial autonomy and self-government in Kosovo", taking full account of the Rambouillet Accords. In your understanding, what is the meaning of this *renvoi* to the Rambouillet Accords? Does it have a bearing on the issues of self-determination and/or secession? If so, what would be the prerequisites of a people's eligibility into statehood, in the framework of the legal regime set up by Security Council's resolution 1244 (1999)? And what are the factual preconditions for the configurations of a 'people', and of its eligibility into statehood, under general international law?"

14. Paragraph 11 of Resolution 1244 sets out the main responsibilities of the international civil presence in Kosovo. The reference to the Rambouillet Accords in subparagraph (a) means that the international civil presence must take full account of the Rambouillet Accords in the exercise of its responsibility to promote the establishment of substantial autonomy and self-government in Kosovo. Hence, it provides guidance to the international civil presence for the exercise of this responsibility. Meaningful self-government was established by the promulgation and implementation of the Constitutional Framework for Provisional Self-Government in Kosovo; the Constitutional Framework was adopted by the Special Representative of the Secretary-General on 15 May 2001 and its implementation was completed at the end of 2003. Due consideration to the Rambouillet Accords only had to be given in the course of the development of the Constitutional Framework.

15. The reference to the Rambouillet Accords in paragraph 11(a) of Resolution 1244 does not have a bearing on the issues of self-determination and/or secession in relation to the current request for an advisory opinion. Substantial autonomy and self-government in Kosovo were to be established under Resolution 1244 "pending a final settlement". The international administration for Kosovo, established by the Security Council under Resolution 1244, was meant to be an "interim administration" (para. 10 of Resolution 1244). Accordingly, the substantial autonomy and self-government in Kosovo under Resolution 1244 was not meant to continue on a permanent basis. Following the exhaustion of all efforts to achieve a final settlement and the proclamation of independence of Kosovo on 17 February 2008, it came to an end.

16. The Kingdom of the Netherlands has addressed the factual preconditions for the configuration of a 'people', and of its eligibility into statehood, under general international law in its Written Comments of 17 July 2009. It has argued that anthropological and social criteria are relevant to determining whether a group of persons constitutes a people. Anthropological criteria refer to (a) common features of a group of persons, such as their ethnic origin, their traditions, their culture, their language, their religion or their homeland (objective criteria), and (b) the will of a group of persons to constitute a people, such as a sense of kinship (subjective criterion). In view of the anthropological heterogeneity of the peoples of the world, the presence of any such features varies from people to people, and can only be identified on a case-by-case basis. Furthermore, common features of a group of persons and/or the will of such group of persons to be a people may be subject to change over time (see para. 3.6 of the Written Comments of the Kingdom of the Netherlands of 17 July 2009). For the purpose of the exercise of the right to self-determination by means of the establishment of an independent state, a people must also have a common territorial basis. A proclamation of independence must be linked to this territorial basis, follow existing international boundaries and former internal boundaries, and respect the principle of *uti possidetis juris* (see para. 3.8 of the written comments of the Kingdom of the Netherlands of 17 July 2009).

B. Lijnzaad
Representative of the Kingdom of the Netherlands
21 December 2009

ALBERT HAYRAPETYAN

THE LEGAL ASPECT OF NAGORNO-KARABAKH ISSUE

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