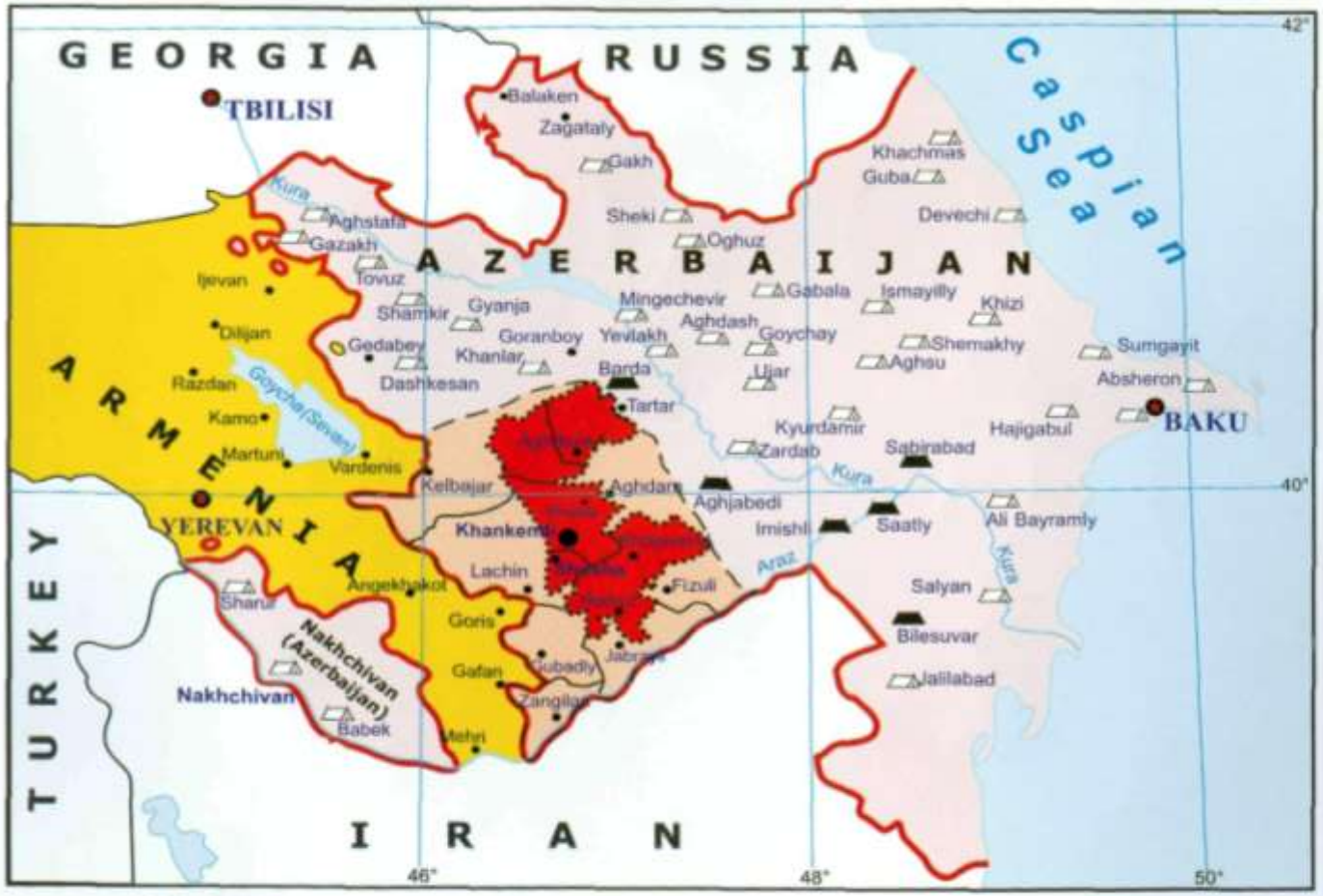
RESULTS OF ARMENIAN AGGRESSION



Refugees and IDP

Refugees from Armenia	- 250 000
Internally displaced persons from the occupied territories	- 660 000
Internally displaced persons from regions along the border with Armenia and line of occupation	- 100 000
Total	**-1 010 000**

Armenian Armed Forces in the occupied territories

Tanks - 316	Artillery - 322
ACV - 324	Personnel - 40 000

Settlers illegally transferred to occupied territories

Nagorny-Karabakh	- 8 500
Lachin	- 13 000
Kelbajar	- 700
Zangilan	- 520
Jabrayil	- 280
Total	- 23 000

Temporary Refugee/IDP settlements

IDP tent camps

Occupied territories

Line of occupation

Admin. line of the former NKAO of Az.SSR

Occupied territories of Azerbaijan

Nagorny-Karabakh region

Territory	- 4 388 sq. km
Population (1989)	- 189 085
Armenians	- 145 450 (76,9%)
Azerbaijanis	- 40 688 (21,5%)
Russians	- 1922 (1%)
Others	- 1025 (0,6%)

Shusha district

Territory	- 289 sq. km
Population (1989)	- 20 579
Azerbaijanis	- 19 036 (92,5%)
Armenians	- 1 377 (6,7%)
Occupied	- May 8, 1992

Districts outside Nagorny-Karabakh region

	Occupation	*Expulsion*
Lachin	- May 18, 1992	- 71 000
Kelbajar	- April 2, 1993	- 74 000
Aghdam	- July 23, 1993	- 165 600
Fizuli	- August 23, 1993	- 146 000
Jabrayil	- August 23, 1993	- 66 000
Gubadly	- August 31, 1993	- 37 900
Zangilan	- October 29, 1993	- 39 500

Victims of aggression

Killed - 20 000 Disabled - 50 000 Missing - 4 8

Destructions and damage

Settlements	- 890
Houses	- 150 000
Public buildings	- 7 000
Schools	- 693
Kindergartens	- 855
Healthcare facilities	- 695
Libraries	- 927
Temples	- 44
Mosques	- 9
Historical places	- 9
Historical monuments and museum	- 464
Museum exhibits	- 40 000
Industrial and agricultural enterprises	- 6 000
Motorways	- 800 km
Bridges	- 160
Water pipelines	- 2 300 km
Gas pipelines	- 2 000 km
Electricity lines	-15 000 km
Forests	- 280 000 ha
Sowing area	- 1 000 000 h
Irrigation systems	- 1 200 km

The total damage is estimated up to 60 billions $ US

AGGRESSION OF THE REPUBLIC OF ARMENIA AGAINST THE REPUBLIC OF AZERBAIJAN

Historical background.

The Nagorny Karabakh region of the Republic of Azerbaijan is part of the geographical area called Garabagh (Qarabağ). The name of this part of the country consists of two Azerbaijani words: "qara" (black) and "bag" (garden).[1] The geographical area of Karabakh covers the lands from the Araz River in the south to the Kur River in the north, and from the junction of the Kur and Araz Rivers in the east to the eastern ranges of the Lesser Caucasus in the west.

From ancient times up to the occupation by Russian Empire in the early 19th century, this region was part of different Azerbaijani states. On 14 May 1805, the Treaty of Kurakchay (1805) between Ibrahim Khan, Khan of Karabakh, and Sisianov, representative of the Russian Emperor, was signed. According to this treaty, the Karabakh khanate came under the Russian rule.

The Gulustan peace treaty, signed between Russian Empire and Persia on 12 October 1813, de jure recognized the joining to Russia of the Northern Azerbaijan khanates, with the exception of the Nakhchyvan and Iravan khanates. According to the Turkmanchay peace treaty, signed on 10 February 1828 - at the end of the second Russian-Persian war (1826-1828) - Iran confirmed its relinquishment of Northern Azerbaijan, including the Nakhchyvan and Iravan khanates.

After the signing of the Gulustan and Turkmanchay treaties a very rapid mass resettlement of Armenians in the Azerbaijani lands took place and the subsequent artificial territorial division emerged. The First World War also contributed to the increase in the number of Armenians in the South Caucasus. From 1828 to 1911 alone, more than 1,000,000 Armenians were resettled by Russia from Iran and Turkey in the region, including the Azerbaijani territories, and 350,000 Armenians appeared there in 1914-1916.

Within the Russian Empire, the territory once belonging to Azerbaijan - which includes inter alia the area presently covered by the Republic of Azerbaijan and the Republic of Armenia - was split under a number of legal regimes in different administrative divisions. According to the final administrative division, Azerbaijan was split among the Baku, Elizavetpol and Iravan provinces, and Zagatala okrug. The Elizavetpol province included inter alia the area presently under Armenian military occupation.

Between 1905 and 1907 the Armenians carried out a series of large-scale bloody actions against the Azerbaijanis. The atrocities began in Baku and then extended over the whole of Azerbaijan, including Azerbaijani villages in the territory of present-day Armenia. Hundreds of settlements were destroyed and wiped from the face of the earth, and thousands of civilians were barbarically killed.

Taking advantage of the situation following the First World War and the February and October 1917 revolutions in Russia, the Armenians began to pursue the implementation of their plans under the banner of Bolshevism. Thus, under the watchword of combating counter-revolutionary elements, in March 1918 the Baku commune began to implement a plan aimed at eliminating the Azerbaijanis from the whole of the Baku province. Apart from Baku, solely because of their ethnic affiliation, thousands of Azerbaijanis were annihilated also in the Shamakhy and Guba districts, as well as in Karabakh, Zangazur, Nakhchyvan, Lankaran and other regions of Azerbaijan. In these areas, the civilian population was exterminated en masse, villages were burned and national cultural monuments were destroyed and obliterated. On 28 May 1918, the Democratic Republic of Azerbaijan was proclaimed. The Republic of Armenia was established the same day. Article 1 of the Declaration of Independence of the Democratic Republic of Azerbaijan provided that "[s]tarting from this day the people of Azerbaijan will have their sovereign rights. Azerbaijan that consists of Eastern and Southern Transcaucasia shall be a legal independent state".

In 1918-1920, the Democratic Republic of Azerbaijan had diplomatic relations with a number of states. Agreements on the principles of mutual relations were signed with some of them; sixteen states established their missions in Baku. With the purpose of achieving the admission to the League of Nations, the Government of Azerbaijan formed on 28 December 1918 the delegation at the Paris Peace Conference headed by the speaker of parliament Alimardan bay Topchubashov. As a result of the efforts of the Azerbaijani delegation and growing threat of occupation of Transcaucasia by Soviet Russia, the Supreme Council of the Allied Powers at the Paris Peace Conference de-facto recognized on 12 January 1920 the independence of the Democratic Republic of Azerbaijan.

In April 1919, the Allied Powers recognized the provisional General-Governorship of Karabakh, which was established by the Democratic Republic of Azerbaijan in January 1919 and included Shusha, Javanshir, Jabrayil, and Zangazur uyezds (uyezd - administrative-territorial unit of the Russian Empire, which was applied in the Democratic Republic of Azerbaijan and Azerbaijan SSR until the late 1920s) with the center in Shusha town, to be under Azerbaijani jurisdiction, and Khosrov bay Sultanov as its governor. In 1919, the Armenian National Assembly of Nagorny Karabakh officially recognized the authority of Azerbaijan. This fact completely disproves the allegations of the Armenian side that Nagorny Karabakh possessed at that time the status of "an independent legal entity" or "an independent political unit".

The population welcomed the "provisional agreement" warmly and hopefully. Celebrations were held in

[1] The term "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language - Dağlıq Qarabağ (pronounced Daghlygh Garabagh), which literally means mountainous Garabagh. In order to avoid confusion the widely referred terms "Nagorny Karabakh" or "Karabakh" will be used here, as appropriate.

Shusha in honor of the agreement that brought peace and order to Karabakh. The delegation of Karabakh Armenians at the meeting in Baku with Prime Minister of Azerbaijan N.Yusifbayov expressed deep gratitude to the Government of Azerbaijan for "the peaceful resolution of the Karabakh problem". The adoption of the agreement meant the failure of the policy of Armenia to declare Nagorny Karabakh the "territory of Armenia". The Democratic Republic of Azerbaijan, for the first time in the South Caucasus, through guarantying rights of the Armenians of Nagorny Karabakh, set in practice an example of a peaceful and civil solution to the problem of minority groups.

Scotland-Liddel, a British journalist, wrote to London from Shusha: "[p]eace came to Karabakh. The Armenians agreed to obey the Azerbaijani government... The Armenians tell me that there has never been such order and peace in Shusha and Karabakh before".[1] He adds further: "[b]oth people were ready to continue peacefully their course of life and would do so, if not the intervention of agitators. I believe that -the latter are responsible for the Armenian-Tartar [read Armenian-Azerbaijani - ed.] massacre in other parts of Transcaucasia. An Armenian propagandist does its job conscientiously, as it concerns propaganda, but I am sure that their activities in Transcaucasia are mere provocation".[2] All aforementioned facts testify against the allegations of the Armenian side that "[following the collapse of the Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan" and that "[t]he newly proclaimed Democratic Republic of Azerbaijan resorted to military means to suppress the peaceful resolve of the people of Nagorny Karabakh for self-determination".[3]

However, Armenia did not give up its claim on Nagorny Karabakh and, with the view of imposing an Armenian administrative system in Nagorny Karabakh, intensified provocative actions there.

While the Bolsheviks were approaching the Azerbaijani borders and the major part of Azerbaijani forces was concentrated in the countrys northern borders, on the night of Novruz Bayramy (Spring Holiday) on 22-23 March 1920, a large-scale armed uprising against the Azerbaijani government was incited in Nagorny Karabakh with the direct involvement and participation of Armenia. Azerbaijani national army units were simultaneously and suddenly attacked in Shusha, Khankandi and in a number of other places. Thus, the Armenian side unilaterally violated the "provisional agreement". The insurgents, however, met with serious resistance from the Azerbaijani soldiers. The day after the uprising, Shusha was liberated of the armed bands, and the attempts of Armenia to capture Azerbaijani territories failed. Armenias territorial claims towards Azerbaijan and efforts to annex Nagorny Karabakh were an evident reality for the most of authors in the former Soviet Union, including Armenian ones. Thus, according to Great Soviet Encyclopedia published in 1926, "[d]ashnaks ... stated to have claims on the Akhalkalaki and Borchaly regions of Georgia, and Karabakh, the Nakhchyvan region and the southern part of the large Yelizavetpol province, which were parts of Azerbaijan. The efforts to forcefully annex those areas caused a war with Georgia (December 1918) and a long, bloody confrontation with Azerbaijan..."[4]

On 28 April 1920, the Democratic Republic of Azerbaijan was occupied by Soviet Russia and the Azerbaijan SSR was established.

Nonetheless, in many parts of the country the Azerbaijanis offered serious resistance to the Bolsheviks, while the Azerbaijani delegation at the Paris Peace Conference continued its work to achieve de-jure recognition and admission into the League of Nations. By a letter dated 1 November 1920, the head of the Azerbaijani Delegation at the Conference requested the Secretary-General of the League of Nations to submit to the Assembly of the League an application for the admission of the Democratic Republic of Azerbaijan into the full membership of the Organization.

In the Memorandum dated 24 November 1920, the Secretary-General of the League of Nations formulated the following two key issues which would have been considered in regard to the application submitted by Azerbaijan:

"The territory of Azerbaijan having been originally part of the Empire of Russia, the question arises whether the declaration of the Republic in May 1918 and the recognition accorded by the Allied Powers in January 1920 suffice to constitute Azerbaijan dejure a 'full self-governing State' within the meaning of Article 1 of the Covenant of the League of Nations. Should the Assembly consider that the international status of Azerbaijan as a 'fully self-governing State' is established, the further question will arise whether the Delegation by whom the present application is made is held to have the necessary authority to represent the legitimate government of the country for the purpose of making the application, and whether that Government is in a position to undertake the obligations and give the guarantees involved by membership of the League of Nations".[5]

As to the first issue, the most important part of the mentioned Memorandum of the Secretary-General relates to the "Juristic observations", which reminds of the conditions governing the admission of new Members to the Organization contained in Article 1 of the Covenant of the League of Nations,[6] including the requirement to be a fully self-governing state. It is obvious that the state, considerable part of the territory of which was occupied by the time of consideration of its application in the League of Nations, and yet the Government that submitted this application was overthrown, could not be regarded as fully self-governing in terms of Article 1 of the Covenant of the League of

[1] State Archive of the Republic of Azerbaijan, f. 894, Inv. 10, f. 103, p.18.
[2] Ibid., p.11.
[3] UN Doc A/63/78 l-S/2009/156, p. 7, paras. 21-22.
[4] Great Soviet Encyclopedia (Moscow: "Soviet Encyclopedia" JSC, 1926), volume 3, p.437.
[5] League of Nations. Memorandum by the Secretary-General on of the Application for the Republic of Azerbaijan to the League of Nations. Assembly Document 20/48/108
[6] See also The Covenant of the League of Nations (1919), in Malcolm D. Evans (ed.), Blackstone 's International Law Documents (Oxford: Oxford University Press, 6th ed., 2003), pp. 1-7, at p.1, Article 1.

Nations.

In addressing the second issue, the Secretary-General of the League of Nations pointed out in his Memorandum that the mandate of the Azerbaijani delegation attending at the Paris Peace Conference derived from the government that had been in power at Baku until April 1920. Thus, the attention in the Memorandum is distinctly paid to the fact that at the time of submission by the Azerbaijani delegation of the application (1 November 1920) and the publication date of the Memorandum (24 November 1920) the government of the Democratic Republic of Azerbaijan, which issued the credentials to the delegation, was not actually in power since April 1920. It was further noted in the Memorandum that this Government did not exercise the authority over the whole territory of the country.

Therefore, the Fifth Committee of the Assembly of the League of Nations in its resolution on the application of Azerbaijan decided that "it is not desirable, in the present circumstances, that Azerbaijan should be admitted to the League of Nations". It is clear from the text of the said resolution that under "the present circumstances" the Fifth Committee, which made no reference to Nagorny Karabakh at all, understood only that "Azerbaijan does not seem to possess a stable government with jurisdiction over a clearly defined territory".[1] Thus, these were just those reasons, derived from the requirements set forth in Article 1 of the Covenant of the League of Nations, which had prevented Azerbaijan from being admitted to the Organization. The aforementioned documents of the League of Nations prove that the Armenian side is mistaken, to say the least of it, believing that the League of Nations "recognized the disputed status of Nagorny Karabakh"[2] and "refused to recognize Azerbaijan because of its claims over the Armenian-populated territories in Eastern Transcaucasia, namely Nagorno-Karabakh".[3]

At the same time, the League of Nations did not consider Armenia itself as a state and proceeded from the fact that this entity had no clear and recognized borders, neither status nor constitution, and its government was unstable. As a result, the admission of Armenia to the League of Nations was voted down on 16 December 1920.[4]

Expansion of the territory of Armenia and change of the demographic composition of its population in the Soviet period

The facts illustrate that over the 70-years of Soviet rule Armenia succeeded in expanding its territory at the expense of Azerbaijan and using every possible means to expel the Azerbaijanis from their lands. During this period, the aforementioned policy was implemented systematically and methodically.

As for the territory of Armenia, according to Armenian scholars, on the basis of the Treaty of Batoum signed by Turkey with Azerbaijan, Georgia, and Armenia on 4 June 1918, the territory of the first Armenian state in the South Caucasus established on 28 May 1918 - with the capital, which was conceded by Azerbaijan on 29 May 1918[5] - - formed a minimum of 8,000,[6] 9,000[7] and a maximum of 10,000 sq.km[8] in the western part of present-day Armenia. Armenia. During the existence of this Armenian state from 1918-1920, it failed to expand its territories at the expense of neighbours.On 30 November 1920, after the occupation of the Democratic Republic of Azerbaijan by Bolshevik Russia, with the aim of sovietization of Armenia, the western part of Zangazur uyezd was included in Armenia. As a result, the Nakhchyvan region was cut off from the main body of Azerbaijan.

From 12 March 1922 to 5 December 1936 Azerbaijan, Georgia and Armenia formed the Transcaucasian Soviet Federative Socialist Republics (hereinafter - TSFSR). Until the admission of Azerbaijan into the TSFSR, the Basarkechar region of New-Bayazid uyezd, together with two thirds of Sharur-Daralayaz uyezd, had already been included in Armenia. After the admission of Azerbaijan into the TSFSR a considerable portion of Gazakh uyezd, a number of villages from Jabrayil uyezd and from the Autonomous Soviet Socialist Republic of Nakhchyvan were included in Armenia.

Thus, due to "sovietization," the territory of Armenia increased from 8,000-10,000 sq.km to 29,800 sq.km, mostly at the expense of Azerbaijani lands.

l 17 (a). During the Soviet period the immigration of a great number of Armenians from abroad and expulsion of Azerbaijanis from their lands took place. Thus, as per Armenian sources, about more than 42,000 Armenians arrived in Armenia between 1921 and 1936.[9] The next step towards the artificial change of the demographic composition of the population in Armenia was a decree by Stalin in November 1945 on the immigration of foreign

[1] League of Nations. Fifth Committee. Admission of New Members. Resolution on the request for admission made by Azerbaijan. Assembly Document 127.

[2] UN Doc. A/63/78l-S/2009/156, p. 8, para. 26.

[3] See, e.g., the statement on behalf of Vartan Oskanian, Minister of Foreign Affairs of Armenia, at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August -7 September 2001, <www.un.org/WCAR/statements/armeniaE.htm>; The initial report of Armenia under the International Covenant of Economic, Social and Cultural Rights, UN Doc. E/1990/5/Add.36, 9 December 1998, p. 3. paras. 3 and 17 (a)

[4] League of Nations. Annex 30 B. Future status of Armenia. Memorandum agreed to by the Council of the League of Nations, meeting in Paris on 11 April 1920. League of Nations Document 20/41/9, p. 27; See also A amission of new Members to the League of Nations. Armenia. Assembly Document 209, pp. 2-3; Assembly Document 251.

[5] See, e.g., State Archive of Political Parties and Social Movements of the Republic of Azerbaijan, f. 970, inv. 1, f. 1, p. 51.

[6] See, e.g., G.Galoyan, Struggle for the Soviet rule in Armenia (Moscow: State Publishing House of Political Literature, 1957), p. 92.

[7] See, e.g., S.P.Agayan, Great October and struggle of labours in Armenia for the victory of the Soviet rule (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 174; E.C.Sarcissian. Expansionary policy of the Ottoman Empire in Transcaucasia on the eve and in the years of the First World War (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 365.

[8] See, e.g., History of the Armenian people, p. 283.

[9] Ibid, p. 336.

Armenians, according to which Armenia received more than 50,000 immigrants in 1946, 35,400 in 1947, and about 10,000 in 1948.[1]

On the pretext of resettling the Armenians coming from abroad, the Council of Ministers of the USSR adopted on 23 December 1947 and 10 March 1948 special decisions on the resettlement of collective farm workers and the other parts of the Azerbaijani population from the Armenian SSR to the Kur-Araz lowlands in the Azerbaijan SSR. Under these decisions, during the period between 1948 and 1953 more than 150,000 Azerbaijanis were forcibly resettled from their historical homelands - the mountainous regions of Armenia - to the then waterless steppes of Mughan and the Mil plateau. At the same time, by mid 1961, 200,000 Armenians immigrated to Armenia[2] and between 1962 and 1973 the number of immigrants consisted 26,100 people.[3]

Shortly after the assertion of claims on Nagorny Karabakh at the end of 1980s, the remaining 200,000 Azerbaijanis were forcibly deported from Armenia.

The Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR

As the Armenian side insists, "[o]n 30 November 1920, the Soviet Government of Azerbaijan adopted a Declaration on recognition of Nagorny Karabakh as an integral part of Soviet Armenia as a welcome act towards the victory of Soviet forces in the country", while "[o]n 21 June 1921, the Government of Soviet Armenia, based on Azerbaijan's Declaration and the agreement with the Azerbaijani Government, issued a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia". The Armenian side further claims that "[t]hese documents were registered in the League of Nations resolution of 18 December 1920, and in the 1920/21 annual report of the Ministry of Foreign Affairs of Russia, respectively".[4] In this regard, the following observations need to be made.

After the occupation of the Democratic Republic of Azerbaijan on 28 April 1920 by Bolshevik Russia, on 19 June 1920, S.Orjonikidze, head of the Caucasian Bureau of the Central Committee of the Russian Communist {Bolshevik) Party sent a telegramme to G.Chicherin, People's Foreign Affairs Commissioner of Russian Soviet Federative Socialist Republic, stating that the Soviet rule is declared in Karabakh and Zangazur and they "consider themselves to be part of the Soviet Republic of Azerbaijan".[5]

The Azerbaijan SSR covered the following areas as described in the document dated 5 August 1920 from the Central State Archive of the Red Army:

The territory of Azerbaijan covers the whole of Ganja province and all uyezds of Surmali, Nakhchyvan and Sharur-Daralayaz of the Erivan province, as well as the southern part of Erivan province with villages of Kamarli. Bovuk-Vedi and Davali and the eastern part of Novo Bayazet".[6]

Dashnak Armenia, the independence of which, due to the growing threat from the Bolsheviks, was de-facto recognized by the League of Nations on 19 January 1920,[7] i.e. 7 days following the de-facto recognition of Azerbaijan Azerbaijan and Georgia by the League of Nations, i.e. on 12 January,[8] was shortly replaced by "Soviet" Armenia in the winter of 1920-1921.

On 1 December 1920, N.Narimanov, Chairman of the People's Commissioners' Soviet of the Soviet Socialist Republic of Azerbaijan, guided by the decision of the Central Committee of the Communist Party of Azerbaijan of 30 November 1920, made a declaration on the occasion of the proclamation of the Soviet rule in Armenia. In this declaration, the western part of Zangazur uyezd was conceded to Armenia and "the working peasants of Nagorny Karabakh are given the full right to self-determination".[9] As is seen, contraty to the understanding of the Armenian side, the declaration made no reference at all to the "recognition of Nagorny Karabakh as an integral part of Soviet Armenia".

On 2 December 1920, the agreement was signed between Russia and Armenia, according to Article 3 of which Russia recognized the following territories to be undisputed part of the Soviet Socialist Republic of Armenia: "Erivan province [...] part of Kars province [...] Zangazur province [...] and part of Gazakh uyezd [...] and those parts of Tiflis province, which were in the possession of Armenia until 23 October 1920".[10]This document testifies that until 2 December 1920 not only Nagorny Karabakh, but also the whole Karabakh, except half of the Zangazur uyezd, were not part of Armenia. It also proves that the declaration by N.Narimanov of 1 December 1920 did not mean concession of Nagorny Karabakh to Armenia.

Moreover, the Armenian side distorts the text of a decree by Soviet Armenia dated 21 June 1921, presenting it

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[1] Ibid., p. 366.
[2] Documents of Foreign Policy of the USSR (Moscow: State Publishing House of Political Literature, 1962), volume 6, note 33, p. 611.
[3] History of the Armenian people, p. 418.
[4] UN Doc A/63/78 l-S/2009/156, p. 8, paras. 27-29.
[5] State Archive of Political Parties and Social Movements of the Republic of Azerbaijan, f. 609, in. 1, f. 21, p. 100.
[6] Central State Archive of Red Army, f. 195, in. 4, f. 385, p. 53.
[7] Papers relating to the foreign relations of the United States, Paris Peace Conference, 1919, volume IX (Washington, D.C.: U.S. Government Printing Office, 1946), pp. 899 & 901.
[8] Ibid., p. 904.
[9] Communist (Baku), 2 December 1920, p. 1.
[10] International policy of the newest time in treaties, notes and declarations, Part 3 (from raising blockade from Soviet Russia to the decade of the October Revolution). Issue 1 (Acts of Soviet diplomacy) (Moscow: Publication of Litizdat of the People Commissariat of Foreign Affairs, 1928), doc. 41, pp. 75-75; Great October Socialist Revolution and victory of the Soviet rule in Armenia (Collection of documents) (Yerevan: Aypetrat, 1957), doc. 295, pp. 441-442.

as "a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia".[1] In reality, according to this document, "on the basis of a declaration by the Revolutionary Committee of the Azerbaijan SSR [dated 1 December 1920] and agreement between the governments of Soviet Republics of Armenia and Azerbaijan, the Revolutionary Committee of Soviet Armenia declares that from this day on Nagorny Karabakh is inseparable part of the Soviet Republic of Armenia".[2] In other words, the decree confirms that until June 1921 Nagorny Karabakh could not be a part of Armenia.

1 As far as the purported "agreement between the governments of Soviet Republics of Armenia and Azerbaijan" is concerned, it is important to notice that on 19 June 1921 the Presidium of the Central Executive Committee of Azerbaijan held its meeting and discussed inter alia "the report of Comrade Narimanov about his visit to Tiflis on the issue of external borders between the Soviet Republics of Azerbaijan, Georgia and Armenia". This report states in the most unambiguous manner that "Nagorny Karabakh remains an inseparable part of Soviet Azerbaijan with the right of internal self-rule". Following the discussion, the meeting decided "to approve the activities of the Commission on the establishment of external borders between the Azerbaijan SSR and the neighbouring Soviet Republics of Transcaucasia".[3]

The Armenian position is discredited also by a number of additional inconsistencies. Thus, the natural question arises as to why Soviet Armenia recognized Nagorny Karabakh as its integral part only in June 1921 if Soviet Azerbaijan had allegedly given its consent to that as early as on 1 December 1920.

1 Furthermore, another Armenian official source (information entitled "Legal aspects for the right to self-determination in the case of Nagorny Karabakh" circulated by the request of the Permanent Mission of Armenia to the United Nations Office at Geneva) addresses the chronology of events at that time differently and thereby redoubles the curiousness of the position of Armenia. Thus, the document provides that "[according to this declaration [of 30 November], the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezour and Nakhichevan were recognized as an integral part of Soviet Armenia". The document further states that "the Azerbaijani Revcom in its 'Declaration Regarding the Establishment of Soviet Power in Armenia' of December 2, 1920, recognized ... Nagorny Karabakh's right for self-determination", and "[o]n June 12,1921, the National Council of the Azerbaijan SSR ... adopted a declaration, which proclaimed Nagorny Karabakh as an integral part of Armenian SSR". According to the document, "[o]n June 19, 1921, Alexander Miasnikyan, Chairman of the Council of People's Commissars of Armenia, issued the following decree: 'On the basis of the declaration of the Revolutionary Committee of the Soviet Socialist Republic of Azerbaijan, and the agreement between Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorny Karabakh is an inseparable part of Soviet Socialist Armenia'".[4]

The impression from this chronological overview is that Azerbaijan was surprisingly persistent in its purported desire to get rid of its territories and attempts to persuade Armenia to accept this gift. The absurdity of such proposition logically derives from the aforementioned information provided by the Armenian side, according to which Azerbaijan allegedly declared no less than three times, i.e. on 30 November 1920,2 December 1920 and 12 June 1921, that it recognizes Nagorny Karabakh as an integral part of Armenia, while Armenia agreed with that only in June 1921. It is notable, by the way, that the two aforementioned documents circulated by Armenia in the United Nations contradict one another as to the date of this purported consent (19 June 1920 in document E/CN.4/2005/G/23 and 21 June 1920 in document A/63/78 l-S/2009/156).

Furthermore, in view of the Armenian side, "[fjollowing the collapse of the [Russian] Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan",[5] "[f]rom 1918 to 1920 ... possessed all necessary attributes of statehood, including army and legitimate authorities" and was "an independent legal entity"[6] or "independent political unit"[7], while "[o]n 23 April 1920 the Ninth Assembly of the Karabakh Armenians declared Nagorny Karabakh as an inalienable part of the Republic of Armenia".[8] At the same time, according to the Armenian side, following the declaration allegedly made by Azerbaijan on 30 November 1920, "the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezour and Nakhichevan were recognized as an integral part of Soviet Armenia".[9] In other words, as per contradicting arguments of the Armenian side, on the one hand, Nagorny Karabakh is considered to be "an independent legal entity" or "an independent political unit" from 1918 to 1920 and likely as part of Armenia since 23 April 1920, while, on the other, there were "borders previously accepted between Armenia and Azerbaijan" and Nagorny Karabakh, Zangazur and Nakhchyvan formed an integral part of Azerbaijan.

It is naturally enough that, while falsifying facts, Armenia reaches a deadlock. Otherwise, it would present credible arguments, especially as far as the alleged declarations of Azerbaijan are concerned. The Armenian side at the same time states that "[njeglecting the reality, on 5 July the Caucasian Bureau of the Communist Party, acting

[1] UN Doc A/63/781-S/2009/156, p. 8, para. 28.
[2] Khorurdain Ayastan, 19 June 1921, p. 1.
[3] State Archive of the Republic of Azerbaijan, f. 379, inv. 1, f. 7480, p. 10.
[4] UN Doc. E/CN.4/2005/G/23, pp. 3-4.
[5] UN Doc A/63/78 l-S/2009/156, p. 7, para. 21.
[6] Ibid., p. 7, para. 23.
[7] UN Doc. E/CN.4/2005/G/23, p. 2.
[8] UN Doc A/63/781 -S/2009/156, p. 7, para. 24
[9] UN Doc..E/CN.4/2005/G/23, p. 3.

under Joseph Stalin's personal pressure, revised its own decision of the previous day and resolved to subject Karabakh to Azerbaijani rule and to create an autonomous province (oblast) of Nagorny Karabakh, within the territory of Soviet Azerbaijan".[1] The Armenian side also acknowledges that "[i]n July 1921, the Azerbaijan SSR insisted that Nagorny Karabakh's issue be considered at the Plenary Session of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolshevics (RCP-B)".[2] The question arises as to what for it was necessary to consider the issue of Nagorny Karabakh on 4 July 1921, revise the decision of the previous day on 5 July 1921 and "subject Karabakh to Azerbaijani rule" if Nagorny Karabakh, as the Armenian side insists, was already a part of Armenia. The Armenian side passes over in silence how it could happen against the background of the purported three declarations of Azerbaijan, especially less than a month after the latest one of 12 June 1921.

In reality, the Azerbaijani leadership at that time was consistent in retaining Nagorny Karabakh within Azerbaijan. All its declarations do not leave any doubt that there could be no agreement between the Soviet Socialist Republics of Azerbaijan and Armenia on the inclusion of Nagorny Karabakh in Armenia. On the other hand, the purpose of those declarations on Nagorny Karabakh published in Armenia was the pacification of Dashnak rebellions, with the liquidation of which in Zangazur, on 15 July 1921, the "Soviet" rule was again established in Armenia.

It was with the same purpose of more effective pacification of Dashnaks that the Bolsheviks chose the method of indulging Armenian nationalists and the Nagorny Karabakh issue was raised in the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party on 4 July 1921 and 4 items were put forward for discussion:

to retain Karabakh as part of Azerbaijan; to hold a referendum with the participation of all the Armenian and Muslim population in the whole of Karabakh;

to include the mountainous part of Karabakh in Armenia;

to hold a referendum only in Nagorny Karabakh, i.e. among the Armenians.

The Caucasian Bureau decided that "Nagorny Karabakh shall be included in the Soviet Socialist Republic of Armenia" and "the referendum shall be held only in Nagorny Karabakh, i.e. among the Armenians". However, according to the same decision, "[s]ince the Karabakh issue gave rise to serious controversies the Caucasian Bureau of the CCRCP deems it necessary to submit it for the final decision of the CCRCP".[3]

The next day, on 5 July 1921, the Caucasian Bureau discussed "the reconsideration of the decision taken on Karabakh at the previous plenary" and decided to retain Nagorny Karabakh within the Azerbaijan SSR. The following quotation proves that the Bureau decided to leave Nagomy Karabakh within the Azerbaijan SSR, not to "transfer" or "subject" it to Azerbaijani rule, as the Armenian side claims[4]:

"Taking into account the necessity of national peace between the Muslims and the Armenians, the economic relations between upper and lower Karabakh and the permanent relations of upper Karabakh with Azerbaijan, Nagorny Karabakh shall be retained within the Azerbaijan SSR and broad autonomy shall be given to Nagorny Karabakh with Shusha city as an administrative centre".[5]

In this regard, the attention should be drawn to the contradictory position of the Government of Armenia as to the status of the Caucasian Bureau. Thus, according to the document circulated by the request of the Permanent Representative of Armenia to the United Nations on 24 March 2009, "the decision [taken by the Caucasian Bureau] cannot serve as a legal basis for the determination of the status and the borders of the Nagorny Karabakh" insofar as it was adopted by a third-country party, i.e. the Russian Bolshevik Party, with no legal power or jurisdiction".[6] Along with the same understanding, in the initial report of Armenia under the International Covenant on Economic, Social and Cultural Rights the Caucasian Bureau is referred to as "an unconstitutional and unauthorized party organ", which "had no right to participate on the national State-building activities of another State", while its decision of 5 July is considered as "an act of gross intervention in the internal affairs of another sovereign Soviet Republic".[7] On the contrary, as per the document circulated by the request of the Permanent Mission of Armenia to the United Nations Office at Geneva on 22 March 2005, the Caucasian Bureau is viewed as a legitimate body with the authorization to decide on territorial issues affecting Armenia and Azerbaijan at that time. Thus, Armenia is confident that "[d]e jure, only the [...] decision [of the Caucasian Bureau] of July 4, 1921 [to] 'include Nagorny Karabakh in the Armenian SSR, and to conduct plebiscite in Nagorny Karabakh only' was the last legal document on the status of Nagorny Karabakh to be legally adopted without procedural violations".[8]

In reality, the decision of 5 July 1921 was the final and binding ruling which would be repeatedly affirmed by the Soviet leadership and recognized by Armenia over the years. Despite of the fact that Nagorny Karabakh was retained within Azerbaijan, it was given the status of autonomy, though more than half-a-million strong Azerbaijani community compactly residing in Armenia at that time was refused the same privilege.

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[1] UN Doc A/63/78 l-S/2009/156, p. 8, para. 30

[2] UN Doc. E/CN.4/2005/G/23, p. 4.

[3] Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party of 4 July 1921. For text, see To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925 Documents and Materials, pp. 90-91.

[4] UN Doc. A/63/78 l-S/2009/156, pp. 8-9, paras. 30 & 34.

[5] Extract from the Protocol of the plenary' session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party of 5 July 1921. For text, see To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials, p. 92.

[6] UN Doc. A/63/78 l-S/2009/156, p. 8, para. 30.

[7] UN Doc. E/l 990/5/Add.36, p. 3, para.2.

[8] UN Doc. E/CN.4/2005/G/23, p. 4.

On 7 July 1923, the Central Executive Committee of the Azerbaijan SSR issued a Decree "On the Formation of the Nagorny Karabakh Autonomous Oblast".[1] The town of Khankandi was defined as the administrative centre of the autonomy. In September 1923, the name of the town was changed to Stepanakert after Stepan Shaumian, a dashnak and a "bolshevik" leader.

The administrative borders of the NKAO were defined in a way to ensure that the Armenian population constituted a majority. According to the population census of 12 January 1989, the population of the autonomous oblast was around 189,000 persons; of them: around 139,000 Armenians - 73,5 %, around 48,000 Azerbaijanis - 25,3 %, around 2000 representatives of other nationalities - 1,2 %.[2]

The allegations of discrimination against the Armenian population of Nagorny Karabakh[3] do not stand up to scrutiny. In reality, the NKAO possessed all essential elements of self-government.

The status of Nagorny Karabakh as an autonomous oblast within the Azerbaijan SSR was stipulated in the USSR Constitutions of 1936 and 1977.[4] In accordance with the Constitutions of the USSR and the Azerbaijan SSR, the legal status of the NKAO was governed by the Law "On the Nagorny Karabakh Autonomous Oblast", which was adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981.[5] Under the Constitution of the USSR, the NKAO was represented by five deputies in the Council of Nationalities of the Supreme Soviet of the USSR. It was represented by 12 deputies in the Supreme Soviet of the Azerbaijan SSR.

The Soviet of People's Deputies of the NKAO - the government authority in the oblast - had a wide range of powers. It decided all local issues based on the interests of citizens living in the oblast and with reference to its national and other specific features. Armenian was used in the work of all government, administrative and judicial bodies and the Prosecutor's Office, as well as in education, reflecting the language requirements of the Armenian population of the oblast. Local TV and radio broadcasts and the publication of newspapers and magazines in the Armenian language were all guaranteed in the NKAO.

As a national territorial unit, the NKAO enjoyed administrative autonomy, and, accordingly, had a number of rights, which, in practice, ensured that its population's specific needs were met. In fact, statistics illustrate that the NKAO was developing more rapidly than Azerbaijan as a whole. The existence and development of the NKAO within Azerbaijan confirms that the form of autonomy that had evolved fully reflected the specific economic, social, cultural and national characteristics of the population and the way of life in the autonomous oblast.

Against this background, Armenia should not overlook the fact that, unlike itself, which has purged its territory of all non-Armenians and become a uniquely mono-ethnic state, Azerbaijan has preserved its ethnic diversity to the present day. Instead of accusing Azerbaijan for "discrimination towards Nagorny Karabakh", it is for the Government of Armenia to exercise some degree of self-evaluation in the field of human rights. Thus, the relevant United Nations bodies have repeatedly expressed their concerns about the spirit of intolerance prevailing in Armenia and the discriminatory policies and practices pursued in that country against ethnic and religious minorities, refugees and asylum-seekers, women and children.[6]

In this regard, it would be appropriate to refer to the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (June 2008), which make it clear that "[s]hould States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question".

Thus, the illustrative evidence of racial prejudices prevailing in the policy and practice of Armenia is the unconcealed conviction in "ethnic incompatibility" between Armenians and Azerbaijanis. This word combination has been first used in a speech at the Diplomatic Academy in Moscow in 2003 by the then President of Armenia Robert Kocharian.[7] The discriminatory conduct of Armenia towards Azerbaijanis, especially the aforementioned statement of of President Kocharian, has produced indignation within the international community. Thus, the then Secretary-General of the Council of Europe Walter Schwimmer said "Kocharian's comment was tantamount to warmongering" and manifestation of "bellicose and hate rhetoric", while the then President of the Parliamentary Assembly of the Council of Europe Peter Schieder stated that "since its creation the Council of Europe has never heard the phrase 'ethnic incompatibility".[8]

The rising of the contemporary phase of the conflict

While presenting its own interpretation of the chronology of events at that time, the Armenian side usually passes over in silence a number of important factual aspects pertaining to the real situation on the ground. Another

[1] For text, see To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials, pp. 152-153.

[2] National composition of the population of the USSR. According to the findings of the Ail-Union population census of 1989. (Moscow: Finance and Statistics, 1991), p. 120.

[3] UN Doc. A/63/78l-S/2009/156, p. 9, paras. 32-33.

[4] USSR Constitution (Moscow, 1936), p. 14, article 24; USSR Constitution (Moscow, 1977), pp. 13-14, article 87.

[5] Law of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Oblast", 16 June 1981 (Baku: Azeraeshr, 1987), p. 3, article 3.

[6] See, e.g., UN Docs. A/57/18, paras. 277, 278, 280, 282 and 283; CRC/C/15/Add.l 19, paras. 24, 32, 46 and 48; CCPR/C/79/Add.lOO, paras. 14, 15, 16 and 17; and E/C.12/1/Add.39, para. 10.

[7] Press article by Artur Terian published on 16 January 2003, <http://wvvvv. armenialiberty. org/armeniareport/report/en/2003/01/4B1EBB47-69C0-69C0-40AF-83DB-24E810DA88E4.aspSeeRFE/RL>.

[8] Council of Europe criticizes Armenian President, RFE/RL Newsline, 17 January 2003, <http://www.rferl.org/ content/article/1142847. html>.

illustration of such "forgetfulness" is the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy" circulated by the request of the Permanent Representative of Armenia as document A/63/78 l-S/2009/156.

Thus, the present-day stage of the Armenia-Azerbaijan conflict began at the end of 1987[1] with the attacks on the Azerbaijanis in Khankandi (during the Soviet period - Stepanakert) and Armenia resulting in a flood of Azerbaijani refugees and internally displaced persons.

On 20 February 1988, the representatives of the Armenian community at the session of the Soviet of People's Deputies of the NKAO adopted a resolution seeking the transfer of the NKAO from the Azerbaijan SSR to the Armenian SSR.[2]

On 22 February 1988, near the settlement of Asgaran on the Khankandi-Aghdam highway, the Armenians opened fire on a peaceful demonstration by the Azerbaijanis protesting against the above-mentioned decision of the Soviet of People's Deputies of the NKAO. Two Azerbaijani youths lost their lives in consequence, becoming the first victims of the conflict.

On 26-28 February 1988, twenty-six Armenians and Azerbaijanis were killed as a result of the disturbances in Sumgait. It is notable that one of the leading figures in these events was a certain Edward Grigorian, an Armenian and native of Sumgait, who was directly involved in the killings and violence against the Armenians and the pogroms in the Armenian neighborhoods. By decision of the Criminal Division of the Supreme Court of the Azerbaijan SSR dated 22 December 1989, Grigorian was sentenced to 12 years' imprisonment. The Court found Grigorian to be one of the organizers of unrest and massacres. Depositions by witnesses and victims show that he had a list of flats inhabited by the Armenians and, together with three other Armenians, called for reprisals against the Armenians, in which he took part personally. His victims (all Armenians) identified Grigorian as one of the organizers and active figures in the violence. In fact, events in Sumgait, being necessary to the Armenian leadership as a mean of launching an extensive anti-Azerbaijani campaign and justifying the ensuing aggressive actions against Azerbaijan, had been planned and prepared in advance. The events in Sumgait also could hardly be managed without outside powerful support. As The Times wrote, the KGB leadership tried "to weaken the Kremlin's authority and powerbase" and "organised acts of provocation, using genuine local dissatisfaction as a base, in cities across the Soviet Union, including Sumgait and Baku..."[3]

Following the aforementioned petition of 20 February 1988, a number of other declarations and decisions were taken by both the Armenian SSR and the local Armenians of the NKAO with the view of securing the unilateral secession of Nagorny Karabakh from Azerbaijan. [4]

Armenia's view is that "following the collapse of the USSR, on the territory of the former Azerbaijani SSR two States were formed: the Republic of Azerbaijan and the Republic of Nagorny Karabakh" (hereinafter - "NKR") and that "[t]he establishment of both States has similar legal basis", while the process by which the latter entity became "independent" reflected the right of self-determination.[5]

However, this approach is fundamentally flawed. On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of attempted unilateral secession of Nagorny Karabakh without Azerbaijan's consent was confirmed at the highest constitutional level. Azerbaijan did not so consent, so that the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the territory of Nagorny Karabakh. Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognized as having as the Azerbaijan SSR within the USSR.

The assertion of secession from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of territorial integrity, as discussed in the Report "On the Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the light of Armenia's Revisionist Claims" circulated by the request of Azerbaijan as the document of the United Nations General Assembly and the Security Council.[6]

Not only has Azerbaijan not consented to this secession (indeed it has constantly and continuously protested against it), but no state in the international community has recognized the "NKR" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.

It follows from the aforementioned that Armenia's claims as to the "independence " of Nagorny Karabakh are contrary to and unsustainable in international law.

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[1] According to Thomas de Waal, as early as in February 1986 one activist of the separatist movement, Muradian, traveled to Moscow from Yerevan "with a draft letter that he persuaded nine respected Soviet Armenian Communist Party members and scientists to sign" with the purpose of separation of Nagorn Karabakh from Azerbaijan and its annexation to Armenia, Black Garden: Armenia and Azerbaijan through Peace and War (New York University Press, New York and London, 2003), pp. 17-20.

[2] UN Doc. A/63/78 l-S/2009/156, pp. 9-10, para. 36.

[3] Vladimir Kryuchkov. Hardline Soviet Communist who became head of the KGB and led a failed plot to overthrow Mikhail Gorbachev, Times Online, 30 November 2007, http://www. timesonline. co.uk/tol/ commentyobituaries/article 2970324.ece>.

[4] For more information, see UN Doc. A/63/664-S/2008/823, p. 45, para. 152.

[5] UN Doc. A/63/78 l-S/2009/156, p. 11, para. 43.

[6] UN Doc. A/63/664/-S/2008/823.

Escalation of the conflict, its course and consequences

At the end of 1991 and the beginning of 1992 the conflict turned into a military phase. Taking advantage of the political instability as a result of the dissolution of the Soviet Union and internal squabbles in Azerbaijan, Armenia initiated with the external military assistance combat operations in Nagorny Karabakh.

The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics - an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets - occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun and its population was subjected to an unprecedented massacre. This bloody tragedy, which became known as the Khojaly genocide, involved the extermination or capture of the thousands of Azerbaijanis; the town was razed to the ground. Over the night from 25 to 26 February 1992 the Armenian armed forces with the help of the infantry guards regiment No. 366 of the former USSR, the personnel of which was composed mainly of the Armenians, implemented the seizure of Khojaly. The inhabitants of Khojaly that remained in the town before the tragic night tried to leave their houses after the beginning of the assault in the hope to find the way to the nearest place populated by the Azerbaijanis. But these plans have failed. Invaders destroyed Khojaly and with particular brutality implemented carnage over its peaceful population. As a result, 613 civilians were killed, including 106 women, 63 children and 70 elderly. Another 1,000 people were wounded and 1,275 taken hostage. To this day, 150 people from Khojaly remain missing.

As news and accounts of the atrocity surfaced, the level of brutality was revealed: atrocities by Armenian troops included scalping, beheading, bayoneting of pregnant women, and mutilation of bodies. Even children were not spared. The facts confirm that the intentional slaughter of the Khojaly town civilians on 25-26 February 1992 was directed to their mass extermination only because they were Azerbaijanis. The Khojaly town was chosen as a stage for further occupation and ethnic cleansing of Azerbaijani territories, striking terror into the hearts of people and creating panic and fear before the horrifying massacre.

In May 1992, Shusha, the Azerbaijani-populated administrative centre of the district within Nagorny Karabakh, and Lachyn, the district situated between Armenia and Nagorny Karabakh, were occupied. In 1993, the armed forces of Armenia captured another six districts of Azerbaijan around Nagorny Karabakh: Kalbajar (April 1993), Aghdam (July 1993), Jabrayil (August 1993), Gubadly (August 1993), Fuzuli (August 1993) and Zangilan (October 1993).

After the open assertion by Armenia in the late 1980s of its territorial claims on Azerbaijan and the launching of armed operations in the Nagorny Karabakh region of the Republic of Azerbaijan such well-known terrorist organizations as the Armenian Secret Army for the Liberation of Armenia (AS ALA), the Commandos of Justice of the Armenian Genocide, and the Armenian Revolutionary Army, transferred the centre of their activities from the countries of the Middle East, Western Europe and North America to the territory of the former USSR.

In all, as a result of terrorist acts against Azerbaijan carried out since the late 1980s by the Armenian secret service and some Armenian organizations closely connected with it, including criminal acts against road, rail, sea and air transport and ground communications, over 2,000 citizens of Azerbaijan have been killed, the majority of them women, the elderly and children.[1]

Furthermore, there are unquestionable facts testifying about the active use by Armenia of mercenaries to attack Azerbaijan.[2]

In sum, the ongoing armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan has resulted in the occupation of almost one-fifth of the territory of Azerbaijan and made approximately one out of every eight persons in the country an internally displaced person or refugee, 20,000 people were killed, 50,000 people were wounded or became invalids, about 5,000 citizens of Azerbaijan are still missing. It should be particularly emphasized that the Azerbaijani refugees and internally displaced persons were forced to flee because Armenia and its military forces had the clear aim of ethnic cleansing and of creating a mono-ethnic culture there.

On 12 May 1994, the ceasefire was established. However, Armenia continues to violate the truce. Since summer of 2003 there has been an acute increase in the Armenian side's violations of the ceasefire. In addition to shelling and killing Azerbaijani soldiers along the cease-fire line, Armenians also attack civilians residing in the adjacent territories.

The aggression against the Republic of Azerbaijan has severely damaged the socio-economic sphere of the country. In the occupied territories six cities, 12 town type villages, 830 settlements, and hundreds of hospitals and medical facilities were burned or otherwise destroyed. As a result of aggression, hundreds of thousands of houses and apartments and thousands of community and medical buildings were destroyed or looted. Hundreds of libraries have been plundered and millions of books and valuable manuscripts have been burned or otherwise destroyed. Several state theatres, hundreds of clubs and dozens of musical schools have been destroyed. Several thousands of

[1] For more information, see the Information provided by the Ministry of Foreign Affairs of Azerbaijan on the organization and implementation by Armenia of terrorist activities against Azerbaijan, Annex to the letter dated 13 November 1995 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/C. 6/50/4, 15 November 1995; Information provided by the Ministry of Foreign Affairs of Azerbaijan on measures to eliminate international terrorism, Annex to the note verbale dated 8 November 1996 from the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/C.6/51/5, 8 November 1996.

[2] For more information, see the Note by the Secretary-General entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", UN Doc. A/49/362, pp. 24-29, paras. 69-72.

manufacturing, agricultural and other kinds of factories and plants have been pillaged. The hundred kilometers-long irrigation system has been totally destroyed. Flocks of several hundreds of thousands of sheep and dozens of thousands of cattle have been driven out of the occupied territories to Armenia. About 70% of the summer pastures of Azerbaijan remains in the occupied zone.

The regional infrastructure including hundreds of bridges, hundreds of kilometers of roads and thousands kilometres of water pipelines, thousands kilometers of gas pipelines and dozens of gas distribution stations have been destroyed.

The war against Azerbaijan has also had catastrophic consequences for its cultural heritage both in the occupied territories and in Armenia.[1]

Contrary to the numerous statements of the official Yerevan that Armenia is not directly involved into the conflict with Azerbaijan and occupation of its territories and that "Nagorny Karabakh gained its independence according to the domestic and international legal norms" (document A/63/78 l-S/2009/156 is a yet another example of such misinterpretation), there are ample evidences testifying against such allegations and proving the direct military aggression of the Republic of Armenia against a sovereign state.[2] At the same time, "NKR" in its current manifestation is an illegal entity and its organs must also be so tainted. The area of Nagorny Karabakh and the surrounding occupied territories remain under the overall effective control of Armenia.

In reality, the actions of Armenia, up to and including the resort to force, constitute a violation of the fundamental norm of respect for the territorial integrity of states, as well as a violation of other relevant international legal principles, such as rule prohibiting the use of force.

The current situation in the occupied territories of Azerbaijan

It has been internationally recognized that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. The existence of and exclusive Armenian presence in the occupied territories is expressly recognized by the political organs of the United Nations, by the EU, the OSCE, the Council of Europe, and the Organization of the Islamic Conference, together with recognition by individual states. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions.

The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the USSR disintegrated and the new successor states came into being, thus transforming an internal conflict between the two Union Republics into an international conflict.

Taking advantage of the favorable results of military actions, Armenia is trying to consolidate the current status quo and impose finally a fait accompli situation through measures aimed at preventing the expelled Azerbaijani population from returning to their places of origin. Such measures include inter alia continuing illegal settlement practices and economic activities in the occupied territories accompanied by serious and systematic interference with property rights.

Sources, including Armenian ones, report on tens of thousands settlers, who have moved into the occupied territories of Azerbaijan, including districts adjacent to the Nagorny Karabakh region, such as Lachyn, Kalbajar, Zangilan and Jabrayil. Facts testify that this is being done in an organized manner with the purpose of annexation of these territories. In 2000, "the resettlement program" has been adopted which envisages the increase of the number of the population in the Nagorny Karabakh region to 300,000 by the year 2010.

Armenia continues to take purposeful measures to build up its military presence in the occupied territories of Azerbaijan. The arms control mechanism is not effective in the territories of Azerbaijan occupied by Armenia. Accumulation of a great number of armaments and ammunitions in these territories, which are beyond the international control, poses serious threats to regional peace and security.

Highly alarmed by the far-reaching implications of this activity, Azerbaijan has requested to address the situation in its occupied territories within the UN General Assembly. This initiative proceeded from the strong belief that the only way for reaching a just, complete and comprehensive settlement of the conflict between Armenia and Azerbaijan is an approach based on the full and unequivocal respect for the letter and spirit of international law.

On 29 October 2004, the UN General Assembly decided to include the item entitled "The situation in the occupied territories of Azerbaijan" to the agenda of its 59th session. On 11 November 2004, a report on the transfer of population into the occupied territories of Azerbaijan was submitted to the UN General Assembly.[3] The UN General

[1] For more information, see the report entitled The War against Azerbaijani Cultural Heritage, UN Doc. A/62/691-S/2008/95, 13 February 2008.

[2] See, e.g., the report entitled Military occupation of the territory of Azerbaijan: a legal appraisal, Annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/62/49l-S/2007/615,23 October 2007, pp. 5-8; UN Doc. A/63/662-S/2008/812, pp. 7-8, paras. 16-19; UN Doc. A/62/692-S/2007/51, pp. 6-10, paras. 17-33; Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny- Karabakh, para. 10 (UN Doc. S/25600, 14 April 1993); OSCE Office for Democratic Institutions and Human Rights, Republic of Armenia Presidential Election Observation, Final Report, p. 8 (Issued 9 April 1998); Crisis Group, Nagorno-Karabakh: Viewing the Conflict from the Ground, p. 9 (Europe Report No. 166, 14 September 2005); Letter from the Charge d'Affaires of the Permanent Mission of Azerbaijan to the UN Secretary-General (with annexed photocopies), UN Doc.
S/1994/147, 14 February 1994.

[3] Information on the transfer of population into the occupied territories of Azerbaijan, annex to the letter dated 11 November 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, UN Doc. A/59/568, 11

Assembly's consideration of this agenda item played a crucial role in attracting attention to the issue of the illegal transfer of settlers into the occupied territories of Azerbaijan, as well as in initiating urgent measures for putting an end to this dangerous practice.

A visit to the occupied territories of the OSCE Fact-Finding Mission from 30 January-5 February 2005 became a logical result of Azerbaijan's initiative to raise the issue on the situation in its occupied territories before the UN General Assembly. The main outcome of the mission's activity was the report based on comprehensive facts, both provided by Azerbaijan and obtained during study of the situation on the ground. The mission clearly confirmed settlement in the occupied territories, thus underlining the concerns of Azerbaijan. In their turn, the OSCE Minsk Group Co-Chairmen, proceeding from the conclusions contained in the Mission's report, have emphasized the inadmissibility of changes in the demographic composition of the region and urged appropriate international agencies to conduct needs assessment for resettlement of the population located in the occupied territories and return of the internally displaced persons to their places of permanent residence. The report and recommendations of the OSCE Minsk Group Co-Chairmen that were based on it, laid down a solid basis for further consideration and resolution of the problem.[1]

The issue of the situation in the occupied territories of Azerbaijan has been also included into the agenda of the subsequent sessions of the UN General Assembly.

On 7 September 2006, the UN General Assembly adopted resolution A/RES/60/285 entitled "The situation in the occupied territories of Azerbaijan" as proposed by Azerbaijan in regard to the incidents of massive fires taking place in the occupied territories.[2]

The resolution stresses the necessity of the urgent conduct of an environmental operation, calls for assessment of the short-term and long-term impact of the fires on the environment of the region and its rehabilitation. For these purposes, the resolution emphasizes the readiness of the parties to cooperate and calls upon the organizations and programs of the United Nations system, in particular the United Nations Environment Program to cooperate with the OSCE.

The OSCE Fact-Finding Mission carried out from 4 to 12 October 2006 assessed the short-term and long-term impact of the fires on the environment in the affected territories and confirmed inter alia that "the fires resulted in environmental and economic damages and threatened human health and security".[3]

On 14 March 2008, the UN General Assembly adopted at its 62nd session resolution A/RES/62/243 on the situation in the occupied territories of Azerbaijan. Seriously concerned that the armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, the UN General Assembly reaffirmed its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders, demanding the immediate, complete and unconditional withdrawal of all Armenian forces from all occupied territories of the Republic of Azerbaijan. The Assembly reaffirmed the inalienable right of the population expelled from the occupied territories to return to their homes. It has also recognized the necessity of providing normal, secure, and equal conditions of life for Armenian and Azerbaijani communities in the Nagorny Karabakh region of the Republic of Azerbaijan, which would allow to build up an effective democratic system of self-governance in this region within the Republic of Azerbaijan. The General Assembly also reaffirmed 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.

RESOLUTIONS OF THE UNITED NATIONS AND THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

UNITED NATIONS SECURITY COUNCIL RESOLUTION 822 (1993)
UNITED NATIONS SECURITY COUNCIL RESOLUTION 853 (1993)
UNITED NATIONS SECURITY COUNCIL RESOLUTION 874 (1993)
UNITED NATIONS SECURITY COUNCIL RESOLUTION 884 (1993)
UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 62/243 (2008)
PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE RESOLUTION 1416 (2005)

Security Council. Distr. General. s/res/822 (1993) 30 April 1993
RESOLUTION 822 (1993)

November 2004.

[1] Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Annex II: Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorny Karabakh, UN Doc. A/59/747-S/2005/187, 21 March 2005.

[2] Letter dated 28 July 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, transmitting a letter dated 28 July 2006 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the wide-scale fires in the occupied territories of Azerbaijan, UN Doc. A/60/963.

[3] Letter dated 20 December 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General. Annex: OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorny Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities. United Nations Document A/61/696.

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

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 Keibadjar 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 Keibadjar district of Azerbaijan, and to submit a further report to the Council;

5. Decides to remain actively seized of the matter.

Security Council. Distr. General. s/res/853 (1993) 29 April 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. Reguests 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. Reguests the Secretary-Ge1.eral, 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.

Security Council. Distr. General.

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; 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.

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.

GENERAL ASSEMBLY. Distr. General. 25 April 1993

Resolution adopted by the General Assembly
[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;

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

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE RESOLUTION 1416 (2005)

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

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.

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

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 cooperation 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.

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 cooperation 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 cooperation.

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.

Text adopted by the Assembly on 25 January 2005

REPORT ON THE LEGAL CONSEQUENCES OF THE ARMED AGGRESSION BY THE REPUBLIC OF ARMENIA AGAINST THE REPUBLIC OF AZERBAIJAN

General Assembly Security Council. Distr.: General 24 December 2008. Original: English
General Assembly Sixty-third session. Agenda items 13 and 18
Protracted conflicts in the GUAM area and their implications for international peace, security and development
The situation in the occupied territories of Azerbaijan
Security Council Sixty-third year

Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

On the instructions of my Government, I have the honour to transmit herewith the Report of the Legal Consequences of Armed Aggression by the Republic of Armenia against the Republic of Azerbaijan (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 13 and 18, and of the Security Council.

(Signed) Agshin Mehdiyev Ambassador Permanent Representative

Annex to the letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

REPORT ON THE LEGAL CONSEQUENCES OF THE ARMED AGGRESSION BY THE REPUBLIC OF ARMENIA AGAINST THE REPUBLIC OF AZERBAIJAN

I. Did the Republic of Armenia perpetrate an armed attack against the Republic of Azerbaijan in and around the Nagorny Karabakh region?

II. Can the Republic of Azerbaijan exercise a right of self-defence (under Article 51 of the UN Charter) against the Republic of Armenia at the present time?

A. International and Non-International Armed Conflicts

1. It is necessary to distinguish between events entailing use of force in and around the Nagorny Karabakh region of the Republic of Azerbaijan before and after the emergence of Armenia and Azerbaijan as sovereign States. The critical date in any analysis of the use of unlawful force between Armenia and Azerbaijan is that of their independence towards the end of 1991 (see infra 9). There was of course much use of force in and around Nagorny Karabakh in the time-frame between 1988 and 1991, but that happened while both Armenia and Azerbaijan still constituted integral parts of the USSR. Instances of the use of force in and around Nagorny Karabakh in the days of the Soviet Union shed light on subsequent events and put them in a proper historical perspective. However, these incidents - even when marked by intensity and scale - must be legally subsumed under the heading of a non-international armed conflict raging within the borders of a single sovereign State.

2. Naturally, from the viewpoint of the fighter (and the civilian victims) on the ground, the fact that the same bloodletting by the same armed groups within the same territory carries one legal tag (non-international armed conflict) until a certain date, and a different legal tag (international armed conflict) thereafter, may appear to be artificial and even perplexing. But, legally speaking, there is a profound disparity between non-international (intra-State) armed conflicts and international (inter-State) armed conflicts, since they are regulated by divergent sets of rules. Shortly after the Republics of Armenia and Azerbaijan became independent (see infra 9), the Nagorny Karabakh conflict underwent a major metamorphosis. When the newly established Republic of Armenia intervened militarily on behalf of ethnic-Armenian local inhabitants of Nagorny Karabakh, the conflict changed from a non-international (intra-State) armed conflict into an international (inter-State) armed conflict. Thus, from the moment of post-independence clash between the two newly established Republics - once the Republic of Armenia perpetrated an armed attack against the Republic of Azerbaijan (see infra 16) - the conflict shifted gear from one legal regime (governing non-international armed conflicts) to another (pertaining to international armed conflicts).

3. The law of armed conflict is divided miojus ad bellum pertaining to the legality of war (as well as cognate issues) and jus in hello regulating the means and methods of warfare (otherwise known as international humanitarian law (IHL)). As far as the international jus ad bellum is concerned, an unlawful use of force can only be unleashed by one sovereign State against another. The reason for that is quite simple. The Charter of the United Nations - while prohibiting the use (or threat) of force, whether or not it amounts to war (that is to say, interdicting also uses of force short of war) -addresses the issue exclusively in terms of inter-State force. Article 2(4) of the Charter proclaims: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".[1]

4.The linchpin of Article 2(4) is that the injunction against the (threat or) use of force relates to the "international relations" between Member States. There is no parallel prohibition - either in the Charter or anywhere

[1] Charter of the United Nations, 1945, 9 International Legislation 327, 332 (M.O.Hudson ed., 1950).

else in international law - banning recourse to force internally within the borders of a single State. Such intra-State force is always subjected to domestic regulation (in conformity with the national constitution and legislation in force), making the use of lawful force a monopoly of State instrumentalities. But internationally there is no jus ad bellum concerning non-international armed conflicts. International law does deal with multiple dimensions of jus in hello in the course of intra state conflicts,[1] but it leaves aside questions pertaining to the jus ad bellum in such conflicts.

B. The Thrust and Repercussions of Article 2(4) of the Charter

5. When it comes to inter-State conflicts, international law addresses not only a host of topics apposite to the jus in bello,[2] but also the crucial issue of the jus ad bellum. Article 2(4) (quoted supra 3) is the mainstay of thaty'ws ad bellum. In 1945, the provision of Article 2(4) was in several respects innovative: earlier there was only a renunciation of war as an instrument of national policy in the relations between Contracting Parties, and even that goes back only to the Kellogg-Briand Pact of 1928.[3] But, as underscored by the International Court of Justice (ICJ) in the Nicaragua Judgment of 1986, the norm enshrined in Article 2(4) can now be regarded as an embodiment of customary international law, and, as such, it obligates all States (whether or not they are Members of the United Nations).[4]

Moreover, the International Law Commission (ILC), in its commentary on the draft text of the 1969 Vienna Convention on the Law of Treaties, identified the Charter's prohibition of the use of inter-State force as "a conspicuous example" of jus cogens[5] The Commission's position was quoted with apparent approval by the ICJ in the Nicaragua case.[6] What this means is that any treaty colliding head-on with the prohibition of the use of force will be invalidated by virtue of Articles 53 or 64 of the Vienna Convention.[7] If that is not enough, Article 52 of the Vienna Convention, relating to coercion of a State, prescribes: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations".[8] Already in 1973, the ICJ held in the Fisheries Jurisdiction case: "There can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void".[9] It follows that that any treaty of cession, whereby an aggressor State purports to gain lawful title over a territory procured by unlawful force, is void ab initio.

7. Most scholars, when citing Article 2(4), accentuate the words "against the territorial integrity or political independence of any state" (see supra 3). Yet, it is necessary to bring to the fore the other limb in the same sentence: "or in any other manner inconsistent with the Purposes of the United Nations". The upshot is that the prohibition is comprehensive, embracing all categories of inter-State use of force in the "international relations" between UN Member States, unless exceptionally I permitted by the Charter. In the Nicaragua Judgment, the ICJ pronounced tout cours that Article 2(4) articulates the "principle of the prohibition of the use of force" in international relations.[10] The principle was presented by the Court in a non-restrictive, all-inclusive, fashion.

7. There are only two lawful exceptions to the UN Charter's broad ban on the use of inter-State force, and both are prescribed in the Charter itself.[11] One exception is enforcement action taken (or authorized) by the Security Council in keeping with the powers vested in it under Chapter VII (and VIII) of the Charter (Articles 39 et seq.)[12] (see infra 55 et seq.). The other exception to the prohibition of the use of inter-State force relates to the exercise of the right of self-defence (Article 51) (see infra 12).

C. The Status of Nagorny Karabakh as Part of the Territory of the Republic of Azerbaijan

9.The occupation by force of Nagorny Karabakh and its surrounding areas constitutes a flagrant breach by the Republic of Armenia of the "territorial integrity" of the Republic of Azerbaijan. The Republics of Armenia and Azerbaijan broke away from the USSR in September-October 1991. There is no question about their independent existence at least as from 8 December 1991, at which date a formal declaration was made at Minsk by Russia, Ukraine and Belarus that "the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists"[13]. Almost from their very inception, the Republics of Armenia and Azerbaijan committed themselves - like other Parties to the Alma Ata Declaration of 21 December 1991 - to: "Recognizing and respecting each other's

[1] See, especially, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents at 775 (D.Schindler and J.Toman eds., 4th ed., 2004).

[2] See, especially, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, The Laws of Armed Conflicts, supra note 2, at 711.

[3] General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact of Paris), 1928, 94 League of Nations Treaty Series 57, 63.

[4] Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits), [1986] Reports of the International Court of Justice 14, 99-100.

[5] Report of the International Law Commission to the General Assembly, 18th Session, [1966] II Yearbook of the International Law Commission 172, 247.

[6] Nicaragua case, supra note 5, at 100.

[7] Vienna Convention on the Law of Treaties, 1969, [1969] United Nations Juridical Yearbook 140, 154.

[8] Ibid., 153.

[9] Fisheries Jurisdiction case (Jurisdiction of the Court) (UK v. Iceland), [1973] Reports of the International Court of Justice 3, 14.

[10] Nicaragua case, supra note 5, at 100.

[11] The existence of these two exceptions is confirmed by the ICJ in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, [1996] Reports of the International Court of Justice 226, 244.

[12] Charter of the United Nations, supra note 1, at 343 ff.

[13] Minsk Agreement, 1991, 31 International Legal Materials 143, id. (1992).

territorial integrity and the inviolability of existing borders".[1] The 1993 Charter of the Commonwealth of Independent Independent States (CIS) (to which they both belong) stresses, in Article 3, the principle of "inviolability of state frontiers, recognition of existing frontiers and renouncement of illegal acquisition of territories".[2] Indubitably, a firm stand was taken by all the newly independent Republics of the CIS, to retain their former administrative (intra-State) borders as their inter-State frontiers following the dissolution of the USSR.[3]

10. The Security Council explicitly referred in Resolution 884 (1993) to "the conflict in and around the Nagomy Karabakh region of the Azerbaijani Republic", while "Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region", as well as "the inviolability of international borders".[4] Similar language had been used earlier, especially in Resolution 853 (1993).[5] General Assembly Resolution 62/243 of of 14 March 2008 is phrased along the same lines: "Reaffirms continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders". [6]

11. These undertakings and resolutions are entirely in harmony with the general legal principle of uti possidetis: "after achieving independence existing delimitations acquire the protection of international law and any changes must be achieved peacefully without the use or threat of force".[7] The obligation to settle international disputes amicably is embedded in Article 2(3) of the UN Charter: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".[8] Article 2(3) and Article 2(4) - two consecutive paragraphs in the same provision of the Charter - must be read together: when a dispute between States arises, the use of force is not a legally viable option (Article 2(4)), and the Parties are bound to settle their differences peacefully (Article 2(3)). If - immediately after independence - the Republic of Armenia wished to challenge the sovereignty of the Republic of Azerbaijan over Nagorny Karabakh, it should have done that by peaceful means instead of resorting to force.

D. Article 51 of the Charter

12. Article 51 of the UN Charter promulgates: '"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".[9] In the Nicaragua Judgment, the ICJ construed the expression "inherent right" appearing in Article 51 as a reference to customary international law.[10] According to the Court, the framers of the Charter thereby acknowledged that self-defence was a pre-existing right of a customary nature, which they desired preserve (at least in essence).[11]

13. The exercise of the right of self-defence is permitted in Article 51 only in response to an armed attack. It ought to be accentuated that the drafters of the Charter deliberately used different language in pari materia in three key clauses:

(i) Article 2(4) (quoted supra 3) - stating the overall prohibition - adverts to "the threat or use of force".

(ii) Article 39 (quoted infra 56) - setting forth the powers of the Security Council - alludes to "any threat to the peace, breach of the peace, or act of aggression".[12]

(iii) Article 51 (quoted supra 12) - whereby the exercise of the right of self-defence is admissible - coins the phrase "armed attack" (which is not to be confused with the definition of attacks employed in the context of hostilities within the purview of the jus in bello).[13]

Plainly, both Articles 2(4) and 39 cover not only actual use of force but also mere threats. Conversely, Article 51 does not mention threats. The exceptional resort to self-defence is contingent on the occurrence of an "armed attack", which is rendered in French as "agression armee", i.e., armed aggression.

14. Since Article 2(4) forbids in generic terms "the threat or use of force", and Article 51 allows taking self-defence measures specifically against an "armed attack", a gap is discernible between the two stipulations.[14] Even if one glosses over mere threats of force, it is evident that not every unlawful use of force constitutes an armed attack. For an unlawful use of force to acquire the dimensions of an armed attack, a minimal threshold has to be reached. Solely an armed attack - as distinct from any use of force that is below that threshold - justifies self-defence in response. In a Resolution on Self-Defence, adopted by the Institut de Droit International in Santiago de Chile in 2007,

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[1] Alma Ata Declaration, 1991, 31 International Legal Materials 147, 148 (1992).
[2] Charter of the Commonwealth of Independent States, 1993, 34 International Legal Materials 1279, 1283 (1995).
[3] See S.R.Ratner, "Drawing a Better Line: Uti Possidetis and the Borders of New States", 90 American Journal of International Law 590, 597 (1996).
[4] Security Council Resolution 884 (1993), 48 Resolutions and Decisions of the Security Council 73, id. (1993).
[5] Security Council Resolution 853 (1993), 48 Resolutions and Decisions of the Security Council 71, id. (1993).
[6] General Assembly Resolution 62/243, Article 1(14 March 2008).
[7] R.Mullerson, "The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia", 42 International and Comparative Law Quarterly A12>, 486 (1993).
[8] Charter of the United Nations, supra note 1, at 332.
[9] Charter of the United Nations, supra note 1, at 346.
[10] Nicaragua case, supra note 5, at 94.
[11] Ibid.
[12] Charter of the United Nations, supra note 1, at 343.
[13] For the latter, see N.Melzer, Targeted Killing in Internationl Law 270 (2008).
[14] See A.Randelzhofer, "Article 51", 1 The Charter of the United Nations: A Commentary 788, 790 (B.Simma ed., 2nd ed., 2002).

it is stated: "An armed attack triggering the right of self-defence must be of a certain degree of gravity. Acts involving the use of force of lesser intensity may give rise to countermeasures in conformity with international law".[1]

15.There is no authoritative definition of an armed attack. Nonetheless, in 1974 the General Assembly adopted by consensus a Definition of Aggression, which is practically confined to armed aggression,[2] namely, the equivalent of an armed attack (see supra 13). The most egregious manifestations of aggression are listed in Article 3(a) and (b):

"(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".[3]

Undeniably, invasion or attacks by the armed forces of a foreign State, military occupation and bombardment - the highlights of Article 3(a)-(b) of the Definition - constitute armed attacks, triggering the right of self-defence in accordance with Article 51 and customary international law.[4] As far as invasion is concerned, this is strongly supported by the Separate Opinion of Judge Simma in the Congo/Uganda Armed Activities case of 2005.[5] As for occupation: "When territory has been occupied illegally, the use of force to retake it will be a lawful exercise of the right of self-defence".[6]

16.The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics - an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets - occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun.[7] Direct artillery bombardment of the Azerbaijani town of Lachin - mounted from within the territory of the Republic of Armenia - took place in May of that year.[8]

17. Armenian attacks against areas within the Republic of Azerbaijan were resumed in 1993, eliciting a series of four Security Council resolutions. It is noteworthy that in the first of these texts, Resolution 822 (adopted on 30 April 1993), the Security Council used the explicit term "invasion" in describing the attack against "the Kelbadjar district of the Republic of Azerbaijan" (although this was attributed to "local Armenian forces", see infra 18)[9]. The Security Council then condemned, in Resolution 853 (adopted on 29 July 1993), "the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic".[10] In Resolution 874 (adopted on 14 October 1993), the Council called for "withdrawal of forces from recently occupied territories"[11] And in Resolution 884 (adopted on 13 November 1993), the Council condemned "the occupation of the Zangelan district and the city of Goradiz".[12] In Resolution 62/243 of 2008, the General Assembly "Demands the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan".[13]

18. It is true that, in 1993, the Security Council was under the impression that there was, e.g., an "invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces" (Resolution 822).[14] In Resolution 884, the Council even called "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 earlier resolutions.[15] Yet, already in 1993, the UN Secretary-General stated to the Security Council: "Reports of the use of heavy weaponry, such as T-72 tanks, Mi-24 helicopter gunships and advanced fixed wing aircraft are particularly disturbing and would seem to indicate the involvement of more than local ethnic forces".[16] Moreover, in the meantime, the Republic of Azerbaijan acquired on the ground - in early 1994 - irrefutable evidence (including military ID cards of Armenian servicemen, operational maps, and signed statements by captured personnel), confirming the participation in the hostilities within the territory of Azerbaijan of regular units of the armed forces of the Republic of Armenia, e.g., Motor-Rifle Regiment No. 555.[17]

19. The occupation of Nagorny Karabakh and surrounding areas, resulting from the invasion of the Republic

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[1] Institut de Droit International, Resolution on Self-Defence, Article 5 (Santiago de Chile, 2007). [30] See Article 1 of the Definition of Aggression, General Assembly Resolution 3314 (XXIX), 29(1) Resolutions of the General Assembly 142, 143 (1974).

[2] See Article 1 of the Definition of Aggression, General Assembly Resolution 3314 (XXIX), 29(1) Resolutions of the General Assembly 142,143, 1974).

[3] Ibid.

[4] See K.C.Kenny, "Self-Defence", 2 United Nations: Law, Policies and Practice 1162, 1164 (R. Wolfram ed., 1995).

[5] Case Concerning Armed Activities on the Territory of the Congo (Congo v. Uganda) (International Court of Justice, 2005), 45 International Legal Materials 271, 369 (2006).

[6] A. Aust, Handbook of International Law 229 (2005).

[7] See T. de Waal, Black Garden: Armenia and Azerbaijan through Peace and War 170 (2003).

[8] See Statement by the Ministry of Foreign Affairs of the Republic of Azerbaijan, annexed to a Letter from the Permanent Representative of Azerbaijan to the President of the Security Council (Doc. S/23926, 14 May 1992).

[9] Security Council Resolution 822 (1993), 48 Resolutions and Decisions of the Security Council 70, id. (1993).

[10] Security Council Resolution 853 (1993), supra note 19, at 71.

[11] Security Council Resolution 874 (1993), 48 Resolutions and Decisions of the Security Council 72, 73 (1993).

[12] Security Council Resolution 884 (1993), supra note 18, at 73.

[13]General Assembly Resolution 62/43, supra note 20, Article 2.

[14] Security Council Resolution 822 (1993), supra note 37, at 70.

[15] Security Council Resolution 884 (1993), supra note 18, at 73.

[16] Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny-Karabakh, para.10 (Doc. S/25600, 14 April 1993).

[17] The evidence is presented in a Letter from the Charge d'Affaires of the Permanent Mission of Azerbaijan to the UN Secretary-General (with annexed photocopies) (Doc. S/1994/147, 14 February 1994).

of Azerbaijan by the Republic of Armenia, has remained in place until the present day. In all, approximately 20% of the entire territory of the Republic of Azerbaijan is currently occupied by armed forces of the Republic of Armenia. The deployment in 1998 of Armenian soldiers to the Kelbadjar district of the Republic of Azerbaijan (the specific subject of Security Council Resolution 822) was attested, for example, by the Final Report of the OSCE Observers of the Presidential Election in the Republic of Armenia.[1] The presence of Armenian conscripts in the Nagorny Karabakh region - as late as 2005 - is confirmed in a Crisis Group report on Nagorny Karabakh.[2]

20. When an armed attack occurs - through invasion or attacks by the armed forces of a foreign State, occupation and bombardment - the right of self-defence solidifies once and for all. This is important to keep in mind when successive rounds of fighting (punctuated by cease-fires) take place in the course of the same international armed conflict. It is wrong to appraise each round of combat as if it were a separate armed conflict (with a separate armed attack and a separate response by way of self-defence). The commission of the original armed attack must be considered to be the defining moment. Any acts taken thereafter by the victim of the armed attack must be seen as falling within the general scope of the exercise of the same right of self-defence, in response to the same armed attack. "The exception of self-defence, ... if accepted as valid, would legalize once and for all the initiatives taken to repulse the adversary by the State making it".[3]

E. Conditions Not Mentioned in Article 51

21. In the Nicaragua case, the ICJ enunciated that Article 51 "does not contain any specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law".[4] In its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Court – quoting these words - added that "[t]he submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law", but "[t]his dual condition applies equally to Article 51 of the Charter, whatever the means of force employed".[5] The two conditions of necessity and proportionality were reaffirmed by the ICJ in its Judgments in the 2003 Oil Platforms case,[6] and in the 2005 Armed Activities case.[7]

22. A discussion of the issue of proportionality in the setting of the Nagorny Karabakh conflict is premature at the present juncture. A proper analysis of proportionality depends on the form in which any hypothetical resumption of self-defence by the Republic of Azerbaijan (see infra 24) is actually manifested (if at all) in the future. In particular, this will be determined by the nature, scope and scale of such recourse to counter-force by the Republic of Azerbaijan against the Republic of Armenia, if and when it occurs.

23. As for necessity, the principal point is that "force should not be considered necessary until peaceful measures have been found wanting or when they clearly would be futile".[8] For more than 15 years, the Republic of Azerbaijan has made efforts in good faith to resolve the Nagorny Karabakh conflict peacefully. There were direct negotiations conducted on various rungs of the political ladder -including the Presidential level - between the Republic of Azerbaijan and the Republic of Armenia. Additionally, there has been mediation under the aegis of the Organization for Security and

Cooperation in Europe (OSCE) [originally, Conference for Security and Cooperation in Europ (CSCE)], the so-called Minsk Process. Regrettably, the many years of expanded energy (not leas since 1994, by the Co-Chairmen of the Minsk Group) have not produced any tangible results. Surer* after more than a decade and a half of fruitless negotiations and mediation - which have merely lei the Republic of Armenia in occupation of NK and surrounding areas - the Republic of Azerbaijan i entitled to draw a line in the sand: the condition of necessity has certainly been satisfied, indee-exhausted.

24. Immediacy has not been recognized by the ICJ as a condition to the exercise of the right o self-defence. By contrast, some scholars[9] believe that it is. All the same, immediacy does not presen any real difficulty to the Republic of Azerbaijan in the present case, taking the view that, "althougl immediacy serves as a core element of self-defence, it must be interpreted reasonably".[10] Mon specifically, the main factors here are:

(i) Time consumed by negotiations (designed to satisfy the condition of necessity) does not count.

(ii) The Republic of Azerbaijan actually commenced to exercise its right of self-defence as early a: the summer of 1992 (shortly after the onset of the armed attack by the Republic of Armenia anc without any undue time-lag). The fact that fighting was later suspended through acceptance of c cease-fire (infra 26) means that what is at balance today is not an initial invocation but a resumptior of the exercise of the right of self-defence.

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[1] OSCE, Office for Democratic Institutions and Human Rights, Republic of Armenia Presidential Election Observation, Final Report, page 8 (Issued 9 April 1998).

[2] Crisis Group, Nagorno-Karabakh: Viewing the Conflict from the Ground at p. 9 (Europe Report No. 166, 14 September 2005).

[3] See J.Combacau, "The Exception of Self-Dcfence in U.N. Practice", The Current Legal Regulation of the Use of Force 9,21(A.Casseseed., 1986).

[4] Nicaragua case, supra note 5, at 94.

[5] Advisor)' Opinion on the Legality of the Threat or Use of Nuclear Weapons, supra note 12, at 245.

[6] Case Concerning Oil Platforms (Iran v. United States) (International Court of Justice, 2003), 42 International Legal Materials 1334, 1361-1362 (2003).

[7] Case Concerning Armed Activities on the Territory of the Congo, supra note 33, at 306.

[8] O.Schachter, "The Right of States to Use Armed Force", 82 Michigan Law Review 1620, 1635 (1984).

[9] See, e.g., Y.Dinstein, War, Aggression andSelf-Defence 210 (4th ed., 2005); Akehurst's Modern Introduction to International Law 316 (P. Malanczuk ed., 7* ed., 1997).

[10] T.D.Gill, "The Temporal Dimension of Self-Defence: Anticipation, Pre-emption, Prevention and Immediacy", 11 Journal of Conflict & Security Law 361, 369 (2006).

(iii) In any event, when an armed attack produces continuous effects (through occupation) - and ir the time that lapsed since the start of the armed attack the victim does not sleep on its rights, but keeps pressing ahead with (barren) attempts to resolve the conflict amicably - the right of self-defence is kept intact, despite the long period intervening between the genesis of the use of (unlawful) force and the ultimate (lawful) stage of recourse to counter-force. The Republic of Azerbaijan - as the victim ol an armed attack - retains its right of self-defence, and can resume exercising it as soon as it becomes readily apparent that prolonging the negotiations is an exercise in futility.

25.The duration of the right of self-defence is determined by the armed attack. "As long as the attack lasts, the victim State is entitled to react".[1]By responding to the continued armed attack by Armenia, Azerbaijan will not be responding to an event that occurred in the early 1990s. It will be responding tc a present reality.

F. Cease-Fire

26.As mentioned (supra 24), the right of self-defence in the Nagorny Karabakh conflict was invoked by the Republic of Azerbaijan from the very beginning (1992), although the Republic of Azerbaijan failed at the time in its attempts to repel the Armenian armed attack. In the four resolutions, adopted in 1993 by the Security Council, the Council first demanded a cease-fire (in Resolutions 822 and 853), then called upon the Parties to make effective and permanent a cease-fire established between them (Resolution 874), and also condemned resumption of hostilities in violation of the cease-fire (Resolution 884).[2] A fragile cease-fire was finally put in place in May 1994. Yet, sporadic violations of the cease-fire have been perpetrated by the armed forces of the Republic of Armenia, along the Line of Contact (LOC), especially since 2003.

27. Fifteen-years old cease-fire calls by the Security Council are, of course, scarcely relevant to the present circumstances. Cease-fires, by their very nature, are no more than interludes. Indeed, it must not be forgotten that a prolonged cease-fire - in freezing lines extant at the moment when hostilities were suspended - plays into the hands of an aggressor State that gained ground through its armed attack. "In circumstances where the aggressor state has acquired control over territory pertaining prima facie to the defending state, a cease-fire would tend to entrench positions of control, and recovery through negotiations may prove a difficult, if not an impossible task".[3] A cease-fire, fire, even when long-standing, is not meant to last forever qua cease-fire. A cease-fire is merely supposed to be a springboard for diplomatic action: to provide "a breathing space for the negotiation of more lasting agreements".[4] This This is precisely what the Republic of Azerbaijan has been striving to accomplish all these years. But, once the Republic of Azerbaijan arrives at the firm conclusion that a peaceful settlement - based on withdrawal by the Republic of Armenia from Nagorny Karabakh and surrounding areas - is unattainable, it is entitled to terminate the cease-fire and resume the exercise of self-defence.

28. Evidently, the Republic of Armenia may still forestall such developments by putting a prompt end to the occupation of Nagorny Karabakh and surrounding areas. Should the Republic of Armenia do this while the cease-fire lasts, and before the Republic of Azerbaijan opts to re-invoke its right of self-defence, there would be no ground for any actual resumption of hostilities. Irrespective of a prognosticated Armenian withdrawal, the Parties to the conflict would still have to resolve outstanding issues of State responsibility. But, if the Armenian occupation of Nagorny Karabakh and surrounding areas were to be terminated, any reason for the use of counter-force by the Republic of Azerbaijan against the Republic of Armenia will have disappeared.

G Military Intervention by Third States

29.Since (in the early days of the Nagorny Karabakh conflict) threats of military intervention seem to have been made by third States on behalf of both the Republic of Armenia and the Republic of

Azerbaijan,[5] it is appropriate to consider the legal implications of such a potential intervention. Whet one posits posits an armed attack committed by the Republic of Armenia against the Republic of Azerbaijai (see supra 16-19, infra 47), the rules of international law are as follows:

(i) Third States are forbidden by international law to intervene militarily in favour of the Republic-of Armenia against the Republic of Azerbaijan. Any such military intervention (in support of a State which has mounted an armed attack against another State) will itself be deemed an armed attack against the Republic of Azerbaijan.

(ii) By contrast, in conformity with Article 51 of the Charter (quoted supra 12), the right oil self-defence can be exercised "collective"ly by any third State. What this means is that (as stated by the ICJ in the Nicaragua case):

"for one State to use force against another, on the ground that that State has committed a wrongful act of force against a third State, is regarded as lawful, by way of exception, only when the wrongful act provoking the response was an armed attack".[6]

And the corollary: "States do not have a right of 'collective' armed response to acts which do not constitute an 'armed attack'".[7]

So, since an armed attack was committed by the Republic of Armenia against the Republic ofl Azerbaijan, a

[1] N.Ronzitti, "The Expanding Law of Self-Defence", 11 Journal of Conflict & Security Law 343, 352 (2006).
[2] Security Council Resolution 822 (1993), supra note 37, at 70; Security Council Resolution 853 (1993), supra note 19, at 71; Security Council Resolution 874 (1993), supra note 39, at Security Council Resolution 884 (1993), supra note 18, at 73.
[3] K.H.Kaikobad, "'Jus ad Bellum': Legal Implications of the Iran-Iraq War", The Gulf War of 1980-1988 51, 64-65 (I.F.Dekker and H.H.G.Post eds., 1992).
[4] S.D.Bailey, "Cease-Fires, Truces, and Armistices in the Practice of the UN Security Council", 71 American Journal of International Law 461, 469 (1977).
[5] See N. Stiirchler, The Threat of Force in International Law 305 (2007).
[6] Nicaragua case, supra note 5, at 104.
[7] Ibid., 110.

third State can exercise its own right of (collective) self-defence against the Republic ofl Armenia (and only against the Republic of Armenia).

30. Nevertheless, the ICJ held: "There is no rule in customary international law permitting another State to exercise the right of collective self-defence on the basis of its own assessment of the situation. Where collective self-defence is invoked, it is to be expected that the State for whose benefit this right is used will have declared itself to be the victim of an armed attack".[1]

Furthermore, according to the ICJ, a request for help from a third State has to be extended by direct victim of the armed attack: in the absence of such a request, collective self-defence by the tl State is excluded.[2] In the Oil Platforms case, the Court reiterated this requirement of a request t has to be made to the third State by the direct victim of the armed attack.[3]

31. In his Dissenting Opinion in the Nicaragua case, Judge Jennings doubted whether the prerequisite of "some sort of formal declaration and request" by the direct victim of the armed attack (a declaration that it is under an armed attack and a request for assistance) is realistic in all instances.[4] Judge Jennings conceded: "Obviously the notion of collective self-defence is open to abuse and it is necessary to ensure that it is not employable as a mere cover for aggression disguised as protection".[5]

32. One thing is clear: if a third State sends troops into the territory of the direct victim of the armed attack (in this case, the Republic of Azerbaijan), uninvited yet allegedly in order to offer military assistance against the armed attack underway by the attacking State (the Republic of Armenia), this will be viewed as another armed attack against the Republic of Azerbaijan, this time by the third State. No matter what the real intentions of the third State are, it is not entitled to dispatch troops into the territory of the Republic of Azerbaijan without the latter's consent. On the contrary, the third State does have the right to take forcible action against the Republic of Armenia, in response to its armed attack against the Republic of Azerbaijan, in exercise of the collective right of self-defence conferred directly on the third State by both Article 51 and customary international law. Still, the third State can proceed into action against the Republic of Armenia only in a manner consistent with the sovereign rights of the Republic of Azerbaijan. Differently put, the collective right of self-defence of the third State against the Republic of Armenia must be exercised without infringing upon the rights of the Republic of Azerbaijan.

III. What are the conditions under which individuals in Nagorny Karabakh may be held to have acted as de facto organs of the Republic of Armenia?

33. The armed attack by the Republic of Armenia against the Republic of Azerbaijan is not limited to straightforward military action by regular armed forces (taking the shape of a direct invasion or attacks by such forces, occupation and bombardment; see supra 15). An armed attack can as well ensue in two indirect ways:

(i) The cross-border launch of armed bands or irregular troops by and from one State against another.

(ii) The use of de facto organs of the attacking State.

Both of these indirect types of forcible intervention play important roles in the armed attack by the Republic of Armenia against the Republic of Azerbaijan.

A. Armed Bands

34. In the Nicaragua case, the ICJ pronounced that "it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border", but also the dispatch of armed bands or "irregulars" into the territory of another State.[6] The Court quoted Article 3(g) of the General Assembly consensus Definition of Aggression:

"(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".[7]

The ICJ specifically took paragraph (g) of Article 3 "to reflect customary international law".[8] In the yost-Nicaragua period, ICJ again has come back to rely on Article 3(g) in the Armed Activities case.[9] Interestingly, so far, Article 3(g) is the only clause of the Definition of Aggression expressly held by the ICJ to mirror customary international law.

35. It may be observed that, under the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations - adopted by consensus by the General Assembly in 1970 and generally regarded as an expression of customary international law - "every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands ... for incursion into the territory of j another State".[10]

36. The Judgment of the ICJ in the Nicaragua case adhered to the view that, "while the concept of an armed attack includes the dispatch by one State of armed bands into the territory of another State, the supply of arms and

[1] Ibid., 104.
[2] Ibid; 105.
[3] Case Concerning Oil Platforms, supra note 51, at 1355.
[4] Nicaragua case, supra note 5, at 544-545.
[5] Ibid.,544.
[6] Ibid., 103.
[7] General Assembly Resolution 3314 (XXIX), supra note 30, at 143.
[8] Nicaragua case, supra note 5, at 103.
[9] Case Concerning Armed Activities on the Territory of the Congo, supra note 33, at 306.
[10] General Assembly Resolution 2625 (XXV), 25 Resolutions of the General Assembly 121,123 (1970).

other support to such bands cannot be equated with armed attack".[1] The ICJ did "not believe" that "assistance to rebels rebels in the form of the provision of weapons or logistical or other support" rates as an armed attack.[2] These are much criticized sweeping statements. In his Dissenting Opinion, Judge Jennings expressed the view that, whereas "the mere provision of arms cannot be said to amount to an armed attack", it may qualify as such when coupled with "logistical or other support"'.[3] In another dissent, Judge Schwebel emphasized the words "substantial involvement therein" (appearing in Article 3(g) of the Definition of Aggression), which are incompatible with the language used by the majority.[4]

B. "Auxiliaries" and Paramilitaries

37.Incontestably, numerous attacks against the Republic of Azerbaijan were mounted by ethnic Armenian inhabitants of Nagorny Karabakh. Since Nagorny Karabakh has become an occupied territory, it is necessary to note the position taken by the ICJ in the 2004 Advisory Opinion on the Wall. The ICJ held there that Article 51 has no relevance to attacks originating within occupied territories, adding however the caveat that no claim has been made in the Wall proceedings that the attacks "are imputable to a foreign State".[5] In light of binding resolutions of the Security Council, adopted in the wake of the outrage of 9 September 2001, a number of Judges took exception to the legal assessment that an armed attack cannot be committed by non-State actors. [6]Without getting into that issue, it is important to emphasize the undisputed caveat. In the Nagorny Karabakh conflict, the argument of the Republic of Azerbaijan rests on the foundation that the attacks "are imputable to a foreign State", namely, that they can be attributed to the Republic of Armenia. Attributability and imputability are synonymous terms in international law.[7]

38. It is a well-known phenomenon in the international domain that the de jure organs of a State "supplement their own action by recruiting or instigating private persons or groups to act as 'auxiliaries' while remaining outside the official structure of the State", such "auxiliaries" being instructed to carry out particular "missions" in and against neighbouring countries.[8] Accordingly, when paramilitary persons or groups (militias or armed bands) perpetrate hostile acts against a local State, a paramount question is whether the actors conducted themselves as "auxiliaries" of a foreign State, in which case their acts can be attributed to the foreign State as acts of State. It must be underscored that the actors do not have to belong de jure to the foreign State's governmental apparatus, since they may be considered its de facto organs.

39. In the Nicaragua Judgment, it was categorically stated that - when the "degree of dependence on the one side and control on the other" warrant it - the hostile acts of paramilitaries can be classified as acts of organs of the foreign State.[9] Yet, the ICJ held that it is not enough to have "general control by the respondent State over a force with with a high degree of dependency on it", because that does not mean that the State concerned "directed or enforced the perpetration" of breaches of international law.[10] "For this conduct to give rise to legal responsibility" of the State in question, "it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed".[11]

40. The insistence on "effective control" by the foreign State over the local paramilitaries makes a lot of sense. Nevertheless, the proposition that "general control" does not amount to "effective control" -and that a close operational control is a conditio sine qua non - is, to say the least, debatable. In 1999, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY), in the Iodic case, sharply assailed the Nicaragua prerequisite of close operational control - as an absolute condition of "effective control" - maintaining that it is inconsonant with both logic and law.[12] The ICTY Appeals Chamber said:

"control by a State over subordinate armed forces or militias or paramilitary units may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation. Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by

[1] Nicaragua case, supra note 5, at 126-127.
[2] Ibid., 104
[3] Ibid.,543.
[4] Ibid., 349.
[5]Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004, 43 International Legal Materials 1009, 1050 (2004).
[6] See (Dissenting) Declaration by Judge Buergenthal (ibid., 1079) and Separate Opinions by Judges Higgins and Kooijmans (ibid., 1063,1072).
[7] See Starke's International Law 176 (LA. Shearer ed., 11th ed., 1994).
[8] Report of the International Law Commission, 53rd Session (2001), General Assembly Doc. A/56/10, at 43, 104.
[9] Nicaragua case, supra note 5, at 62. P
[10] Ibid., 64.
[11] Ibid., 65.
[12] Prosecutor v. Tadic, Judgment, ICTY Appeals Chamber, 1999, 38 International Legal Materials 1518, 1540-1545 (1999).

the controlling State concerning the commission of each of those acts".[1]

The ICTY Appeals Chamber added: "Where the controlling State in question is an adjacent State with territorial ambitions on the State where the conflict is taking place, and the controlling State is attempting to achieve its territorial enlargement through the armed forces which it controls, it may be easier to establish the threshold".[2]

The Tadic conclusion is that paramilitaries can act quite autonomously and still remain de facto organs under the overall control of the foreign State. The doctrine of overall control has been consistently upheld in successive ICTY judgments (both at the Trial and the Appeal levels) following the Tadic case.[3]

41. Notwithstanding the disagreement between the ICJ and the ICTY, it has to be appreciated that -even when setting the higher bar of close operational control - the ICJ took it for granted that, under certain circumstances, acts performed by paramilitaries can become acts of a foreign State. In the 2005 Armed Activities case, the ICJ regarded the attributability of an armed attack to a foreign State as the acid test.[4] What has to be considered, according to the Judgment, is whether conduct was carried out "on the instructions of, or under the direction or control of, a given State.[5] The phrase quoted is borrowed from Article 8 of the ILC 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts, which reads:

"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct".[6]

42. Interestingly enough, in its commentary on Article 8 of the Draft Articles, the ILC relied on the "effective control" test in Nicaragua Judgment (which it quoted at some length) and linked the phrase "under the direction or control of to the ICJ's notion of "control".[7] We have here a double mirror: the ILC reflects the ICJ's terminology, and then the ICJ quotes the ILC.

43. The ILC was fully cognizant of the dissonance between the approaches taken by the ICJ and the ICTY. On the one hand, it seems to have fully endorsed the ICJ line by stating: "Such conduct will be attributable to the State only if it directed or controlled the specific operation", as distinct from conduct "which escaped from the State's direction or control".[8] The reference to direction or control of a specific conduct, rather than the general or overall direction or control, is the telling point.[9] On the other hand, the ILC attempted to span the gap between the two conflicting schools of thought. First, it pointed out that the ICTY spoke in connection with individual criminal responsibility for breaches of IHL, whereas the ICJ dealt with a non-criminal case relating to State responsibility.[10] Secondly, the ILC stressed[11] a dictum from the Tadic Judgment that ultimately everything depended on the "degree of control", which may "vary according to the factual circumstances of each case", so that the Nicaragua "high threshold for the test of control" will not be required in every instance.[12] The ILC agreed: "Each case will depend on its own facts, in particular those concerning the relationship between the instructions given or the direction or control exercised and the specific conduct complained of.[13] The ILC further explained: "In the text of article 8, the three terms 'instructions', 'direction' and 'control' are disjunctive; it is sufficient to establish any one of them".[14]

44. The ICJ came back to the subject at some length in the Genocide case of 2007, where the previous (Nicaragua) position was endorsed and the Tadic criticism rejected.[15] All the same, the ICJ stated that the overall control test of the ICTY may be "applicable and suitable" when "employed to determine whether or not an armed conflict is international" (which was the issue in Tadic), but it cannot be presented "as equally applicable under the law of State responsibility for the purpose of determining ... when a State is responsible for acts committed by paramilitary units, armed forces which are not among its official organs".[16] The ICJ added that "the degree and nature of a State's involvement in an armed conflict on another State's territory which is required for the conflict to be characterized as international, can very well, and without logical inconsistency, differ from the degree and nature of involvement required to give rise to that State's responsibility for a specific act committed in the course of the conflict".[17] The ICJ a gain cited Article 8 of the LLC's Draft Articles, once more underlining the importance of attributability.[18]

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[1] Ibid., 1545. Emphasis in the original.
[2] Ibid.
[3] For details, see E.La Haye, War Crimes in Internal Armed Conflicts 19 (2008).
[4] Case Concerning Armed Activities on the Territory of the Congo, supra note 33, at 306.
[5] Ibid., 308.
[6] Report of the International Law Commission, supra note 80, at 45.
[7] Ibid., 105.
[8] Ibid., 104.
[9] See A.J.J, de Hoogh, "Articles 4 and 8 of the 2001 ILC Articles on State Responsibility, the Tadic Case and Attribution of Acts of Bosnian Serb Authorities to the Federal Republic of Yugoslavia", 72 British Year Book of International Law 255,278(2001).
[10] Report of the International Law Commission, supra note 80, at 106-107.
[11] Ibid., 106.
[12] Prosecutor v. Tadic, supra note 84, at 1541.
[13] Report of the International Law Commission, supra note 80, 108.
[14] Ibid.
[15] Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia/Herzegovina v. Serbia/Montenegro) (International Court of Justice, 2007), 46 International Legal Materials 185, 287-288 (2007).
[16] Ibid., 288.
[17] Ibid.
[18] Ibid.

45. The Genocide Judgment did not lay to rest the dispute between the ICJ and the ICTY.[1] Yet, neither the ICJ ICJ nor the ICTY dealt with the issue of an armed attack. If one takes the Genocide case's bifurcation between the question whether "a State's involvement in an armed conflict on another State's territory" is sufficient for the conflict to become international, and the question of State responsibility for specific acts, then the issue of an armed attack is closer to the former rather than to the latter. Furthermore, the ILC was right in stressing the significance of "the factual circumstances of each case". When the factual circumstances show that tiers of command and control in the ostensibly separate structures of the paramilitaries and the foreign State are intermeshed to such an extent that it is practically impossible to disentangle them - so much so that officials routinely rotate, switching i posts within the two hierarchies - the paramilitaries must be seen as "under the direction or control of the foreign State.

46. A good authority for this thesis can be found in the 2000 Judgment of a Trial Chamber of the ICTY in the Blaskic case. Here the ICTY established Croatia's overall control over paramilitary Croat forces fighting in Bosnia-Herzegovina, accentuating the phenomenon of sharing of personnel: senior Croatian officers voluntarily resigning from regular military service in order to serve in Bosnia-) Herzegovina - with official authorization and acknowledgement of their being temporarily detached -while able to rejoin the ranks of the Croatian army at a later stage.[2]

47. In the case of the Republic of Armenia and the so-called "Nagorno Karabakh Republic" ("NKR"), the movement of personnel in leadership echelons between the supposedly separate entities has happened in an even more remarkable way and on the highest possible level. The two most egregious instances are those of the present and the previous Presidents of the Republic of Armenia. The present President, Serzh Sargsyan - elected in February 2008 - had started his career as Chairman of the "NKR Self-Defence Forces Committee", a post which he left in 1993, in order to assume the mantle of Minister of Defence (and later Prime Minister) of the Republic of Armenia. His predecessor, Robert Kocharyan, was the first "President of the NKR", from 1994 to 1997. He then became Prime Minister of the Republic of Armenia, and from 1998 to 2008 served as President. In such circumstances, it is 1 (to say the least) a reasonable conclusion that the present de jure top organs of the Republic of Armenia were its de facto organs even while hoisting the banner of the "NKR". After all, how can the Republic of Armenia credibly deny attributability of decisions taken and policies executed by two consecutive Heads of State in their previous incarnations as "President of NKR" and "Chairman of the NKR Self-Defence Forces Committee"? Those decisions and policies are clearly the reason why the two individuals were later rewarded by elevation to the Republic of Armenia's top position. If the Republic of Armenia itself looks upon a leadership role in the "NKR" as a natural stepping-stone on the path of career-building within the Republic - there being no temporal interludes or other partitions creating temporal or other buffer zones and dividing the two purportedly separate entities - surely the Republic of Azerbaijan is entitled to consider the "NKR" a mere backyard of the Republic of Armenia, and regard the two as inseparable.

48. It may be remarked that, in view of the fact that the paramilitaries in and around the Nagorny Karabakh region of Azerbaijan can be considered de facto organs of the Republic of Armenia, there is no real need for the Republic of Azerbaijan to conduct any negotiations with the Nagorny Karabakh inhabitants of Armenian extraction as long as the occupation of Nagorny Karabakh by the Republic of Armenia lasts. Negotiations coming within the rubric of necessity as a condition to the exercise of the right of self-defence (see supra 23) have had to be carried out with the genuine adversary Party to the conflict, i.e., the Republic of Armenia. Only after withdrawal by the Republic of Armenia from Nagorny Karabakh and surrounding areas will the time come for the Republic of Azerbaijan to resolve democratically the manner and structure of peacetime protection of the Armenian minority within its territory (including the possibility of the grant of internal autonomy and/or other guarantees ensuring respect for the rights of a national minority). .

IV. What is the role of the Security Council in the Nagorny Karabakh conflict?

49. In Article 24(1) of the Charter, Member States "confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf'.[3] It is the function of the Security Council to decide or recommend what measures are to be taken in the discharge of its responsibility. Decisions, unlike recommendations, are binding on all Member States. Article 25 of the Charter is categorical:

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".[4]

As the ICJ stated, in its 1971 Advisory Opinion on Namibia, once a binding decision is adopted by the Security Council, all Member States of the UN must comply with it (whether or not they are members of the Council, and even if - assuming that they are non-Permanent Members of the Council - they voted against the resolution).[5]

A. Article 51 of the Charter

[1] See A.Cassese, "The Nicaragua and Tadic tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia", 18 European Journal of International Law 649-668 (2007).
[2] Prosecutor v. Blaskic (ICTY Trial Chamber, 2000), 122 International Law Reports 2, 54-55.
[3] Charter of the United Nations, supra note 1, at 339.
[4] Ibid.
[5] Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), [1971] Reports of the International Court of Justice 16, 54.

50. Pursuant to Article 51, the Security Council has a special mandate. "In practice it is for every state to judge for itself, in the first instance, whether a case of necessity in self-defence has arisen".[1] That is to say, a State resorting to counter-force in response to an armed attack - in the exercise of the right of self-defence - acts unilaterally, at its own discretion. There is no requirement of seeking in advance a green light from the Security Council, in order to resort to counter-force in self-defence. The acting State is the one to determine (unilaterally) when, where and how to employ counter-force in response to an armed attack. What Article 51 requires is that the self-defence measures taken be reported immediately to the Security Council. However, the pivotal point is that the report has to be sent to the Council after - not before - the self-defence measures have been undertaken by the acting State. The Security Council comes into the picture not in the first instance, but only subsequently.

51. The ICJ, in the Nicaragua case, held that "the absence of a report may be one of the factors indicating whether the State in question was itself convinced that it was acting in self-defence".[2] Failure to report was also noted in the Armed Activities case.[3] While the consequences of such a failure may not be as grave as the ICJ envisioned in Nicaragua,[4] there is no doubt that a State resorting to self-defence exposes itself to a certain risk by not reporting to the Council.

52. Even when a report about recourse to self-defence is submitted to the Security Council, this is no: the end of the matter. After all, each of the Parties to a conflict often claims to be acting in self-defence against an armed attack by its adversary. When both Parties do that, one of them must bewrong, since there is no self-defence against self-defence. Consequently, whereas in the first instance every State has a right to appraise for itself whether it is the victim of an armed attack (to which it responds with self-defence), there comes a second stage in which the competence to decide whether an armed attack has actually occurred - and by whom - passes to the Security Council.[5] Council.[5]

53. Once the second stage is reached, the Security Council is at a crossroads. The Council may adopt a binding decision, either endorsing the invocation of self-defence or rejecting it. Alternatively, tie Council may do nothing, either by choice or by force of a political reality (chiefly, due to the use or the threat of the use of the veto power by one of its Permanent Members). A third option is that the Council will issue a (non-binding) recommendation as to what it thinks should be done.

54. Empirically, when fighting flares up between States, the Security Council rarely determines in a binding fashion who has initiated an armed attack and who is therefore entitled to exercise self-defence.[6] The Council usually prefers neither to identify the attacker nor to attribute responsibility: instead, it calls on both Parties to cease fire, withdraw their forces and seek an amicable solution to the conflict.[7] A paradigmatic illustration of this tendency can be found in Resolutions 822 and 853 of 1993 as regards the the Nagorny Karabakh conflict.[8] However, ignoring a Security Council resolution may be hazardous, since the result may be that the Council will shift gear: moving from a soft language to a more determinative decision.

B. Chapter VII of the Charter

55. The Security Council has a wider role to play under Article 39 et seq. of the Charter. Since Article 39 is the opening clause of Chapter VII of the Charter (devoted to "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"), this is usually called Chapter VII action. The idiom is maintained in this Report, although it must be noted that:

(i) Article 51 is the closing provision of the Chapter, yet it is excluded from the discussion here.

(ii) Some of the measures taken by the Security Council - when it authorizes (rather than ordains) enforcement action - is actually carried out in keeping with Chapter VIII (dealing with "Regional Arrangements"), specifically, Article 53(1).[9]

55. Article 39 of the Charter lays down: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".[10]

As the text elucidates, the Security Council may adopt either (non-binding) recommendations or binding decisions. Recommendations may be identical to those adopted under Chapter VI.[11] The main consequence of a determination of "the existence of any threat to the peace, breach of the peace, or act of aggression" is that it may set the stage for the adoption by the Security Council of a binding decision (supra 49) initiating enforcement action.

57. The fact that the the Nagorny Karabakh conflict had endangered "peace and security in the region"

[1] 1 Oppenheim's International Law All (R.Jennings and A.Watts eds., 98th ed., 1992).
[2] Nicaragua case, supra note 5, at 105.
[3] Case Concerning Armed Activities on the Territory of the Congo, supra note 33, at 306.
[4] For details, see Dinstein, supra note 54, at 216-218.
[5] See S.A.Alexandrov, Self-Defence against the Use of Force in International Law 98 (1996).
[6] The best known case in which this happened is Resolution 83 (1950), in which the Security Council determined in a binding way that "the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace", recommending that Member States furnish assistance to the victim "to repel the armed attack". 3 Resolutions cm Decisions of the Security Council 20, id. (1950).
[7] See C.Gray, International Law and the Use of Force 96-97 (2nd ed., 2004).
[8] Security Council Resolution 822 (1993), supra note 37, at 70; Security Council Resolution 853 (1993), supra note 19, at 71.
[9] Charter of the United Nations, supra note 1, at 347.
[10] Ibid., 343.
[11] See B.Conforti, The Law and Practice of the United Nations 179 (2nd ed., 2000).

was acknowledged by the Security Council in Resolutions 822, 853, 874 and 884 of 1993.[1] Nevertheless, the Council has not made a determination of the existence of a threat to the peace (or a breach of the peace or an act of aggression) in conformity with Article 39 (quoted supra 56). The difference in practical terms between a threat to the peace (formally determined by the Council) and a situation that endangers peace (merely acknowledged by the Council) is admittedly unclear.[2] Equally, there is no obvious distinction between threat or danger to peace and security "in the region" and in the world at large. After all, there is no "hierarchy or subordination between peace and security on the global and regional level, as the two are of course closely linked".[3] A fire lit regionally may easily spread globally.

58. The cardinal point is that the Security Council is the sole body competent under the Charter to adopt binding decisions entailing enforcement measures: if the Security Council fails to adopt such a binding decision (perhaps because of inability to surmount a veto by one of the Permanent Members), the General Assembly does not have the competence to become a substitute for the Council.[4]

59. When cease-fire is the issue, it is required to distinguish between a mere (non-binding) exhortation by the Security Council for the cessation of hostilities and a mandatory decision to the same effect (which the Parties to the conflict are obligated to observe). In recent years, the signal for the binding character of a Security Council decision has usually been a Preambular paragraph in the text stating unambiguously that the Council is acting under Chapter VII of the Charter.

60. The issue of a mandatory cease-fire is of essence if it is expected that the Parties to the conflict will leave the field of action in favour of the Security Council. It is important to keep in mind that, when the Security Council decides (let alone recommends) to take specific measures under Chapter VII, such a resolution by itself does not automatically halt any unilateral self-defence measures taken by a State in response to an armed attack.

61. Notwithstanding views to the contrary,[5] the correct analysis of the text of Article 51 leads to the conclusion that it is not enough for the Security Council to adopt just any Chapter VII resolution, in order to divest Member States of their right to continue concurrently a resort to force in self-defence, in response to an armed attack.[6] attack.[6] The right of self-defence, vested in the victim of an armed attack, "remains intact until the Council has successfully dealt with the controversy before it".[7] And, basically, it is for the State acting in self-defence to evaluate whether the Council's efforts have been crowned with success.[8] It follows that, if the Council really wishes the Parties to the conflict to disengage, it has no choice but to adopt a legally binding Chapter VII decision that impose a mandatory cease-fire. Short of an explicit decree by the Council to desist from any further use of force, the State acting in self-defence retains its right to proceed with the forcible measures that it has chosen to pursue in response to the armed attack.

V. Can responsible individuals In the Republic of Armenia be criminally accountable for acts of aggression against the Republic of Azerbaijan?

A. The Nuremberg Legacy

62. The criminalization of war of aggression in a treaty in force was first accomplished in the Charter of the International Military Tribunal annexed to the 1945 London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis.[9] Article 6(a) of the London Charter established the jurisdiction of the Tribunal over crimes against peace, defined as follows:

"planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing".[10]

62. Article 6 specifically adds at its end:

"Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan".

64. The London Charter served as the basis for the Nuremberg trial of the major Nazi war criminals. It also served as a model for the similar trial of the major Japanese war criminals in Tokyo. Article 5(a) of the Charter of the International Military Tribunal for the Far East (issued in a Proclamation by General D. MacArthur, in his capacity as Supreme Commander of the Allied Powers in the region) included a parallel definition of crimes against peace.[11]

65. In its Judgment of 1946, the International Military Tribunal (IMT) at Nuremberg held that Article 6(a) of

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[1] Security Council Resolution 822 (1993), supra note 37, at 70; Security Council Resolution 853 (1993), supra note 19, at 71; Security Council Resolution 874 (1993), supra note 39, at 72; Security Council Resolution 884 (1993), supra note 18, at 73.
[2] See J.A.Frowein and N.Krisch, "Article 39", 1 The Charter of the United Nations: A Commentary, supra note 28, at 717, 723.
[3] K.Wellens, "The UN Security Council and New Threats to the Peace: Back to the Future", 8 Journal of Conflict & Security Law 15, 33 (2003).
[4] See T.Bruha, "Security Council", 2 United Nations: Law, Policies and Practice, supra note 32, at 1147, 1148.
[5] See A.Chayes, "The Use of Force in the Persian Gulf, Law and Force in the New International Order 3, 5-6 (L.F.Damrosch and D.J.Scheffer eds., 1991).
[6] See O.Schachter, "United Nations Law in the Gulf Conflict", 85 American Journal of International Law 453, 458 (1991).
[7] See E.V.Rostow, "Until What? Enforcement Action or Collective Self-Defense?", 85 American Journal of International Law 506, 511 (1991). Emphasis in the original.
[8] See L.M.Goodrich, E.Hambro and A.P.Simons, Charter of the United Nations: Commentary and Documents 352 (3rd ed., 1969).
[9] Charter of the International Military Tribunal, Annexed to London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 1945, The Laws of Armed Conflicts, supra note 2, at 1253, 1255.
[10] Ibid., 1256.
[11] Charter of the International Military Tribunal for the Far East, 1946, 14 Department of State Bulletin 361, 362 (1946).

the London Charter is declaratory of modern international law, which regards war of aggression as a grave crime.[1] Hence, the IMT rejected the argument that the provision of Article 6(a) amounted to ex post facto criminalization of the acts of the defendants, in breach of the nullum crimen sine lege principle.[2] The Tribunal declared:

Charter of the International Military Tribunal for the Far East, 1946, 14 Department of State Bulletin 361, 362 (1946).

"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced".[3]

Elsewhere in its Judgment, the IMT said:

"War is essentially an evil thing. Its consequences are not confined to the belligerent States alone, but affect the whole world.

To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole".[4]

66. The Nuremberg criminalization of war of aggression was upheld, in 1948, by the International Military Tribunal for the Far East (IMTFE) at Tokyo.[5] It was also endorsed in other trials against criminals of World War II (WWII), most conspicuously in the Ministries case, in 1949, the last of the "Subsequent Proceedings" (held by American Military Tribunals at Nuremberg for the prosecution of mid-level Nazi war criminals).[6]

67. It is clear from the WWII case law that individual liability for crimes against peace can only be incurred by high-ranking persons, whether military or civilian. In the High Command case of 1948 (also a "Subsequent Proceedings" trial), an American Military Tribunal ruled that the criminality of aggressive war attaches only to "individuals at the policy-making level".[7] In the I.G. Farben case of the same year (yet another "Subsequent Proceedings" trial), the Tribunal pronounced that it would be incongruous to charge the entire population with crimes against peace: only those persons in the political, military or industrial spheres who bear responsibility for the formulation and execution policies can be held liable for crimes against peace.[8]

68. The limitation of individual accountability for the crime of aggression to leaders or organizers is i clear also from the 1996 text of Article 16 of the Draft Code of Crimes against the Peace and Security of Mankind (quoted infra 11). It is today fully recognized that "the crime of aggression is necessarily committed by those decision-makers who have the capacity to produce those acts which constitute an 'armed attack' (as that term may be defined) against another state".[9]

69. This is not to say that penal responsibility for crimes against peace is reduced, even in a dictatorship, to one or two individuals at the pinnacle of power. As the Tribunal in the High Command case asserted: "No matter how absolute his authority, Hitler alone could not formulate a policy of aggressive war and alone implement that policy by preparing, planning and waging such a war".[10]

70. What has to be done is sift the evidence concerning personal contributions to the decision-making process by all those who belong to leadership echelons. The Tribunal in the High Command case declined to fix a distinct line, somewhere between the private soldier and the Commander-in-Chief, where liability for crimes against peace begins.[11] The Judgment did articulate the rule that criminality hinges on the actual power of an individual to "shape or influence" the war policy of his country.[12] The phrase "shape or influence" is patently flexible, catching in its net not only those at the very top.[13]

71. Relevant leadership echelons are by no means curtailed to the armed services. Crimes against peace may equally be committed by civilians.[14] The prime example is that of members of the cabinet or senior government officials whose input is apt, at times, to outweigh that of generals and admirals. The majority of the defendants convicted at Nuremberg of crimes against peace were high-ranking civilians.

B. The Rome Statute of the International Criminal Court

72. Article 5(1)(d) of the 1998 Rome Statute of the International Criminal Court confers on the Court (ICC) subject-matter jurisdiction with respect, inter alia, to "t]he crime of aggression".[15] However, Article 5(2) of the Statute defers action to a future time:

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[1] International Military Tribunal (Nuremberg trial), Judgment (1946), 1 International Military Tribunal (Blue Book Series) 171,219-223.
[2] Ibid., 219.
[3] Ibid., 223.
[4] Ibid., 186.
[5] In re Hirota and Others (International Military Tribunal for the Far East, 1948), [1948] Annual Digest and Reports of Public International Law Cases 356, 362-363.
[6] USA v. Von Weizsaecker et ah ("Ministries case") (Nuremberg, 1949), 14 Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 (Green Book Series) 314, 318-22.
[7] USA v. Von Leeb et ah ("High Command case") (Nuremberg, 1948), 11 Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 462, 486.
[8] USA v. Krauch et ah ("I.G. Farben case") (Nuremberg, 1948), 8 Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 1081, 1124-1125.
[9] M.C.Bassiouni and B.B.Ferencz, "The Crime against Peace", 2 International Criminal Law 313, 347 (M.C.Bassiouni. ed.,2nd ed., 1999).
[10] High Command case, supra note 136, at 486.
[11] Ibid., 486-487.
[12] Ibid., 488-489.
[13] See K.J.Heller, "Retreat from Nuremberg: The Leadership Requirement in the Crime of Aggression", 18 European Journal of International Law All, 486 et seq. (2007).
[14] See M.Greenspan, The Modern Law of Land Warfare 455-456 (1959).
[15] Rome Statute of the International Criminal Court, 1998, The Laws of Armed Conflicts, supra note 1, at 1314, 1315.

"The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations".[1]

73. Articles 121 and 123 of the Rome Statute pertain to amendment and review procedures that will formally commence seven years after the entry into force of the Statute (2002).[2] The decision to postpone the definition of the crime of aggression was largely motivated by the fact that the Rome conference was unable to reach an agreement as to whether the ICC would be empowered to exercise jurisdiction in the absence of a Security Council determination that an act of aggression has occurred.[3]

74. Preliminary work on the definition of the crime of aggression for the purposes of an amendment of the Rome Statute has already started. First, the matter was addressed by a Preparatory Commission (which drafted the Elements of Crimes that will assist the ICC in the interpretation and application of the Statute's provisions relating to other crimes within its jurisdiction). Further drafting has been undertaken by a special Working Group under the auspices of the Assembly of States Parties of the Rome Statute. But it must be perceived that, under Article 121, an amendment of the Rome Statute requires a two-thirds majority of the States Parties plus ratification or acceptance by seven-eights of them. There is no indication, as yet, that such a high degree of quasi-unanimity is attainable.

75. The controversy attending the formulation of the crime of aggression is very real, but its ramifications must not be exaggerated. There is no reason to believe that States regard as outdated the concept of wars of aggression as a crime under international law. On the contrary, support for this concept has been manifested consistently in international forums. It is important to note that the General Assembly consensus 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (supra 35) recognized that "war of aggression constitutes a crime against peace, for which there is responsibility under international law".[4]

76. As early as 1946, the General Assembly affirmed the principles of international law recognized by the Charter and the Judgment of the International Military Tribunal.[5] In 1947, the General Assembly instructed the ILC to to formulate these principles and also to prepare a Draft Code of Offences against the Peace and Security of Mankind.[6] The ILC composed the "Nurnberg Principles" in 1950. The text recites the Charter's definition of crimes against peace, emphasizing that offenders bear responsibility for such crimes and are liable to punishment.[7]

77. In 1996, the ILC completed a long overdue Draft Code of Crimes against the Peace and Security of Mankind. Without attempting to define aggression, the final text includes the crime of aggression in Article 16:

"An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression".[8]

In its commentary, the ILC observed that the branding of aggression as a crime against the peace and security of mankind is drawn from the 1945 London Charter as interpreted and applied by the IMT.[9]

78. In all - despite the currently unresolved search for a generally agreed definition of the crime of aggression - the criminality of a certain core of aggressive acts of war can be viewed as validated by customary international law (moulded by the London Charter and the Nuremberg Judgment).[10] The disagreements linked especially to the "architecture" of the institutional relationship between the ICC and the Security Council do not diminish from the substantive "content of customary international law".[11]

79. In one important respect, the Rome and ILC decisions to criminalize "aggression" per se - and establish individual accountability for that crime - runs counter to the Nuremberg precedent and to the consensus Definition of Aggression, inasmuch as the latter focus on "war of aggression" as a crime. The objection to the narrower Nuremberg approach is that the distinction between a war of aggression and other acts of aggression (short of war) is sometimes fraught with difficulties.[12] The counterargument is that incidents short of war may not be grave enough to justify the subjection of individuals to criminal accountability. Only an actual definition of the crime of aggression - once adopted (at some indefinite point in the years ahead) - will show whether the theoretical broadening of the scope of the crime to acts short of war is acceptable to States in practice. But whether aggression short of war is included in or excluded from the definition, one thing is clear: in essence, a war of aggression is indeed a punishable crime.

C. Immunity from Prosecution?

80. Some high-ranking office-holders of the State (primarily, Heads of States) enjoy certain

[1] Ibid.
[2] Ibid., 1372-1373.
[3] See M.H.Arsanjani, "The Rome Statute of the International Criminal Court", 93 American Journal of International Law 22, 29-30(1999).
[4] General Assembly Resolution 2625 (XXV), supra note 73, at 122.
[5] General Assembly Resolution 95 (I), 1(2) Resolutions of the General Assembly 188, id. (1946).
[6] General Assembly Resolution 177 (II), 2 Resolutions of the General Assembly 111,112 (1947).
[7] Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal, Report of the International Law Commission, 2nd Session, [1950] II Yearbook of the International Law Commission 364, 374, 376.
[8] Draft Code of Crimes against the Peace and Security of Mankind, Report of the International Law Commission, 48th Session, [1996] II (2) Yearbook of the International Law Commission 17, 42-43.
[9] Ibid., 43.
[10] See A.Cassese, International Criminal Law 113-114 (2003).
[11] R.Cryer, "Aggression at the Court of Appeal" 10 Journal of Conflict & Security Law 209, 228 (2005).
[12] See GGaja, "The Long Journey towards Repressing Aggression", 1 The Rome Statute of the International Criminal t: A Commentary All, 435 (A.Cassese et al. eds., 2002).

immunities from prosecution under international law. Thus, the Institut de Droit International, in a resolution adopted in Vancouver in 2001, stated:

"In criminal matters, the Head of State shall enjoy immunity from jurisdiction before the courts of a foreign State for any crime he or she may have committed, regardless of its gravity".[1]

81. However, this rule is clearly confined to criminal proceedings before the domestic courts of foreign States. As the ICJ emphasized, in the Arrest Warrant case of 2002, "jurisdictional immunity is procedural in nature" and must not be confused with the issue of criminal responsibility (which is a matter of substantive law).[2] As the Court put it, immunity does not mean impunity.[3] Accordingly, the Court made it clear that there is no bar to prosecution of high-ranking office-holder (in the case before it, a Foreign Minister) before an international criminal court vested with jurisdiction.[4]

82. Article 27 of the Rome Statute prescribes:

"1. This 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.

2. 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".[5]

This provision follows in the wake of Article 7 of the 1945 London Charter, which reads:

"The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment".[6]

The conceptual underpinning of the removal of immunity in the Charter was resoundingly supported by the IMT: "The principle of international law, which under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings".[7]

It is incontrovertible today that the official position of a Head of State or any other high-ranking governmental office-holder does not cloak the person concerned with immunity, if put on trial for crimes against peace (war of aggression) before an international criminal court or tribunal vested with jurisdiction.

REPORT ON THE FUNDAMENTAL NORM OF THE TERRITORIAL INTEGRITY OF STATES AND THE RIGHT TO SELF-DETERMINATION IN THE LIGHT OF ARMENIA'S REVISIONIST CLAIMS

General Assembly Security Council.Distr.: General 29 December 2008. Original: English

General Assembly Sixty-third session

Agenda items 13 and 18

Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Security Council Sixty-third year

Letter dated 26 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

On the instructions of my Government, I have the honour to transmit herewith the report on the fundamental norm of the territorial integrity of States and the right to self-determination in the light of Armenia's revisionist claims (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 13 and 18 of its sixty-third session, and of the Security Council.

(Signed) Agshin Mehdiyev. Ambassador. Permanent Representative

Annex to the letter dated 26 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Report on the fundamental norm of the territorial integrity of States and the right to self-determination in the light of Armenia's revisionist claims

1. The present Report provides the view of the Government of the Republic of Azerbaijan on the interrelationship between the legal norm of the territorial integrity of states and the principle of self-determination in international law in the context of the revisionist claims made fey the Republic of' Armenia ("Armenia").

[1] Institut de Droit International, Resolution, "Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law", 69 Annuaire de I'Institut de Droit International 1A3, 753 (Vancouver, 2001) tide 13(2)).
[2] Case Concerning the Arrest Warrant of 11 April 2000, [2002] Reports of the International Court of Justice 3, 25.
[3] Ibid.
[4] Ibid., 25-26.
[5] Rome Statute, supra note 144, at 1327.
[6] Charter of the International Military Tribunal, supra note 127, at 1257.
[7] International Military Tribunal (Nuremberg trial), Judgment, supra note 130, at 223.

2. Such revisionist claims have been made with regard to the Nagomy Karabakh[1] conflict between Armenia and Azerbaijan and essentially assert that Nagorny Karabakh did not form part of the new state of Azerbaijan on independence and this is maintained by various legal arguments, including the principle of self-determination.

3. The Nagorny Karabakh conflict, in short, is one where part of the internationally recognised territory of the Republic of Azerbaijan ("Azerbaijan") has been captured and held by Armenia, whether directly by its own forces or indirectly by forces forming part of the "Nagorny Karabakh Republic" ("NKR"). This latter entity is a self-proclaimed "state", supported by Armenia and essentially under its direction and control. It is entirely unrecognised as such, even by Armenia.

4. This Report examines first the concept of the territorial integrity of states; secondly, the evolution and status of the principle of the self-determination of peoples; and finally, the nature of Armenian claims particularly with regard to Nagorny Karabakh.

5. Essentially, the conclusion of the Report is that Armenia's claims as to the detachment of Nagorny Karabakh from Azerbaijan are incorrect as a matter of international law and Armenia is in violation of international legal principles concerning inter alia the norm of territorial integrity.

A. The Fundamental Norm of the Territorial Integrity of States

I. International Practice

a) Introduction

6. States are at the heart of the international legal system and the prime subjects of international law. However one defines the requirements of statehood, the criterion of territory is indispensable. It is inconceivable to envisage a state as a person in international law bearing rights and duties without a substantially agreed territorial framework. As Oppenheim has noted, "a state without a territory is not possible".[2]

In any system of international law founded upon sovereign and independent states, the principle of the protection of the integrity of the territorial expression of such states is bound to assume major importance.[3] Together with the concept of the consequential principle of non-intervention, territorial integrity is crucial with respect to the evolution of the principles associated with the maintenance of international peace and security. It also underlines the decentralized state-orientated character of the international political system and both reflects and manifests the sovereign equality of states as a legal principle.

7. Territorial integrity and state sovereignty are inextricably linked concepts in international law. They are foundational principles. Unlike many other norms of international law, they can only be amended as a result of a conceptual shift in the classical and contemporary understanding of international law.

8. It was emphasised in the Island ofPalmas case, arguably the leading case on the law of territory and certainly the starting-point of any analysis of this law, that:

"Territorial sovereignty... involves the exclusive right to display the activities of a state",[4] while:

"Sovereignty in the relations between states signifies independence. Independence in relation to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state. The development of the national organisation of states during the last few centuries, and as a corollary, the development of international law, have established this principle of the exclusive competence of the state in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations".[5]

10. Accordingly, the concept of state sovereignty can only be exercised through exclusive territorialM control so that such control becomes the cornerstone of international law, while the exclusivity of I control means that no other state may exercise competence within the territory of another state! without the express consent of the latter. To put it another way, the development of international law! upon the basis of the exclusive authority of the state within an accepted territorial framework meantB that territory became "perhaps the fundamental concept of international law".[6] This principle is two-1 sided. It establishes both the supervening competence of the state over its territory and the absence of I competence of other states over that same territory. Recognition of a state's sovereignty over its! territory imports also recognition of the sovereignty of other states over their territory. TheB International Court clearly underlined in the Corfu Channel case$_5$ that$_T$ "[bjetween independent states, I respect for territorial sovereignty is an essential foundation of international relations".[7]

11. These principles have been further discussed by the world court. The Permanent Court of I International

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[1] The term "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language - "Daghq Qarabag" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. In order to avoid confusion the widely referred term "Nagorny Karabakh" will be used hereinafter.

[2] R. Y. Jennings and A. D. Watts (eds.), Oppenheim's International Law, 9th ed., 1992, p. 563.

[3] Oppenheim notes that "the importance of state territory is that it is the space within which the state exercises its supreme, and normally exclusive, authority", ibid., p. 564. Bowett regards this principle as fundamental in international law and an essential foundation of the legal relations between states, Self-Defence in International law, Manchester, 1958, p. 29. See, generally, J. Castellino and S. Allen, Title to Territory in International Law: A Temporal Analysis, Aldershot, 2002; GDistefano, L'Ordre International entre Legalite et Effectivite: Le Titre Juridique dans le Contentieux Territorial, Paris, 2002 ; R. Y. Jennings, The Acquisition of Territory in International Law, Manchester, 1963; M. N. Shaw, "Territory in International Law", 13 Netherlands YIL, 1982, p. 61; N. Hill, Claims to Territory in International Law and Relations, London, 1945; J. Gottman, The Significance of Territory, Charlottesville, 1973; and S. P. Sharma, Territorial Acquisition, Disputes and International Law, The Hague, 1997.

[4] 1RIAA 829, 839(1928).

[5] Ibid., at 838.

[6] D. P. O'Connell, International Law, 2nd ed., London, 1970, vol. I, p. 403.

[7] ICJ Reports, 1949, pp. 4, 35.

Justice, for example, emphasised in the Lotus case that:

I[1] "The first and foremost restriction imposed by international law upon a state is that -failing the existence of a permissive rule to the contrary - it may not exercise its power in any form in the territory of another state",[1]

while the International Court underlined in the Corfu Channel case "every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states"[2] and noted in the Asylum case that "derogation from territorial sovereignty cannot be recognised unless its legal basis is established in each case".[3]

12. Thus, despite the rise of globalisation, whether of commercial or trade relations or in matters concerning human rights or the environment, territorial sovereignty continues to constitute the lynch pin of the international legal system.

13. The juridical requirement, therefore, placed upon states is to respect the territorial integrity of other states. It is an obligation flowing from the sovereignty of states and from the equality of states. This has been reflected in academic writing. One leading writer has noted that "[f]or states, respect for their territorial integrity is paramount... This rule plays a fundamental role in international relations".[4] It has also been stated that "[f]ew principles in present-day international law are so firmly established as that of the territorial integrity of States".[5]

14. It is, of course, important to note that this obligation is not simply to protect territory as such or the right to exercise jurisdiction over territory or even territorial sovereignty, the norm of respect for the territorial integrity of states imports an additional requirement and this is to sustain the territorial wholeness or definition or delineation of particular states. It is a duty placed on all states to recognise that the very territorial structure and configuration of a state must be respected.

15. Further, respect for the territorial integrity of states may be seen as a rule of jus cogens, certainly that aspect of the rule that prohibits aggression against the territorial integrity of states possesses the status of a peremptory norm.[6]

b) Societal Basis for the Norm of Territorial Integrity

16. The policy underlying the doctrine of respect for the territorial integrity of states may be seen both in terms of the very nature of state sovereignty and in terms of the perceived need for stability in international relations, specifically with regard to territorial matters. In so far as the first is concerned, the doctrine of state sovereignty has at its centre the concept of sovereign equality, which has been authoritatively defined in terms of the following propositions:

"(a) States are judicially equal;

(b) Each State enjoys the rights inherent in full sovereignty;

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States".[7]

17. In addition to constituting, therefore, one of the key elements in the concept of sovereign equality, territorial integrity has been seen as essential in the context of the stability and predictability of the international legal system as a whole based as it is upon sovereign and independent states territorially delineated. The importance of territorial integrity is reflected in the key concept of the stability of boundaries which, it has been written, constitutes "an overarching postulate of the international legal system and one that both explains and generates associated legal norms".[8] The International Court, for example, has referred particularly to "the permanence and stability of the land! frontier" in the Tunisia/Libya Continental Shelf case,[9] to the need for "stability and finality" in the! Temple of Preah Vihear case,[10] and to the "stability and permanence" of boundaries in the Aegecm Sea Continental Shelf case.[11] Each of these declarations underscores the importance of the core! principle of respect for the territorial integrity of states.

18. The International Court explained the rationale behind this as follows:

"when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question".[12]

20. The point was emphasised by the Arbitral Tribunal in the Beagle Channel case, where it was noted that:

"a limit, a boundary, across which the jurisdictions of the respective bordering states may not pass, implied

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[1] PCIJ, Series A, No. 10, p. 18.
[2] ICJ Reports, 1949, pp. 6,22.
[3] ICJ Reports 1950, pp. 266, 275.
[4] Kohen, "Introduction" in M.G.Kohen (ed.), Secession: International Law Perspectives, Cambridge, 2006, p. 6.
[5] Seethe Opinion on the "Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty" by Professors Franck, Higgins, Pellet, Shaw Shaw and Tomuschat on 8 May 1992, para. 2.16, <http://www.uni.ca/ library/5experts.html>.
[6] See further below, para. 66 and following.
[7] Declaration on Principles of International Law 1970, General Assembly resolution 2625 (XXV).
[8] M.N. Shaw, "The Heritage of States: The Principle of Uti Possidetis Juris Today", 67 British Year Book of International Law, 1996, pp. 75, 81.
[9] ICJ Reports, 1982, pp. 18, 66.
[10] ICJ Reports, 1962, pp. 6, 33.
[11] ICJ Reports, 1978, pp. 3, 36.
[12] Temple of Preah Vihear, ICJ Reports, 1962, pp. 6, 34.

definitiveness and permanence".[1]

c) The Norm of Territorial Integrity as Enshrined in International Instruments of a **I Global Nature**

20. A number of key instruments referred to the norm of territorial integrity in the nineteenth and early twentieth century. For example, at the Vienna Congress of 1815 the neutrality and territorial integrity of Switzerland were guaranteed,[2] while the London Protocol 1852 guaranteed that of Denmark and the Treaty of Paris 1856 that of the Ottoman Empire.[3] Further the Treaty of 2 November 1907 recognised the independence and territorial integrity of Norway.

21. The final of President Woodrow Wilson's Fourteen Points delivered to Congress on 8 January 1918 referred to the need to establish a general association of nations under specific covenants for the purpose of "affording mutual guarantees of political independence and territorial integrity to great and small states alike".[4] This constituted a a key inspiration with regard to the creation of the League of Nations.

22.Article 10 of the Covenant of the League of Nations provided that:

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled".

23. It is to be noted that the Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy in 1925 (the Locarno Pact) provided explicitly for the maintenance of the territorial status quo resulting from the frontiers between Germany and Belgium and between Germany and France, and the inviolability of these frontiers as fixed by or in pursuance of the Versailles Treaty of Peace 1919.

24. In the Charter of the United Nations, the following provisions are particularly relevant. Article 2 (1) provides that the Organisation itself is based on "the principle of the sovereign equality of all its Members", while article 2 (4) declares that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ...". The latter principle is, of course, one of the core principles of the UN. It is discussed later in this Report in more detail.[5]

25. The Manila Declaration on the Peaceful Settlement of International Disputes 1982 reaffirms in its preamble the "principle of the Charter of the United Nations that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" and states in point 4 that:

"States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law".

26. The Declaration on the Right to Development adopted by the General Assembly on 4 December 1986 in resolution 41/128 called in article 5 for states to take resolute action to eliminate "threats against national sovereignty, national unity and territorial integrity". General Assembly resolution 46/182, dated 19 December 1991, adopting a text on Guiding Principles on Humanitarian Assistance, provides in paragraph 3 that "[t]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country". Further, resolution 52/112 concerning the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, adopted by the General Assembly on 12 December 1997, explicitly reaffirmed "the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, territorial integrity of I states...".

27. The UN Millennium Declaration, adopted by the General Assembly on 8 September 2OO0,[6] noted the rededication of the heads of state and of government gathered at the UN to supporting inter I alia "all efforts to uphold the sovereign equality of all States, [and] respect for their territorial I integrity and political independence". This Declaration was reaffirmed in the World Summit Outcome I 2005, in which world leaders agreed "to support all efforts to uphold the sovereign equality of all I states, [and] respect their territorial integrity and political independence".[7] In its turn, this provision I in the World Summit Outcome was explicitly reaffirmed by the UN Global Counter-Terrorism I Strategy 2006.[8]

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[1] HMSO, 1977, p. 11.

[2] See e.g. Markus Kutter, Die Schweizer una[1] die Deutschen (Frankfurt/M.: Fischer, 1997), pp. 97-105 cited in B. Schoch, "Switzerland - A Model for Solving Nationality Conflicts?", Peace Research Institute, Frankfurt, 2000, p. 26 and Edmund Jan Osmahczyk and Anthony Mango, Encyclopedia of the United Nations and International Agreements, 3 rd ed., 2004, vol. 4, p. 2294.

[3] Ibid.

[4] "<http://wwi.lib.byu.edu/index.php/President_Wilson%27s_Fourteen_Points>

[5] See below, para. 66 and following.

[6] General Assembly resolution 55/2.

[7] General Assembly resolution 60/1, para. 5.

[8] General Assembly resolution 60/288. See also General Assembly resolutions 57/337 on the Prevention of Armed Conflict which reaffirmed the Assembly's commitment to the principles of the political independence, the sovereign equality and the territorial integrity of states; 59/195 on Human Rights and Terrorism, paragraph 1 of which refers to the territorial integrity of states; and resolution 53/243, the Declaration and Programme of Action on a Culture of Peace, paragraph 15 (h) of which calls on states to refrain from any form of coercion aimed against the political independence and territorial integrity of states.

28. References to territorial integrity may also be found in multilateral treaties of a global character. I For example, the preamble to the Nuclear Non-Proliferation Treaty 1968 includes the following! provision:

"Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

29. Further, article 301 of the Convention on the Law of the Sea 1982 provides that:

"In exercising their rights and performing their duties under this Convention, states parties shall refrain from any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodies in the Charter of the United Nations",

while article 19 of that Convention provides that the passage of a foreign ship through the territorial I sea of a coastal sea "shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State".[1]

30. The norm of territorial integrity applies essentially to protect the international boundaries of independent states. However, it also applies to protect the temporary, if agreed, boundaries of such states from the use of force. The Declaration on Principles of International Law Concerning Friendly Relations 1970 provides that:

"Every state likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character".

31. While the norm calling for respect for territorial integrity applies to independent states, it is also worth pointing to the fact that the international community sought to preserve the particular territorial configuration of colonial territories as the movement to decolonisation gathered pace. Point 4 of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly on 14 December 1960 specifically called for an end to armed action against dependent peoples and emphasised that the "integrity of their national territory shall be respected".[2] The Declaration on Principles of International Law Concerning Friendly Relations 1970 further provided that:

"The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles".[3]

32. The UN, while underlining the presumption of territorial integrity with regard to colonial territories in the move to independence,[4] was equally clear with regard to the need for respect for the territorial integrity of independent countries that were administering such territories. Point 6 of the Colonial Declaration stated that:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations", while point 7 of the same Declaration noted that:

"All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity".

33.On the same topic, although perhaps more robustly, the 1970 Declaration ended the section on j self-determination by stating that:

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".[5]

34. It was then separately emphasised that:

"Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country".

35. Accordingly, acceptance of the separate status of the colonial territory was accompanied by recognition of the norm of territorial integrity of the state or country in question.

36. This approach whereby the recognition of particular rights in international law of non-state persons is accompanied by a reaffirmation of the principle of territorial integrity finds recent expression in the UN Declaration on the Rights of Indigenous Peoples, adopted on 7 September 2007.[6] Article 46 of the Declaration provides that:

"Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to

[1] See also article 39 providing for a similar rule with regard to the transit passage of ships and aircraft.
[2] General Assembly resolution 1514 (XV).
[3] General Assembly resolution 2625 (XXV).
[4] See further, below, para. 79 and following.
[5] See further, below, para. 142 and following.
[6] A/61/L.67.

engage in any activity or to perform any act contrary to the Charter of the United Nations or 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".

d) The Norm of Territorial Integrity as Enshrined in International Instruments of a Regional Nature

37. Many of the core constitutional documents of the leading regional organisations refer specifically to territorial integrity and the following examples, geographically arranged, may be provided.

i) Europe

38.The Helsinki Final Act, adopted on 1 August 1975 by the Conference on Security and Cooperation in Europe, included a Declaration on Principles Guiding Relations Between Participating States (termed the "Decalogue"). Several of these principles are of note. Principle I notes that participating states will "respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every state to juridical equality, to territorial integrity and to freedom and political independence". Principle II declares that participating states "will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration". Principle III declares that participating states "regard as inviolable all one another's frontiers as well as the frontiers of all states in Europe", while Principle IV deals specifically with territorial integrity and states as follows:

"The participating states will respect the territorial integrity of each of the participating states. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating state, and in particular from any such action constituting a threat or use of force. The participating states will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

39. The Document on Confidence-Building Measures, adopted as part of the Helsinki Final Act, affirmed that participating states were:

"Determined further to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States as adopted in this Final Act".

40.The Charter of Paris for a New Europe adopted by the renamed Organisation for Security and Cooperation in Europe in November 1990 reaffirmed that:

"In accordance with our obligations under the Charter of the United Nations and commitments under the Helsinki Final Act, we renew our pledge to refrain from the threat or use of force against the territorial integrity or political independence of any State, or from acting in any other manner inconsistent with the principles or purposes of those documents".

41. The OSCE Code of Conduct on Politico-Military Aspects of Security approved at the Budapest Summit of 1994 affirmed the duty of non-assistance to states resorting to the threat or use of force against the territorial integrity or political independence of any other state.[1] This was followed by the Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century, adopted on 3 December 1996, in which the Heads of State and Government committed themselves inter alia "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" (point 6).[2] The Charter for European Security, adopted in November 1999,[3] declared that participating states would "consult promptly, in conformity with our OSCE responsibilities, with a participating state seeking assistance in realizing its right to individual or collective self-defence in the event that its sovereignty, territorial integrity and political independence are threatened" (point 16), while the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, reached at the same OSCE Istanbul Summit in 1999 by participating states, recalled "their obligation to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations".

42. The Council of Europe has adopted two conventions of particular relevance. First, the European Charter for Regional or Minority Languages, adopted on 5 November 1992, provides in the preamble that:

"the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity",

while article 5 states that:

"Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international

[1] See OSCE Handbook, 2007, p. 83, <http://www.osce.org/publications/sg/2007/10/22286_1002_en.pdf>.
[2] S/1/96.
[3] PCOEW 389.

law, including the principle of the sovereignty and territorial integrity of states".

43.Secondly, the Framework Convention for the Protection of National Minorities, adopted on 1 Februaiy 1995, provides that "the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between states but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each state" and called for:

"the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states".

44.Article 21 emphasises that:

"Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".

ii) The Atlantic Area

45.The North Atlantic Treaty, adopted on 4 April 1949 and established NATO as a collective security organisation, provides in article 4 that "[t]he Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened".

Hi) The Commonwealth of Independent States

46.The Charter of the Commonwealth of Independent States, adopted at Minsk on 22 January 1993, notes as amongst its principles listed in article 3, the inviolability of state borders, the recognition of existing borders and the rejection of unlawful territorial annexations; together with the territorial integrity of states and the rejection of any actions directed towards breaking up alien territory. Article 12 provides that:

"In the event that a threat arises to the sovereignty, security or territorial integrity of one or several member states or to international peace and security, the member states shall without delay bring into action the mechanism for mutual consultations for the purpose of coordinating positions and for the adoption of measures in order to eliminate the threat which has arisen, including peacekeeping operations and the use, where necessary, of the Armed Forces in accordance with the procedure for exercising the right to individual or collective defence according to Article 51 of the UN Charter".

47.The CIS Collective Security Treaty was initially signed on 15 May 1992 [1] and came into force on 20 April 1994 following the addition of further signatories. This treaty declared in article 2 that in the event of a threat to the security, sovereignty or territorial integrity of one or more of the signatory states, a mechanism for joint consultations would be activated. The treaty was renewed in 1999 for a further five years by the original six signatories,[2] but was replaced on 7 October 2002 by the Charter of the Collective Security Organisation. This Charter sought to ensure the "security, sovereignty and territorial integrity" of states parties as noted in the preamble, while article 3 described the purposes of the organisation as being "to strengthen peace and international and regional security and stability and to ensure the collective defence of the independence, territorial integrity and sovereignty of the member States, in the attainment of which the member States shall give priority to political measures".

48. Further, the Charter of GUAM,[3] adopted on 23 May 2006, calls for cooperation in article II based on "the principles of respect for sovereignty and territorial integrity of the states, inviolability of their internationally-recognized borders and non-interference in their internal affairs and other universally recognized principles and norms of international law".

iv) Arab Slates

49. Article 5 of the Pact of the League of Arab States, adopted on 22 March 1945,[4] provides that:

"The recourse to force for the settlement of disputes between two or more member States shall not be allowed. Should there arise among them a dispute that does not involve the independence of a State, its sovereignty or its territorial integrity, and should the two contending parties apply to the Council for the settlement of this dispute, the decision of the Council shall then be effective and obligatory".

v) Latin America

50. Article 1 of the Charter of the Organisation of American States 1948[5] provides that the American states parties to the Charter thereby establish an international organisation "to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence".

51. The Framework Treaty on Democratic Security in Central America, adopted on 15 December 1995, notes in article 26 as amongst its regional security principles the following:

"(c) Renunciation of the threat or the use of force against the sovereignty, territorial integrity and political independence of any country in the region that is a signatory of this Treaty; ... (h) Collective defence and solidarity in the event of armed attack by a country outside the region against the territorial integrity, sovereignty, and

[1] By Armenia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan.

[2] With the addition of Georgia, but the exclusion of Uzbekistan, who joined in 2006. On 18 August 2008, Georgia notified its intention to withdraw from the CIS, <http://www.mfa.gov.ge/ index.php?lang_id=ENG&sec id=36&info_ id=7526>.

[3] Consisting of Azerbaijan, Georgia, Moldova and Ukraine. The Charter transformed the GUAM Group established in 1997 as a consultative forum and then formalised in 2001 into the "Organisation for Democracy and Economic Development - GUAM", to be known as GUAM, see preamble.

[4] <http://avalon.law.yale.edu/20th_century/arableag.asp>.

[5] As amended in 1967, 1985, 1992 and 1993, see <http://www.oas.org/juridico/English/charter.html>.

independence of a Central American country, in accordance with the constitutional provisions of the latter country and of the international treaties in force; (i) The national unity and territorial integrity of the countries in the framework of Central American integration".

52, Article 42 further provides that "[a]ny armed aggression, or threat of armed aggression, y a state outside the region against the territorial integrity, sovereignty or independence of a entral American state shall be considered an act of aggression against the other Central American states".4 Africa

53. The Charter of the Organisation of African Unity 1963 declares in article II (1) (c) that among the purposes of the organisation are the defence of their "sovereignty, their territorial integrity and independence", while article III lists the principles to which the members of the OAU adhere in fulfilling the stated purposes of the organisation. These include the sovereign equality of all member states; non-interference in the internal affairs of states and "respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence". The OAU was transformed into the African Union by the Constitutive Act of the African Union 2000. Article 3 includes, among the objectives of the Union, defence of the "sovereignty, territorial integrity and independence of its members", while article 4 provides that the Union is to function in accordance with a number of principles, including "sovereign equality and interdependence among member states of the Union" and "respect of borders existing on achievement of independence".

54. The norm of territorial integrity also appears explicitly in the constitutional documents of sub-regional organisations. For example, the Heads of State and Government of the member states of the Economic Community of West African States (ECOWAS) reaffirmed in article II of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, adopted on 10 December 1999, a series of "fundamental principles", including "territorial integrity and political independence of Member States", while the preamble to the Protocol on Politics, Defence and Security Cooperation, adopted by the Heads of State and Government of the member states of the Southern African Development Community on 14 August 2001, recognised and reaffirmed the principles of "strict respect for sovereignty, sovereign equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in internal affairs of other States" and declared in article 11 (1) (a) that "State Parties shall refrain from the threat or use of force against the territorial integrity or political independence of any state, other than for the legitimate purpose of individual or collective self-defence against an armed attack".

vii) Islamic States

55. The Charter of the Organisation of the Islamic Conference 1972 provides that amongst its principles laid down in article II are "respect for the sovereignty, independence and territorial integrity of each member state" and "abstention from the threat or use of force against the territorial integrity., national unity or political independence of any member states". The Islamabad Declaration adopted at the Extraordinary Session of the Islamic Summit 1997 reaffirmed in its preamble respect for the I principles of "sovereignty, territorial integrity and non-interference in internal affairs of states".[1] The Charter of the Organisation was replaced with an amended document dated 14 March 2008, which refers twice in its preambular paragraph to the determination of the organisation to "respect, safeguard and defend the national sovereignty, independence and territorial integrity of all member states". Article 1 noted as one of the objectives of the organisation to respect the "sovereignty, independence and territorial integrity of each Member State", while another objective is to "support the restoration of complete sovereignty and territorial integrity of any member state under occupation, as a result of aggression, on the basis of international law and cooperation with the relevant international and! regional organisations". Article 2 states the principles of the organisation, including the principle that I all member states "undertake to respect national sovereignty, independence and territorial integrity of I other member states and shall refrain from interfering in the internal affairs of others".

viii) Asia

56. The Southeast Asia Collective Defence Treaty (the Manila Pact) was signed on 8 September [1954 by the US, UK and France with a number of southeast Asian states, creating the Southeast Asia I Treaty Organisation. In article II, the parties agreed "separately and jointly, by means of continuous I and effective self-help and mutual aid will maintain and develop their individual and collective! capacity to resist armed attack and to prevent and counter subversive activities directed from without! against their territorial integrity and political stability". The organisation ended in 1977.

57. The Association of South East Asian Nations (ASEAN) was created on 8 August 1967. In theI Treaty of Amity and Cooperation in Southeast Asia, 1976, the states parties agreed to be bound by a 1 number of "fundamental principles" laid down in article 2, including "[m]utual respect for thel independence, sovereignty, equality, territorial integrity and national identity of all nations". Article 101 provides that "[e]ach High Contracting Party shall not in any manner or form participate in am activity which shall constitute a threat to the political and economic stability,

[1] A/51/915.

sovereignty, or territorial integrity of another High Contracting Party". The ASEAN Charter was signed on 20 November 2007, with the preamble noting respect for the "principles of sovereignty, equality, territorial integrity, I non-interference, consensus and unity in diversity".[1] Article 2 (2) provides that ASEAN and its member states are to act in accordance with a number of principles, including "respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member states".

58.Further, the Charter of the South Asian Regional Association for Regional Cooperation,[2] adopted on 8 December 1986, affirmed "respect for the principles of sovereign equality, territorial integrity, national independence, non-use of force and non-interference in the internal affairs of other States and peaceful settlement of all disputes" and emphasised in article II (1) that "[cooperation within the framework of the Association shall be based on respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other States and mutual benefit".

e) The Norm of Territorial Integrity as Enshrined in Agreements Concerning Situations of a Specific Nature

59. The norm of territorial integrity has also been expressed in a number of bilateral or limited participation international agreements concerning the resolution of particular issues. A brief survey of some of the more significant examples will suffice.

60. In article 3 of the Japan-Korean Treaty of 23 February 1904, for instance, Japan guaranteed the territorial integrity of the Korean Empire, while the Treaty of Guarantee of 16 August 1960, part of the constitutional settlement of the Cyprus issue, provided both for the new Republic of Cyprus to "ensure the maintenance of its independence, territorial integrity and security" (article II) and for a guarantee of that territorial integrity by Greece, Turkey and the UK (article III). The Indo-Nepal Treaty of 31 July 1950 provided for mutual recognition of both state's independence and territorial integrity, while the Simla Agreement between India and Pakistan, signed on 2 July 1972, provided in point (v) for "respect each other's national unity, territorial integrity, political independence and sovereign equality". The peace agreements between Israel and Egypt of 26 March 1979 (article II) and between Israel and Jordan of 26 October 1994 (article 2 (1)) both provided for recognition of each state's territorial integrity, while the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement), signed on 14 December 1995, provided that the parties (Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia) agreed to "refrain from any action, by threat or use of force or otherwise, against the territorial integrity or political independence of Bosnia and Herzegovina or any other state".[3]

61. Further, a series of agreements between eastern European states after the end of the Cold War provided for the mutual recognition of borders.[4] For example, the Lithuania-Poland Agreement of

26 April 1994 "formally ratifying now and for the future the integrity of the current territories" (preamble) confirmed "the principles of respect for sovereignty, the inviolability of the borders, prohibition of armed aggression, territorial integrity, non interference in local affairs, and regard for human rights and basic freedoms" (article 1) and recognised the "inviolability of the existing border between them marked in the territory and mutually commit themselves to respect without any conditions the other's sovereignty and territorial integrity" (article 2). In the Hungary-Romania Treaty, signed on 16 September 1996, the parties provided in article 4 that they, "according to the principles and norms of international law and with the principles of the Final Act in Helsinki, reconfirm that they shall observe the inviolability of their common border and the territorial integrity of the other Party", while the Romania-Ukraine Treaty signed on 2 June 1997 underlined the principles of the inviolability of frontiers and of the territorial integrity of states (article 1 (2)) and reaffirmed that they "shall not have recourse, in any circumstances, to the threat of force or use of force, directed either against the territorial integrity or political independence of the other Contracting Party" (article 3).[5]

62. Finally, in the China-Russia Treaty of 16 July 2001 the parties reaffirmed in article 1 a number of principles, including "mutual respect of state sovereignty and territorial integrity" and in article 4 specifically supported each other's policies "on defending the national unity and territorial integrity" and promised not to undertake any action that "compromises the sovereignty, security and territorial integrity of the other contracting party" (article 8).

f) The Norm of Territorial Integrity as Enshrined in UN Resolutions of a Specific Nature

63.The norm of territorial integrity has also been referred to, and reaffirmed, in a large number of UN resolutions adopted with regard to particular situations. In particular, and covering recent years only, the territorial integrity of the following states has been explicitly and specifically reaffirmed: Kuwait, [6] Ukraine, [1] Iraq, [2] Afghanistan, [3] Angola, [4] East Timor, [5] Sierra Leone, [6] Burundi, [7]

[1] The member states currently are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

[2] Consisting of India, Pakistan, Bangladesh, the Maldives. Nepal, Sri Lanka and Bhutan.

[3] This agreement was witnessed by France, the UK, the US, Germany and Russia. See also the Croatia-Bosnia Treaty on the State Border of 30 July 1999.

[4] See also the German-Polish Agreement on the Confirmation of the Frontier, 14 November 1990.

[5] See also article 13 (12) providing that none of the provisions of that article concerning national minorities could be interpreted as implying "any right to undertake any action or commit any activity contrary to the goals and principles of the Charter of the United Nations or to other obligations resulting from international law or to the provisions of the Helsinki Final Act and of the Paris Charter for a New Europe, including the principle of territorial integrity of states."

[6] Security Council resolution 687 (1991).

Lebanon,[8] Georgia,[9] Cyprus,[10] the Comoros,[11] the Democratic Republic of the Congo,[12] Rwanda and other states in the region,[13] Burundi,[14] Cote d'Ivoire,[15] Somalia,[16] Sudan,[17] Chad and the Central African Republic,[18] Haiti,[19] the states of the Former Yugoslavia,[20] and Nepal.[21]

64. Finally, it should be specifically noted for the particular purposes of this Report that the Security Council has explicitly reaffirmed the territorial integrity of Azerbaijan and of all other states in the region in resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993). Further, the General Assembly in resolution 62/243, adopted on 14 March 2008, expressly reaffirmed "continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders".

g) **Conclusion**

65. It can, therefore, be seen at this stage that the norm of territorial integrity has been comprehensively confirmed and affirmed in a long series of international instruments, binding and non-binding, ranging from UN resolutions of a general and a specific character to international multilateral, regional and bilateral agreements. There can thus be no doubting the legal nature of this norm, nor its centrality in the international legal and political system. As the Supreme Court of Canada emphasised, "international law places great importance on the territorial integrity of nation states".[22]

II. Some Relevant Consequential Principles

66. The foundational norm of territorial integrity has generated a series of relevant consequential principles.

a) Prohibition of the Threat or Use of Force

67. The territorial integrity of states is protected by the international legal prohibition on threat or use of force. Article 2 (4) of the UN Charter lays down the rule that:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations".

68. This principle constitutes a norm of particular importance. Article 9 of the Draft Declaration on Rights and Duties of States 1949 declares that:

"Every state has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another state, or in any other manner inconsistent with international law and order".[23]

69. The Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN, adopted by the General Assembly on 24 October 1970,[24] recalls "the duty of states to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State" and emphasises that it was "essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". The preamble continues by underlining that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a state or country or at its political independence is incompatible with the purposes and principles of the Charter".

70. Beyond these preambular comments, the Declaration interpreted specifically a number of principles, contained in the UN Charter, including the principle prohibiting inter alia the threat or use of force against the territorial integrity of states. The Declaration provides that:

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[1] See Security Council Presidential statement of 20 July 1993, S/26118.
[2] Ibid and resolutions 1770 (2007), 1790 (2007) and 1830 (2008).
[3] See Security Council resolutions 1267 (1999), 1776 (2007).
[4] See Security Council resolution 1268 (1999). See also General Assembly resolution 52/211.
[5] See e.g. Security Council resolutions 389 (1976), 1272 (1999), and 1745 (2007).
[6] Security Council resolution 1306 (2000).
[7] Security Council resolution 1719 (2006).
[8] See e.g. Security Council resolutions 347 (1974), 425 (1978), 436 (1978), 444 (1979), 467 (1980), 490 (1981), 508 (1982), 509 (1982), 520 (1982), 542 (1983), 564 (1985), 587 (1986), 1052 (1996), 1559 (2004), 1655 (2006), 1701 (2006), 1757 (2007) and 1773 (2007). See also General Assembly resolution 36/226.
[9] See e.g. Security Council resolutions 1752 (2007), 1781 (2007) and 1808 (2008).
[10] See e.g. General Assembly resolutions 3212 (XXIX) and 37/253.
[11] See e.g. General Assembly resolution 37/43.
[12] See e.g. Security Council resolutions 1756 (2007), 1771 (2007), 1794 (2007), 1804 (2008) and 1807 (2008). See also General Assembly resolution 60/170.
[13] See e.g. Security Council resolutions 1771 (2007), 1804 (2008) and 1807 (2008).
[14] See e.g. Security Council resolution 1791 (2007).
[15] See e.g. Security Council resolutions 1739 (2007), 1765 (2007), 1795 (2008) and 1826 (2008).
[16] See e.g. Security Council resolutions 1766 (2007), 1772 (2007), 1801 (2008), 1811 (2008) and 1816 (2008).
[17] See e.g. Security Council resolutions 1769 (2007), 1784 (2007), 1841 (2008) and 1828 (2008).
[18] See e.g. Security Council resolution 1778 (2007).
[19] See e.g. Security Council resolutions 1780 (2007) and 1840 (2008).
[20] See e.g. Security Council resolution 1785 (2007).
[21] See e.g. Security Council resolution 1796 (2008).
[22] Reference Re Secession of Quebec [1998] 2 S.C.R. 217, para. 112.
[23] General Assembly resolution 375 (IV).
[24] General Assembly resolution 2625 (XXV).

"Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues... Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States".

71.It is accepted that the unlawful use of force is not only a rule contained in the UN Charter and in customary international law, but that it is also contrary to the rules of jus cogens, or a higher or peremptory norm. The International Law Commission in its commentary on the Draft Articles on theLaw of Treaties noted that "the law of the Charter concerning the prohibition of the use of force initself constitutes a conspicuous example of a rule in international law having the character of jus cogens" and included as an example of a treaty which would violate the rules of jus cogens and thus be invalid, a treaty contemplating an unlawful use of force contrary to the principles of the Charter,[1] while the Commission in its commentary on article 40 of the Draft Articles concerning State Responsibility noted that "it is generally agreed that the prohibition of aggression is to be regarded as peremptory".[2]Support for this proposition included not only the Commission's commentary on what became article 53 of the Vienna Convention on the Law of Treaties 1969,[3] but also uncontradicted statements by Governments in the course of of the Vienna Conference on the Law of Treaties[4] and the view of the International Court in the Military and Paramilitary Activities in and against Nicaragua case.[5]

72. Linked to this rule of jus cogens, is the associated principle that boundaries cannot in law be changed by the use of force. Security Council resolution 242 (1967), for example, emphasised the "inadmissibility of the acquisition of territory by war", while the Declaration on Principles of International Law 1970 declared that:

"The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal".

73. Principle IV of the Declaration of Principles adopted by the CSCE in the Helsinki Final Act 1975 noted that:

"The participating states will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal ,

while Security Council resolution 662 (1990), adopted unanimously and under Chapter VII as a binding decision, declared that the purported Iraqi annexation of Kuwait "under any form and whatever pretext has no legal validity and is considered null and void".

74. The International Court in the Construction of a Wall advisory opinion[6] emphasised that just as the principles as to the use of force incorporated in the Charter reflected customary international law, I "the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force".

b) The Objectivisation of Boundary Treaties

75. One further aspect of the importance of the territorial definition of states and the special protection afforded to it by international law is with regard to boundary treaties. Treaties as a matter of general principle bind only those states that are parties to them and the rights conferred by them will normally subside with the termination of the treaty itself. However, and due to the special position of boundaries in international law, treaties that concern boundaries between states manifest an unusual character in this respect.

76. Boundary treaties create an objective reality. That is, the boundaries established in such treaties will apply erga omnes and will survive the demise of the treaty itself. This proposition was reaffirmed by the International Court in the Libya/Chad case. The Court noted that:

"the establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasised by the Court (Temple ofPreah Vihear, ICJ Reports, 1962, p. 34; Aegean Sea Continental Shelf, ICJ Reports, 1978, p. 36).

A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary... This is not to say that two states may not by mutual agreement vary the border between them; such a result can of course be achieved by mutual consent, but when a boundary has been the subject of agreement, the continued existence of that boundary is

[1] Yearbook of the International Law Commission, 1966, vol. II, pp. 247-8.
[2] J.Crawford, The International Law Commissions Articles on State Responsibility, Cambridge, 2002, p. 246.
[3] "See footnote 72 above.
[4] The Commission noted in a footnote to this comments that "[i]n the course of the conference, a number of Governments characterized as peremptory the prohibitions against aggression and the illegal use of force: see Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March to 24 May 1968, summary records of the plenary meeting and of the meetings of the Committee of the Whole (United Nations publication, Sales No. E.68.V.7), 52nd meeting, paras. 3, 31 and 43; 53rd meeting, paras. 4, 9, 15, 16, 35, 48,59 and 69; 54th meeting, paras. 9, 41, 46 and 55; 55lh meeting, paras. 31 and 42; and 56th meeting, paras. 6, 20,29 and 51", see J.Crawford, The International Law Commission s Articles on State Responsibility, Cambridge, 2002, p. 246.
[5] ICJ Reports, 1986, pp. 14, 100-101. This view is supported by scholars, see e.g. B.Simma, "NATO, the UN and the Use of Force: Legal Aspects", 10 European Journal of International Law, 1999, pp. 1,3.
[6] ICJ Reports, 2004, pp. 136, 171. See also General Assembly resolution ES-10/14, 8 December 2003.

not dependent upon the continued life of the treaty under which the boundary is agreed".[1]

77. This position is supported, or reflected, by two further principles. The first relates to the rebus sic stantibus rule. This provides that a party to a treaty may unilaterally invoke as a ground for terminating or suspending the operation of the treaty the fact that there has been a fundamental change of circumstances from those which existed at the time of the conclusion of the treaty.[2] The doctrine was enshrined in article 62 of the Vienna Convention on the Law of Treaties 1969, which was accepted by the International Court in the jurisdictional phase of the Fisheries Jurisdiction cases as a codification of existing customary international law. The issue focused on whether there had been a radical transformation in the extent of obligations imposed by the treaty in question.[3] However, article 62 (2) (a) of the Vienna Convention provides that the doctrine could not be invoked "if the treaty establishes a boundary" and it is clear from the International Law Commission's Commentary that such treaties should constitute an exception to the general rule permitting termination or suspension, since otherwise the rule might become a source of dangerous frictions.[4]

78. The second principle relates to state succession. Article 16 of the Vienna Convention on

Succession of States in Respect of Treaties 1978 provides the basic rule that a newly independent state I (in the sense of a former colonial territory) was not bound to maintain in force or to become a party to any treaty by reason only of the fact that at the date of the succession of states the treaty was in force in respect of the territory to which the succession of states relates. However, this adoption of the socalled "clean slate" principle was held not to apply to boundary treaties. Article 11 of the Vienna - Convention on Succession of States in Respect of Treaties 1978 provides that "a succession of States does not as such affect: (a) a boundary established by a treaty...". The wording used is instructive. The reference, of course, is to a boundary established by a treaty and not to the treaty itself as such

and it is important to differentiate between the instrument and the objective reality it creates or recognises. In this sense, the treaty is constitutive.

79. Article 11 has subsequently been affirmed as requiring respect for treaty based boundary settlements. The International Court of Justice in the Tunisia/Libya case expressly stated that "this rule of continuity ipso jure of boundary and territorial treaties was later embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties",[5] while the Arbitration Commission established by the International Conference on Yugoslavia stated in Opinion No. 3 that "all externalfrontiers must be respected in line with the principle stated in the United Nations Charter, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)) and in the Helsinki Final Act, a principle which also underlies Article 11 of the Vienna Convention of 23 August 1978 on the Succession of States in Respect of Treaties".[6]

c) The Principle of Uti Possidetis Juris[7]

80. The principle of uti possidetis is a critical doctrine which underpins the process of coming to statehood of a new entity under international law. Essentially it provides that new states achieve independence with the same borders that they had when they were administrative units within the territory or territories of either a colonial power or an already independent state, The fundamental aim of the doctrine is to underline the principle of the stability of state boundaries, but it also provides the new state with a territorial legitimation. This legitimation may derive from boundaries that were originally international boundaries or boundaries that were originally internal lines. In the former case, the rule of state succession to boundaries established by treaties will, of course, apply. However, the rule of continuity of international boundaries constitutes a general principle and will also apply however that boundary was established, for example, by way of recognition or by way of an international award. As the Court made clear in the Burkina Faso/Mali case,[8] "there is no doubt that the obligation to respect pre-existing international boundaries in the event of a state succession derives from a general rule of international law".

81. Essentially, the principle of uti possidetis functions in the context of the transmission of sovereignty and the creation of a new independent state and conditions that process. Once the new state has become independent, the norm of territorial integrity takes over to provide protection for the territorial framework of that state.

82. The principle of uti possidetis first appeared in modem times in Latin America as the successor states to the Spanish Empire obtained their independence. The primary intention was clearly to seek to prevent the return of European colonialism by an acceptance that no areas of terra nullius remained on the continent since successor states

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[1] ICJ Reports, 1994, pp. 6, 37.
[2] See, for example, A.D.McNair, The Law of Treaties (1961), pp. 681-91 and T.O. Elias, The Modern Law of Treaties (1974), p. 119.
[3] ICJ Reports, 1974, pp. 3, 18.
[4] Yearbook of the International Law Commission (1966 II), p. 259.
[5] ICJ Reports, 1982, pp. 18, 66. See also the Burkina Faso/Mali case, ICJ Reports, 1986, pp. 554, 563 and Judge Ajibola's Separate Opinion in the Libya/Chad case, ICJ Reports, 1994, pp. 6, 64.
[6] 92 International Law Reports, pp. 170, 171.
[7] See e.g. M.Kohen, Possession Contestee et Souverainete Territoriale, Geneva, 1997, chapter 6, and ibid., "Uti Possidetis, Prescription et Pratique Subsequent a un Traite dans 1'Affaire de Vile de Kasikili/Sedudu devant la Cour Internationale de Justice", 43 German YIL, 2000, p. 253: G.Nesi, L 'Uti Possidetis luris nel Diritto Internazionale, Padua, 1996; Luis Sanchez Rodriguez, "VUti Possidetis et les Effectivites dans les Contentieux Territoriaux et Frontaliers", 263 Hague Recueil, 1997, p. 149; J.M.Sorel and R.Mehdi, "U Uti Possidetis Entre la Consecration Juridique et la Pratique: Essai de Reactualisation", AFDI, 1994, p. 11; T.BartoS, "Uti Possidetis. Quo VadisT, 18 Australian YIL, 1997, p. 37; "L'Applicability de VUti Possidetis Juris dans les Situations de Secession ou de Dissolution d'Etats", Colloque, RBDI, 1998, p. 5, and M.N.Shaw, "Heritage of States", loc.cit.
[8] ICJ Reports, 1986, pp. 554, 566. See also the Tunisia/Libya case, ICJ Reports, 1982, pp. 18, 65-6.

succeeded to the boundaries of the former Spanish colonies or administrative units.[1] From Latin America the doctrine moved across to Africa, where the situation was rather more intricate both because of the involvement of a number of European colonial powers and because of the complex ethnic patterns of the continent.

83. Resolution 16(1) adopted by the Organisation of African Unity at its Cairo meeting in 1964 entrenched, or more correctly, reaffirmed the core principle. This stated that colonial frontiers existing at the moment of decolonization constituted a tangible reality which all member states pledged themselves to respect. This resolution was a key political statement and one with crucial legal overtones. It was carefully analysed by the International Court in the Burkina Faso/Mali case as an element in a wider situation.[2]

84. The Court declared that the 1964 resolution "deliberately defined and stressed the principle of uti possidetis juris", rather than establishing it. The resolution emphasized that the fact that the new African states had agreed to respect the administrative boundaries and frontiers established by the colonial powers "must be seen not as a mere practice contributing to the gradual emergence of a principle of customary international law, limited in its impact to the African continent as it had previously been to Spanish America, but as the application in Africa of a rule of general scope". The acceptance of the colonial borders by African political leaders and by the OAU itself neither created a new rule nor extended to Africa a rule previously applied only in another continent. Rather it constituted the recognition and confirmation of an existing principle. As the Chamber noted, the essence of the principle of uti possidetis "lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case the application of the principle of uti possidetis resulted in administrative boundaries being transformed into international frontiers in the full sense of the term".[3]

85. This definition was reaffirmed in the El Salvador/Honduras case and referred to as an authoritative statement.[4] The Court declared that uti possidetis was essentially "a retrospective principle, investing as international boundaries administrative limits intended originally for quite other purposes".[5] It was underlined in the Burkina Faso/Mali case[6] that "the principle of uti possidetis freezes the territorial title; it stops the clock but does not put back the hands".

86. It is also clear that the principle of uti possidetis applies beyond the decolonisation context to cover the situation of secession from, or dissolution of, an already independent state. The Court in the Burkino Faso/Mali case[7] took pains to emphasise that the principle was not "a special rule which pertains solely to one specific system of international law", but rather:

"it is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal straggles provoked by the challenging of frontiers following the withdrawal of the administering power".[8] This formulation was repeated and affirmed in the decision of the International Court recently in Nicaragua v Honduras.,[9]

87. That uti possidetis is a general principle appears also from later practice. This may be seen, for example, with regard to the former USSR,[10] Czechoslovakia[11] and the former Yugoslavia. In the latter case, the Yugoslav Arbitration Commission established by the European Community and accepted by the states of the former Yugoslavia made several relevant comments. In Opinion No. 2, the Arbitration Commission declared that: "whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence {uti possidetis juris) except where the states concerned agree otherwise".[12]

88. In Opinion No. 3, the Arbitration Commission, in considering the internal boundaries between Serbia and Croatia and Serbia and Bosnia-Herzegovina, emphasised that: "except where otherwise agreed, the former boundaries became frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and in particular from the principle of uti possidetis. Uti possidetis, though initially applied in settling decolonization issues in America and Africa, is today recognised as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Faso and Mali (Frontier Dispute)".[13]

89. This approach was confirmed, for example, by the Under-Secretary of State of the Foreign and

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[1] See Colombia-Venezuela, 1 Reports of International Arbitral Awards, pp. 223, 228 and El Salvador/Honduras (Nicaragua Intervening), ICJ Reports, 1992, pp. 351, 387.
[2] ICJ Reports, 1986, pp. 554, 565-6.
[3] Ibid, at 566.
[4] ICJ Reports, 1992, pp. 351, 386.
[5] Ibid, at 388.
[6] ICJ Reports, 1986, pp. 554, 568.
[7] Ibid, at 565.
[8] Ibid. See also the Separate Opinion of Judge Kooijmans, Qatar v Bahrain, ICJ Reports, 2001, pp. 40, 230-2.
[9] ICJ Reports, 2007, paras. 151 and following.
[10] See e.g. R.Yakemtchouk, "Les Conflits de Territoires and de Frontieres dans les Etats de 1'Ex-URSS", AFDI, 1993, p. 401. See further below, paragraphs 92-94 and following.
11 See J.Malenovsky, "Problemes Juridiques Lies a la Partition de la Tchecoslovaquie", AFDI, 1993, p. 328.
[12] 92 ILR, p. 168. See also A.Pellet, "Note sur la Commission d'Arbitrage de la Conference Europeenne pour la Paix en Yugoslavie", AFDI, 1991, p. 329, and Pellet, "Activite de la Commission d'Arbitrage de la Conference Europeenne pour la Paix en Yugoslavie", AFDI, 1992, p. 220.
[13] 92 ILR, p. 171.

Commonwealth Office of the UK, who stated in a Note in January 1992[1] that: "the borders of Croatia will become the the frontiers of independent Croatia, so there is no doubt about that particular issue. That has been agreed amongst the Twelve, that will be our attitude towards those borders. They will just be changed from being republican borders to international frontiers".

91. Article X of the General Framework Agreement for Peace in Bosnia and Herzegovina 1995 (the Dayton Peace Agreement) provided that "the Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina recognise each other as sovereign independent states within their international borders", while Security Council resolution 1038 (1996) reaffirmed the independence, sovereignty and territorial integrity of Croatia.

92. Further relevant state practice may be noted. For example with regard to the former USSR, article 5 of the Agreement Establishing the Commonwealth of Independent States, signed at Minsk on 8 December 1991,[2] provided that "the High Contracting Parties acknowledge and respect each other's territorial integrity and the inviolability of existing borders within the Commonwealth". This was reinforced by the Alma Ata Declaration of 21 December 1991, signed by eleven of the former Republics (i.e., excluding the Baltic States and Georgia),[3] which referred to the states "recognising and respecting each other's territorial integrity and the inviolability of existing borders". Although these instruments refer essentially to the principle of territorial integrity protecting international boundaries, it is clear that the intention was to assert and reinforce a uti possidetis doctrine, not least in order to provide international, regional and national legitimation for the new borders. This is so since the borders to be protected that had just come into being as international borders were those of the former Republics of the USSR and no other.

93. In addition, article 6 of the Ukraine-Russian Federation Treaty of 19 November 1990 provided specifically that both parties recognized and respected the territorial integrity of the former Russian and Ukrainian Republics of the USSR within the borders existing in the framework of the USSR. Similarly, the Treaty on the General Delimitation of the Common State Frontiers of 29 October 1992 between the Czech Republic and Slovakia confirmed that the boundary between the two new states as of their independence on 1 January 1993 would be the administrative border existing between the Czech and Slovak parts of the former state.[4]

94. Of particular interest are the European Guidelines on Recognition of New States in Eastern Europe and the Soviet Union, adopted by the European Community and its Member States on 16 December 1991. These provided for a common policy on recognition with regard to the states emerging from the former Yugoslavia and former USSR in particular, which required inter alia "respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement".[5] This reference was thus not restricted to international frontiers and since since the context was the coming to independence of a range of new states out of former federal states, all of whom became sovereign within the boundaries of the former federal units, the Guidelines constitute valuable affirmation of the principle of uti possidetis.

95. International practice, therefore, supports the conclusion that there is at the least a very strong presumption that a colony or federal or other distinct administrative unit will come to independence within the borders that it had in the period immediately prior to independence. The parties themselves may agree to alter the uti possidetis line, both during the process of acquisition of independence and afterwards, but this is dependent both upon the consent of the parties (and not just one of them) and the acceptance of this by the UN.[6]

96. Apart from this, decolonisation practice shows essentially that only where there has been international legitimation by the United Nations may the operation of the principle be altered, and this would be dependent upon an internationally accepted threat to peace and security. The examples of Palestine[7] and Ruanda-Urundi[8] are instructive here in showing that the UN was convinced that for reasons of peace and security the territory in question should come to independence in a partitioned form and the UN proceeded to affirm this formally. However, these cases involved territories under UN supervision (as mandated or trust territories respectively) and it is difficult to think of an example of a non-consensual alteration of the uti possidetis line outside of this context and with regard to secession from, or dissolution of, an already independent state.

B. The Principle of Self-Determination[9]

I. Self-Determination as a Legal Right

97. Self-determination has proved to be one of the key principles of modern international law, but, unlike, for example, the philosophical or political expression of the principle, the right to self-determination under

[1] UKMIL, 63 BYIL, 1992, p. 719.
[2] See 31 ILM, 1992, p. 138 and p. 147 and following, and 34 ILM, 1995, p. 1298.
[3] 31 ILM, 1992, p. 148.
[4] See Malenovsky, "Problemes", loc.cit.
[5] 92 ILR, p. 174 (emphasis added).
[6] Shaw, "Heritage", loc.cit., p. 141 and General Assembly resolution 1608 (XV). See also the Beagle Channel case, HMSO, 1977, pp. 4-5 and El Salvador/Honduras, ICJ Reports, 1992, pp. 351, 408.
[7] See General Assembly resolution 181 (II) and Shaw, "Heritage", loc.cit., p. 148.
[8] Ibid. See also T/1551; T/1538; T/L.985 and Add. 1; T/L.1004 and T/L.1005; A/5126 and Add. 1 and General Assembly resolution 1746 (XVI).
[9] See, in general, e.g. A.Cassese, Self-Determination of Peoples, Cambridge, 1995; K.Knop, Diversity and Self-Determination in International Law, Cambridge, 2002; A.E.Buchanan, Justice, Legitimacy and Self-Determination, Oxford, 2004; D.Raic, Statehood and the Law of Self-Determination, The Hague, 2002; Crawford, Creation of States in International Law, Oxford, 2nd ed., 2006, pp. 107 ff, and Crawford, "The General Assembly, the International Court and Self-Determination" in Fifty Years of the International Court of Justice (eds. A.V.Lowe and M.Fitzmaurice), Cambridge, 1996, p. 585; C.Tomuschat (ed.), Modern Law of Self-Determination, The Hague, 1993 and Shaw, International Law, op.cit., p. 251 and following.

international law has come to have a rather specific meaning, or more correctly two specific meanings.

98. The principle of self-determination essentially emerged through the concepts of nationality and democracy in nineteenth century Europe and very gradually extended its scope, owing much to the efforts of President Wilson of the US. Although there was no reference to the principle as such in the League of Nations Covenant and it was clearly not accepted as a legal right,[1] its influence can be detected in the various provisions for minority protection[2] and in the establishment of the mandates system based as it was upon the sacred trust concept.[3] In the Aaland Islands case it was clearly accepted by both the International Commission of Jurists and the Committee of Rapporteurs that the principle of self-determination was not a legal rule of international law, but purely a political concept.[4]

99. Self-determination does, however, appear in the UN Charter. Article 1(2) stated that the development of friendly relations among nations, based upon respect for the principle of equal rights and self-determination, constituted one of the purposes of the UN. This phraseology is repeated in article 55. Although clearly not expressed as a legal right, the inclusion of a reference to self-determination in the Charter, particularly within the context of the statement of purposes of the UN, provided the opportunity for the subsequent interpretation of the principle. It is also to be noted that Chapters XI and XII of the Charter deal with non-self-governing and trust territories and may be seen as relevant within the context of the development and definition of the right to self-determination, although the term is not expressly used.

100. Practice since 1945 within the UN, both generally and particularly with regard to specific cases, can be seen as having ultimately established the legal standing of the right in international law. Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted in 1960 by eighty-nine votes to none, with nine abstentions, for example, stressed that: "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

101. It continued by noting that inadequacy of political, social, economic or educational preparedness was not to serve as a justification for delaying independence, while attempts aimed at the partial or total disruption of the national unity and territorial integrity of a country were deemed incompatible with the UN Charter. The Colonial Declaration set the terms for the self-determination debate in its emphasis upon the colonial context and its opposition to secession, and has been regarded by some as constituting a binding interpretation of the Charter.[5] The International Court has specifically referred to the Colonial Declaration as an "important stage" in the development of international law regarding non-self-governing territories and as the "basis for the process of decolonization".[6]

102. The 1970 Declaration on Principles of International Law Concerning Friendly Relations, which I can be regarded as constituting an authoritative interpretation of the seven Charter provisions it I expounds, states inter alia that:

"by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter".

103. In addition to this general, abstract approach, the UN organs have dealt with self-determination in a series of specific resolutions with regard to particular situations and this practice may be adduced as reinforcing the conclusions that the principle has become a right in international law by virtue of a process of Charter interpretation. Numerous resolutions have been adopted in the General Assembly ' and also the Security Council.[7] It is also possible that a rule of customary law has been created since | practice in the UN system is still state practice, but the identification of the opinio juris element is not easy and will depend upon careful assessment and judgment.

104. In 1966, the General Assembly adopted the International Covenants on Human Rights. Both these Covenants have an identical first article, declaring inter alia that:

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

while states parties to the instruments:

"shall promote the realisation of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations".

105. The Covenants came into force in 1976 and thus constitute binding provisions as between the parties. The Human Rights Committee, established under the International Covenant on Civil and Political Rights (and with its jurisdiction extended under the first Optional Protocol), has discussed the nature of self-determination and this will

[1] See e.g. A.Cobban, The Nation-State and National Self-Determination, London, 1969, and D.H.Miller, The Drafting of the Covenant, New York, 1928, vol. II, pp. 12-13.
[2] See e.g. I.Claude, National Minorities, Cambridge, 1955, and J.Lador-Lederer, International GroupProtection, Leiden, 1968.
[3] See e.g. H.D.Hall, Mandates, Dependencies and Trusteeships, Washington, 1948 and Q.Wright, Mandates under the League of Nations, Chicago, 1930.
[4] LNOJ Supp. No. 3, 1920, pp. 5-6 and Doc. B7/21/68/106[VII], pp. 22-3. See also J.Barros, The Aaland Islands Question, New Haven, 1968.
[5] See e.g. O.Asamoah, The Legal Significance of the Declarations of the General Assembly of the United Nations, The Hague, 1966, pp. 177-85.
[6] The Western Sahara case, ICJ Reports, 1975, pp. 12, 31. Tomuschat has called the Colonial Declaration "the starting point for the rise of self-determination as a principle generating true legal rights", see "Secession and Self-Determination" in M.G.Kohen (ed.), Secession, op.cit., p. 23.
[7] See e.g. Assembly resolutions 1755 (XVII); 2138 (XXI); 2151 (XXI); 2379 (XXIII); 2383 (XXIII) and Security Council resolutions 183 (1963); 301 (1971); 377 (1975) and 384 (1975).

be noted below (see para. 118-119).

106. Judicial discussion of the principle of self-determination has been relatively rare and rather broad. In the Namibia advisory opinion[1] the International Court emphasised that "the subsequent development of international law in regard to non-self-governing territories as enshrined in the I Charter of the United Nations made the principle of self-determination applicable to all of them". The I Western Sahara advisory opinion reaffirmed this point.[2]

107. The Court moved one step further in the East Timor (Portugal v. Australia) case[3] when it I declared that "Portugal's assertion that the right of peoples to self-determination, as it evolved from I the Charter and from United Nations practice, has an erga omnes character, is irreproachable." The I Court also emphasised that the right of peoples to self-determination was "one of the essential principles of contemporary international law".

108. In the Construction of a Wall advisory opinion,[4] the Court summarised the position as follows:

"The Court would recall that in 1971 it emphasized that current developments in 'international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all [such territories]'. The Court went on to state that 'These: developments leave little doubt that the ultimate objective of the sacred trust' referred to in Article 22, paragraph 1, of the Covenant of the League of Nations 'was the self-determination... of the peoples concerned (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1. C. J. Reports 1971, p. 31, paras. 52-53). The Court has referred to this principle on a number of occasions in its jurisprudence (ibid.; see also Western Sahara, Advisory Opinion, I.C.J, reports, 1975, p. 68, para. 162). The Court indeed made it clear that the right of peoples to self-determination is today a right erga omnes (see East Timor (Portugul v. Australia), Judgment, 1. C. J. Reports 1995, p. 102, para. 29)".

109. Confirmation of the status of the principle of self-determination was provided by the Supreme Court of Canada in 1998 in the Reference re Secession of Quebec case.[5] The Court responded to the second of the three questions posed, asking whether there existed in international law a right to self-determination which would give Quebec the right unilaterally to secede, by declaring that the principle of self-determination "has acquired a status beyond 'convention' and is considered a general principle of international law".[6]

110. Since it is undeniable that the principle of self-determination has a legal norm, the question arises as to its scope and application. Although the usual formulation contained in international instruments[7] from the 1960 Colonial Declaration to the 1970 Declaration on Principles of International Law and the 1966 International Covenants on Human Rights refers to the right of "all peoples" to determine "freely their political status", international practice is clear that not all I "peoples" as defined in a political-sociological sense[8] are accepted in international law as able to freely determine their political status up to and including secession from a recognised independent state. In fact, practice shows that the right has been recognised for "peoples" in strictly defined circumstances.

II. The Nature and Scope of the Right to Self-Determination

III. The following propositions, based on international practice and doctrine, may be put forward.

a) Self-Determination Applies to Mandate and Trusteeship Territories

112. The right to self-determination was first recognised as applying to mandate and trust territories,

that is, the colonies of the defeated powers of the two world wars. Such territories were to be governed according to the principle that "the well-being and development of such peoples form a sacred trust of civilisation". This entrusted the tutelage of such peoples to "advanced nations who by reason of their resources, their experience or their geographical position" could undertake the responsibility. The arrangement was exercised by them as mandatories on behalf of the League.[9] Upon the conclusion of the Second World War and the demise of the League, the mandate system was transmuted into the United Nations trusteeship system under Chapters XII and XIII of the UN Charter.[10]

b) Self-Determination Applies to Non-Self-Governing Territories under the UN Charter

113. The right of self-determination was subsequently recognised as applicable to all non-self-governing territories as enshrined in the UN Charter. An important step in this process was the Colonial Declaration 1960, which called for the right to self-determination with regard to all colonial countries and peoples that had not attained independence and this was confirmed by the International Court of Justice in two advisory opinions.[11] The UN based

[1] ICJ Reports, 1971, pp. 16,31.
[2] ICJ Reports, 1975, pp. 12, 31.
[3] ICJ Reports, 1995,pp.90,102.
[4] ICJ Reports, 2004, pp. 136,172. See also ibid, p. 199.
[5] [1998] 2 S.C.R. 217. The first question concerned the existence or not in Canadian constitutional law of a right to secede, and the third question asked whether in the event of a conflict constitutional or international law would have priority.
[6] Ibid, para. 115.
[7] See also article 20 of the African Charter of Human and Peoples' Rights 1981, which provides that, "all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have chosen".
[8] See e.g. Cobban, Nation-State, p. 107, and K.Deutsche, Nationalism and Social Communications, New York, 1952. See also the Greco-Bulgarian Communities case, PCIJ, Series B, No. 17; 5 AD, p. 4.
[9] See article 22 of the Covenant of the League of Nations. See also the International Status of South West Africa, ICJ Reports, 1950, pp. 128, 132; the Namibia case, ICJ Reports, 1971, pp. 16, 28-9; Certain Phosphate Lands in Nauru, ICJ Reports, 1992, pp. 240, 256; and Cameroon v. Nigeria, ICJ Reports, 2002, pp. 303, 409.
[10] See e.g. Certain Phosphate Lands in Nauru, ICJ Reports, 1992, pp. 240, 257 and Cameroon v. Nigeria, ICJ Reports, 2002, pp. 303, 409.
[11] See the Namibia case, ICJ Reports, 1971, pp. 16, 31 and the Western Sahara case, ICJ Reports, 1975, pp. 12, 31-3. See also the Construction of a

its policy on the proposition that "the territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the state administering it" and that such status was to exist until the people of that territory had exercised the right to self-determination.[1] The Canadian Supreme Court concluded in the Quebec Secession case that "[t]he right of colonial peoples to exercise their right to self-determination by breaking away from the "imperial" power is now undisputed".[2]

114. The principle of self-determination provides that the people of the colonially defined territorial unit in question may freely determine their own political status. Such determination may result in independence, integration with a neighbouring state, free association with an independent state or any other political status freely decided upon by the people concerned.[3]

c) Self-Determination Applies to Territories under Foreign or Alien Occupation

115. The Declaration on Principles of International Law 1970 noted that the "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination], as well as a denial of fundamental human rights, and is contrary to the Charter", while article 1 (4) of Additional Protocol I to the Geneva Conventions 1949, adopted in 1977, referred to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". The Canadian Supreme Court also referred to the right of self-determination in the context of foreign military occupations.[4]

116. The Palestine people under Israeli occupation since the 1967 war has, in particular, been recognised as having the right to self-determination. This was noted in a number of UN resolutions[5] and by the International Court in the Construction of a Wall case.[6] Further example of this might include, amongst others, Afghanistan under Soviet occupation.[7]

d) Self-Determination Applies Within States as a Rule of Human Rights

117. Cassese has written that:[8]

"Internal self-determination means the right to authentic self-government, that is, the right for a people really and freely to choose its own political and economic regime -which is much more than choosing among what is on offer perhaps from one political or economic position only. It is an ongoing right. Unlike external self-determination for colonial peoples - which ceases to exist under customary international law once it is implemented - the right to internal self-determination is neither destroyed nor diminished by its already once having been invoked and put into effect'!.

118. This aspect of self-determination applies in a number of contexts, but with the common theme of the recognition of legal rights for communities of persons within the recognised territorial framework of the independent state.

l) Generally

119. The interpretation of self-determination as a principle of collective human rights has been analysed by the Human Rights Committee in interpreting article 1 of the Civil and Political Rights Covenant.[9] In its General Comment on Self-Determination adopted in 1984, the Committee emphasised that the realisation of the right was "an essential condition for the effective guarantee and observance of individual human rights".[10] The Committee takes the view, as Higgins has noted,[11] that:

"external self-determination requires a state to take action in its foreign policy consistent with the attainment of self-determination in the remaining areas of colonial or racist occupation. But internal self-determination is directed to their own peoples".

120. In its discussion of self-determination, the Committee has encouraged states parties to provide in their

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Wall case, ICJ Reports, 2004, pp. 136, 172.

[1] 1970 Declaration on Principles of International Law. Note also that resolution 1541 (XV) declared that there is an obligation to transmit information regarding a territory "which is geographically separate and is distinct ethnically and/or culturally from the country administering it".

[2] [1998] 2 S.C.R. 217, para. 132.

[3] Western Sahara case, ICJ Reports, 1975, pp. 12, 33 and 68. See also Judge Dillard, ibid., p. 122; 59 ILR, pp.30, 50, 85, 138. See General Assembly resolution 1541 (XV) and the 1970 Declaration on Principles of International Law.

[4] The Quebec Secession case, [1998] 2 S.C.R. 217, para. 138.

[5] See e.g. General Assembly resolutions 3236 (XXIX), 55/85 and 58/163. See also General Assembly resolutions 38/16 and 41/100 and Cassese, Self-Determination, op.cit., p. 92 and following.

[6] ICJ Reports, 2004, pp. 136, 183, 197 and 199. See also e.g. Cassese, Self-Determination, op.cit., pp. 90-9.

[7] See e.g. Cassese, Self-Determination, op.cit., p. 94 and following.

[8] Self-Determination, op.cit., p. 101.

[9] See in particular D.McGoldrick, The Human Rights Committee, Oxford, 1994, chapter 5; Cassese, Self-Determination, op.cit., p. 59 and following, and M.Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, Kehl, 2nd edn., 2005, part 1.

[10] General Comment 12: see HRI/GEN/1/Rev.l, p. 12, 1994. However, the principle is seen as a collective one and not one that individuals could seek to enforce through the individual petition procedures provided in the First Optional Protocol to the Covenant, see e.g. See the Kitok case, Report of the Human Rights Committee, A/43/40, pp. 221, 228; the Lubicon lake Band case, A/45/40, vol. II, pp. 1, 27; and RL v. Canada, AIAHAO, pp. 358. 365. However, in Mahuika et al. v. New Zealand, the Committee took the view that the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27 on the rights of persons belonging to minorities, A/56/40, vol. II, annex X, A. See also Diergaardt et al. v. Namibia, A/55/40, vol. II, annex IX, sect. M, para. 10.3.

[11] R.Higgins, "Postmodern Tribalism and the Right to Secession" in C.Brolmann, R.Lefeber and M.Zieck (eds.), Peoples and Minorities in International Law, Dordrecht, 1993, p. 31.

reports details about participation in social and political structures,[1] and in engaging in dialogue with representatives of states parties, questions are regularly posed as to how political institutions operate and how the people of the state concerned participate in the governance of their state.[2] This necessarily links in with consideration of other articles of the Covenant concerning, for example, freedom of expression (article 19), freedom of assembly (article 21), freedom of association (article 22) and the right to take part in the conduct of public affairs and to vote (article 25). The right of self-determination, therefore, provides the overall framework for the consideration of the principles relating to democratic governance.

121. The Committee on the Elimination of Racial Discrimination adopted General Recommendation 21 in 1996 in which it similarly divided self-determination into an external and an internal aspect. The former:

"implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation", while the latter referred to the: "right of every citizen to take part in the conduct of public affairs at any level. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level...". [3]

122. The issue was touched upon by the Canadian Supreme Court in the Quebec Secession case, where it was noted that self-determination "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".[4]

li) Minorities

123. The international protection of minorities has gone through various guises.[5] After the First World War and the collapse of the German, Ottoman, Russian and Austro-Hungarian Empires coupled with the rise of a number of independent nation-based states in Eastern and Central Europe, series of arrangements were made to protect the rights of those racial, religious or linguistic minority groups to whom sovereignty and statehood could not be granted.[6] granted.[6] Such provisions constituted obligations of international concern and could not be altered without the assent of a majority of the League of Nations Council. The Council was to take action in the event of any infraction of minorities' obligations. There also existed a petition procedure by minorities to the League, although they had no standing as such before the Council or the Permanent Court of International Justice.[7] After the Second World War, the the focus shifted to the international protection of universal individual human rights, although several instruments dealing with specific situations incorporated provisions concerning the protection of minorities.[8]

124. It was with the adoption of the International Covenant on Civil and Political Rights in 1966 that the question of minority rights came back onto the international agenda. Article 27 of this Covenant provides that "[i]n those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". This cautious formulation made it clear that such minority rights adhered to the members of such groups and not to the groups themselves, while the framework for the operation of the provision was that of the state itself. The Committee adopted a General Comment on article 27 in 1994 after much discussion.[19] The General Comment pointed to the distinction between the rights of persons belonging to minorities on the one hand, and the right to self-determination and the right to equality and non-discrimination on the other. It was particularly emphasised that the rights under article 27 did not prejudice the sovereignty and territorial integrity of states.

125. The UN General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in December 1992. Article 1 provides that states "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories'" (emphasis added) and shall adopt appropriate legislative and other measures to achieve these ends. The Declaration states inter alia that persons belonging to minorities have the right to enjoy their own culture, practice and profess their own religion and to use their own language in private and in public without hindrance. Such persons also have the right to participate effectively in cultural, social, economic and public life. However, the Declaration concludes by explicitly stating that "[njothing in the present Declaration may be construed as permitting any activity

[1] See e.g. the report of Colombia, CCPR/C/64/Add.3, pp. 9 ff., 1991. In the third periodic report of Peru, it was noted that the first paragraph of article 1 of the Covenant "lays down the right of every people to self-determination. Under that right any people is able to decide freely on its political and economic condition or regime and hence establish a form of government suitable for the purposes in view", CCPR/C/83/Add.l, 1995, p. 4.

[2] See e.g. with regard to Canada, A/46/40, p. 12. See also A/45/40, pp. 120-1, with regard to Zaire.

[3] A/51/18.

[4] [1998] 2 S.C.R. 217, para. 126. Emphasis in original.

[5] See e.g. M.Weller, Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies, Oxford, 2007; R.Higgins, "Minority Rights: Discrepancies and Divergencies Between the International Covenant and the Council of Europe System" in Liber Amicorum for Henry Schermers, Dordrecht, 1994, p. 193; P.Thornberry, International Law and Minorities, Oxford, 1991; H.Hannum (ed.), Documents on Autonomy and Minority Rights, Dordrecht, 1993; J.Rehman, The Weakness in the International Protection of Minority Rights, The Hague, 2000; and the Capotorti Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/384/Rev.l, 1979.

[6] See, generally, Thornberry, International Law and Minorities, pp. 38 ff.

[7] See e.g. the Capotorti Report, op.cit., pp. 20-2.

[8] See e.g. Annex IV of the Treaty of Peace with Italy, 1947; the Indian-Pakistan Treaty, 1950, and article 7 of the Austrian State Treaty, 1955. See also the provisions in the documents concerning the independence of Cyprus, Cmnd 1093, 1960.

[9] General Comment No. 23, HRI/GEN/1/Rev.l, p. 38.

contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states".[1]

126. In similar vein, the Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1995, establishes as its aim, as expressed in the preamble, "the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states", while specifically providing that "[njothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of states".

iii) Indigenous Peoples

127. International law has also concerned itself increasingly with the special position of indigenous peoples.[2] While recognizing the special position of such peoples with regard to the territory with which they have long been associated, relevant international instruments have consistently constrained the rights accepted or accorded with reference to the need to respect the territorial integrity of the state in which such peoples live. Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, adopted by the International Labour Organisation in 1989, underlined in its preamble the aspirations of indigenous peoples "to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the states in which they live" (emphasis added).

128. A Declaration on the Rights of Indigenous Peoples was adopted by the United Nations in 2007.[3] The Declaration, noting that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, specifically recognised their right to self-determination.[4] In exercising their right to self-determination, it was noted that indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[5] While thus essentially defining the meaning of self-determination for indigenous peoples, the point was underlined in article 46 (1) that:

"Nothing in this Declaration may be interpreted as implying for any state, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or 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".

e) Self-Determination Reinforces the Sovereign Equality and Territorial Integrity of States

129. The relevant formulation in the UN Charter provides in article 1 (2) that one of the purposes of the organisation is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples", while article 55 refers to "peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Although the terminology is somewhat unclear, the only logical interpretation of this phrase is that friendly relations as between states (since in the Charter the term "nations" bears this meaning)[6] should proceed on the basis of respect for the principles of equal rights of states, being a long-established principle of international law. The reference to the self-determination of peoples appears in the Charter to refer either to the population of a member-state of the UN[7] or to the population of a non-self-governing or trust territory.[8] Accordingly, the principle of self-determination as it has been enshrined in the UN Charter may be interpreted as reinforcing the principle of respect for the territorial integrity of states since it constitutes a reaffirmation of the principle of sovereign equality as well as that of colonial territories mutatis mutandis. This in rum underlined the principle of non-intervention by states into the domestic affairs of other states.[9]

130. Kelsen emphasised that self-determination as expressed in the Charter simply underlined the concept of the sovereignty of states. He noted that since the "self-determination of the people usually designated a principle of internal policy, the principle of democratic government" and article 1(2) referred to relations among states, and since

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[1] Article8(4).

[2] See e.g. P.Thornberry, Indigenous Peoples and Human Rights, Manchester, 2002; S.Marquardt, "International Law and Indigenous Peoples", 3 International Journal on Group Rights, 1995, p. 47; R.Barsh, "Indigenous Peoples: An Emerging Object of International Law", 80 American Journal of International Law, 1986, p. 369; J.Anaya, Indigenous Peoples in International Law, Oxford, 2nd edn., 2004, and G.Bennett, Aboriginal Rights in International Law, London, 1978. See also Justice Pending: Indigenous Peoples and Other Good Causes (eds. G.Alfredsson and M.Stavropoulou), The Hague, 2002.

[3] General Assembly resolution 61/295.

[4] Articles 1 and 3.

[5] Article 4. The Declaration also noted that indigenous peoples have the right to maintain and strengthen their distinctive political, economic, social and cultural characteristics, as well as their legal systems, while retaining the right to participate fully in the life of the state (article 5), the right to a nationality (article 6), and the collective right to live in freedom and security as distinct peoples free from any act of genocide or violence (article 7 (2)). They also have the right not to be subjected to forced assimilation or destruction of their culture (article 8).

[6] See in addition to the title of the organisation ("United Nations") and the articles cited above, the preamble and article 14

[7] Note the reference at the start of the preamble to "We, the Peoples of the United Nations" and later to "our respective Governments" establishing the UN.

[8] See articles 73 and 76 respectively.

[9] Law of the United Nations (1950), pp. 51-3. See also pp. 29-32. See, generally, Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter", 66 American Journal of International Law, 1972, p. 337. In his report to Commission I, the Rapporteur noted that it was understood that the "principle of equal rights of peoples and that of self-determination are two component elements of one norm". Summary Reports of Committee I/I Doc.l/i/iof 16 May 1945, 6 UNCIO Docs., p. 296.

"the terms 'peoples' too ... in connection with 'equal rights' means probably states since only states have 'equal rights' according to general international law... then the self-determination of peoples in article 1(2) can mean only sovereignty of the states".[155] While this view may now in hindsight be seen as unduly cautious, the fact that self-determination acts to reinforce the principles of the sovereign equality of states and of non-intervention is undiminished. Indeed, Higgins has written that:

"In both article 1 (2) and article 55, the context seems to be the right of the peoples of one state to be protected from interference by other states or governments".[1]

131. Further, in the decolonisation context, since self-determination has been understood to mean that the people of the colonially defined unit may freely determine their political status (up to and including independence) but within that colonial framework, unless the UN has otherwise accepted that the peoples within the territory cannot live within one state and that this situation has produced a threat to peace and security, [2] then one consequence of the exercise of self-determination is to forge the territorial extent of the newly created state, which is then protected by the application additionally of the principle of respect for its territorial integrity.

f) Self-Determination Does Not Authorise Secession

(a) The General Principle

132. Outside of the special context of decolonisation, which may or may not be seen as a form of "secession", international law is unambiguous in not providing for a right of secession from independent states. The practice surveyed above in section A.I on the fundamental norm of territorial integrity demonstrates this clearly. Indeed, such a norm would be of little value were a right to secession under international law be recognised as applying to independent states.

133. The UN has always strenuously opposed any attempt at the partial or total disruption of the national unity and territorial integrity of a state. Point 6 of the Colonial Declaration 1960, for example, emphasised that:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations", while the preamble to the Declaration on Principles of International Law 1970 included the following paragraphs:"Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State, Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter".

134. In addition, it was specifically noted that: "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

134. This approach has also been underlined in regional instruments. For example, article III (3) of the OAU Charter emphasises the principle of "Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence", while Principle VIII of the Helsinki Final Act noted that:

"The participating States will respect the equal rights of peoples and their rights to self-determination, acting 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 the territorial integrity of States".[3]

136. In addition, the Charter of Paris 1990 declared that the participating states: "reaffirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to the territorial integrity of states".

Principle IV on the Territorial Integrity of States underlined respect for this principle, noting that the participating states "will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating state", see above, para. 38.

137. International practice demonstrates that self-determination has not been interpreted to mean that any group defining itself as such can decide for itself its own political status up to and including secession from an already independent State.[4] The UN Secretary-General has emphasised that: "as an international organisation, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of a member State".[5]

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[1] "Self-Determination and Secession" in J.Dahlitz (ed.), Secession and International Law, New York, 2003, pp. 21, 23. See also T. M.Franck, The Power of Legitimacy Among Nations, Oxford, 1990, p. 153 and following and Franck, "Fairness in the International Legal and Institutional System", 240 HR, 1993 III, pp. 13, 127-49.

[2] See above, para. 95.

[3] Principle IV on the Territorial Integrity of States underlined respect for this principle, noting that the participating states "will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating state", see above, para. 38.

[4] See e.g. H.Hannum, Autonomy, Sovereignty and Self-Determination, Pennsylvania, 1990, p. 469; Higgins, op.cit., p. 121; ranck, Fairness, op.cit. p. 149 et seq. and Cassese, op.cit., p. 122.

[5] UN Monthly Chronicle (February 1970), p. 36. See also the comment by the UK Foreign Minister that "it is widely accepted at the United Nations that the right of self-determination does not give every distinct group or territorial sub-division within a state the right to secede from it and thereby dismember the territorial integrity or political unity of sovereign independents", 54 BYIL, 1983, p. 409.

138. The Yugoslav Arbitration Commission underlined in Opinion No. 2 that: "whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence {uti possidetis juris) except where the states concerned agree otherwise",[1] while, the Canadian Supreme Court concluded in the Quebec Secession case that: "international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states... The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The various international documents that support the existence of a people's right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state's territorial integrity or the stability of relations between sovereign states".[2]

139. Leading writers have come to the same general conclusion. Cassese has written that:

"Ever since the emergence of the political principle of self-determination on the international scene, states have been adamant in rejecting even the possibility that nations, groups and minorities be granted a right to secede from the territory in which they live. Territorial integrity and sovereign rights have consistently been regarded as of paramount importance; indeed they have been considered as concluding debate on the subject".[3]

140. That author concluded with the observation that: "the international body of legal norms on self-determination does not encompass any rule granting ethnic groups and minorities the right to secede with a view to becoming a separate and distinct international entity".[4]

141. Crawford has written that: "Since 1945 the international community has been extremely reluctant to accept unilateral secession of parts of independent states if the secession is opposed by the government of that state. In such cases the principle of territorial integrity has been a significant limitation. Since 1945 no state which has been created by unilateral secession has been admitted to the United Nations against the declared wishes of the predecessor state".[5]

142. He has concluded as follows: "To summarise, outside of the colonial context, the principle of self-determination is not recognised as giving rise to unilateral rights of secession by parts of independent states... State practice since 1945 shows the extreme reluctance of states to recognise unilateral secession outside of the colonial context. That practice has not changed since 1989, despite the emergence during that period of twenty-three new states. On the contrary, the practice has been powerfully reinforced".[6]

(b) The Reverse Argument - The "Saving" or "Safeguard" Clause of the Declaration on Principles of International Law 1970

143. The 1970 on Principles of International Law Concerning Friendly Relations contains in its section on self-determination the following provision:

"Nothing in the foregoing paragraph shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".[7]

144. The thrust of this clause is to reinforce the primacy of the principle of territorial integrity and political unity of sovereign and independent states, while reaffirming the importance of states conducting themselves in accordance with the principle of self-determination. The primary starting-point is clearly the principle of territorial integrity, for its significance is of the essence in the clause in prohibiting action to affect in any way detrimentally the territorial integrity of states. Further, it is to be noted that this clause is immediately followed by the statement that "[ejvery State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country". This provision is laid down without condition or provision, nor is expressed as being contingent upon any particular factual situation. The concordance can hardly be coincidental.

145. Secondly, the clause provides a definition of the principle of self-determination in terms of the representative and non-discriminatory requirement of government so that a people validly exercise such right by participation in the governance of the state in question on a basis of equality. This is a clear reference to "internal self-determination" as it has been analysed and recognised by the Human Rights Committee in its implementation of article 1 of the International Covenant on Civil and Political Rights expressing the right of all peoples to self-determination.

146. However, some have drawn the inference by way of reverse or a contrario argument that states that are not conducting themselves in accordance with the principle of self-determination are not therefore protected by the principle of territorial integrity, thus providing for a right of secession. Even those writers that do draw this conclusion express themselves in extremely cautious and hesitant terms. Cassese, for example, concludes that: "a racial or religious group may attempt secession, a form of external self-determination, when it is apparent that internal self-

[1] 92 ILR, p. 168.
[2] [1998] 2 S.C.R. 217, paras. 122 and 127.
[3] Op. cit., p. 122.
[4] Ibid., p. 339.
[5] Op.cit., p. 390.
[6] Ibid., p. 415.
[7] See also the similar clause in the Vienna Declaration of the UN World Conference on Human Rights 1993.

determination is absolutely beyond reach. Extreme and unremitting persecution and the lack of any reasonable prospect for peaceful challenge may make secession legitimate",[1] while Crawford has noted that: "it is arguable that, in extreme cases of oppression, international law allows remedial secession to discrete peoples within a state and that the 'safeguard clauses' in the Friendly Relations Declaration and the Vienna Declaration recognise this, even if indirectly".[2]

147. The Canadian Supreme Court in the Quebec Secession case mentioned the issue, noting that it was unclear whether the reverse argument actually reflected an "established international law standard" and in any event concluding that it was irrelevant to the Quebec situation.[3]

148. A more general comment should be made. It would be extremely unusual for a major change in legal principle such as the legitimation of the right to secession from an independent state, even in extreme conditions, to be introduced by way of an ambiguous subordinate clause phrased in a negative way, especially when the principle of territorial integrity has been accepted and proclaimed as a core principle of international law. Further the principle of territorial integrity is repeated both before the qualifying clause in the provision in question and indeed in the immediately following paragraph. It is also to be underlined that the 1970 Declaration provides that each principle contained in the Declaration is to be interpreted in the context of the other principles and that all these principles are interrelated. The principle of sovereign equality includes the unconditional provision that "[t]he territorial integrity and political independence of the State are inviolable". Accordingly, it is hard to conclude that the "saving" or "safeguard" clause so indirectly provides such an important exception to the principle of territorial integrity.

149. Additionally, actual practice demonstrating the successful application of this proposition is lacking, even when expressed as restricted to "extreme" persecution. This is particularly so where the governing norm of respect for the territorial integrity of states is so deeply established.

C. Armenia's Revisionist Claims and Responses Thereto

150. Armenia's revisionist claims with regard to self-determination and territorial integrity proceed as follows.[4]

a) Prior to Azerbaijan s Independence

151. Armenia makes a series of historical assertions. It claims that Nagorny Karabakh was arbitrarily placed in the Soviet Republic of Azerbaijan on 5 July 1921 with the status of an autonomous region. Within the Soviet Union, it is claimed, the Nagorny Karabakh Autonomous Region (Oblast) was subject to pressures aimed at reducing the ethnic Armenian population.[5] However, it is well known that Nagorny Karabakh has been part of Azerbaijan for centuries and, owing to the territorial claims of Armenia, the decision was taken on 5 July 1921 to leave Nagorny Karabakh within Azerbaijan.[6] Moreover, it is also well documented that the region possessed all essential elements of self-government and even developed more rapidly than Azerbaijan as a whole. Nonetheless, whatever the truth of Armenia's assertions, they cannot affect the legal position as it existed during the critical period leading up to and including the independence of Azerbaijan nor the legal position after such independence, otherwise the international community would be faced with scores of revisionist claims based upon historical arguments.

152. Armenia claims that the key to the legal situation is the period commencing 20 February 1988, when a session of the twentieth convocation of delegates of the Nagorny Karabakh Autonomous Region adopted a resolution seeking the transfer of the region from Azerbaijan to Armenia (within the USSR). This was accepted by the Supreme Soviet of the Armenian SSR on 15 June 1988. On 12 July 1988, the eighth session of the twentieth convocation of delegates of the Nagorny Karabakh Autonomous Region passed a resolution on the secession of the region from Azerbaijan. This was confirmed on 16 August 1989 at the "congress of plenipotentiary representatives of the population of Nagorny Karabakh", while on 1 December 1989, the Supreme Soviet of the Armenian SSR adopted a resolution calling for the "reunification" of the Armenian SSR and Nagorny Karabakh. On 2 September 1991, "the local councils" of Nagorny Karabakh adopted a "Declaration of Independence of the Republic of Nagorno-Karabakh". This was confirmed by a "referendum" held in Nagorny Karabakh on 10 December 1991. On 28 December that year, "elections" were held in the territory and on 6 January 1992, the newly convened "parliament" adopted a "Declaration of Independence", followed two days later by the adoption of a "Constitutional Law 'On Basic Principles of the State Independence of Nagorny Karabakh Republic'".[7]

153. Armenia's view is that "[o]n the date the Republic of Azerbaijan obtained its recognition, the Republic of

[1] Op.cit., p. 120.
[2] Op.cit., p. 119.
[3] [1998] 2 S.C.R. 217, para. 135.
[4] See e.g. Armenia's Initial Report to the Human Rights Committee, CCPR/C/92/Add.2, 30 April 1998; and Armenia's Initial Report to the Committee on the Economic, Social and Cultural Rights, E/1990/5/Add.36, 9 December 1998. See also S.Avakian, "Nagorno-Karabagh: Legal Aspects", 2005, appearing on the website of the Armenian Foreign Ministry, <http://www.armenianforeignministry.com/fr/nk/legalaspects/legalaspect_text.pdf> and the Note Verbale from the Permanent Mission of Armenia to the Office of the UN High Commissioner for Human Rights entitled "The Right of Peoples to Self-Determination and Its Application to Peoples under Colonial or Alien Domination or Foreign Occupation", E/CN.4/2005/G/23, 22 March 2005, which is essentially the same document minus annexes.
[5] See e.g. Note Verbale, op.cit., p. 4 and Initial Report to the Human Rights Committee, op.cit., pp. 6-7.
[6] Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks) of 5 July 1921, in "To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials", Baku, 1989,p. 92.
[7] See Note Verbale, op.cit., pp. 7-9.

Nagorny Karabakh no longer formed part of it",[1] while the process by which this entity became independent reflected the right of self-determination.[2]

154. However, this approach is fundamentally flawed. The following points need to be made bearing in mind the analysis of the relevant concepts made earlier in this Report.

155. First, the critical period for the purposes of uti possidetis and thus the legitimate inheritance of territorial frontiers is the period around independence. The International Court has made this very clear. In Burkina Faso/Mali, it was stated that:[3] "The essence of this principle {uti possidetis] lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved*, and further, that:[4]

"By becoming independent, a new state acquires sovereignty with the territorial base and boundaries left to it by the colonial power. This is part of the ordinary operation of the machinery of state succession. International law - and consequently the principle of uti possidetis - applies to the new state (as a state) not with retroactive effect, but immediately and from that moment onwards. It applies to the state as it is, i.e., to the 'photograph' of the territorial situation then existing. The principle of uti possidetis freezes the territorial title; it stops the clock, but does not put back the hands" (emphasis in original).

156. What mattered, therefore, was the frontier "which existed at the moment of independence".[5] Insofar as the Nagorny Karabakh situation is concerned, this must be 18 October 1991, the date of independence of the Republic of Azerbaijan confirmed at the referendum held on 29 December 1991. Accordingly, the situation as at that date must be examined.

157. Secondly, the applicable law governing the application of uti possidetis, being the rule determining the territorial boundaries of an entity upon independence is the constitutional law of the former or predecessor state for it is primarily with respect to the valid titles established under that system that one can identify the relevant administrative line.

158. The Chamber in Burkina Faso/Mali noted that the determination of the relevant frontier line had to be appraised in the light of French colonial law since the line in question had been an entirely internal administrative border within French West Africa. As such it was defined not by international law, but by the French legislation applicable to such territories.[6] This approach was reinforced in the El Salvador/Honduras case, where the Chamber stated that "when the principle of uti possidetis juris is involved, the jus referred to is not international law but the constitutional or administrative law of the pre-independence sovereign".[7]

159. Accordingly, the application of the principle of uti possidetis is conditioned upon the constitutional position as at the moment of independence with regard to the administrative boundaries in question. In this sense, the position as far as Azerbaijan is concerned is clear. The attempts made by the Armenians of Nagorny Karabakh and Armenia to alter the line (or remove Nagorny Karabakh from the recognised territory of Azerbaijan) were not accepted either by Azerbaijan or by the authorities of the USSR at the relevant time. On 18 July 1988, the Presidium of the Supreme Soviet of the USSR (faced with the request of the convocation of delegates of the Nagorny Karabakh Autonomous Region of 20 February that year to join Armenia, the refusal of this by Azerbaijan on 13 and 17 June and the support of the request by Armenia on 15 June) decided to leave the territory within the Azerbaijan SSR. The decisions on unilateral secession of Nagorny Karabakh of 12 July 1988 and 16 August 1989 were refused by Azerbaijan on 12 July 1988 and 26 August 1989 respectively.[8] On 20 January 1989, the Supreme Soviet of the USSR established a special authority for the territory under the direct authority of the central government, but replaced this on 28 November 1989 with a "Republican Organisational Committee" of the Azerbaijan SSR.[9]

160. On 1 December 1989, the Supreme Soviet of Armenia adopted a resolution calling for the reunification of the Armenian SSR with Nagorny Karabakh.[10] However, on 10 January 1990, the Presidium of the Supreme Soviet of the USSR adopted a resolution on the "Nonconformity With the USSR Constitution of the Acts on Nagorny Karabakh Adopted by the Armenian SSR Supreme Soviet on 1 December 1989 and 9 January 1990", declaring the illegality of the proposed unification of Armenia with Nagorny Karabakh without the consent of the Azerbaijan SSR.[11] On 30 August 1991, the Azerbaijan SSR adopted a Declaration on the restoration of state independence of Azerbaijan and on 18 October 1991 and 29 December 1991, this was officially confirmed.

161. Unlike all previous decisions taken by the Armenian side on Nagorny Karabakh, the proclamation on 2 September 1991 of the "Republic of Nagorny Karabakh" was argued by the Law of the USSR "On the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR" of 3 April 1990.[12]

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[1] See Initial Report to the Human Rights Committee, op.cit., p. 8.
[2] "Nagorno-Karabagh: Legal Aspects", op.cit., p. 20.
[3] ICJ Reports, 1986, pp. 554, 566. This was reaffirmed in El Salavador/Honduras, ICJ Reports, 1992, pp. 351,386-7.
[4] ICJ Reports, 1986, p. 568.
[5] Ibid., p. 570.
[6] Ibid., p. 568. The situation is slightly different where the boundaries in question where constituted by international agreement prior to independence, rather than where, as here, the relevant boundaries were prior to independence internal or administrative lines of the predecessor state.
[7] ICJ Reports, 1992, pp. 351, 559.
[8] See Bulletin of the Supreme Soviet of the Azerbaijan SSR, 1988, No. 13-14, pp. 14-15 and Bulletin of the Supreme Soviet of the Azerbaijan SSR, 1989, No. 15-16, pp. 21-22.
[9] See "Nagorno-Karabagh: Legal Aspects", op.cit., pp. 9-10 and Note Verbale, op.cit., p. 5.
[10] Ibid.
[11] See Bulletin of the Supreme Soviet of the USSR, 1990, No. 3, p. 38.
[12] See Bulletin of the Supreme Soviet of the USSR, 1990, No. 15, pp. 303-308.

162. The purpose of this Law was to regulate mutual relations within the framework of the USSR by establishing a specific procedure to be followed by Union Republics in the event of their secession from the USSR. A decision by a Union Republic to secede had to be based on the will of the people of the Republic freely expressed through a referendum, subject to authorization by the Supreme Soviet of the Union Republic. At the same time, according to this Law, in a Union Republic containing autonomous entities, the referendum had to be held separately in each entity in order to decide independently the question of staying in the USSR or in the seceding Union Republic, as well as to raise the question of its own state-legal status. Moreover, the Law provided that in a Union Republic, whose territory included areas with concentration of national groups that made up the majority of the population in a given locality, the results of the voting in those localities had to be considered separately during the determination of the referendum results. The secession of a Union Republic from the USSR could be regarded valid only after the fulfillment of complicated and multi-staged procedures and, finally, the adoption of the relevant decision by the Congress of the USSR People's Deputies.

163. In reality, as Cassese pointed out, "the law made it extremely difficult for republics successfully to negotiate the entire secession process" and thus "clearly failed to meet international standards on self-determination". The same author concludes with the observation that "[t]he Law [of 3 April 1990] made the whole process of possible secession from the Soviet Union so cumbersome and complicated, that one may wonder whether it ultimately constituted a true application of self-determination or was rather intended to pose a set of insurmountable hurdles to the implementation of that principle".[1] It is therefore curiously to hear this Act being invoked against the background of claims to application of the right of peoples to self-determination, since that is precisely what the Law limited.

164. For these reasons, the Law of 3 April 1990 was never applied. Instead, it was rapidly superseded by the dramatic events in the USSR and forfeited not only its urgency but also legal effect before the Soviet Union ceased to exist as international legal person. Cassese has written that the "process of independence by the twelve republics ... occurred outside the realm of law ..." and "was precipitated by the political crisis at the centre of the Soviet Union and the correlative increase in the strength of centrifugal forces" (emphasis in original).[2]

165. In other words, on the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of any unification of Nagorny Karabakh with Armenia without Azerbaijan's consent was confirmed at the highest constitutional level. Azerbaijan did not so consent, so that the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the territory of Nagorny Karabakh. Accordingly, the factual basis for the operation of the legal principle of uti possidetis is beyond dispute in this case. Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognised as having as the Azerbaijan SSR within the USSR.

166. It follows from this that Armenia's claims as to the claimed "independence" or "reunification" of Nagorny Karabakh are contrary to the internationally accepted principle of uti possidetis and therefore unsustainable in international law.

167. Finally, Armenia's arguments that Azerbaijan proclamation that it succeeded to the 1918-20 state of Azerbaijan[3] meant that Azerbaijan succeeded to the boundaries of its former incarnation is equally fallacious. It is one one thing to claim succession to a former legal personality, something which would mean more in political than in legal terms, it is quite another to argue that such a process would mean a reversion to territorial boundaries. If accepted as a rule of international law, it would run counter to all understanding of the principle of self-determination and lead to considerable uncertainty as states sought to redefine their territorial extent in the light of former entities to which they may be able to claim succession.[4] Further, such an approach would reduce the principle of territorial integrity to a fiction, since states could challenge and seek to extend their boundaries and claim areas legitimately in the territory of other states on the basis of such reversionary irredentism. It would also mean that the principle of uti possidetis would be subject to a considerable exception. It is a doctrine with no support in international law in the light of its considerable inherent dangers.

b) After Azerbaijan's Independence

168. The claims made by Armenia insofar as they relate to the period prior to the independence of Azerbaijan are contrary to international law. However, claims have been made in relation to the post- independence period and these are similarly unlawful as amounting to a violation of the principle of the respect for the territorial integrity of sovereign states.

169. On 10 December 1991, Nagorny Karabakh held a "referendum on independence" (without the support or consent of independent Azerbaijan of which it legally constituted a part) which was confirmed two days later by an "Act on the Results of the Referendum on the Independence of the Republic of Nagorny Karabakh". On 28 December 1991, "parliamentary elections" were held in the territory and on 6 January 1992 the newly convened "parliament" adopted a "Declaration of Independence". On the same day, the "Supreme Council of Nagorny Karabakh" adopted a "Declaration on State Independence of the Republic of Nagorny Karabakh".[5] Thus, the process of secession from Azerbaijan was instituted. This was claimed to be on the basis of the right to self-

[1] Cassese, Self-Determination, op.cit., pp. 264-265.
[2] Ibid., p. 266.
[3] See e.g. the terms of the Declaration of 30 August 1991and article 2 of the Declaration of 18 October 1991.
[4] See e.g. M.N.Shaw, Title to Territory in Africa, Oxford, 1986, chapter 4.
[5] Note Verbale, op.cit., p. 8. Note that on 23 November 1991, faced with rising unrest, Azerbaijan removed Nagorny Karabakh's autonomy, ibid.,p.9.

determination. [1]

170. This assertion of secession from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of territorial integrity, as discussed earlier in this Report. Not only has Azerbaijan not consented to this secession (indeed it has constantly and continuously protested against it), but no state in the international community has recognised the "Republic of Nagorny Karabakh" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.

D. Conclusions

171. The following general conclusions may be drawn from the above analysis:

1) The principle of respect for the territorial integrity of states constitutes a foundational norm in international law buttressed by a vast array of international, regional and bilateral practice, not least in the United Nations.
2) The territorial integrity norm may well constitute a rule of jus cogens.
3) The territorial integrity norm reflects and sustains the principle of sovereign equality.
4) The territorial integrity norm is reflected in a range of associated and derivative international legal principles, the most important of which is the prohibition of the threat or use of force against the territorial integrity of states, which is without dispute a rule of jus cogens.
5) A related principle of territorial integrity, that of uti possidetis juris, provides for the territorial definition of entities as they move to independence.
6) This principle of uti possidetis applies to new states, irrespective of colonial or other origins, and asserts that absent consent to the contrary, a new state will come to independence in the boundaries that it possessed as a non-independent entity.
7) The principle of self-determination exists as a rule of international law. As such it provides for the independence of colonial territories and for the participation of peoples in the governance of their states within the territorial framework of such states. The principle of self-determination also has an application in the case of foreign occupations and acts to sustain the integrity of existing states.
8) The principle of self-determination cannot be interpreted to include a right in international law of secession (outside of the colonial context).

172. The following particular conclusions may be drawn:

1) The principle of uti possidetis establishes that Azerbaijan validly came to independence within the borders that it had under Soviet law in the period preceding its declaration of independence.
2) These borders included the territory of Nagorny Karabakh as affirmed by the legitimate authorities of the USSR at the relevant time.
3) Azerbaijan has not consented to the removal of Nagorny Karabakh from within its own internationally recognised territorial boundaries.
4) Neither the purported unification of Nagorny Karabakh with Armenia nor its purported independence have been recognised by any third state.
5) Accordingly, the actions of those in control in Nagorny Karabakh prior to the independence of Azerbaijan offend the principle of uti possidetis and fall to be determined within the legal system of Azerbaijan.
6) The inhabitants of Nagorny Karabakh, however, are entitled to the full benefit of international human rights provisions, including the right to self-determination within the boundaries of Azerbaijan. There is no applicable right to secession under international law.
7) The actions of those in control in Nagorny Karabakh following the independence of Azerbaijan amount to secessionist activities and fall to be determined within the domestic legal system of Azerbaijan.
8) The actions of Armenia, up to and including the resort to force, constitute a violation of the fundamental norm of respect for the territorial integrity of states, as well as a violation of other relevant international legal principles, such as rule prohibiting the use of force.

REPORT ON THE INTERNATIONAL LEGAL RESPONSIBILITIES OF ARMENIA AS THE BELLIGERENT OCCUPIER OF AZERBAIJANI TERRITORY

General Assembly. Security Council. Original: English. General Assembly. Sixty-third session
Agenda items 13 and 18
Protracted conflicts in the GUAM area and their implications for international peace, security and development
The situation in the occupied territories of Azerbaijan
Distr.: General. Security Council. Sixty-fourth year

Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory (see annex).

[1] See "Nagorno-Karabagh: Legal Aspects", op.cit., p. 20.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 13, "Protracted conflicts in the GUAM area and their implications for international peace, security and development", and 18, "The situation in the occupied territories of Azerbaijan", and of the Security Council.

(Signed) Agshin Mehdiyev. Ambassador. Permanent Representative

Annex to the letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory

1. The present Report provides the view of the Government of the Republic of Azerbaijan with regard to the international legal responsibilities of the Republic of Armenia ("Armenia") as the belligerent occupier of the legitimate and recognised territory of the Republic of Azerbaijan ("Azerbaijan")[1]. The Report addresses the following issues:

a) Is Armenia an occupier in international law of Azerbaijani territory?

b) If so, what are Armenia's duties as an occupier of Azerbaijani territory with regard to issues such as the maintenance of public order, the preservation of the Azerbaijani legal system and the protection of human rights in the territory in question?

c) How may Armenia's responsibilities be monitored and enforced in international law?

1. General

2. International law historically dealt with question of occupation of territory of a state as part of what used to be called the law of war and what is now called international humanitarian law.[2] The law is essentially laid down in three instruments, being the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land 1907 ("the Hague Regulations"); Geneva Convention IV on the Protection of Civilians in Time of War 1949 ("Geneva Convention IV") and Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts 1977 ("Additional Protocol I").

3. Armenia became a party to Geneva Convention IV and to Additional Protocol I on 7 June 1993 and Azerbaijan became a party to Geneva Convention IV on 1 June 1993. Accordingly, Armenia is bound by all three of the instruments noted above, the Hague Regulations constituting customaiy international law.

a) Occupation and Sovereignty

4. The first point to make is that international law specifies that territory cannot be acquired by the use of force. Article 2 (4) of the United Nations Charter declares that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ..".

5. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970[3] provided that:

"The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal".

6. Principle IV of the Declaration of Principles adopted by the Conference on Security and Cooperation in Europe in the Helsinki Final Act 1975 noted that:

"The participating states will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

6. It is, thus, abundantly clear that occupation does not confer sovereignty over the occupied territory upon the occupying state. Gasser, for example, writes that:

"The annexation of conquered territory is prohibited by international law. This necessarily means that if one state achieves power over parts of another state's territory by force or threat of force, the situation must be considered temporary by international law. The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory".[4]

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[1] For more information on the matter, see also the Reports entitled "Military Occupation of the Territory of Azerbaijan: a Legal Appraisal", A/62/49 l-S/2007/615, "The Legal Consequences of the Armed Aggression of the Republic of Armenia Against the Republic of Azerbaijan", A/63/662-S/2008/812, and "Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the Light of Armenia's Revisionist Claims",' A/63/664-S/2008/823.

[2] See e.g. L. Green, The Contemporary Law of Armed Conflict, 2" ed., Manchester, 2000, chapters 12 and 15; H. P. Gasser, "Protection of the Civilian Population" in D. Fleck (ed.), Handbook of Humanitarian Law in Armed Conflict, Oxford, 1995, p. 209; UK Ministry of Defence, The Manual of the Law of Armed Conflict, Oxford, 2004, chapters 9 and 11; E. Benvenisti, The International Law of Occupation, Princeton, 2004 and J. Pictet (ed.), The Geneva Conventions of 12 August 1949: Commentary, Geneva Convention IV, Geneva, 1958. See also A. Roberts, "What is a Military Occupation?", 55 British Year Book of International Law, p. 249.

[3] Adopted in General Assembly resolution 2625 (XXV).

[4] Op.cit., p. 242. See also Benvenisti, Op.cit., p. 8. Note in addition Prefecture ofVoiotia v Germany (Distomo Massacre), Court of Cassation, Greece, 4 May 2000, 129 International Law Reports, pp. 514, 519 and Mara 'abe v The Prime Minister of Israel, Israel Supreme Court, 15

8. Accordingly, sovereignty over the occupied territory does not pass to the occupier. The legal status of the population cannot be infringed by any agreement concluded between the authorities of the occupied territory and the occupying power, nor by an annexation by the latter.[1] Occupation is, thus, a relationship of power and such power is regulated according to the rules of international humanitarian law, which lays down both the rights and the obligations of the occupying power pending termination of that status. Both the legal status of the parties to the conflict and the legal status of the territory in question remain unaffected by the occupation of that territory.[2] Accordingly, no action taken by Armenia or by its subordinate local authority within the occupied territories can affect the pre-existing legal status of these territories, which thus remain Azerbaijani in international law.

b) Commencement of Occupation

9. Article 42 of the Hague Regulations provides that: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".

9. This provision is considered to be a rule of customary international law and thus binding on all states.[3] It was examined by the International Court of Justice in the Construction of a Wall advisory opinion, in which the Court declared that: "territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised".[4]

10. The International Court of Justice noted that: "under customary international law, as reflected in article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised .... In order to reach a conclusion as to whether a state, the military forces of which are present on the territory of another state as a result of an intervention, is an 'occupying power' in the meaning of the term as understood in the jus in bello, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening state in the areas in question".[5]

11. Article 2 of Geneva Convention IV provides that the convention shall apply:

"to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".[6]

13.Since both Armenia and Azerbaijan are parties to this Convention, they are bound by its provisions. This obligation thus derives from both quoted parts of the article. Insofar as the first paragraph is concerned, the official Commentary on the Convention notes that "[a]ny difference arising between two states and leading to the intervention of members of the armed forces is an armed conflict within the meaning of article 2".[7] That this happened from the early 1990s is indisputable as is the continuing outbreak of low-level hostilities and loss of life.[8]

14. The Interaational Court of Justice has discussed the meaning of this paragraph in its advisory opinion in the Construction of a Wall case.[9] It noted that the Convention is applicable under this paragraph when two conditions were fulfilled; that there exists an armed conflict and that the conflict is between two contracting parties. The Court continued by stating that "[i]f those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties". Further, the Court noted that the object of the second paragraph, which provides that the Convention applies to "all cases of partial or total occupation of the territory of a High Contracting Party", was "directed simply to making it clear that, even if the occupation effected during the conflict met no armed resistance, the Convention is still applicable". As the Court emphasised, the purpose of the Convention was to seek to guarantee the protection of civilians irrespective of the status of the occupied territory.[10] It further underlined its approach by concluding that:

"the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties".[11]

16. Further, the Eritrea-Ethiopia Claims Commission has pointed out that:

"These protections [provided by international humanitarian law] should not be cast into doubt because the

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September 2005, 129 International Law Reports, pp. 241,252.

[1] See article 47 of Geneva Convention IV.

[2] See article 4 of Additional Protocol I.

[3] See Construction of a Wall, ICJ Reports, 2004, pp. 136, 172.

[4] Ibid., p.167.

[5] Congo v Uganda, ICJ Reports, 2005, pp. 168, 229-30.

[6] See also article 3 of Additional Protocol I.

[7] Pictet (ed.), Commentary, Op.cit., p. 20.

[8] See e.g. an AFP report dated 5 September 2007 stated that three Armenian and two Azerbaijani soldiers had been killed in fighting near Nagorny Karabakh. The report concludes by noting that "Armenian and Azerbaijani forces are spread across a ceasefire line in and around Nagorny Karabakh, often facing each other at close range, and shootings are common", http://www.reliefweb.int/rw/rwb.nsf/db900sid/TBRL-76RMYP7OpenDocument>. See also the Parliamentary Assembly of the Council of Europe report on Migration, Refugees and Population dated 6 February 2006, which deplores "the frequent incidents along the ceasefire line and the border incidents, which are detrimental to refugees and displaced persons", Doc. 10835, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs /Doc06/EDOC10835.htm>, at para. 5. This terminology was repeated in Resolution 1497,2006.

[9] ICJ Reports, 2004, pp. 136, 174-5.

[10] Ibid., p. 175.

[11] Ibid., p. 177.

belligerents dispute the status of territory ... respecting international protections in such situations does not prejudice the status of the territory".[1]

16. Insofar as the conflict between Armenia and Azerbaijan is concerned, both the Hague Regulations and Geneva Convention IV apply. Further, as Armenia is a party to Additional Protocol I this also applies.

2. Armenia as an Occupier under International Law

a) Armenia as the Occupier of Azerbaijani Territory

17. The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the USSR disintegrated and the new successor states came into being, thus transforming an internal dispute between the two Union Republics into an international conflict. There can be no occupation in an international law sense of the concept as between contending forces in an internal conflict. With the declaration of Armenian independence on 21 September 1991 and that of Azerbaijan on 18 October that year, the conflict over Nagorny Karabakh[2] became an international one. Both Armenia and Azerbaijan came to independence and were recognised as such in accordance with international law within the boundaries that they had had as republics of the USSR. This meant that Nagorny Karabakh was internationally accepted as falling with the territory of Azerbaijan.

18. Fighting in the region of Nagorny Karabakh intensified after independence of Armenia and Azerbaijan, followed by the increased involvement of troops from the Republic of Armenia during this period. The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics - an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets - occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun.[3] Direct artillery bombardment of the Azerbaijani town of Lachin - mounted from within the territory of the Republic of Armenia -took place in May of that year[4] Armenian attacks against areas within the Republic of Azerbaijan were resumed in 1993, eliciting a series of four Security Council resolutions. Human Rights Watch in its comprehensive report of December 1994 established on the basis of evidence it had collected "the involvement of the Armenian army as part of its assigned duties in the conflict ..". Such information was gathered by Human Rights Watch from prisoners from the Armenian army captured by Azerbaijan and from Armenian soldiers in Yerevan, the capital of Armenia. Western journalists also reported seeing busloads of Armenian army soldiers entering Nagorny Karabakh from Armenia. Human Rights Watch concluded that the Armenian army troop involvement in Azerbaijan made Armenia a party to the conflict and made the war an international armed conflict involving these two states.[5]

19. That there was and remains a situation of armed confrontation has been recognised by various United Nations organs. The UN Human Rights Committee, for example, has referred with regard to Azerbaijan explicitly to "[t]he situation of armed conflict with a neighbouring country".[6] The Committee on the Elimination of Racial Discrimination noted in its Concluding Observations on Azerbaijan on 12 April 2001 that:

"After regaining independence in 1991, the State party was soon engaged in war with Armenia, another State party. As a result of the conflict, hundreds of thousands of ethnic Azerbaijanis and Armenians are now displaced persons or refugees. Because of the occupation of some 20 per cent of its territory, the State party cannot fully implement the Convention".[7]

20. Further, this Committee proceeded to "express its concern about the continuation of the conflict in and around the Nagorny-Karabakh region of the Republic of Azerbaijan", a conflict which "undermines peace and security in the region and impedes implementation of the Convention".[8] Concern with "the conflict in the Nagorny-Karabakh region" was also expressed in the Committee's Concluding Observations on Azerbaijan on 14 April 2005.[9]

21. A similar position has been adopted by the UN Committee on Economic, Social and Cultural Rights. In its Concluding Observations on Azerbaijan on 22 December 1997, it was noted that "the State party is also faced with considerable adversity and instability due to an armed conflict with Armenia". The Committee also referred to the "conflict with Armenia"[10] in its Concluding Observations on Azerbaijan on 14 December 2004.[11]

22. The US Department of State's Country Reports on Human Rights Practices for Armenia 2006, for example, noted that:

"Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding

[1] Partial Award, Central Front, Ethiopia's Claim 2, The Hague, 28 April 2004, para 28. See also article 4 of Additional Protocol I.

[2] Note that Nagorny Karabakh is sometimes written as Nagorno-Karabakh or Karabagh. In reality, "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language - "Daghq Qarabag" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. The word "Garabagh" is translated from Azerbaijani as "Black Garden". In order to avoid confusion the widely referred term "Nagorny Karabakh"' will be used hereinafter.

[3] See T. de Waal, Black Garden: Armenia and Azerbaijan through Peace and War 170 (2003).

[4] See Statement by the Ministry of Foreign Affairs of the Republic of Azerbaijan, annexed to a Letter from the Permanent Representative of Azerbaijan to the President of the Security Council (Doc. S/23926, 14 May 1992)., 69-73.

[5] Seven Years of Conflict in Nagorno-Karabakh, New York, 1994, pp. 69-73.

[6] See the Concluding Observations of the Human Rights Committee: Azerbaijan, 3 August 1994, CCPR/C/79/Add. 38, at para. 2. The reference to "armed conflict" was repeated in the Committee's Concluding Observations on Azerbaijan on 12 November 2001, CCPR/CO/73/AZE, at para. 3.

[7] CERD/C/304/Add.75, at para. 3.

[8] Ibid, at para. 7.

[9] CERD/C/AZE/CO/4, at para. 10.

[10] E/C.12/1/Add.20, at para. 12.

[11] E/C. 12/1/Add. 104, at para. 11.

Azerbaijani territories. All parties to the Nagorno-Karabakh conflict have laid landmines along the 540-mile border with Azerbaijan and along the line of contact".[1]

23. The US Department of State's Country Reports on Human Rights Practices for Azerbaijan 2006 stated that:

"Armenia continued to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories. During the year, incidents along the militarized line of contact separating the sides as a result of the Nagorno-Karabakh conflict again resulted in numerous casualties on both sides. Reporting from unofficial sources indicated approximately 20 killed and 44 wounded, taking into account both military and civilian casualties on both sides of the line of contact. According to the national agency for mine actions, landmines killed two persons and injured 15 others during the year". [2]

24. Further, the Freedom House Report on Azerbaijan for 2006 states that:

"The Azerbaijani government continued to have no administrative control over the self-proclaimed Nagorno-Karabakh Republic (NKR) and the seven surrounding regions (Kelbajar, Gubatli, Djabrail, Fizuli, Zengilan, Lachin, and Agdam) that are occupied by Armenia. This area constitutes about 17 percent of the territory of Azerbaijan",[3] while the International Crisis Group's Report on Nagorny Karabakh of 11 October 2005 notes in its Executive Summary that:

"Armenia is not willing to support withdrawal from the seven occupied districts around Nagorno-Karabakh, or allow the return of Azerbaijani internally displaced persons (IDPs) to Nagorno-Karabakh, until the independence of Nagorno-Karabakh is a reality".[4]

25. The Security Council has consistently reaffirmed both the sovereignty and territorial integrity of Azerbaijan and the inadmissibility of the use of force for the acquisition of territory. It has further consistently recognised that Nagorny Karabakh is part of Azerbaijan and called on a number of occasions for the withdrawal of the occupying forces from all the occupied territories of Azerbaijan.

26. Security Council resolution 822 (1993) called for "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 Kelbajar district and other recently occupied areas of Azerbaijan". Resolution 853 (1993) condemned "the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic" and demanded the "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", while resolution 874 (1993) repeated the call for the "withdrawal of forces from recently occupied territories". Resolution 884 (1993) reaffirmed the earlier resolutions, condemned the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic and demanded 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".

27. Resolutions 853 (1993) and 884 (1993) further called upon the Government of the Republic of Armenia to "continue to exert its influence" to achieve compliance with Security Council resolutions, as did the statement made by the President of the Security Council on 18 August 1993.[5]

28. The General Assembly of the United Nations has also included on its agenda from 2004, an item entitled "The Situation in the Occupied Territories of Azerbaijan". On 14 March 2008, the Assembly adopted resolution 62/243, including the following substantive provisions:

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

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;

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".

29. The report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, dated 19 November 2004, declared that:

"Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large budgetary resources to this area".[6]

30. Resolution 1416 (2005), adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe, noted particularly that "[considerable parts of the territory of Azerbaijan are still occupied by Armenian

[1] <http://www.state.gOv/g/drl/rls/hrrpt/2006/78799.htm>.
[2] <http://www.state.gov/g/drl/rls/hrrpt/2006/78801 .htra>.
[3] <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.
[4] "Nagorno-Karabakh: A Plan for Peace", Report No. 167, p. I.
[5] S/26326, 18 August 1993.
[6] David Atkinson, "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference",Explanatory Memorandum, para.6.

forces" and reiterated 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."

31. The International Crisis Group noted in its September 2005 report that "[ajccording to an independent assessment, there are 8,500 Karabakh Armenians in the army and 10,000 from Armenia" and that "many conscripts and contracted soldiers from Armenia continue to serve in NK [Nagoray Karabakh]", while "[fjormer conscripts from Yerevan and other towns in Armenia have told Crisis Group they were seemingly arbitrarily sent to Nagorno-Karabakh and the occupied districts immediately after presenting themselves to the recruitment bureau. They deny that they ever volunteered to go to Nagorno-Karabakh or the adjacent occupied territory". It was further noted that "[t]here is a high degree of integration between the forces of Armenia and Nagorno-Karabakh".[1]

32. The above indicative materials demonstrate clearly that the regular armed forces of the Republic of Armenia took direct part in the capture of Nagorny Karabakh and seven surrounding regions. Further, Armenia has sustained the existence of the "Republic of Nagorny Karabakh", an illegally created and entirely unrecognised entity within the internationally recognised territory of Azerbaijan, by a variety of political and economic means, including the maintenance of military forces in the occupied territories and on the line of contact.

33. It has been internationally recognised that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions. Article 6 of Geneva Convention IV declares that the Convention applies "from the outset of any conflict or occupation mentioned in article 2", so that it clearly applies as from the moment that Armenian forces entered Azerbaijani territory and will continue so to do until their final withdrawal.[2]

a) Armenia's Duties as an Occupier of Azerbaijani Territory 1) General

34. In the official statement of the ICRC delivered by Thurer in 2005, the following was noted with regard to the duties of an occupier in the light of the applicable law:

"the occupying power must not exercise its authority in order to further its own interests, or to meet the interests of its own population. In no case can it exploit the inhabitants, the resources or other assets of the territory under its control for the benefit of its own territory or population. Any military occupation is considered temporary in nature; the sovereign title does not pass to the occupant and therefore the occupying powers have to maintain the status quo. They should thus respect the existing laws and institutions and make changes only where necessary to meet their obligations under the law of occupation, to maintain public order and safety, to ensure an orderly government and to maintain their own security".[3]

34. Article 43 of the Hague Regulations provides the essential framework of the law of occupation. It notes that: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety [Vordre et la vie publics], while respecting, unless absolutely prevented, the laws in force in the country".

36. Further, the International Court of Justice has emphasised that an occupying power is under an obligation under article 43: "to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force [in the occupied area]. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party".[4]

37. Article 43 has been described as the "gist" of the law of occupation and the culmination of prescriptive efforts made in the nineteenth century and thus recognised as expressing customary international law.[5] The key features of this provision read together create a powerful presumption against change with regard to the occupying power's relationship with the occupied territory and population, particularly concerning the maintenance of the existing legal system, while permitting the occupier to "restore and ensure" public order and safety. While the balance between the two is not always clear, especially with regard to extended occupations, it is clear that the occupying power does not have a free hand to alter the legal and social structure in the territory in question and that any form of "creeping annexation" is forbidden. As Benvestisti has pointed out: "the administration of the occupied territory is required to protect two sets of interests: first, to preserve the sovereign rights of the ousted government, and, second, to protect the local population from exploitation of both their persons and their property by the occupant".[6]

2) Protection of the Existing Local Legal System

38. International humanitarian law provides for the keeping in place of the local legal system during

[1] "Nagorno-Karabakh: Viewing the Conflict from the Ground", Report no. 166, 14 September 2005, pp. 9-10.

[2] See Pictet, Geneva Convention IV, p. 60 with which the official statement of the International Committee of the Red Cross ("ICRC") delivered by D. Thurer on 21 October 2005 agrees, <http.77www.icrc.org/web/eng/siteeng0.nsf/ htmlall/occupation-statement-211105?opendocument>. See also Roberts, "Military Occupation", loc. cit., p. 256 and Construction of a Wall, ICJ Reports, 2004, pp. 136, 174, noting that Geneva Convention IV applies when an armed conflict between two contracting parties exists.

[3] <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/occupation-statement-211105?opendocument>.

[4] Congo v Uganda, ICJ Reports, 2005, pp. 168,231.

[5] See Benvenisti, Op.cit., pp. 7-8. See also M. Sassoli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 European Journal of International Law, 2005, p. 661 and A. Roberts, "Transformative Military Occupation", 100 American Journal of International Law, 2006, p. 580.

[6] Op.cit., p. 28. See also S. Wills, "Occupation Law and Multi-National Operations: Problems and Perspectives", 77 British Year Book of International Law, pp. 256, 264.

occupation. This is a fundamental element in the juridical protection of the territory and population as they fall under the occupation of a hostile power. Article 43 of the Hague Regulations expressly provides for this in noting that the occupying power must respect local laws "unless absolutely prevented", a high threshold which may be only rarely achieved. This is because occupation is a temporary factual situation with minimal modification of the underlying legal structure with regard to the territory in question. The term "laws in force" is to be interpreted widely to include not only laws in the strict sense, but also constitutional provisions, decrees, ordinances, court precedents as well as administrative regulations and executive orders.[1]

39. Article 43 of the Hague Regulations has been supplemented by Geneva Convention IV. Article 64 provides, for example, that the penal laws of the occupied territory shall remain in force, unless they constitute a threat to the security of the occupying power. Occupying powers may however, under the second paragraph to this provision, subject the population of the occupied territory to "provisions which are essential to enable the occupying power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them". However, this is to be restrictively interpreted and the difference between preserving local laws and providing for "provisions" which are "essential" is clear and significant. They mean not only that the legal system as such is unaffected save for the new measures which are not characterised as such as laws, but that the test for the legitimacy of these imposed measures is that they be "essential" for the purposes enumerated. The fact that the French term indispensable is used clearly demonstrates the restrictive nature of the reservation.

40. Article 64 also provides that "the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws", while article 54 provides that: "the Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience".

41. In other words, while the occupying power may enact penal provisions of its own in order to maintain an orderly administration, such competence is constrained by the need to preserve the existing local legal system and by the need to comply with the rule of law.[2] Further, protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.[3] Representative of the delegates of the International Committee of the Red Cross ("ICRC") have the right to go to all places where protected persons are found, particularly places of internment, detention and work.[4]

42. In addition to the preservation of the local legal system, article 56 provides that to the fullest extent of the means available to it, the occupying power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories are to be allowed to carry out their duties.[5]

3) Property Rights

43. Article 46 of the Hague Regulations provides that, inter alia, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Article 46 also specifies that private property cannot be confiscated, except where requisitioned for necessary military purposes, but even then requisitioning must take into account the needs of the civilian population.[6] Pillage is forbidden,[7] while reprisals against the property of protected persons are prohibited.[8]

44. Article 55 states that the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country and that it must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. In addition, article 56 provides that the property of municipalities, institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property and that all seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

45. Article 53 of Geneva Convention IV prohibits the destruction by the occupying power of any real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations.[9] It is a grave breach of the Convention to engage in extensive destruction not so justified.[10]

4) Protecting Protected Persons

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[1] See Sassdli, loc. cit., pp. 668-9.
[2] See articles 67 and 69-75 of Geneva Convention IV and article 75 of Additional Protocol I.
[3] Article 76 of Geneva Convention IV.
[4] Article 143.
[5] See also article 14 of Additional Protocol I.
[6] Article 52 of the Hague Regulations and article 55 of Geneva Convention IV.
[7] Article 47 of the Hague Regulations.
[8] Article 33 of Geneva Convention IV.
[9] See also article 23 (g) of the Hague Regulations.
[10] Article 147 of Geneva Convention IV.

46. A number of provisions exist detailing the treatment of persons within the occupied territory (termed protected persons under the convention). The major ones are as follows:

i) It is prohibited to employ protected persons for work outside the occupied territory (article 51 (3)).

ii) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity All protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion (article 27).

iii) The party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred (article 28).

iv) No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties (article 31).

v) There is a prohibition on taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents (article 32).

vi) No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited and reprisals against protected persons and their property are prohibited (article 33).

vii) The taking of hostages is prohibited (article 34).

5) Missing Persons

47. Special provisions apply with regard to missing persons. Article 26 of Geneva Convention IV provides that each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

48. Article 33 of Additional Protocol I, which is specifically entitled "Missing Persons", provides that:

"1. As soon as circumstances permit, and at the latest from the end of active hostilities, each party to the conflict shall search for the persons who have been reported missing by an adverse party. Such adverse party shall transmit all relevant information concerning such persons in order to facilitate such searches.

2.In order to facilitate the gathering of information pursuant to the preceding paragraph, each party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:

(a) Record the information specified in article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;

(b) To the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

3.Information concerning persons reported missing pursuant to paragraph I and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse party while carrying out the missions in areas controlled by the adverse party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties".

49. As a party to Additional Protocol I, Armenia is bound by the above provision.

50. Further, in resolution 59/189, adopted by the United Nations General Assembly on 20 December 2004, states parties to an armed conflict were called up to take all appropriate measures to prevent persons from going missing in connection with armed conflict and to account for persons reported missing as a result of such a situation. The resolution also reaffirmed both the right of families to know the fate of their relatives reported missing in connection with armed conflicts; and that each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities, shall search for the persons who have been reported missing by an adverse party. States parties to an armed conflict were called upon to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict. [1]

51. Resolution 1553 (2007) of the Council of Europe Parliamentary Assembly emphasised that the issue of missing persons was a "humanitarian problem with human rights and international humanitarian law implications" and that time was of the essence when seeking to solve the issue of the missing. The resolution noted that the Parliamentary Assembly was concerned by the "continuing allegations of secret detention of missing persons". The resolution also gave the figure of 4,499 Azerbaijanis listed as missing as a result of the Nagorny Karabakh conflict[2]

[1] See also General Assembly resolutions 61/155, adopted on 19 December 2006, and 63/183, adopted on 18 December 2008.

[2] According to the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, 4210 citizens of

and declared that:

"The right to know the fate of missing relatives is ... firmly entrenched in international humanitarian law. Furthermore, state practice establishes as a norm of customary international law, applicable in both international and non-international armed conflicts, the obligations of each party to the armed conflict to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide their family members with any information it has on their fate. The right to know is also anchored in the rights protected under the European Convention on Human Rights, notably Articles 2, 3, 5, 8, 10 and 13".

6) Prohibition on Settlements in Occupied Territories

52. Article 49 of Geneva Convention IV provides that "the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies". This constitutes the basis and expression of a rule of law prohibiting the establishment of settlements in the occupied territories consisting of the population of the occupying power or of persons encouraged by the occupying power with the intention, expressed or otherwise, of changing the demographic balance. The International Court of Justice has noted that this provision:

"prohibits not only deportations or forced transfer of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers or parts of its own population into the occupied territory".[1]

53. Such activity also constitutes a grave breach of Additional Protocol I[2] and, indeed, a breach of Armenia's own domestic legislation.[3] Attempts to change the demographic composition of occupied territories have also been condemned by the Security Council.[4] The Committee on the Elimination of Racial Discrimination in its Decision 2 (47) of 17 August 1995 on the situation in Bosnia and Herzegovina declared that "any attempt to change or to uphold a changed demographic composition of an area, against the will of the original inhabitants, by whichever means is a violation of international law",[5] while Special Rapporteur Al-Khasawneh in his Final Report on "Human Rights Dimensions of Population Transfer" for the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities underlined the illegality of population transfers and their prohibition under international human rights and humanitarian law.[6] This view was endorsed by the Sub-Commission in its consideration of the Report.[7]

54. Practice shows clearly that Armenia has violated this prohibition. Significant numbers of Armenian settlers have been encouraged to move into the occupied areas, in particular the Lachin area, an area that had been especially depopulated of its Azerbaijani inhabitants. There have been numerous independent reports of the introduction of settlers into the occupied areas.

55. The Report of the OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorny Karabakh, 2005, concluded that the settlement figures were approximately as follows: 1,500 in Kelbajar district; 800 to 1,000 in Agdam district; under 10 in Fizuli district; under 100 in Jebrail district; 700 to 1,000 in Zangelan district and from 1,000 to 1,500 in Kubatly district.[8] The report also noted that some 3,000 settlers lived in Lachin town[9] and emphasised that "[settlement incentives are readily apparent".[10] The US Committee for Refugees and Immigrants in its World Refugee Survey 2002 Country Report on Armenia stated that:

"According to the de facto government of Nagorno-Karabakh, the population of the enclave stood at about 143,000 in 2001, slightly higher than the ethnic Armenian population in the region in 1988, before the conflict. Government officials in Armenia have reported that about 1,000 settler families from Armenia reside in Nagorno-Karabakh and the Lachin Corridor, a strip of land that separates Nagorno-Karabakh from Armenia. According to the government, 875 ethnic Armenian refugees returned to Nagorno-Karabakh in 2001. Most, but not all, of the ethnic Armenian settlers in Nagorno-Karabakh are former refugees from Azerbaijan. Settlers choosing to reside in and around Nagorno-Karabakh reportedly receive the equivalent of $365 and a house from the de facto authorities".[11]

56. In a paper prepared by Anna Matveeva on "Minorities in the South Caucasus" for the ninth session (May 2003) of the Working Group on Minorities of the UN Sub-Commission on Promotion and Protection of Human Rights, the following was stated: "A policy of resettlement in areas held by the Armenian forces around Karabakh ('occupied territories' or 'security zone') which enjoy relative security has been conducted since 1990s. Applications for settlement are approved by the governor of Lachin who tends to mainly accept families. Settlers normally receive

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Azerbaijan are registered missing in connection with the conflict as of 1 January 2008, of them 47 children, 256 women and 355 elderly.

[1] Construction of a Wall, ICJ Reports, 2004, pp. 136, 183.

[2] See article 85 (4) (a) defining as a grave breach of the Protocol: "The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention". It also amounts to a war crime under the Statute of the International. Criminal Court 1998, see article 8 (2) b (viii).

[3] See J.M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol I: Rules, ICRC, Cambridge, 2005, p. 462, footnote 36.

[4] See e.g. resolutions 446, 452,465, 476, 677.

[5] A/50/18, 1995, para. 26.

[6] E/CN.4/Sub.2/1997/23, 27 June 1997. See also the First Report by Al-Khasawneh and Hatano, E/CN.4/Sub.2/1993/17 and Corr. 1, 1993.

[7] Sub-Commission resolution 1997/29.

[8] A/59/747-S/2005/187, at page 26.

[9] Ibid., at page 29.

[10] Ibid., at page 30

[11] <http://refugees.org/countryreports.aspx?_VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpHbOJ1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi&xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH&CountryDD%3ALocationList>.

state support in renovation of houses, do not pay taxes and much reduced rates for utilities, while the authorities try to build physical and social infrastructure".[1]

57.The International Crisis Group report of September 2005 reported that: "Stepanakert[2] considers Lachin for all intents and purposes part of Nagorno-Karabakh. Its demographic structure has been modified. Before the war, 47,400 Azeris and Kurds lived there: today its population is some 10,000 Armenians, according to Nagorno-Karabakh officials. The incentives offered to settlers include free housing, social infrastructure, inexpensive or free utilities, low taxes, money and livestock. In the town centre, up to 85 percent of the houses have been reconstructed and re-distributed. New power lines, road connections and other infrastructure have made the district more dependent upon Armenia and Nagorno-Karabakh than before the war .[3]

58. The International Crisis Group report of October 2005 stated that: "The interest in Lachin seems to be based on more than security. Stepanakert, with Armenia's support, has modified the district's demographic structure, complicating any handover... Stepanakert considers Lachin for all intents and purposes part of Nagorno-Karabakh and has established infrastructure and institutions in clear violation of international law prohibitions on settlement in occupied territories".[4]

59. Accordingly, Armenia's breach of this important rule of international humanitarian law has been clearly established.

7) Application to Subordinate Local Administrations

60. Geneva Convention IV provides that for the continued existence of convention rights and duties irrespective of the will of the occupying power. Article 47 in particular provides that:

"Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

62. In particular, the rights provided for under international humanitarian law cannot be avoided by recourse to the excuse that another party is exercising elements of power within the framework of the occupation. This is the scenario that Roberts has referred to in noting that occupying powers often seek to disguise or limit their own role by operating indirectly by, for example, setting up "some kind of quasi-independent puppet regime".[5] It is clear, however, however, that an occupying power cannot evade its responsibility by creating, or otherwise providing for the continuing existence of, a subordinate local administration. The UK Manual of the Law of Armed Conflict has, for example,
provided as follows:

"The occupying power cannot circumvent its responsibilities by installing a puppet government or by issuing orders that are implemented through local government officials still operating in the territory".[6]

62. Accordingly, Armenia is responsible as the occupying power not only for the actions of its own armed forces and other organs and agents of its government, but also for the actions of its subordinate local administration in the occupied territories, including the forces and officials of the so-called "Republic of Nagorny Karabakh".

3. The Application of International Human Rights Law to Occupations

63. In addition to the traditional rules of humanitarian law, international human rights law is now seen as in principle applicable to occupation situations. The International Court of Justice has interpreted article 43 of the Hague Regulations to include:

"the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third state".[7]

64. More generally, the International Court of Justice has discussed the relationship between international humanitarian law and international human rights law. In its advisory opinion on the Legality of the Threat of Use of Nuclear Weapons, the Court emphasised that "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency" and in such cases the matter will fall to be determined by the applicable lex specialis, that is international humanitarian law.[8]

65. The Court returned to this matter in its advisory opinion on the Construction of a Wall, where it declared more generally that:

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[1] E/CN.4/Sub.2/AC.5/2003/WP.7,5 May 2003 at pages 34-35.

[2] Note that the name of the town was Khankendi until September 1923, when it was renamed after bolshevik leader Stepan Shaumian. Although the Azerbaijani authorities subsequently restored the original name of the town, it is still referred to by the Armenians as "Stepanakert".

[3] Op. cit., p. 7.

[4] Op.cit., p. 22. See also the fall analysis of the settlement programme presented by the Permanent Representative of Azerbaijan to the UN in November 2004, A/59/568.

[5] "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 American Journal of International Law, 2006, pp. 580, 586.

[6] "Op.cit., p. 282.

[7] Congo v Uganda, 1CJ Reports, 2005, pp. 168, 231 and 242 and following.

[8] ICJ Reports, 1996, pp. 226,239.

"the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind found in Article 4 of the International Covenant on Civil and Political Rights".[1]

66. As to the relationship between international humanitarian law and human rights law, the Court noted that there were three possible situations. First, some rights might be exclusively matters of humanitarian law, some rights might be exclusively matters of human rights law and some matters may concern both branches of international law.[2] It was essentially a question of interpretation of the particular instrument in question. In particular, the jurisdiction of states, while primarily territorial, may sometimes be exercised outside the national territory and in such a situation the International Covenant and other relevant human rights treaties had to be applied by state parties. This was an approach that was deemed consistent with both the travaux preparatoires of, for example, the International Covenant on Civil and Political Rights and with the constant practice of the Human Rights Committee established under it.[3]

67. The Court concluded by affirming that the International Covenants on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child were "applicable in respect of acts done by a state in the exercise of its jurisdiction outside of its own territory".[4]

68. It is also worth point out the applicability of the general principle of state responsibility for the acts of its organs which would obviously include members of its armed forces acting abroad.[5] The Court interestingly referred in in addition in the Construction of a Wall case to the prolonged occupation question and to the applicability of the International Covenant on Economic, Social and Cultural Rights.[6]

69. The Court returned to the question of the relationship between international humanitarian law and international human rights law by reaffirming that:

"international human rights instruments are applicable 'in respect of acts done by a state in the exercise of its jurisdiction outside its own territory', particularly in occupied territories".[7]

70. Accordingly, it is now accepted that the law applicable in occupation situations includes multilateral human rights instruments to which the occupying power is a party. This means inevitably not only that the organs and agents of the occupying power must act in conformity with the provisions of such instruments, but also that the population is entitled to the benefit of their application. Thus, the application of human rights law in these situations impacts upon the powers and duties of the occupier and affects the traditional attempts to balance military necessity and humanity in any occupation.

71. Armenia is a party to the following universal human rights conventions as from the date in parenthesis:

i) International Covenant on Civil and Political Rights (23 June 1993) ("ICCPR");

ii) International Covenant on Economic, Social and Cultural Rights (13 September 1993) (ICESCR");

iii) Convention on the Prevention and Punishment of the Crime of Genocide (23 June 1993);

iv) Convention on the Elimination of All Forms of Racial Discrimination (23 June 1993);

v) Convention on the Rights of the Child (23 June 1993);

vi) Convention on the Elimination of All Forms of Discrimination against Women (13 September 1993);

vii) Convention against Torture (13 September 1993).[8]

72. Accordingly, Armenia is bound by the provisions of these conventions not only within its own borders, but also in the occupied territories of Azerbaijan. One may note briefly the relevance of the following obligations by way of example:

i) The obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the particular instrument, without distinction of any kind (article 2, ICCPR and article 2, ICESCR);

ii) Right to life (article 6, ICCPR);

iii) Prohibition of torture and cruel, inhuman and degrading treatment or punishment (article 7, ICCPR and Convention against Torture);

iv) Right to liberty and security of person (article 9, ICCPR);

v) Right to liberty of movement and the right not to be arbitrarily deprived of the right to enter one's own country (article 12, ICCPR);

vi) Right to equality before court and tribunals (article 14, ICCPR) and to equality of protection before the law (article 26, ICCPR);

vii) Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence (article 17, ICCPR);

viii) Right to freedom of thought, conscience and religion;

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[1] ICJ Report, 2004, pp. 136, 178.
[2] Ibid.
[3] Ibid., pp. 179-82.
[4] Ibid., pp. 180 and 181.
[5] See e.g. Difference Relating to Immunity from Legal Process of a Special Rapporteur, ICJ Reports, 1999, p. 87 and Congo v Uganda, ICJ Reports, 2005, pp. 168,242. See also Article 4 of the International Law Commission's Articles on State Responsibility, 2001, A/56/10 and General Assembly resolution 56/83 of 12 December 2001.
[6] ICJ Reports, 2004, pp. 136, 181 (emphasis added).
[7] ICJ Reports, 2005, pp. 178, 242-43.
[8] Armenia is also a party to the International Convention for the Protection of All Persons from Enforced Disappearance 2006 (10 April 2007). This Convention is not yet in force.

ix) Prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20);

x) Rights to peaceful assembly and association (articles 21 and 22, ICCPR); xi) Right and opportunity, without distinction and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to have access, on general terms of equality, to public service in one's country (article 25, ICCPR);

xii) Right of persons belonging to minorities not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (article 27, ICCPR).

73. In addition, Armenia is also a party to the European Convention on Human Rights. The question of the application of this Convention extraterritorially by states parties has been the subject of a number of important cases.

74. The European Court of Human Rights has interpreted the concept of 'jurisdiction' as it appears under article 1 ("High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention") to include the situation where acts of the authorities of contracting states, whether performed within or outside national boundaries, produce effects outside their own territory.[1] The Court emphasised that:

"Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action whether lawful or unlawful it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration".[2]

75. The Court clarified further that a state's responsibility in exercising effective control over the area outside its national territory "cannot be confined to the acts of its own soldiers or officials [in that area] but must also be engaged by virtue of the acts of the local administration which survives by virtue of [this state's] military and other support".[3] Such responsibility would cover acts of a state supporting the installation of a separatist state within the territory of another state.[4] Responsibility could also be engaged by the acquiescence or connivance of the authorities of a contracting state in the acts of private individuals which violate the convention rights of other individuals within its jurisdiction, particularly with regard to the recognition by a state of the acts of "self-proclaimed authorities which are not recognised by the international community".[5]

76. Accordingly, the responsibility of Armenia for violations of the European Convention of Human Rights in the occupied territory of Azerbaijan is engaged. The relevant rights under this Convention would include the right to life (article 2), the prohibition of torture and inhuman and degrading treatment and punishment (article 3), due process (article 5), fair trial (article 6), the right to private and family life (article 8) and the right to peaceful enjoyment of property (article 1 of Protocol I).

4. Implementation of Armenia's Responsibilities under Applicable International Law

77. To the extent that Armenia has violated the relevant applicable law with regard to the occupation of Azerbaijani territory, it is responsible under international law. That is the essential fact. As article 1 of the Articles on State Responsibility adopted by the International Law Commission on 9 August 2001[6] declares, "[e]very internationally wrongful act of a state entails the international responsibility of that state", while article 2 provides that there is an internationally wrongful act of a state when conduct consisting of an action or omission is attributable to the state under international law and constitutes a breach of an international obligation of the state. This principle has been affirmed in the case-law. [7]

78. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.[8] Article 12 stipulates that there is a breach of an international obligation when an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character.[9] A breach that is of a continuing nature extends over the entire period during which the act continues and remains not in conformity with the international obligation in question,[10] while the Permanent Court of International Justice has emphasised that "it is a principle of international law, and even a greater conception of law, that any breach of an engagement involves an obligation to make reparation".[11]

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[1] See e.g. Drozd and Janousek v. France and Spain, Series A, vol. 240, 1992, p. 29. See also Loizidou v. Turkey, Judgments of 23 February 1995 and 28 November 1996, Cyprus v. Turkey, Judgment of 10 May 2001, ilascu v Moldova and Russia, Judgment of 8 July 2004.

[2] Judgment of 23 February 1995 at para. 62. See also Judgment of 28 November 1996 at para. 52, Judgment of 10 May 2001, paras. 75 and following.

[3] Judgment of 10 May 2001 at para. 77 and Judgment of 8 July 2004 at paras. 312 and the following.

[4] Judgment of 8 July 2004, para. 312.

[5] Judgment of 8 July 2004, para. 318. See also Judgment of 10 May 2001, para 81.

[6] Commended to governments in General Assembly resolution 56/83. See also General Assembly resolutions 59/35 and 62/61.

[7] See e.g. Chorzow Factory case, PCI J, Series A, No. 9, p. 21 and the Rainbow Warrior case, 82 International Law Reports, p. 499.

[8] Article 3.

[9] See the Gabcikovo-Nagymaros Project case, ICJ Reports, 1997, pp. 7, 38.

[10] See article 14. See also e.g. the Rainbow Warrior case, 82 International Law Reports, p. 499; the Gabcikovo-Nagymaros (Hungary v Slovakia) case, ICJ Reports, 1997, pp. 7, 54; Genocide Convention (Bosnia v Serbia) case, ICJ Reports, 2007, para. 431; Loizidou v. Turkey, Merits, European Court of Human Rights, Judgment of 18 December 1996, paras. 41-7 and 63-4; and Cyprus v. Turkey, European Court of Human Rights, Judgment of 10 May 2001, paras. 136, 150,158,175,189 and 269.

[11] The Chorzow Factory case, PCIJ, Series A, No. 17, 1928, p. 29; 4 AD, p. 258. See also the Corfu Channel case, ICJ Reports, pp. 4, 23.

79. Any state responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition if circumstances so require.[1] Armenia Armenia is under such an international obligation.

80. The question of implementation or enforcement of the relevant responsibility laid down in international humanitarian law and under international human rights law, however, is a separate legal and practical question. There are a number of relevant mechanisms. To the extent that Armenia is in violation of relevant UN treaties, organs created under such conventions (such as the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee against Torture etc.) possess the jurisdiction to monitor and hold to account states, including Armenia, that have breached the binding provisions in question. The same is true of relevant regional conventions, in particular the European Convention on Human Rights, with the European Court of Human Rights being a particularly active body and one capable as a court of producing binding decisions.

79. International humanitarian law has its own implementation processes. Parties to the 1949 Geneva Conventions and to Additional Protocol I undertake to respect and to ensure respect for the instrument in question,[2] and to disseminate knowledge of the principles contained therein.[3] A variety of enforcement methods also exist, although the use of reprisals has been prohibited.[4] One of the means of implementation is the concept of the Protecting Protecting Power, appointed to look after the interests of nationals of one party to a conflict under the control of the other, whether as prisoners of war or occupied civilians. Such a power must ensure that compliance with the relevant provisions has been effected and that the system acts as a form of guarantee for the protected person as well as a channel of communication for him with the state of which he is a national. However, the drawback of this system is its dependence upon the consent of the parties involved. Not only must the Protecting Power be prepared to act in that capacity, but both the state of which the protected person is a national and the state holding such persons must give their consent for the system to operate.[5]

82. Additional Protocol I also provides for an International Fact-Finding Commission[6] with competence to inquire into grave breaches[7] of the Geneva Conventions and that Protocol or other serious violations, and to facilitate through its good offices the "restoration of an attitude of respect" for these instruments. This body came into being as the International Humanitarian Fact-Finding Commission in 1991 after 20 states parties to the Protocol agreed to accept its competence.[8] The parties to a conflict may themselves, of course, establish an ad hoc inquiry into alleged violations of humanitarian law.[9]

83. An important monitoring and indeed implementation role is played by the International Committee of the Red Cross.[10] This body has a wide-ranging series of functions to perform, including working for the application of the Geneva Conventions and acting in natural and man-made disasters. It has operated in a large number of states, visiting prisoners of war and otherwise functioning to ensure the implementation of humanitarian law.[11] It operates in both international and internal armed conflict situations. It is involved in the Armenia-Azerbaijan conflict.

84. The International Court of Justice in the Construction of a Wall case referred to the "special position" of the ICRC concerning execution of Geneva Convention IV, which "must be 'recognised and respected at all times' by the parties pursuant to article 142 of the Convention".[12] In addition, the Eritrea-Ethiopia Claims Commission has noted that the ICRC had been assigned significant responsibilities in a number of articles of the Geneva Convention III (with which it was concerned) both as a humanitarian organization providing relief and as an organization providing necessary and vital external scrutiny of the treatment of prisoners of war.[13]

85. It is, of course, also the case that breaches of international humanitarian law or international human rights law may constitute war crimes or crimes against humanity or even genocide for which universal jurisdiction is provided with regard to alleged offenders.[14] In such cases, pursuit of such individuals may be undertaken through the

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[1] Article 30. See also the Rainbow Warrior case, 82 International Law Reports, pp. 499, 573.
[2] Common article 1.
[3] See e.g. article 144 of Geneva Convention IV and article 83 of Additional Protocol I.
[4] See e.g. articles 20 and 51(6) of Additional Protocol I.
[5] See article 9 of Geneva Convention IV.
[6] See article 90 of Additional Protocol I.
[7] See articles 50, 51, 130 and 147 of the four 1949 Conventions respectively and article 85 of Additional Protocol I. A Commission of Experts was established in 1992 to investigate violations of international humanitarian law in the territory of the Former Yugoslavia, see Security Council resolution 780 (1992). See also the Report of the Commission of 27 May 1994, S/l 994/674.
[8] See UK Manual, Op.cit., p. 415. As of October 2008, 70 of the 168 states parties to the Protocol (but not including either Armenia or Azerbaijan) have accepted the competence of the Commission, see statement of the President of the Commission dated 23 October 2008, <http://www.ihffc.org/en/documents/IHFFC_PresGA0810. pdf>.
[9] Articles 52, 53, 132 and 149 of the four 1949 Conventions respectively.
[10] See e.g. G Willemin and R. Heacock, The International Committee of the Red Cross, The Hague, 1984, and D. Forsythe, "The Red Cross as Transnational Movement", 30 International Organisation, 1967, p. 607.
[11] See e.g. article 142 of Geneva Convention IV.
[12] 1CJ Reports, 2004. pp. 136, 175-6.
[13] Partial Award, Prisoners of War. Ethiopia's Claim 4 case, 1 July 2003, paras. 58 and 61-2.
[14] See e.g. A. Cassese, The International Criminal Court, 2 edn, Oxford, 2008; W. Schabas, An Introduction to the International Criminal Court, 3r edn, Cambridge, 2007; R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, An Introduction to International Criminal Law and Procedure, Cambridge, 2007; I. Bantekas and S. Nash, International Criminal Law, 2n edn, London, 2003; and G. Werle, Principles of International Criminal Law, The Hague, 2005.

domestic courts of involved or third party states. There is [no current international criminal court or tribunal with relevant individual jurisdiction with regard to Armenia. State responsibility in such cases may be enforced through relevant inter-state mechanisms.

5. Conclusions

86. The following conclusions may be reached:

1) The applicable law in the first instance is international humanitarian law, consisting of the Hague Regulations (being part of customary international law), together with Geneva Convention IV and to Addition Protocol I on 7 June 1993 to both of which Armenia is a party;

2) Armenian involvement in the conflict with Azerbaijan gave to that conflict an international character;

3) Armenian involvement in the capture and retention of the Nagorny Karabakh region of Azerbaijan and its surrounding districts was such as to bring the provisions of international humanitarian law into operation;

4) The facts show that Armenia is in occupation of these areas as that term is understood in international humanitarian law;

5) International law precludes the acquisition of sovereignty to territory by the use of force so that the occupation by Armenia of Azerbaijani territory cannot give any form of title to the former state;

6) As an occupying power, Armenia is subject to a series of duties under international law;

7) The core of these duties is laid down in article 43 of the Hague Regulations and focus upon the restoration and ensuring, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country;

8) The presumption in favour of the maintenance of the existing legal order is particularly high and is supplemented by provisions in Geneva Convention IV;

9) Private and public property is particularly protected. Private property cannot be confiscated, except where requisitioned for necessary military purposes, but even then requisitioning must take into account the needs of the civilian population;

10) The occupying state is no more than the administrator of public property and must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct;

11) Destruction of private and public property is forbidden, except where such destruction is rendered absolutely necessary by military operations;

12) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They are to be at all times humanely treated and protected especially against all acts of violence or threats thereof;

13) Armenia as the occupying power is under a special obligation with regard to Azerbaijani missing persons, of whom there are accepted to be 4,210 as of 1 January 2008;

14) Armenia bears a responsibility under international humanitarian law not to establish or facilitate the establishment of settlements of Armenians in the occupied territories;

15) Armenia cannot evade its responsibilities under international humanitarian law by means of its support for a subordinate local administration;

16) In addition to the traditional rules of humanitarian law, Armenia is also bound in its administration of the occupied territories by the provisions of those international human rights treaties to which it is a party;

17) Such treaties include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture;

18) Armenia is also bound by the European Convention of Human Rights in its occupation of Nagorny Karabakh and surrounding districts;

19) Armenia bears state responsibility for its breaches of international humanitarian law and international human rights law as discussed above and is under an obligation both to cease its violations and make reparation for them;

Such obligations under international humanitarian law and under international human rights law may be monitored and implemented by mechanisms in force for Armenia, such as the Human Rights Committee and the European Court of Human Rights, together with ICRC processes;

21) Insofar as war crimes, crimes against humanity and genocide are concerned, individual responsibility may lie and may be implemented through domestic courts in various involved or third party states, while state responsibility may be enforced where possible through relevant inter-state mechanisms.

CURRENT STATE OF HISTORICAL, ARCHITECTURAL AND ARCHEOLOGICAL MONUMENTS IN THE TERRITORY OF THE NAGORNY KARABAKH REGION OF THE REPUBLIC OF AZERBAIJAN

Historical and Architectural Monuments of Shusha district.

	Name	Date	Address	Coordinates	Current state
1	Castle walls	1750s	Shusha town U.Hajybayov Str.	-	partly destroyed
2	Ganja gate	18th century	Shusha town, Niyazi Str.	46°44'58"E;39°45'55"N	unknown
3	Panah khan castle	18th century	Shusha town J.Garyaghdyoghlu Str.	46°45'31"E;39°45'26"N	partly destroyed
4	Ibrahim khan castle	18th century	Topkhana forest Shusha town	46°45'51"E;39°45'14"N	unknown
5	Gara Boyukkhanym castle	18th century	Shusha town Ojaggulu Str.	46°45'21"E; 39°45'30"N	destroyed
6	Spring	18th century	Shusha town, Niyazi Str.	46°44'59"E; 39°45'54"N	destroyed
7	Saatly mosque	18th-19th centuries	Shusha town U.Hajybayov Str.	46°45'01"E;39°45'44"N	destroyed
8	Administrative office of vizier M.P.Vagif (later house of Ughurlu bay"!	18th century	Shusha town Kh.Shushinski Str.	46°45'07"E; 39°45'50"N	unknown
9	Yukhary Govharagha mosque	18th-19th centuries	Shusha town M.A.Rasulzada Str.	46°45'07"E; 39°45'34"N	destroyed
10	Madrasah of Yukhary Govharagha mosque	First half of the 19th century	Shusha town, crossroads of N.b.Vazirov and M.A.Rasulzada Strs.	46°45'06"E; 39°45'35"N	destroyed
11	Ashaghy Govharagha mosque	18th-19th centuries	Shusha town Govharagha Str.	46°45'H"E;39°45'40"N	destroyed
12	Madrasah of Ashaghy Govharagha mosque	19th century	Shusha town Govharagha Str.	46°45'H"E;39°45'41"N	destroyed
13	Khanlyg Mukhtar caravanserai	19th century	Shusha town Panah khan Str.	46°45'01"E; 39°45'45"N	destroyed
14	Caravanserai of Agha Gahraman Mirsiyab	19th century	Shusha town, crossroads of U.Hajybayov and M.F.Akhundov Strs.	46°45'00"E; 39°45'46"N	destroyed
15	Caravanserai of the Safarov brothers	19th century	Shusha town M.F.Akhundov Str.	46°45'03"E;39°45'35"N	destroyed
16	Caravanserais and mosque of Mashadi Shukur Mirsiyab and Mashadi Huseyn Mirsiyab	19th century	Shusha town N.b.Vazirov Str.	46°45'05"E;39°45'36"N	destroyed
17	House of G.b.Zakir	18th century	Shusha town G.b.Zakir Str.	46°45'20"E;39°45'59"N	unknown
18	House of M.M.Navvab	18th century	Shusha town M.M.Navvab Str.	46°44'58"E;39°45'37"N	destroyed
19	Khan palace	19th century	Shusha town U.Hajybayov Str.	46°45'02"E;39°45'52"N	unknown
20	House of Natavan	19th century	Shusha town U.Hajybayov Str.	46°45'00"E;39°45'52"N	destroyed
21	"Khan gyzy" spring	19th century	Shusha town U.Hajybayov Str.	46°45'01"E;39°45'49"N	unknown
22	Prison complex	19th century	Shusha town Niyazi Str.	46°45'18"E;39°45'44"N	unknown

23	House of F.b.Kocharli	19th century	Shusha town 20 Yanvar Str.	46°44'48"E; 39°45'47"N	destroyed
24	House of U.Hajybayov	19th century	Shusha town U.Hajybayov Str.	46°45'07"E; 39°45'54"N	destroyed

25	House of N.b.Vazirov	19th century	Shusha town 20 Yanvar Str.	46^{0}44'47"E;39°45'49"N	destroyed
26	House of Y. V. Chamanzamanl i	18th century	Shusha town N.b.Vazirov Str.	46°45'20"E;39°45'39"N	unknown
27	House of A.Hagverdiyev	18th century	Shusha town 20 Yanvar Str.	46^{0}44'47"E;39^{0}45'49"N	destroyed
28	House of S.S.Akhundov	19th century	Shusha town S.S.Akhundov Str.	46°45'15"E;39^{0}45'27"N	destroyed
29	House of Sadygjan	18th century	Shusha town Sadygjan Str.	46°45'06"E; 39°45'45"N	destroyed
30	House of F.b.Vazirov	18th century	Shusha town G.Pirimov Str.	46°45'01"E;39^{o}45'37"N	destroyed
31	House of Huseyn bay	18th century	Shusha town S.S.Akhundov Str.	46^{0}45'16"E;39°45'27"N	unknown
32	House of Kechachi oghlu Mahammad	19th century	Shusha town S.S.Akhundov Str.	46°45'18"E;39^{0}45'26"N	destroyed
33	House of Bulbul	19th century	Shusha town F.Amirov Str.	46°45'24"E;39°45'44"N	destroyed
34	House of J.Garyaghdyoghlu	18th century	Shusha town J.Garyaghdyoghlu Str.	46°45'22"E; 39°45'26"N	destroyed
35	House of S.Shushinski	19th century	Shusha town Sadygjan Str.	46^{o}45'06"E;39°45'46"N	destroyed
36	House of the Behbudovs	18th century	Shusha town F.b.Kocharli Str.	46°45'10"E;39°45'25"N	unknown
37	House of Hajy Gulu	19th century	Shusha town F.Amirov Str.	46°45'30"E; 39°45'42"N	destroyed
38	House	19th century	Shusha town Govharagha Str.	46°45'H"E;39^{0}45'39"N	destroyed
39	House	19th century	Shusha town Ojaggulu Str.	46°45'17"E;39^{0}45'31"N	destroyed
40	Hamam "Shirin su"	19th century	Shusha town Sadygjan Str.	46°45'05"E;39^{o}45'46"N	destroyed
41	House of Kh.Shushinski	19th century	Shusha town U.Hajybayov Str.	46°45'07"E; 39°45'54"N	unknown
42	House of Asad bay	19th century	Shusha town Kh.Shushinski Str.	46^{o}45'05"E;39°45'50"N	unknown
43	Khoja Marjanly mosque	19th century	Shusha town M.A.Sabir Str.	46°45'02"E;39^{o}45'34"N	destroyed
44	Khoja Marjanly spring	19th century	Shusha town M.A.Sabir Str.	46°45'02"E;39^{o}45'35"N	destroyed
45	Guyulug mosque	19th century	Shusha town Ojaggulu Str.	46°45'16"E;39^{0}45'34"N	unknown
46	Mamayi mosque	19th century	Shusha town G.Asgarov Str.	46^{o}44'57"E;39°45'40"N	destroyed
47	Mamayi spring	19th century	Shusha town M.F.Akhundov Str.	46°44'59"E;39°45'40"N	destroyed
48	Square spring	19th century	Shusha town M.A.Rasulzada Str.	46^{o}45'06"E;39°45'36"N	destroyed
49	Spring	19th century	Shusha town Govharagha Str.	46°45'12"E;39°45'40"N	destroyed
50	Seyidli mosque	19th century	Shusha town J.Garyaghdyoghlu Str.	46°45'20"E; 39°45'26"N	unknown

51	Mosque of Taza mahalla	19th century	Shusha town F.b.Kocharli Str.	46°45'10"E;39°45'22"N	destroyed
52	Spring of Taza mahalla	19th century	Shusha town F.b.Kocharli Str.	46°45'10"E;39°45'23"N	destroyed
53	Merdinli mosque	19th century	Shusha town Sadygjan Str.	46°45'08"E; 39°45'43"N	destroyed

54	IMerdinli spring	(19th century	7 Shusha town Sadygjan Str.	I46°45'08"E; 39°45'44"N	[destroyed 1
55	Kocharli mosque	19th century	Shusha town 20 Yanvar Str.	46°44'47"E; 39°45'50"N	destroyed
56	Kocharli spring	19th century	Shusha town 20 Yanvar Str.	46°44'46"E; 39°45'50"N	destroyed
57	Julfalar mosque	19th century	Shusha town S.S.Akhundov Str.	46°45'13"E;39°45'28"N	destroyed
58	Mosque of Chukhur mahalla	19th century	Shusha town N.b.Vazirov Str.	46°45'25"E; 39°45'39"N	destroyed
59	Spring of Chukhur mahalla	19th century	Shusha town N.b.Vazirov Str.	46°45'26"E; 39°45'39"N	destroyed
60	Hajy Yusifli mosque	19th century	Shusha town G.b.Zakir Str.	46°45'16"E;39°45'43"N	destroyed
61	Hajy Yusifli spring	19th century	Shusha town G.b.Zakir Str.	46°45'16"E;39°45'42"N	destroyed
62	Choi gala mosque	19th century	Shusha town G.b.Zakir Str.	46°45'09"E; 39°45'50"N	destroyed
63	Choi gala spring	19th century	Shusha town G.b.Zakir Str.	46°45'10"E;39°45'50"N	destroyed
64	Gurdlar spring	1900	Shusha town A.Aghaoghlu Str.	46°45'20"E;39°45'30"N	destroyed
65	Hamamgabaghy spring	19th century	Shusha town A.Aghaoghlu Str.	46°45'07"E;39°45'31"N	destroyed
66	Aghadadali spring	19th century	Shusha town Aghadadali Str.	46°45'03"E;39°45'23"N	unknown
67	Lachyn reservoir	19th century	Shusha town Garabagh Str.	46°44'09"E;39°45'23"N	unknown
68	Spring	19th century	Near Shusha town	46°43'51"E;39°45'17"N	unknown
69	Isa spring	19th century	Near Shusha town	46°43'34"E;39°45'03"N	unknown
70	Gymnasium	19th century	Shusha town V.Jafarov Str.	46°44'34"E;39°45'16"N	unknown
71	Realni School	1906	Shusha town V.Jafarov Str.	46°44'35"E;39°45'10"N	mostly destroyed
72	Hajy Heydar tomb	19th century	Mirza Hasan cemetery Shusha town, Nivazi Str.	46°45'04"E;39°46'04"N	destroyed
73	Houses of the Mehmandarovs	19th century	Shusha town F.b.Kocharli Str.	46°45'10"E;39°45'2r'N	unknown
74	House	19th century	Shusha town F.b.Kocharli Str.	46°45'12"E;39°45'20"N	unknown
75	House	19th century	Shusha town F.b.Kocharli Str.	46°45'09"E; 39°45'26"N	unknown
76	House	18th century	Shusha town F.b.Kocharli Str.	46°45'H"E;39°45'29"N	unknown
77	House	18th century	Shusha town F.b.Kocharli Str.	46°45'12"E;39°45'19"N	unknown
78	House of Hajy Dadash	18th century	Shusha town F.b.Kocharli Str.	46°45'11"E;39°45'25"N	destroyed

79	House	18th century	Shusha town F.b.Kocharli Str.	46°45'15"E;39°45'13"N	destroyed
80	House	18th century	Shusha town F.b.Kocharli Str.	46^{0}45'H"E;39^{0}45'27"N	unknown
81	House	18th century	Shusha town F.b.Kocharli Str.	46°45'10"E;39°45'17"N	unknown
82	House	18th century	Shusha town F.b.Kocharli Str.	46°45'13"E;39°45'21"N	unknown

83	House	18th century	Shusha town F.b.Kocharli Str.	46°45'09"E; 39°45'27"N	unknown
84	House	19th century	Shusha town Nizami Str.	46°44'57"E; 39°45'38"N	destroyed \
85	House	19th century	Shusha town Nizami Str.	46°45'13"E;39^{0}45'32"N	destroyed
86	House	19th century	Shusha town Nizami Str.	46°45'12"E;39^{0}45'31"N	destroyed
87	House	18th century	Shusha town Nizami Str.	46°45'10"E;39^{o}45'32"N	unknown
88	House of Bahman Mirza	19th century	Shusha town 20 Yanvar Str.	46°44'44"E; 39°45'48"N	unknown
89	Treasury of Bahman Mirza	19th century	Shusha town 20 Yanvar Str.	46^{o}44'50"E;39°45'51"N	unknown
90	House of Gulam Shah	19th century	Shusha town 20 Yanvar Str.	46°44'42"E;39°45'47"N	destroyed
91	House	18th century	Shusha town 20 Yanvar Str.	46°44'43"E; 39°45'54"N	destroyed
92	House	18th century	Shusha town 20 Yanvar Str.	46°44'53"E; 39°45'49"N	destroyed
93	House	18th century	Shusha town 20 Yanvar Str.	46°44'47"E; 39°45'52"N	destroyed
94	House	18th century	Shusha town 20 Yanvar Str.	46°44'45"E;39°45'51"N	destroyed 1
95	House	19th century	Shusha town 20 Yanvar Str.	46°44'52"E;39^{0}45'51"N	destroyed,
96	Mineral Water Gallery	1976	Shusha town 20 Yanvar Str.	46°44'46"E; 39°45'54"N	unknown
97	House of A.Garasharov	19th century	Shusha town A.Garasharov Str.	46°44'55"E;39^{0}45'38"N	destroyed
98	House	19th century	Shusha town A.Garasharov Str.	46^{0}44'53"E;39^{o}45'38"N	destroyed
99	House	19th century	Shusha town A.Garasharov Str.	46°44'53"E; 39°45'39"N	destroyed
100	House	19th century	Shusha town A.Garasharov Str.	46°44'54"E; 39°45'39"N	destroyed
101	House	19th century	Shusha town A.Garasharov Str.	46°44'55"E; 39°45'40"N	destroyed
102	House	19th century	Shusha town A.Garasharov Str.	46°44'53"E; 39°45'36"N	destroyed
103	House	18th century	Shusha town A.Garasharov Str.	46°44'52"E; 39°45'38"N	destroyed
104	House	18th century	Shusha town A.Garasharov Str.	46°44'48"E;39°45'34"N	destroyed
105	House	18th century	Shusha town A.Garasharov Str.	46°44'52"E; 39°45'38"N	destroyed
106	House	18th century	Shusha town L.Imanov Str.	46°45'07"E; 39°45'26"N	destroyed

107	House	18th century	Shusha town L.Imanov Str.	46°45'07"E;39°45'20"N	unknown
108	House	18th century	Shusha town L.Imanov Str.	46°45'09"E;39°45'23"N	unknown
109	House	18th century	Shusha town L.Imanov Str.	46°45'10"E;39°45'23"N	unknown
110	House	18th century	Shusha town L.Imanov Str.	46°45'07"E;39°45'25"N	destroyed
111	House	18th century	Shusha town L.Imanov Str.	46°45'06"E;39°45'25"N	destroyed

112	House of the Zohrabbayovs	19th century	Shusha town Ojaggulu Str.	46°45'19"E;39°45'32"N	destroyed
113	House	19th century	Shusha town Ojaggulu Str.	46°45'22"E;39°45'32"N	destroyed
114	House	18th century	Shusha town Ojaggulu Str.	46°45'20"E; 39°45'34"N	destroyed
115	House	19th century	Shusha town Ojaggulu Str.	46°45'21"E; 39°45'32"N	destroyed
116	House	18th century	Shusha town Ojaggulu Str.	46°45'22"E; 39°45'33"N	destroyed
117	House	19th century	Shusha town Y.V.Chamanzaminli	46°45'09"E;39°45'32"N	destroyed
118	House of Mashadi Ibish	18th century	Shusha town Y.V.Chamanzaminli	46°45'07"E;39°45'32"N	destroyed
119	House	19th century	Shusha town Y.V.Chamanzaminli	46°45'07"E; 39°45'33"N	destroyed
120	House	18th century	Shusha town Y.V.Chamanzaminli	46°45'07"E;39°45'32"N	destroyed
121	House	18th century	Shusha town Y.V.Chamanzaminli	46°45'08"E;39°45'32"N	destroyed
122	House	18th century	Shusha town Y.V.Chamanzaminli	46°45'07"E;39°45'3r'N	destroyed
123	House	18th century	Shusha town Karbalayi Safikhan Str.	46°45'20"E;39°45'42"N	unknown
124	House	19th century	Shusha town Karbalayi Safikhan Str.	46°45'18"E;39°45'41"N	destroyed
125	House	19th century	Shusha town Karbalayi Safikhan Str.	46°45'19"E;39°45'42"N	unknown
126	House	18th century	Shusha town Karbalayi Safikhan Str.	46°45'12"E;39°45'42"N	destroyed
127	House	19th century	Shusha town S.S.Akhundov Str.	46°45'19"E;39°45'26"N	destroyed
128	House	19th century	Shusha town S.S.Akhundov Str.	46°45'19"E;39°45'27"N	destroyed
129	House	19th century	Shusha town U.Hajybayov Str.	46°45'01"E;39°45'43"N	destroyed
130	House	19th century	Shusha town U.Hajybayov Str.	46°45'01"E;39°45'41"N	destroyed
131	Mill	20th century	Shusha town A.Aghaoghlu Str.	46°45'07"E;39°45'30"N	unknown
132	House	19th century	Shusha town A.Aghaoghlu Str.	46°45'09"E;39°45'31"N	destroyed
133	House	18th century	Shusha town A.Aghaoghlu Str.	46°45'12"E;39°45'30"N	unknown
134	House	19th century	Shusha town A.Aghaoghlu Str.	46°45'11"E;39°45'30"N	destroyed

135	House of Mashadi Novruz	18th century	Shusha town Panah khan Str.	46°44'49"E;39^{0}45'42"N	destroyed
136	House of Mamay bay	18th century	Shusha town M.F.Akhundov Str.	46^{0}44'59"E;39°45'39"N	destroyed
137	House	18th century	Shusha town M.F.Akhundov Str.	46°45'0r'E;39°45'39"N	destroyed
138	House	18th century	Shusha town M.F.Akhundov Str.	46°45'02"E;39°45'40"N	unknown
139	House	18th century	Shusha town M.F.Akhundov Str.	46°45'01"E;39^{o}45'38"N	destroyed
140	House	19th century	Shusha town N.b.Vazirov Str.	46^{o}45'23"E;39°45'40"N	destroyed

141	House	18th century	Shusha town N.b.Vazirov Str.	46°45'12"E;39°45'36"N	destroyed
142	House	18th century	Shusha town N.b.Vazirov Str.	46°45'21"E; 39°45'37"N	destroyed
143	House	18th century	Shusha town N.b.Vazirov Str.	46°45'23"E; 39°45'38"N	destroyed
144	House	18th century	Shusha town N.b.Vazirov Str.	46°45'14"E;39°45'38"N	destroyed
145	House	18th century	Shusha town N.b.Vazirov Str.	46°45'25"E;39°45'39"N	destroyed
146	House	18th century	Shusha town F.Amirov Str.	46°45'23"E;39°45'43"N	destroyed
147	House	18th century	Shusha town F.Amirov Str.	46°45'23"E; 39°45'42"N	destroyed
148	House	18th century	Shusha town F.Amirov Str.	46^{0}45'23"E;39^{0}45'44"N	destroyed
149	House	18th century	Shusha town F.Amirov Str.	46°45'22"E; 39°45'44"N	destroyed
150	House	18th century	Shusha town F.Amirov Str.	46°45'26"E; 39°45'43"N	destroyed
151	House	18th century	Shusha town L.Karimov Str.	46°45'11"E;39^{0}45'35"N	destroyed
152	House	18th century	Shusha town L.Karimov Str.	46°45'15"E;39^{0}45'35"N	destroyed
153	House	18th century	Shusha town L.Karimov Str.	46^{0}45'15"E;39°45'34"N	unknown
154	House	19th century	Shusha town L.Karimov Str.	46°45'13"E;39°45'33"N	unknown
155	House	19th century	Shusha town L.Karimov Str.	46°45'12"E;39°45'33"N	unknown
156	House	19th century	Shusha town L.Karimov Str.	46^{0}45'17"E;39°45'34"N	destroyed
157	House	19th century	Shusha town L.Karimov Str.	46°45'12"E;39°45'34"N	destroyed
158	House	19th century	Shusha town L.Karimov Str.	46°45'10"E;39^{o}45'35"N	unknown
159	House	18th century	Shusha town H.Hajiyev Str.	46^{0}44'57"E;39^{0}45'32"N	destroyed
160	House	19th century	Shusha town H.Hajiyev Str.	46°44'56"E; 39°45'33"N	destroyed
161	House	18th century	Shusha town H.Hajiyev Str.	46°44'57"E;39°45'34"N	unknown
162	House	18th century	Shusha town H.Hajiyev Str.	46°44'56"E;39°45'31"N	unknown

163	House	18th century	Shusha town H.Hajiyev Str.	46°45'00"E; 39°45'32"N	unknown
164	House	18th century	Shusha town G.b.Zakir Str.	46°45'12"E;39^{0}45'52"N	destroyed
165	House	18th century	Shusha town G.b.Zakir Str.	46°45'11"E;39^{0}45'52"N	destroyed
166	House	18th century	Shusha town G.b.Zakir Str.	46^{0}45'17"E;39°45'43"N	destroyed
167	House	18th century	Shusha town G.b.Zakir Str.	46°45'17"E;39°45'39"N	destroyed
168	House	18th century	Shusha town G.b.Zakir Str.	46°45'11"E;39°45'49"N	destroyed
169	House	19th century	Shusha town G.b.Zakir Str.	46^{0}45'21"E; 39°45'44"N	destroyed

170	House	19th century	Shusha town G.b.Zakir Str.	46°45'18"E;39°45'43"N	unknown
171	House	19th century	Shusha town A.Hagverdiyev Str.	46°45'27"E;39°45'32"N	unknown
172	House	19th century	Shusha town A.Hagverdiyev Str.	46^{0}45'27"E;39^{0}45'31"N	destroyed
173	House	19th century	Shusha town A.Hagverdiyev Str.	46°45'29"E; 39°45'33"N	destroyed
174	House	19th century	Shusha town A.Hagverdiyev Str.	46°45'33"E;39°45'35"N	destroyed
175	House of Shukur bay	19th century	Shusha town Govharagha Str.	46°45'll"E;39^{o}45'40"N	destroyed
176	House	19th century	Shusha town Aghadadali Str.	46°45'05"E;39^{o}45'26"N	destroyed
177	House	19th century	Shusha town Aghadadali Str.	46°45'02"E;39°45'28"N	destroyed
178	House	19th century	Shusha town Aghadadali Str.	46°45'02"E; 39°45'27"N	destroyed
179	House	18th century	Shusha town M.M.Navvab Str.	46°44'58"E;39°45'36"N	unknown
180	House	18th century	Shusha town Sadygjan Str.	46^{o}45'08"E;39°45'38"N	destroyed
181	House of Hajy Bashir	18th century	Shusha town, Sadygjan Str.	46°45'06"E; 39°45'43"N	destroyed
182	House	18th century	Shusha town Sadygjan Str.	46^{o}45'08"E;39°45'42"N	destroyed
183	House	18th century	Shusha town, Fuzuli Str.	46°45'06"E; 39°45'26"N	destroyed
184	House	18th century	Shusha town M.A.Sabir Str.	46°45'03"E;39^{o}45'35"N	destroyed
185	House	18th century	Shusha town S.Vurghun Str.	46^{C,}45'12"E;39°45'37"N	destroyed
186	House	18th century	Shusha town S.Vurghun Str.	46°45'13"E;39^{o}45'40"N	destroyed
187	House	18th century	Shusha town G.Pirimov Str.	46°45'03"E; 39°45'39"N	destroyed
188	House	18th century	Shusha town G.Pirimov Str.	46^{o}45'02"E;39°45'39"N	unknown
189	House	18th century	Shusha town M.P.VagifStr.	46°45'02"E; 39°45'34"N	destroyed
190	House	19th century	Shusha town M.Shahriyar Str.	46°45'26"E; 39°45'40"N	destroyed

191	House of Mashadi Gara	19th century	Shusha town J.Garyaghdyoghlu Str.	46°45'24"E; 39°45'26"N	destroyed
192	House	18th century	Shusha town General Guliyev Str.	46°45'17"E;39°45'25"N	unknown
193	House	18th century	Shusha town, Natavan Str.	46°44'47"E;39°45'47"N	destroyed
194	House	19th century	Shusha town Kh.Mammadov Str.	46°45'H"E;39°45'46"N	destroyed
195	Harnam	19th century	Malybayli village	46°47'30"E;39°50'02"N	destroyed
196	Spring	19th century	Malybayli village	46°47'42"E; 39°49'35"N	destroyed
197	Mosque	19th century	Malybayli village	46°47'34"E; 39°49'57"N	destroyed
198	Administrative building	19th century	Malybayli village	46°47'19"E;39°49'47"N	destroyed

Archeological Monuments

N	Name	**Date**	**Address**	Coordinates	**Current state**
199	Mound	Bronze Age	North-west of Shusha town	46°44'48"E;39°46'23"N	unknown
200	Stone box graves	Late Bronze and Early Iron Ages	Between Shusha town and Shushakand village	46°45'17"E;39°46'38"N	unknown
201	Cave site	Stone Age	South ot Shusha town left bank of the Dashaltv River	46°45'29"E; 39°45'03"N	unknown

Historical and Architectural Monuments Khojavand district.

N	**Name**	**Date**	**Address**	**Coordinates**	**Current state**
1	TombNl	17th century	Khojavand village	47°05'40"E;39°47'23"N	destroyed
2	Tomb N2	17th century	Khojavand village	47°05'40"E;39°47'23"N	destroyed
3	Albanberdi church	-	Garakand village	missing	unknown
4	Maiden tower	-	Garakand village	missing	unknown
5	Albanian temple	-	Gaghartsi village	missing	unknown
6	Albanian temple	-	Chorakli village	missing	unknown
7	Baghyr khan temple	12th century	Jamiyyat village	missing	unknown
8	Albanian temple	16th century	Gavahyn village	missing	unknown
9	Albanian temple	1667	Gargar village	missing	unknown
10	Albanian temple	17th century	Sos village	missing	unknown
11	Amaras cloister	4th, 10th and 19th cenmries	Jutchu village	47°01'24"E;39°41'19"N	unknown
12	Albanian temple	13th century	Taghaverd village	missing	unknown

13	Albanian temple	1645	Zoghalbulag village	missing	unknown
14	Albanian temple	17th century	Azykh village	missing	unknown
15	Gtich cloister	1241-1248	Boyuk Taghlar village	missing	unknown
16	School building	Early 20th century	Boyuk Taghlar village	missing	unknown
17	Albanian temple	12thcentury	Tugh village	46°57'47"E;39°35'11"N	unknown
18	Anapat temple	-	Tugh village	46°57'46"E;39°35'06"N	unknown
19	Gyzylvang temple	-	Tugh village	missing	unknown
20	Bridge	18th century	Near Tugh village	missing	unknown

21	Tomb of M.M.KJiazani	70s of the 19thcentury	Tugh village	46°58'02"E;39°35'30"N	unknown
22	12 room school building	1904 (founded in 1885 as a two class school")	Tugh village	46°57'51"E;39°35'19"N	destroyed
23	Albanian temple	4th-6th centuries	Susanlyg village	missing	unknown
24	Albanian temple	12th and 17th centuries	Tsakuri village	missing	unknown
25	Albanian temple	-	Chyraguz village	missing	unknown
26	Albanian temple	1601	Mammaddara village	missing	unknown
27	Mosque	-	Dudukchu village	missing	unknown
28	Tomb	-	Dudukchu village	missing	destroyed
29	Albanian temple	-	Edilli village	missing	unknown
30	Albanian temple	-	Aghbulag village	missing	unknown
31	Albanian temple	-	Khyrmanjyg village	missing	unknown
32	Albanian temple	-	Malikjanly village	missing	unknown
33	Albanian temple	1721	Hadrut settlement	missing	unknown
34	Albanian temple	1635	Taghaser village	missing	unknown
35	Albanian temple	17th century	Sor village	missing	unknown
36	Albanian temple	17th century	Darakand village	missing	unknown
37	Albanian temple	-	Binadarasi village	missing	unknown
38	Albanian temple	18th century	Guneychartar village	missing	unknown
39	Albanian temple	14th century	Dolanlar village	missing	unknown
40	Albanian temple	-	Dolanlar village	missing	unknown

41	Albanian temple	-	Chaylaggala village	missing	unknown

Archeological Monuments

N	**Name**	**Date**	**Address**	**Coordinates**	**Current state**
42	Azykh cave	Lower Paleolithic Age	Azykh village	46°59'16"E;39°37'20"N	unknown
43	Taghlar cave	Paleolithic Age	Boyuk Taghlar village	46°57'54"E; 39°36'08"N	unknown
44	Nargiztapa residential area	Early and Middle Bronze Ages	5 km east of Khojavand town	missing	unknown
45	Necropolis	Late Bronze-Early Iron Ages	Dolanlar village	missing	unknown

Historical and Architectural Monuments Khojaly district

N	**Name**	**Date**	**Address**	**Coordinates**	**Current state**
1	Asgaran castle	18th century	Asgaran settlement	46°49'53"E; 39°56'00"N	unknown
2	Round tomb	1356-1357	Khojaly town	46047'33"E;39°54'30"N	destroyed
3	Tomb	14th century	Khojaly town	46°47'35"E;39°54'30"N	destroyed
4	Castle	14th century	Dashbashy forest Dashbashy village	missing	unknown
5	Albanian temple	13 th century	Khanabad village	missing	unknown
6	Temple complex	7th century	Badara village	missing	unknown
7	Gyrkhlar castle	Middle Ages	Badara village	missing	unknown
8	Albanian temple	1673	Khanyeri village	missing	unknown
9	Albanian temple	-	Meshali village	missing	unknown
10	Albanian temple	1202	Armudlu clearing Garagav village	missing	unknown
11	Albanian temple	-	Karkijahan settlement Khankandi town	missing	unknown
12	Albanian temple	15th century	Shushakand village	missing	unknown
13	Albanian temple	17th century	Khachmach village	missing	unknown
14	Albanian temple	17th century	Chanagchy village	missing	unknown
15	Albanian temple	17th century	Chanagchy village	missing	unknown
16	Albanian temple	-	Garabulag village	missing	unknown
17	Albanian temple	-	Daghyurd village	missing	unknown

Archeological Monuments

N	**Name**	**Date**	**Address**	**Coordinates**	**Current state**
18	Khojaly mounds	Late Bronze-Early Iron Ages	Khojaly town	46°47'43"E; 39°54'29"N 46°47'59"E; 39°54'29"N	unknown

19	Stone box necropolis	Bronze Age	Khojaly town	46^{0}47'57"E;39°54'13"N	unknown
20	Khachynchay mounds	Early Bronze Age	North-east of Seyidbayli village	missing	unknown
21	Pitcher graves necropolis	Bronze Age	Armudlu clearing Garagav village	missing	unknown
22	Mounds	Bronze Age	Armudlu clearing Garagav village	missing	unknown
23	Stone box necropolis	Iron Age	Armudlu clearing Garagav village	missing	unknown
24	Necropolis	Early and Middle	South of Khankandi town	missing	unknown
25	Khankandi mounds	Bronze Age	North of Khankandi town	missing	unknown
26	Mounds	Iron Age	Near Khankandi town	missing	unknown
27	Pitcher graves necropolis	Early Middle Ages	Khankandi town	missing	unknown
28	Cemetery	Bronze Age	Chanagchy village	missing	unknown
29	Stone box necropolis	Iron Age	Daghyurd village	missing	unknown
30	Stone box necropolis	Iron Age	Daghyurd village	missing	unknown

Historical and Architectural Monuments Tartar district

N	Name	**Date**	**Address**	**Coordinates**	**Current state**
1	Urek cloister	4th-5th and 13th centuries	West of Talysh village	missing	unknown
2	Castle	13th-14th centuries	West of Talysh village	missing	unknown
3	Saint Eliseus cloister	5th and 13th centuries	Near Madagiz village	missing	unknown
4	Bridge	12th-13th centuries	Madagiz village	missing	unknown
5	Three infants cloister	-	Tonashen village	missing	unknown
6	Castle	12th-13th centuries	Chilaburt village	missing	unknown
7	Castle remnants	12th-13th centuries	Chardagly village	missing	unknown
8	Malik Hatam castle	18th century	West of Kichik Garabay village	missing	unknown
9	Albanian temple	Middle Ages	Gasapet village	missing	unknown
10	Castle	Middle Ages	Umudlu village	missing	unknown
11	Ancient residential area	-	Umudlu village	46°35'12"E;40^{o}12'10"N	unknown
12	Hamam	-	Umudlu village	46°35'08"E; 40°12'05"N	destroyed
13	Hamam	-	Umudlu village	46^{o}35'17"E;40°12'06"N	destroyed

Archeological Monuments

N	Name	**Date**	**Address**	**Coordinates**	**Current state**
14	Cemetery	Middle Ages	Gasapet village	missing	unknown

15	Residential area	Middle Ages	Chardagly village	missing	unknown

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