

ARTICLE 51 OF THE UN CHARTER AND THE ARMENIA-AZERBAIJAN CONFLICT

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Abstract

This article analyzes the question of the use of force in international conflicts in the context of self-defense under Article 51 of the UN Charter. In the introduction, it briefly considers the US-Afghanistan, US-Iraq, Israel-Lebanon and Freedom Flotilla conflicts in light of the applicability of Article 51. The main focus of the paper is the conflict between two South Caucasian countries – Armenia and Azerbaijan – over the Nagorno-Karabakh region of Azerbaijan. The article illustrates the reasons for the conflict and the peace efforts that were pursued in the framework of the OSCE Minsk process for its resolution. The paper claims that Article 51 can be legally invoked in the case of Armenia-Azerbaijan conflict by Azerbaijan if all peace proposals from mediators are not successful and the international organizations implicated do not take effective measures to end the Armenian occupation of Nagorno-Karabakh and adjacent districts, which are internationally-recognized territories of Azerbaijan.

Key Words

UN Charter, Article 51, self-defense, Azerbaijan, Armenia, Nagorno-Karabakh, conflict.

Introduction

Over the past ten years, a number of military actions in the international arena have been justified under Article 51 of the UN Charter: sometimes rightfully and many times as means of justifying aggressive actions, even invasions. One of the last incidents was the military attack undertaken by Israeli armed forces on the Freedom Flotilla carrying humanitarian aid to the Gaza Strip in May 2010. Israel, as in many cases

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before, attempted to base its action on its right to self-defense,¹ in spite of the fact that the dispute could have been solved by peaceful means, as the people carrying humanitarian aid did not possess firearms and were halted in neutral waters. In its report on the issue, the Human Rights Council Fact-Finding Mission concluded that “a series of violations of international law, including international humanitarian and human rights law, were committed by the Israeli forces during the interception of the flotilla and during the detention of passengers in Israel prior to deportation” and “the action cannot be justified in the circumstances even under Article 51 of the Charter of the United Nations”.²

This act was one of the latest events embellishing the history of international relations based on Article 51. The very first of these events in this decade, and of global magnitude, was the US-led military attack on Afghanistan after 9/11. The pertinence and validity of this military attack was justified by the US on the right to self-defense and relevant UN Security Council resolutions,³ and was also supported by the coalition of 42 states despite some opposing views.⁴

The second disputable and criticized event was the US-led attack on Iraq. This act was seriously condemned, because many argued it was performed without UN authorization. The condemnations against the US became more severe after the US allegations that the Iraqis possessed weapons of mass destruction were not verified after the fall of the Saddam regime.⁵ On 16 September 2004, Secretary-General of the United Nations

¹In his statement “*No Love Boat*” of 2 June 2010, Israeli Prime Minister Netanyahu indicated that “the Jewish state has a right to defend itself just like any other state”, available at <http://www.mfa.gov.il>.

²UN Human Rights Council document A/HRC/15/21, 27 September 2010.

³UN Security Council Resolution 1368, adopted on 12 September 2001 “*calls* on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks means terrorists attacks which took place on 11 September 2001 in New-York, Washington D.C and Pennsylvania – S.G. and stresses that those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable” (emphasis added).

⁴For example, see Majorie Cohn, “*Bombing Afghanistan is Illegal and Must Be Stopped*”, at <http://jurist.law.pitt.edu/forum/forumnew36.htm> and Robin Miller, “*U.S. Self-defense Claim Doesn't Fly*”, at <http://www.robincmiller.com/afghan2.htm>.

⁵In his briefing to the UN Security Council on 14 February 2003, the Executive Chairman of the UN Monitoring, Verification and Inspection Commission (UNMOVIC) Dr. Hans Blix

Kofi Annan, while speaking on the issue, said, “I have indicated it was not in conformity with the UN Charter. From our point of view, from the Charter point of view, it was illegal”.⁶

The third event was the Israeli attack on Lebanon in 2006, which caused strong perturbations and condemnation from the international community,⁷ despite the Israeli attempt to base the act on its right to self-defense.⁸ The conflict severely damaged Lebanese civilian infrastructure, killed at least 1,500 people, mostly Lebanese civilians (UNICEF estimated that 30% of Lebanese killed were children under the age of 13)⁹ and displaced approximately one million Lebanese and 500,000 Israelis,¹⁰ although most of the latter were able to return to their homes. Israel held Lebanon responsible for the Hezbollah attacks since Hezbollah was a member of the Lebanese government at the time.¹¹ The counterargument of Lebanon was that the Government of Lebanon did not condone Hezbollah attacks.¹²

As can be seen from abovementioned examples, the use of force in dispute resolution in contemporary international relations is still relevant and

noted that “UNMOVIC has not found any such weapons,” at <http://www.un.org/Depts/unmovic/blix14Febasdel.htm>; see also “CIA’s Final Report: No WMD found in Iraq,” at <http://www.msnbc.msn.com/id/7634313/>

⁶BBC, “Iraq War Illegal”, says Annan, 16 September 2004, at <http://news.bbc.co.uk/2/hi/3661134.stm>

⁷For example, on 11 August 2006, the United Nations’ Human Rights Council held a special session on the issue and adopted the resolution S-2/1 condemning Israeli military operations in Lebanon.

⁸The Israel Ambassador to the UN referenced to Article 51 in his letters to the UN Secretary-General and Security Council on 12 July 2006: “Israel thus reserves the right to act in accordance with Article 51 of the Charter of the United Nations and exercise its right of self-defence when an armed attack is launched against a Member of the United Nations. The State of Israel will take the appropriate actions to secure the release of the kidnapped soldiers and bring an end to the shelling that terrorizes our citizens”, UN Document A/60/937, S/2006/515.

⁹“The Humanitarian Challenge in Lebanon”, 9 August 2006, at http://www.unicef.org/emerg/index_35274.html.

¹⁰BBC, “Middle East Crisis: Facts and Figures,” at http://news.bbc.co.uk/2/hi/middle_east/5257128.stm.

¹¹Prime Minister Olmert, “Lebanon is Responsible and Will Bear the Consequences”, 12 July 2006, at <http://www.mfa.gov.il/MFA/Government/Communiques/2006>.

¹²Prime Minister Fouad Siniora, Daily Star (Lebanon), 17 July 2006.

applicable, despite the fact that humanity has two terrible experiences from its use which has brought indescribable sorrows to mankind. In this context, briefly considering the reasons for the Armenia- Azerbaijan, Nagorno-Karabakh conflict and the positions of the conflicting parties, the article aims to draw attention to the possibility of a new war in South Caucasus between Azerbaijan and Armenia over the Nagorno-Karabakh region and adjacent districts of Azerbaijan under Armenian occupation. It elaborates on the right of Azerbaijan to invoke Article 51 of the UN Charter based on the facts that the Armenian aggression is recognized by international legal documents and the aggressor is not willing to release the occupied territories peacefully despite 18 years of diplomatic efforts pursued to settle the conflict.

Reasons for the Armenia-Azerbaijan, Nagorno-Karabakh Conflict and Positions of the Conflicting Parties

One of the most vivid examples of a violation of the norms and principles of international law is the almost two decades-long and still unresolved Armenia-Azerbaijan Nagorno-Karabakh conflict, which emerged as a result of the illegal use of force and where Article 51 of the Charter can be legally invoked.

The conflict began at the eve of the collapse of the USSR, when the predominantly Armenian population of the Nagorno-Karabakh region of Azerbaijan ousted the entire Azeri population of the region, occupied regions of Azerbaijan adjacent to Nagorno-Karabakh and declared their independence with the direct support of neighboring Armenia. As a result of this conflict, Azerbaijan lost 20 percent of its territory and one million Azerbaijanis became refugees and IDPs. In 1994, the parties declared a cease-fire.

The position of Armenia on this conflict is that the Armenian population of Nagorno-Karabakh exercised their right to self-determination based on international law and created an independent state, since this population had been systematically discriminated against. Armenia also argues that Nagorno-Karabakh has never been the part of the independent Republic of Azerbaijan.¹³

¹³See http://www.armeniaforeignministry.com/fr/nk/legalaspects/legalaspect_text.pdf.

Azerbaijan's position is that Nagorno-Karabakh is the internationally-recognized territory of Azerbaijan.¹⁴ International law does not permit the exercise of the right to self-determination to the prejudice of the principle of the territorial integrity of states.¹⁵ The Armenian population of Nagorno-Karabakh region enjoyed all rights as citizens and as a national minority in the Azerbaijan Soviet Socialist Republic (SSR).¹⁶ Azerbaijan is ready to give any possible form of self-rule to the people of Nagorno-Karabakh within its territory and believes that the status of the region can only be rightly determined after the expelled Azeri population of this region returns back to their homes.¹⁷

Regarding Armenian allegations that Nagorno-Karabakh has never been part of independent Azerbaijan since it declared its sovereignty before the Republic of Azerbaijan became independent,¹⁸ it has to be noted that

¹⁴The *de jure* inclusion of the Nagorno-Karabakh region and adjacent occupied territories in Azerbaijan is recognized in UN Security Council Resolutions 853, 874 and 884 of 1993, General Assembly Resolutions A/RES/49/13, A/RES/57/298, A/RES/62/243; the OSCE Lisbon Summit Final Documents – DOC.S/1/96, (3 December 1996), p. 15; Organization of Islamic Conference Resolutions “The Destruction and Desecration of Islamic Historical and Cultural Relics and Shrines in the Occupied Azeri Territories Resulting from Republic of Armenia’s Aggression against the Republic of Azerbaijan” and “The Aggression of the Republic of Armenia and against the Republic of Azerbaijan”, Parliamentary Assembly of the Council of Europe Resolution 1416 (2005).

¹⁵UN General Assembly Resolution 2625 (XXV) on “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations”.

¹⁶Regarding the groundlessness of Armenian allegations on the discriminatory policy against Armenian population of Nagorno-Karabakh region, see Council of Europe, ACFC/SR (2002) 1, Report Submitted by Azerbaijan Pursuant to Article 25, Paragraph 1 of The Framework Convention For The Protection of National Minorities, (received on 4 June 2002), at <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/2002/azerbaijan.htm>.

¹⁷For comprehensive information on the position of Azerbaijan on the Nagorno-Karabakh conflict, see Ministry of Foreign Affairs of Azerbaijan, at http://mfa.gov.az/eng/khojaly_en/index.php?option=com_content&task=view&id=29&Itemid=43

¹⁸Azerbaijan declared its independence on 18 October 1991 by adoption of the Constitutional Act on State Independence of the Republic of Azerbaijan and Nagorno-Karabakh on 2 September 1991 by the decision of Joint Meeting of Soviets of People’s Deputies of the Nagorno-Karabakh Region and Shaumyan district. For the comprehensive information on the groundlessness of this argument, see T. F. Musayev “*Legislation of the USSR and Secessionist Claims in the Threshold of the Union’s Disintegration*”, Materials of the International Conference on “Basic Principles for the Settlement of the Conflicts on the Territories of GUAM States”, Baku, 15-16 April 2008, pp. 88-91.

Nagorno-Karabakh was an autonomous oblast within the Azerbaijan SSR and, according to the Soviet Constitution, the territory of a Union Republic could not be altered without its consent¹⁹ and only Union Republics had the right to secede freely from the USSR.²⁰

As to the right of self-determination, it is worth mentioning that there is no international document confirming that this right can be exercised through aggression by another state and to the detriment of the principle of territorial integrity of states. An act of secession on the basis of self-determination can only be justified with the use of peaceful means and with the consent of the state of origin. The Helsinki Final Act of 1975 clearly notes 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”²¹ and “the participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States”.²² In the case of the Nagorno-Karabakh conflict, Armenia not only supported the secession of the Nagorno-Karabakh region from Azerbaijan through the use of large-scale military operations, but also occupied seven districts of Azerbaijan situated outside the administrative borders of this region.

Furthermore, UN General Assembly Resolution 2625 (XXV), “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations” clearly expresses that the principle of territorial integrity has precedence over self-determination for each state. After elaborating on

¹⁹USSR Constitution, Moscow 1977, art. 78.

²⁰Ibid, art. 72.

²¹Conference on Security and Cooperation in Europe, Helsinki Final Act, 1975, ‘Questions relating to security in Europe’, IV, Territorial Integrity of States, at <http://www.hri.org/docs/Helsinki75.html>.

²²Conference on Security and Cooperation in Europe, Helsinki Final Act, 1975, ‘Questions relating to security in Europe’, VIII Equal rights and self-determination of people, at <http://www.hri.org/docs/Helsinki75.html>

the principle of equal rights and self-determination of peoples, the Declaration states “[n]othing 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 color”.²³ As is obvious, the UN General Assembly recognizes the precedence of the principle of territorial integrity over self-determination in cases where the State itself recognizes the right of self-determination for its people and when the State represents its people without distinction based on race, creed or origin. In the case of Nagorno-Karabakh, Azerbaijan had recognized the right of the Armenian population of Nagorno-Karabakh to self-determining, as the region had enjoyed the status of autonomy within the Azerbaijan SSR since 1923 and its population was represented in the decision-making bodies of the state.²⁴

Armenian Aggression in the International Documents and Mass Media

Recourse to force as a means of solving international disputes was outlawed by the Pact of Paris (the Kellogg-Briand Pact) in 1928.²⁵ Article 2 of the UN Charter drafted in 1945 called on the members of the UN to solve their controversies by peaceful means and refrain from use of force. The third and fourth provisions of the Article say:

“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

²³UN General Assembly Resolution 2625 (XXV) on “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations”.

²⁴The Nagorno-Karabakh Autonomous Republic 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, according to the USSR Constitution of 1977.

²⁵General Treaty for the Renunciation of War as an Instrument of National Policy (Pact of Paris), 94 *League of Nations Treaty Series*, (1928), p. 57.

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”.

These provisions clearly intend that nothing in international relations can justify the use of force against the territory of an independent state. In this regard, aggression and secession accompanied by the use of force are not also exempt from this provision.

The UN General Assembly resolution on the definition of aggression adopted in 1974 formulates that: “*Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition*”.²⁶

Today, aggression is universally considered to be an unlawful act and the prohibition of aggression has reached the status of a *jus cogens* norms.²⁷ Despite this fact, it is still relevant even in our civilized world. One of the most dramatic examples of such an action counter to contemporary values is the Armenian aggression against Azerbaijan, which has been recognized in numerous international documents and mass media resources that will be discussed below.

First of all, it is worth mentioning that, in line with the groundless allegations against Azerbaijan as noted above, Armenia also tried to camouflage its direct participation in the Nagorno-Karabakh conflict by presenting it as a conflict between Azerbaijan and Armenians of the Nagorno-Karabakh region. But after the invasion of districts located outside of the administrative line of the Nagorno-Karabakh region in 1993, the international community began expressing serious doubts in this regard.²⁸

²⁶UN General Assembly Resolution 3314(XXIX) on “Definition of the Aggression” available at www.un.org/documents/ga/res/29/ares29.htm.

²⁷The Report of the International Law Commission, 53rd Session, GAOR, 56th Session, Supp. No. 10 (A/56/10), 2001, pp. 283-284, paras. 4 and 5.

²⁸See Elizabeth Fuller, “Paramilitary Forces Dominate Fighting in Transcaucasus”, RFE/RL Research Report, Vol.2:25, (June 18, 1993), p. 75; “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh”, Human Rights Watch Report, USA (1994), pp. 67-73; Svante E. Cornell, “The Nagorno-Karabakh Conflict Reconsidered,” *Journal of South Asian and Middle Eastern Studies*, Vol. 20, No. 4 (1997), p. 8; Thomas Goltz, “*Azerbaijan Diary*”,

Armenia has been a direct party to the negotiation process with Azerbaijan on the Nagorno-Karabakh conflict from the beginning of the process. The number of parties to this conflict were specified and cemented in 1992. According to the rules to which all parties agreed in 1992 and which the OSCE adheres to even today, there are two “principal parties” - the Republic of Armenia and Republic of Azerbaijan, and two “interested parties” - the Armenian community and Azerbaijani community of Nagorno-Karabakh- to the Nagorno-Karabakh conflict.²⁹

Armenia’s direct participation in the Nagorno-Karabakh conflict and the existence of Armenian presence in the occupied territories of Azerbaijan have been expressly noted by the political bodies of the United Nations, the EU, the OSCE, the Council of Europe, and the Organization of the Islamic Conference, together with recognition by individual states and respected mass media.

In UN Security Council Resolutions 822, 853, 874 and 884, adopted in 1993 in response to the occupation of the territories of Azerbaijan, the Council “expresse[d] its serious concern at the deterioration of the relations between the Republic of Armenia and the Azerbaijani Republic” and “reaffirm[ed] the sovereignty, territorial integrity and inviolability of the international borders of the Azerbaijani Republic and all other States in the region”. The Council “demand[ed] immediate cessation of all hostile acts, immediate, complete and unconditional withdrawal of occupying forces from all occupied regions of the Azerbaijani Republic, and “call[ed] for the restoration of economic, transport and energy links in the region, ensuring the return of refugees and displaced persons to their homes”.³⁰ None of these resolutions was ever implemented by Armenia.

The resolutions and reports adopted by the international organizations after the UN resolutions confirmed not only the fact of the occupation of the

New York, M.E. Sharpe, 1998, p. 341; Tomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, New York and London, NYU Press, 2004, p. 212.

²⁹John J. Maresca, “Resolving the Conflict over Nagorno-Karabakh: Lost Opportunities for International Conflict Resolution,” in Chester A. Crocker, Fen Osler Hampson and Pamela Aall, *Managing Global Chaos: Sources of and Responses to International Conflict* Washington D.C., United States Institute of Peace Press, 1996, p. 260.

³⁰ For the full list of all UN Security Council resolutions passed in 1993, see <http://www.un.org/Docs/scres/1993/secres93.htm>.

territories of Azerbaijan, but also clearly named Armenia as an occupying party. There are the following examples:

- In the aftermath of the Presidential elections in Armenia in March 1998, the OSCE/ODIHR Election Observation Mission in Armenia released its Final Report in which it expressed extreme concern “that one of the mobile boxes has crossed the national borders of the Republic of Armenia to collect votes of Armenian soldiers posted abroad (Kelba[d]jar)”, thus confirming the deployment of Armenian troops in the Kelbadjar district of Azerbaijan, which was occupied in April 1993.³¹
- Also 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 amount of budgetary resources to this area”.³²
- The Council of Europe Parliamentary Assembly Resolution 1416 of 2005 expressed its regret that “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.” The Assembly also “reaffirm[ed] 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”.³³ The Assembly “reiterate[ed] 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

³¹See “OSCE/ODIHR Final Report on the Presidential Elections in Armenia”, 9 April 1998, p. 8, at http://www.osce.org/documents/odihr/1998/04/1215_en.pdf.

³²David Atkinson, “*The Conflict over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference*”, Explanatory Memorandum, para. 6.

³³Available at <http://assembly.coe.int/documents/adoptedtext/ta05/eres1416.htm>.

Europe and reaffirms the right of displaced persons from the area of conflict to return to their homes safely and with dignity”.³⁴ By referring to “member state” the Assembly once again confirmed that its member Armenia is an occupier of the territories of Azerbaijan.

- The resolutions of the Organization of Islamic Conference on “The Destruction and Desecration of Islamic Historical and Cultural Relics and Shrines in the Occupied Azeri Territories Resulting from Republic of Armenia’s Aggression against the Republic of Azerbaijan” and “The Aggression of the Republic of Armenia and against the Republic of Azerbaijan” regularly adopted at the Summits and Foreign Ministers Conferences of the Organization for several years also clearly named Armenia as an occupier and demanded the immediate release of occupied territories of Azerbaijan.³⁵
- One of the recent important documents on the Nagorno- Karabakh conflict was the resolution entitled “The Need for an EU Strategy for the South Caucasus” adopted by the European Parliament on 20 May 2010. The resolution called for “the withdrawal of Armenian forces from all occupied territories of Azerbaijan”³⁶ and in this way confirmed the fact of occupation of the territories of Azerbaijan by Armenia.

There are also dozens of facts brought to the attention of the international community by the impartial resources on Armenia’s direct involvement to the Nagorno-Karabakh conflict:

- Human Rights Watch, in its comprehensive report of December 1994, indicated on the basis of evidence it had collected that “the involvement of the Armenian army as part of its assigned duties in the conflict.... This 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

³⁴Ibid.

³⁵Texts of the latest resolutions are at http://www.oic.oci.org/is11/English/docu_ments.asp.

³⁶Document is at

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0193+0+DOC+XML+V0//EN>.

Armenian army soldiers entering Nagorno-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”.³⁷

- The US Department of State’s Country Reports on Human Rights Practices for Armenia and Azerbaijan 2006 noted that “Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories”.³⁸
- Another example is the Freedom House Report on Azerbaijan for 2006 which noted that “[t]he Azerbaijani government continued to have no administrative control over 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”.³⁹

Armenia’s invasion against Azerbaijan and its direct involvement in the conflict were also highlighted in a dozen of well-known western mass media resources. For example, *The Independent* wrote on 12 October 2009 that “...in 1993 Armenia invaded its own eastern neighbor, Azerbaijan...”⁴⁰ *The Times* wrote on 14 April 1993 that “[o]ne thing is certain: the Kelbadjar region was attacked from Armenia itself, to the west, as well as from Nagorno-Karabakh to the east”. *The Washington Post* came to the same conclusion stating on 28 April 1993 that “[t]he war involving the former Soviet Republics of Armenia and Azerbaijan has moved into a dangerous new phase...”, while the *Agence France Presse* stated on 22 April 1993 that

³⁷Human Rights Watch, *Seven Years of Conflict in Nagorno-Karabakh*, New-York, 1994, pp. 69-73.

³⁸Available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78799.htm> and <http://www.state.gov/g/drl/rls/hrrpt/2006/78801.htm>.

³⁹Available at <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.

⁴⁰The Independent, “*The Big Question: Is the Bitter Divide between Turkey and Armenia Coming to an End?*” by Marcus Tanner, 12 October 2009.

“Azerbaijan has suffered a series of setbacks in the war after Armenia carried out a major offensive early this month...”⁴¹

As can be seen from the abovementioned examples, Armenia committed an act of aggression and used force against the territorial integrity of Azerbaijan by violating the principles and norms of international law. This country violated provisions of the UN Charter which allow member states to resort to force only in self-defense. In other words, the use of force in international relations is justified only in the cases of self-defense. States may not resort to force for other purposes, including territorial acquisition. International law does not recognize territorial acquisitions by the use of threat or force. This is the legal consequence of the principle stated in Article 2 of the UN Charter. In line with the UN Charter, Armenia also violated other internationally-accepted documents, such as UN General Assembly Resolution 2625 (XXV) on “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations” which clearly expresses that “the territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the Provisions of the Charter. The territory of a State shall not be the object of acquisition of another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal”.⁴² The principle of non-recognition of territorial acquisitions obtained through the use of threat or force is accompanied by the principle that any treaty, the conclusion of which was procured by the treat or use of force in violation of the Charter of the United Nations, shall be void.⁴³ This provision was also confirmed in Article 5 of the UN General Assembly resolution on the definition of aggression: “No territorial acquisition or special advantage resulting from aggression are or shall be recognized lawful”.⁴⁴ This is to say

⁴¹See letter dated April 30, 1993 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/25701 (provides excerpts from the news reports).

⁴²UN General Assembly Resolution 2625 (XXV) of October 1970, available at <http://www.un.org/documents/ga/res/25/ares25.htm>

⁴³Ian Brownlie, Chairman of the International Law Commission (United Nations) “*Consequences of the Illegal Use of Force and Territorial Acquisitions*”, Materials of the International Conference on “Basic Principles for the Settlement of the Conflicts on the Territories of GUAM States”, Baku, 15-16 April 2008, p. 86.

⁴⁴UN General Assembly Resolution 3314(XXIX), “Definition of Aggression”, at www.un.org/documents/ga/res/29/ares29.htm

that, since Armenia and the non-recognized Nagorno-Karabakh Republic acquired the territories of Azerbaijan by use of force and occupation, it is in no way possible for them to legalize the results of this unlawful act.

Ineffective Peace Efforts for the Resolution of the Conflict

In spite the fact that Armenia refuses to relinquish the occupied territories of Azerbaijan after the persistent calls of international organizations, Azerbaijan has continued its peace efforts and negotiations within the Minsk process⁴⁵ of the OSCE since 1992.

In the 1996 Lisbon Summit of the OSCE, the Chairman-in-Office of the Organization outlined three principles which should form basis for the settlement for the Nagorno-Karabakh conflict, which were recommended by the Co-Chairmen of the Minsk Group:⁴⁶

- Territorial integrity of the Republic of Armenia and the Republic of Azerbaijan;
- Legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;
- Guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all parties with the provisions of the settlement.⁴⁷

These principles were supported by all OSCE participating States, except Armenia.⁴⁸

⁴⁵The Minsk process was named after the Minsk (Belorussia) peace conference on Nagorno-Karabakh which had to be convened in 1992, but was not accomplished because of Armenian aggression spilled over other regions of Azerbaijan outside Nagorno-Karabakh.

⁴⁶The Minsk Group was set up to coordinate all mediation efforts within the CSCE (Conference for Security and Cooperation in Europe which was transformed to OSCE) at the 1994 CSCE Budapest Summit from the group of 11 states. The United States, Russia and France are co-chairs of the Minsk Group.

⁴⁷Lisbon Document 1996, p.15, available at www.osce.org/item/4049.html.

⁴⁸Ibid.

In 1997, the OSCE Minsk group co-chairs prepared and submitted to the parties a 'package' resolution proposal, which meant reaching an agreement on all issues, including the status of Nagorno-Karabakh, at the same time in one package document. Armenia refused to adopt this plan.⁴⁹ The second proposal of the group was a "stage by stage" resolution plan for the conflict. This plan envisaged the resolution of the conflict by stages:

- the first stage was to be the liberation of six districts occupied in the course of the conflict that are outside of the former Nagorno-Karabakh Autonomous Oblast (except the Lachin district) along with the return of the civilian population and restoration of the main communications in the region of conflict;
- the second stage was to be the a resolution of the situation around the Lachin and Shusha districts as well as the adoption of the main principles of the status of the Nagorno-Karabakh region; and
- the final stage was to be the comprehensive settlement of the conflict, including an Agreement on the status of self-rule of Nagorno-Karabakh within Azerbaijan.⁵⁰

The presidents of Armenia and Azerbaijan supported this plan in their joint statement made on 10 October 1997 in Strasbourg.⁵¹ But in April of 1998, Armenia reneged on its previous agreement.⁵² On 9 November 1998, the co-chairmen introduced new proposals on the package settlement of the conflict based on a concept of a "common state." From the very beginning of the consultations, Azerbaijan refused to accept this proposal as it meant the creation of an independent Nagorno-Karabakh state in the territory of Azerbaijan.⁵³

Today, the latest proposal given by the Minsk group co-chairs is called the "renewed version of Madrid document on basic principles". This

⁴⁹Elchin Ahmedov, "Ermenistanin tecavuzkarliq siyaseti ve ATET", "Garabag dunen, bu gun ve sabah" 8-ci elmi konsfransinin materiallari, at <http://karabakh-doc.azerall.info/ru/articls/artc124az-1.php>

⁵⁰<http://www.mfa.gov.az/khojaly/index.php>

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

proposal envisages a step-by-step resolution of the conflict, which envisions release of the seven occupied districts of Azerbaijan adjacent to Nagorno-Karabakh within the fixed timeframe, restoration of all communications, return of all refugees and internally-displaced persons to their places of origin, international security guarantees (including peacekeeping forces) and interim status to Nagorno-Karabakh. These principles were drafted by the Minsk group co-chairs as a result of two years of consultations with Azerbaijan and Armenia. Azerbaijan accepted them as the basis for peace agreement, but Armenia at the very last moment said that it had difficulties with adopting these principles.⁵⁴ The principles were also supported by the presidents of the co-chair states of the Minsk group - Dmitry Medvedev, Barak Obama and Nikola Sarkozy – in their Statements at the G8 Summit in L'Aquila on 10 July 2009 and in Muskoka on 26 June 2010. The last Statement envisages “the return of the occupied territories surrounding Nagorno-Karabakh, interim status for Nagorno-Karabakh guaranteeing security and self-governance, and a corridor linking Armenia to Nagorno-Karabakh, with the final status of Nagorno-Karabakh to be determined in the future by a legally-binding expression of will, the right of all internally-displaced persons and refugees to return, and international security guarantees, including a peacekeeping operation”.⁵⁵

During the whole period of negotiations, Azerbaijani authorities have repeatedly stated that Azerbaijan is ready to bestow the highest form of autonomy to the Nagorno-Karabakh region within its territorial integrity.⁵⁶

Fragile Cease-Fire and Risk of a New War under Article 51 of the UN Charter

The cease-fire agreement between Armenia and Azerbaijan was signed in May of 1994. This agreement stopped large-scale military operations, but both parties were still faced with human losses every year as

⁵⁴Qlava MID Azerbaydjana, “*Nelzya dat vozmojnost sorvat peregovori po karabaxskomu konfliktu*,” at <http://www.day.az/news/politics/212877.html>.

⁵⁵G8 Summit, Joint Statement on Nagorno-Karabakh conflict by Dmitry Medvedev, President of the Russian Federation, Barak Obama, President of the United States of America and Nikolas Sarkozy, President of the Republic France, at http://eng.news.kremlin.ru/ref_notes/32.

⁵⁶For example, see the “Position of Armenian Side Still Indefinite – Azerbaijani Minister”, at <http://www.news.az/articles/politics/2512> [last visited 22 October 2010].

a result of frequent clashes and sniper attacks on the line of contact. According to the Special Representative of the OSCE Chairman-in-Office, Andrzej Kasprzyk, who monitors the cease-fire regime on the line of contact “the situation in the front lines has not changed dramatically since the cease-fire was agreed upon. There are unfortunately a number of casualties each year - approximately 30 (occasionally civilians) - as a result of shooting incidents on the Line of Contact and the Armenian- Azerbaijani border.”⁵⁷ In one of the latest armed incidents on the front line, which took place on 18-19 June 2010, Armenia had four dead soldiers and Azerbaijan had one dead soldier.⁵⁸ The incident once again demonstrated that the conflict is not static - tensions are still high and large scale military operations could be resumed at any moment if the ineffective peace talks continue along the same path.

The possibility of a peaceful resolution to the conflict is coming to the end, as this option has been applied in all possible ways throughout the years of patient and tireless efforts of negotiations, discussions and mediations. Taking into account that peace negotiations with the Armenian side have not produced results, Azerbaijan’s authorities several times stressed the possibility of a military solution of the conflict:

- For example, in his speech on the occasion of the opening ceremony for the new building of the Azeri community of Nagorno-Karabakh in Baku on 6 July 2010, President Ilham Aliyev clearly indicated that “the format which we call the Prague process⁵⁹ is the last chance for Armenia. It is the last chance for Armenia to leave the occupied territories voluntarily...”⁶⁰
- Also in his statement at the farewell ceremony for two soldiers who had died heroically on the frontline on 7 November 2010, President Aliyev stated that “[w]e will keep conducting talks for as much as there remains a hope for restoration of our territorial integrity through

⁵⁷“Facilitating dialogue”, (Interview with the Special Representative of the OSCE Chairman-in-Office Andrzej Kasprzyk), *OSCE Magazine*, Issue 1/2010, p. 14.

⁵⁸See “OSCE, EU condemn Karabakh “Armed incident”” at http://www.rferl.org/content/OSCE_EU_Condemn_Karabakh_Armed_Incident/2079009.html.

⁵⁹“Prague process” is a last format of peace negotiation between Armenia and Azerbaijan which began in 2003 after the meeting of Presidents of two states in Prague.

⁶⁰Available in the Azerbaijani language at <http://www.milli.az/news/politics/15859.html>.

negotiations. If we notice that it is not possible, then Azerbaijan will restore its territorial integrity using its military. I do not doubt that we have all the conditions necessary for it... We can restore our territorial integrity by military means at any moment”.⁶¹

It will be very relevant to point out that the “Military Doctrine of the Republic of Azerbaijan” adopted on 8 June 2010 indicates that Azerbaijan will take back its occupied territories by war if Armenia does not relinquish them peacefully. Article 28 of the Doctrine notes that “[Azerbaijan] maintains its right to use all necessary means, including applying military force, to restore its territorial integrity according to the norms and principles of international law, if the Republic of Armenia continues to hold under occupation the part of the territory of the Republic of Azerbaijan and refuses to liberate occupied territories in the framework of political resolution of the problem”.⁶²

Today, Armenia tries in every possible way to urge the Government of Azerbaijan to accept that it will never choose the military option for the settlement of the Nagorno-Karabakh conflict, based on the principles of international law to solve disputes by peaceful means and refrain from the use of force.⁶³ Armenia forgets that it was the state that chose the way of war and use of force against the territorial integrity of its neighbor in the Nagorno-Karabakh conflict twenty years ago, instead of peaceful dispute resolution. As Foreign Minister of Azerbaijan Elmar Mammadyarov noted, “the force has already been applied and Azerbaijani territories have already been occupied”.⁶⁴ As a result of the aggression against the territorial integrity of Azerbaijan, Armenia gave Azerbaijan reason to invoke Article 51 of the UN Charter on the use of force in self-defense at any time, until its territories are under the occupation. Article 51 of the UN Charter clearly notes:

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

⁶¹Speech is available at <http://president.az/mobile/articles/1011?locale=en>

⁶²Available in Azerbaijani at <http://www.meclis.gov.az/?/az/law/183/1>

⁶³The President of the Republic of Armenia Serzh Sargsyan in an Interview with Euronews on 21 March 2010 appealed to Azerbaijan “to sign an agreement not to use force”.

⁶⁴Qlava MID Azerbaydjana nazval usloviye otkaza Baku ot voennyoy ritoriki, 23 June 2010, at <http://www.day.az/news/topnews/215657.html>.

*Council has taken 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.*⁶⁵

According to this Article, every State has the right to take self-defense measures if an armed attack against it occurs. “In practice, it is for every state to judge for itself, in the first instance, whether a case of necessity in self-defense has arisen”.⁶⁶ That is to say, a State resorting to counter-attack in response to an armed attack, in the exercise of the right to self-defense, acts unilaterally, at its own discretion. There is no requirement to seek a green light in advance from the UN Security Council. What Article 51 requires is that the self-defense 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-defense measures have been undertaken by the acting state. In this way, Article 51 of the Charter gives the member states the right to act immediately, without warning the Council. This provision of the Charter incorporates two limitations on the right to use of force in self-defense: such a right exists only (1) where there was an “armed attack” against the country and (2) “until” the Security Council has had time to take appropriate measures.⁶⁷

Despite the fact that the right to pre-emptive use of force in self-defense is very arguable after its numerous applications in response to terrorists attacks, the right to self-defense in response to an act of aggression is generally accepted. This was confirmed in the UN Secretary-General’s report “In Larger Freedom: Towards Development, Security and Human Rights for All” of 2005. After noting that “in recent years, this issue has deeply divided Member States” and “they have disagreed about whether States have the right to use military force pre-emptively, to defend

⁶⁵Charter of the United Nations, at <http://www.un.org/en/documents/charter/index.shtml>.

⁶⁶R. Jennings and A. Watts (eds.), *Oppenheim’s International Law*, 1992, p. 422.

⁶⁷For commentary on the proper interpretation of the “until” clause in Article 51, see Malvina Halberstam, “*The Right to Self-defense once the Security Council Takes Action*”, 17 Mich J.Int’l L.229 (Winter 1996) and Thomas K.Plofcham, “*Article 51: Limits on Self-defense?*”, 13 Mich J. Int’l L. 336 (Winter 1992).

themselves against imminent threats; whether they have the right to use it preventively, to defend themselves against latent or non-imminent threats; and whether they have the right - or perhaps the obligation - to use it protectively, to rescue the citizens of other States from genocide or comparable crimes” the Secretary-General’s report confirmed that the UN Charter offers a good basis for understanding when the right to self-defense can be invoked. According to the report, “imminent threats are fully covered by Article 51, which safeguards the inherent right of sovereign States to defend themselves against armed attack. Lawyers have long recognized that this covers an imminent attack as well as one that has already happened”.⁶⁸

In the case of the Nagorno-Karabakh conflict, there was an “armed attack” against the territory of Azerbaijan 18 years ago which resulted in the occupation of approximately 20 percent of Azerbaijan’s territory as recognized in the international documents mentioned above. In this regard, the right of Azerbaijan to invoke Article 51 is not excluded by the first limitation on the right to self-defense.

As to the second limitation on the use of force in self-defense, one can argue that Azerbaijan has lost the opportunity to act in self-defense under this article because the Security Council has already engaged in this conflict by adopting four resolutions on this issue, as discussed above. But the correct analysis of the text of Article 51 leads to the conclusion that it is not enough for the Security Council to just adopt a resolution; in order to divest Member States of their right to continue concurrently a resort to force in self-defense, in response to an armed attack,⁶⁹ the right of self-defense vested in the victim of an armed attack, “remains intact until the Council has *successfully* dealt with the controversy before it.”⁷⁰ Basically it is for the State acting in self-defense to evaluate whether the Council’s efforts have been a success.⁷¹ For example, in the Falkland Crisis of 1982, the United Kingdom launched military actions against Argentina in response to the

⁶⁸“In Larger Freedom: Towards Development, Security and Human Rights for All”, UN Secretary-General Report, available at <http://www.un.org/largerfreedom/>.

⁶⁹O. Shachter “*United Nations Law in the Gulf Conflict*”, 85 American Journal of International Law 453, 458 (1991)

⁷⁰E. V. Rostow, “*Until What? Enforcement Action or Collective Self-Defense?*”, 85 American Journal of International Law 506, 511 (1991).

⁷¹L. M. Goodrich, E. Hambro and A. P. Simons, *Charter of the United Nations: Commentary and Documents* 352 (3rd edition, 1969).

latter's invasion of the Falkland Islands, despite the fact that the UN Security Council was engaged with the matter and had already adopted Resolution 502. The United Kingdom grounded its acts in the fact that Argentina did not comply with the provisions of the resolution and did not withdraw its forces from the islands.⁷²

Thus, the interpretation of the Article 51 and international practice prove that if the Security Council really wishes the parties to the conflict to disengage, it has no choice but to adopt a legally-binding Chapter VII decision that imposes a mandatory cease-fire. In the case of the Nagorno-Karabakh conflict, the Security Council did not act under the Chapter VII and the provision on "complete and unconditional withdrawal of the occupying forces involved from all occupied areas of the Azerbaijani Republic"⁷³ of the resolutions adopted by the Council remains unimplemented. The Security Council repeated this demand not once, but four times. Four times it accepted the fact of occupation and demanded its stop and the withdrawal from occupied territories. In spite of the fact that every time Armenia continued the occupation of the territories of Azerbaijan, the Security Council did not demand compliance and did not act in any practical manner to stop and punish the occupier. It has also to be noted that the Council began to act on the issue and adopted these resolutions after the Armenian invasion spilled over into the territories of Azerbaijan which are not the part of the Nagorno-Karabakh region. The Security Council was quiet when the Azerbaijani population of Nagorno-Karabakh was totally expelled from their homes and even when hundreds of innocent inhabitants of Khojaly city of the region were brutally massacred in one night by Armenian forces in February 1992.

Conclusion

The right to self-defense is a universally recognized norm of international law, enshrined in various international legal instruments, including the Charter of the United Nations. Every State is entitled to invoke its inherent right to self-defense, with all relevant consequences, when use of

⁷²See speech of Margaret Thatcher at the House of Commons on 29 April 1982, at <http://www.margarethatatcher.org/document/104928>

⁷³See Operative Paragraph (OP)1 of Security Council Resolution 822, OP 3 of the Res. 853, OP 5 of the Res. 874 and OP 4 of the Res. 884

force against its territorial integrity has taken place and its territories are occupied.

It was more than seventeen years ago that the Nagorno-Karabakh region and surrounding seven administrative districts, which constitute almost one-fifth of the territory of Azerbaijan, came under Armenian occupation, one out of every nine persons in Azerbaijan is an internally-displaced person or refugee, tens of thousands of people were killed or wounded in this conflict and about 4090 Azerbaijani citizens are still missing.⁷⁴ It has already been 18 years since UN Security Council Resolutions 822, 853, 874 and 884 were adopted and demanded the “immediate, complete and unconditional withdrawal of all occupying forces from occupied regions of the Republic of Azerbaijan”. At its 62nd session, the UN General Assembly adopted the Resolution on “The Situation in the Occupied Territories of Azerbaijan” which expressed the General Assembly’s concern that

the armed conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, reaffirmed *inter alia* its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders and also demanded immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan.⁷⁵

That document once again confirmed the fact of aggression against the territories of Azerbaijan by its neighbor Armenia. This resolution and also many other documents of international organizations confirmed the occupation of Azerbaijani territories by Armenia. There is an internationally-recognized fact of aggression and strong demand for the rectification of its consequences, i.e. the immediate and unconditional liberation of all occupied territories of Azerbaijan, which permits Azerbaijan to invoke Article 51 in

⁷⁴Official information of the State Commission on Missing Persons and Hostages of the Republic of Azerbaijan for 1 June 2010, at www.human.gov.az

⁷⁵UN General Assembly document A/RES/62/243, adopted on 14 March 2008

self-defense since Armenia refuses to implement the internationally-binding demands⁷⁶ and continues to enjoy impunity for its unlawful action.

Despite the fact that Azerbaijan has demonstrated genuine desire for the resolution of the Nagorno-Karabakh conflict through peace negotiations which have already continued for 18 years, Armenia does not show any sign of readiness to settle the conflict, specifically by refusing the Minsk Group proposals and performing unlawful acts in the invaded territories, such as illegal settlement⁷⁷ and changing the names of the occupied districts of Azerbaijan.⁷⁸ Armenia's actions are bitter results of this country's impunity for the grave violation of the norms and principles of international law. They diminish the belief of the Azerbaijani people in the possibility of peaceful resolution of the conflict and pave the way for a military solution of the conflict. The Armenian State bears responsibility for breach of international law, including humanitarian law and international human rights law, and its actions in Nagorno-Karabakh conflict constitute aggression against Azerbaijan.

In spite of the unequivocal support of the international community for the sovereignty and territorial integrity of Azerbaijan and widespread condemnation of the Armenian occupation of its territories, Armenia has continued for 18 years to use negotiations on conflict resolution only to preserve the *status quo* and secure the annexation of the Azerbaijani territories.

In view of these points, Azerbaijan is entitled to exercise its legitimate right of self-defense under Article 51 of the UN Charter and undertake relevant measures deriving from this right to put an end to the occupation of its territories. Moreover, in view of Armenia's destructive

⁷⁶The resolutions adopted by the Security Council are binding according to Article 25 of the U.N. Charter, which states that “[t]he Members of the United Nations agree to accept and to carry out the decisions of the Security Council in accordance with the present Charter”.

⁷⁷The OSCE Fact-Finding Mission carried out from 30 January–5 February 2005 in the occupied territories of Azerbaijan confirmed Azerbaijan's concerns about the illegal settlement of Armenians in the occupied territories around the Nagorno-Karabakh. See OSCE, “Report of the OSCE Fact-Finding Mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh,” 2005.

⁷⁸For example, on 2 November 2010 the name of the occupied district of Azerbaijan around the Nagorno-Karabakh - Agdam was changed to Akna by the authorities of the non-recognized Nagorno-Karabakh Republic.

stance in the peaceful negotiations, the resort to the right of self-defense by the Republic of Azerbaijan is the only way to put an end to the aggression and the return of more than one million refugees and IDP's from conflict-affected areas to their homes and to bring about the long-awaited stability for the region.