MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF AZERBAIJAN
DEPARTMENT FOR ANALYSIS AND STRATEGIC STUDIES

DOCUMENTS
OF INTERNATIONAL ORGANIZATIONS ON
THE ARMENIA-AZERBAIJAN CONFLICT IN 1992-2020

C O N T E N T S

UNITED NATIONS (UN)

United Nations Security Council Resolution 822 (30 April 1993) 5
United Nations Security Council Resolution 853 (29 July 1993) 7
United Nations Security Council Resolution 874 (14 October 1993) 9
United Nations Security Council Resolution 884 (12 November 1993) 11
United Nations Security Council President's Statement (06 April 1993) 13
United Nations Security Council President's Statement (18 August 1993) 14
United Nations Security Council President's Statement (26 April 1995) 16
United Nations General Assembly Resolution 48/114 (23 March 1994) 18
United Nations General Assembly Resolution 57/298 (06 February 2003) 21
United Nations General Assembly Resolution 60/285 (15 September 2006) 23
United Nations General Assembly Resolution 62/243 (25 April 2008) 24
Report of the UN Secretary-General (14 April 1993) 26
Report of the UN Secretary-General (30 March 2009) 30
Report on the military occupation of the territory of Azerbaijan: a legal appraisal (23 October 2007) 39
Report on the legal consequences of the armed aggression by the Republic of Armenia against the Republic of Azerbaijan (24 December 2008) 56
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 (29 December 2008) 84
Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory (27 January 2009) 133
Support by States Member of the United Nations and international organizations to Azerbaijan's position on the conflict in and around the Nagorno-Karabakh region of Azerbaijan (20 February 2009) 161
Report on the armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences (06 October 2009) 170
The facts documented by Armenian sources, testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan (28 April 2010) 201
Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility (03 May 2012) 212
Report on illegal economic and other activities in the occupied territories of Azerbaijan (16 August 2016) 246
Information on some facts testifying to the organization and implementation by Armenia of terrorist acts against Azerbaijan (10 May 2012) 253
Legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan (26 April 2017) 373
Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory (05 June 2020) 430
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 (22 July 2020) 469

NON-ALIGNED MOVEMENT (NAM)

Final Document of the 17th Summit of the Heads of State or Government (18 September 2016) 520
Final Document of the 18th Summit of the Heads of State or Government (26 October 2019) 522

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

CSCE Committee of Senior Officials Decision (28 February 1992) 525
CSCE Council of Ministers Decision (24 March 1992) 530
Report by the Chairman of the CSCE Minsk Conference to the President of the UN Security Council (27 July 1993) 533
Report by the Chairman of the CSCE Minsk Conference to the President of the UN Security Council and Adjusted timetable of urgent steps to implement the UN Security Council Resolutions 822 and 853 (01 October 1993) 537
Declaration and package proposal by the Nine CSCE Minsk Group Countries (10 November 1993) 543
CSCE Budapest Summit Document (21 December 1994) 546
OSCE Lisbon Summit Document (03 December 1996) 549

Conclusions of the Report of the OSCE Fact-Finding Mission to the occupied territories of Azerbaijan surrounding its Nagorno-Karabakh region (28 February 2005) 551
Recommendations by the OSCE Minsk Group Co-Chairs on the results of the OSCE Minsk Group Fact-Finding Mission to the occupied territories of Azerbaijan (06 March 2005) 557
Joint Statement by the Heads of State of the OSCE Minks Group Co-Chairs at the L'Aquila Summit of the Eight (10 July 2009) 558
Joint Statement by the Heads of State of the OSCE Minks Group Co-Chairs at the Muskoka Summit of the Eight (26 June 2010) 559
Executive Summary of the Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the occupied territories of Azerbaijan (24 March 2011) 560

ORGANIZATION OF ISLAMIC COOPERATION (OIC)

Council of Foreign Ministers Resolution 12/46 on political affairs (02 March 2019) 562
Council of Foreign Ministers Resolution 4/46 on economic issues (02 March 2019) 568
Council of Foreign Ministers Resolution 3/46 on the protection of Islamic Holy Places (02 March 2019) 570
Council of Foreign Ministers Resolution 7/46 on Affiliated Institutions (02 March 2019) 573
Final Communique of the 14th Islamic Summit Conference (31 May 2019) 575

COUNCIL OF EUROPE (CoE)

Parliamentary Assembly of the Council of Europe Resolution 1416 (25 January 2005) 578
Parliamentary Assembly of the Council of Europe Recommendation 1690 (25 January 2005) 580
European Court of Human Rights Grand Chamber Judgment Press Release (16 June 2015) 581
Parliamentary Assembly of the Council of Europe Resolution 2085 (26 January 2016) 583

EUROPEAN UNION (EU)

European Communities Council Statement (07 April 1993) 586
European Communities Council Statement (09 November 1993) 588
European Communities Commission Communication (31 May 1995) 590
European Parliament Resolution 0193 (20 May 2010) 593
European Parliament Resolution 0128 (18 April 2012) 594
European Parliament Resolution 0446 (23 October 2013) 595
European Parliament recommendation to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on the Eastern Partnership (19 June 2020) 596

NORTH ATLANTIC TREATY ORGANIZATION (NATO)

Statement issued at the meeting of the North Atlantic Cooperation Council (11 June 1993) 599
Declaration by the Heads of State and Government at the meeting of the North Atlantic Council (11 January 1994) 600
Brussels Summit Communiqué by the Heads of State and Government at the meeting of the North Atlantic Council (11 July 2018) 601

COMMONWEALTH OF INDEPENDENT STATES (CIS)

Declaration by the Heads of Member States on the respect for sovereignty, territorial integrity and inviolability of the borders of the CIS Member States (15 April 1994) 603
Bishkek Protocol initiated by the CIS Interparliamentary Assembly (12 May 1994) 604
Memorandum by the Heads of Member States on the maintenance of peace and stability in the Commonwealth of Independent States (10 February 1995) 605

ECONOMIC COOPERATION ORGANISATION (ECO)

Antalya Communiqué for 24th Meeting of the Council of Ministers (09 November 2019) 607

COOPERATION COUNCIL OF TURKIC SPEAKING STATES (TURKIC COUNCIL)

Declaration of the 7th Summit of the Cooperation Council of Turkic Speaking States (15 October 2019) 609

ORGANIZATION FOR DEMOCRACY AND ECONOMIC DEVELOPMENT (GUAM)

Joint Declaration by the Heads of State of the Organization for Democracy and Economic Development – GUAM on the issue of conflict settlement (23 May 2006) 611

UNITED NATIONS

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/RES/822 (1993)
30 April 1993

RESOLUTION 822 (1993)

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

The Security Council,

Recalling the statements of the President of the Security Council of 29 January 1993 (S/25199) and of 6 April 1993 (S/25539) concerning the Nagorno-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 distruptive effect that the escalation in armed hostilities can have on that process,

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

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

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

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

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

5. Decides to remain actively seized of the matter.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/RES/853 (1993)
29 July 1993

RESOLUTION 853 (1993)

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

The Security Council,

Reaffirming its resolution 822 (1993) of 30 April 1993, Taking note of the report of the Secretary-General dated 14 April 1993 (S/25600),

Having considered the report issued on 27 July 1993 by the Chairman of the Mink 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 at 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 inadmissability 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 Azerbaijan Republic;

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

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

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

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

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

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

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

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

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

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

14. Decides to remain actively seized of the matter.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/RES/874 (1993)
14 October 1993

RESOLUTION 874 (1993)

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

The Security Council,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Supports the monitoring mission developed by the CSCE;

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

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

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

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

13. Decides to remain actively seized of the matter.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/RES/884 (1993)
12 November 1993

RESOLUTION 884 (1993)

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

The Security Council,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Decides to remain actively seized of the matter.

UNITED
NATIONS

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Security Council

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GENERAL

S/24535
6 April 1992

ORIGINAL: ENGLISH

NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

Following consultations with the members of the Security Council, the President of the Council made the following statement, on behalf of the Council, at its 3194th meeting, on 6 April 1992, in connection with the Council's consideration of the item entitled "The situation relating to Nagorny-Karabakh":

"The Security Council expresses its serious concern at the deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan, and at the escalation of hostile acts in the Nagorny-Karabakh region, especially the invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces. The Council demands the immediate cessation of all such hostilities, which endanger peace and security of the region, and the withdrawal of these forces.

"In this context, the Security Council, reaffirming the territorial and sovereign integrity of all States of the region and the inviolability of their borders, expresses its support for the CSCE peace process. It expresses the hope that the present preliminary agreement reached by the Minsk Group will be expeditiously followed by agreements on a cease-fire, a timetable for the deployment of the monitors, a draft political declaration and the convening, as soon as possible, of the Minsk Conference.

"The Security Council urges the parties involved to take all necessary steps to advance the CSCE peace process and refrain from any action that will obstruct a peaceful solution to the problem.

"The Council also calls for unimpeded access to humanitarian humanitarian relief missions in the region and in particular in all areas affected by the conflict in order to alleviate the suffering of the civilian population.

"The Security Council requests the Secretary-General, in consultation with the CSCE, to ascertain facts, as appropriate, and to submit urgently a report to the Council containing an assessment of the situation on the ground.

"The Council will remain seized of the matter."

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UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/26326
18 August 1993

ORIGINAL: ENGLISH

NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

Following consultations with the members of the Security Council, the President of the Council made the following statement, on behalf of the Council, at the 3260th meeting, on 18 August 1993, in connection with the Council's consideration of the item entitled "The situation relating to Nagorny Karabakh":

"The Security Council expresses its serious concern at the deterioration of relations between the Republic of Armenia and the Azerbaijani Republic and at the tensions between them. The Council calls upon the Government of the Republic of Armenia to use the influence to achieve compliance by the Armenians of the Nagorny-Karabakh region of the Azerbaijani Republic with its resolutions 822 (1993) and 853 (1993).

"The Council also expresses its deep concern at the recent intensification of fighting in the area of Kizil. The Council condemns the attack on the Kizil region from the Nagorny-Karabakh region of the Azerbaijani Republic, just as it has previously condemned the invasion and seizure of the districts of Kelbadjar and Agdam of the Azerbaijani Republic. The Council demands a stop to all attacks and an immediate cessation of the hostilities and bombardments, which endanger peace and security in the region, and an immediate, complete and unconditional withdrawal of occupying forces from the area of Kizil, and from the districts of Kelbadjar and Agdam and other recently occupied areas of the Azerbaijani Republic. The Council calls upon the Government of the Republic of Armenia to use its unique influence to this end.

"The Council reaffirms the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region and the inviolability of their borders, and expresses its grave concern at the attack these countries have had on the efforts of the Minsk Group of the Conference on Security and Cooperation in Europe (CSCE), to achieve a peaceful solution to the conflict. The Council expresses its full support of the CSCE peace process, and notes particularly the opportunity that the current round of Minsk Group talks have afforded the parties to the conflict to present their views directly. In this context, the Council calls upon all of the parties to respond positively and within the agreed time-frame to the 18 August adjusted version of the Minsk Group's "Invitable of Legal Steps to Implement United Nations Security Council resolutions 822 (1993) and 853 (1993)" and to refrain from any actions that

would destruct a peaceful solution." The Council welcomes the intention of the CSCE to send a mission to the region to report on all aspects of the situation.

"In light of some great recent escalation of the conflict, the Council strongly reaffirms the call in resolution 853 (1993) for States to refrain from supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory of the Azerbaijani Republic. The Council calls upon the government of the Republic of Armenia to ensure that the forces involved are not provided with the means to extend their military campaign still further.

"The Council also renews the calls in resolutions 822 (1993) and 853 (1993) for unimpeded access for international humanitarian relief efforts in the region, in all areas affected by the conflict, in order to alleviate the continually increasing suffering of the civilian population. The Council reminds the parties that they are bound by and must adhere to the principles and rules of international humanitarian law.

"The Executive Council will remain actively seized of the matter and will be ready to consider appropriate steps to ensure that all parties fully respect and comply with the resolutions."

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/PRST/1995/21
26 April 1995

ORIGINAL: ENGLISH

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 3525th meeting of the Security Council, held on 26 April 1995, in connection with the Council's consideration of the item entitled "The situation relating to Nagorny Karabakh", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council has considered the reports (S/1995/249 and S/1995/321) of the Co-Chairmen of the OSCE Minsk Conference on Nagorny Karabakh presented in accordance with paragraph 8 of its resolution 884 (1993). It expresses its satisfaction that the cease-fire in the region agreed upon on 12 May 1994 through the mediation of the Russian Federation in cooperation with the OSCE Minsk Group has been holding for almost a year.

"At the same time, the Council reiterates the concern it has previously expressed at the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic and at the tensions between the Republic of Armenia and the Azerbaijani Republic. In particular, it expresses its concern at recent violent incidents and emphasizes the importance of using the mechanism of direct contacts for the settlement of incidents as agreed upon on 6 February 1995. It strongly urges the parties to the conflict to take all necessary measures to prevent such incidents in future.

"The Council reaffirms all its relevant resolutions, inter alia, on the principles of sovereignty and territorial integrity of all States in the region. It also reaffirms the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory.

"The Council reiterates its full support for the efforts of the Co-Chairmen of the Minsk Conference to assist in conducting speedy negotiations for the conclusion of a political agreement on the cessation of the armed conflict, the implementation of which will eliminate major consequences of the conflict for all parties, inter alia, ensuring withdrawal of forces, and permit the convening of the Minsk Conference.

"The Council stresses that the parties to the conflict themselves bear the main responsibility for reaching a peaceful settlement. It stresses the urgency of concluding a political agreement on the cessation of the armed conflict on the basis of the relevant principles of the Charter of the United Nations and of the OSCE. It strongly urges those parties to constructively conduct negotiations without preconditions or procedural obstacles and to refrain from any actions that may undermine the peace process. It emphasizes that the achievement of such an agreement is a prerequisite for the deployment of a multinational OSCE peace-keeping force.

"The Council welcomes the decision of the Budapest summit of the CSCE of 6 December 1994 on the 'Intensification of CSCE action in relation to the Nagorny-Karabakh conflict' (S/1995/249, appendix). It confirms its readiness to provide continuing political support, inter alia, through an appropriate resolution regarding the possible deployment of a multinational OSCE peace-keeping force following agreement among the parties for cessation of the armed conflict. The United Nations also stands ready to provide technical advice and expertise.

"The Council underlines the urgency of the implementation by the parties of confidence-building measures, as agreed upon within the Minsk Group on 15 April 1994, in particular in the humanitarian field, including the release of all prisoners of war and civilian detainees by the first anniversary of the cease-fire. It calls upon the parties to prevent suffering of the civilian populations affected by the armed conflict.

"The Council reiterates its request that the Secretary-General, the Chairman-in-Office of the OSCE and the Co-Chairmen of the OSCE Minsk Conference continue to report to the Council on the progress of the Minsk process and on the situation on the ground, in particular, on the implementation of its relevant resolutions and on present and future cooperation between the OSCE and the United Nations in this regard.

"The Council will keep the matter under consideration."

UNITED NATIONS **A**

General Assembly

Distr.
GENERAL

A/RES/48/114
23 March 1994

Forty-eighth session
Agenda item 113

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/48/631)]

48/114. Emergency international assistance to refugees and displaced persons in Azerbaijan

The General Assembly,

Recalling its relevant resolutions regarding humanitarian assistance to refugees and displaced persons,

Having considered the report of the United Nations High Commissioner for Refugees, 1/

Recognizing the catalytic role that the High Commissioner plays, together with the international community and development agencies, in the promotion of humanitarian aid and development with a view to finding durable and lasting solutions for refugees and displaced persons,

Expressing its grave concern at the continuing deterioration of the humanitarian situation in Azerbaijan owing to the displacement of large numbers of civilians,

Welcoming the efforts made by the United Nations interim office and the Office of the United Nations High Commissioner for Refugees in Azerbaijan to coordinate the needs assessment and the provision of humanitarian assistance,

Welcoming also the consolidated United Nations inter-agency humanitarian programme for Azerbaijan for the period 1 July 1993 to 31 March 1994,

Expressing its appreciation to the States and intergovernmental and non-governmental organizations that have responded positively and continue to

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respond to the humanitarian needs of Azerbaijan, and to the Secretary-General and United Nations bodies for mobilizing and coordinating the delivery of appropriate humanitarian assistance,

Also expressing its appreciation to the Governments of the neighbouring States that provide the necessary humanitarian assistance, including the provision of accommodation and transit routes through their territories for the displaced persons from Azerbaijan,

Noting with alarm that the humanitarian situation in Azerbaijan has continued to deteriorate seriously since the adoption of the programme in June 1993, and that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million,

Aware that the refugees and displaced persons are in a precarious situation, facing the threat of malnutrition and disease, and that appropriate external assistance is needed for the provision of foodstuffs, medical aid and the necessary shelter for the winter,

Deeply concerned about the enormous burden that the massive presence of refugees and displaced persons has placed on the country's infrastructure,

Affirming the urgent need to continue international action to assist Azerbaijan in providing shelter, medication and food to the refugees and displaced persons, especially to the most vulnerable groups,

1. Welcomes with appreciation the efforts undertaken by the Secretary-General in drawing the attention of the international community to the acute problems of the Azerbaijani refugees and displaced persons and in mobilizing assistance for them;

2. Urgently appeals to all States, organizations and programmes of the United Nations, specialized agencies and other intergovernmental and non-governmental organizations to provide adequate and sufficient financial, medical and material assistance to the Azerbaijani refugees and displaced persons;

3. Invites the international financial institutions and the specialized agencies, organizations and programmes of the United Nations system, where appropriate, to bring the special needs of the Azerbaijani refugees and displaced persons to the attention of their respective governing bodies for their consideration and to report on the decisions of those bodies to the Secretary-General;

4. Invites the Secretary-General to continue to monitor the overall situation of refugees and displaced persons in Azerbaijan and to make available his good offices as required;

5. Requests the United Nations High Commissioner for Refugees to continue her efforts with the appropriate United Nations agencies and intergovernmental, governmental and non-governmental organizations, in order to consolidate and increase essential services to refugees and displaced persons in Azerbaijan;

/...

6. Requests the Secretary-General to report to the General Assembly at its forty-ninth session on the progress made in the implementation of the present resolution.

85th plenary meeting
20 December 1993

General Assembly

Distr.: General
6 February 2003

Fifty-seventh session
Agenda item 22 (*l*)

Resolution adopted by the General Assembly

57/298. Cooperation between the United Nations and the Organization for Security and Cooperation in Europe

The General Assembly,

Recalling the framework for cooperation and coordination between the United Nations and the Conference on Security and Cooperation in Europe, which was signed on 26 May 1993,[1] as well as its resolutions on cooperation between the two organizations,

Recalling also the principles embodied in the Helsinki Final Act and in the declaration at the 1992 Helsinki Summit by the heads of State or Government of the participating States of the Conference on Security and Cooperation in Europe of their understanding that the Conference is a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations and as such provides an important link between European and global security,[2]

Acknowledging the increasing contribution of the Organization for Security and Cooperation in Europe to the establishment and maintenance of international peace and security in its region through activities in early warning and preventive diplomacy, including through the activities of the High Commissioner on National Minorities, crisis management and post-conflict rehabilitation, as well as arms control and disarmament,

Recalling the Charter for European Security adopted at the Summit in Istanbul, Turkey, in November 1999, which reaffirms the Organization for Security and Cooperation in Europe as a primary organization for the peaceful settlement of disputes within its region and as a key instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation,

[…]

26. *Fully supports* the activities of the Organization for Security and Cooperation in Europe to achieve a peaceful solution to the **conflict in and around the Nagorny-Karabakh region of the Republic of Azerbaijan,** and welcomes cooperation between the United Nations and the Organization for Security and Cooperation in Europe in this regard;

[1] A/48/185, annex II, appendix.

[2] See A/47/361-S/24370, annex.

27. *Remains deeply concerned* at the failure to achieve a settlement of the Nagorny-Karabakh conflict despite the intensified dialogue between the parties and the active support of the Co-Chairmen of the Minsk Group of the Organization for Security and Cooperation in Europe, reaffirms that the prompt resolution of that protracted conflict will contribute to lasting peace, security, stability and cooperation in the South Caucasus region, reiterates the importance of continuing the peace dialogue, calls upon the sides to continue their efforts to achieve an early resolution of the conflict based on norms and principles of international law, encourages the parties to explore further measures that would enhance mutual confidence and trust, welcomes the commitment of the parties to the ceasefire and to achieving a peaceful and comprehensive settlement, also welcomes in particular the continued meetings of the Presidents of Armenia and Azerbaijan and of their special representatives, and encourages the parties to continue their efforts, with the active support of the Co-Chairmen, aimed at reaching a just and enduring settlement;

[…]

79th plenary meeting
20 December 2002

General Assembly

Distr.: General
15 September 2006

Sixtieth session
Agenda item 40

Resolution adopted by the General Assembly on 7 September 2006

60/285. The situation in the occupied territories of Azerbaijan

The General Assembly,

Seriously concerned by the fires in the affected territories, which have inflicted widespread environmental damage,

1. *Stresses* the necessity to urgently conduct an environmental operation to suppress the fires in the affected territories and to overcome their detrimental consequences;

2. *Welcomes* the readiness of the parties to cooperate to that end, and considers such an operation to be an important confidence-building measure;

3. *Takes note* of the intention of the Organization for Security and Cooperation in Europe to organize a mission to the region to assess the short- and long-term impact of the fires on the environment as a step in preparation for the environmental operation;

4. *Calls upon*, in this regard, the organizations and programmes of the United Nations system, in particular the United Nations Environment Programme, in cooperation with the Organization for Security and Cooperation in Europe, to provide all necessary assistance and expertise, including, inter alia, the assessment of and counteraction to the short- and long-term impact of the environmental degradation of the region, as well as in its rehabilitation;

5. *Requests* the Chairman-in-Office of the Organization for Security and Cooperation in Europe to provide a report on this matter to States members of the General Assembly by 30 April 2007.

98th plenary meeting
7 September 2006

05-50470

General Assembly

Distr.: General
25 April 2008

Sixty-second session
Agenda item 20

Resolution adopted by the General Assembly on 14 March 2008

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

The General Assembly,

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

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

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

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

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

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

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

[1] See A/59/747-S/2005/187.

[2] A/61/696, annex.

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

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

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

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

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

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

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

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

86th plenary meeting
14 March 2008

UNITED NATIONS

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Security Council

[illegible]
GENERAL

S/25600
14 April 1993

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL PURSUANT TO THE STATEMENT OF THE PRESIDENT OF THE SECURITY COUNCIL OF CONSULTATIONS WITH THE AUTHORITIES RELATING TO [illegible]

INTRODUCTION

1. In the statement made by the President of the Security Council on 3 April 1993, on the situation relating to Nagorny Karabakh, the Council requested me, in consultation with the Conference on Security and Cooperation in Europe (CSCE), to undertake urgently, as appropriate, and to submit promptly a report to the Council containing an assessment of the situation on the ground (see S/25539). The present report is submitted in accordance with that request by the Security Council. The report has been prepared, after consultation with representatives of the Chairman-in-Office of the CSCE, on the basis of information provided to me by the United Nations representatives in Azerbaijan and Armenia.

2. In a personal letter dated 31 March 1993 the President of the Republic of Azerbaijan, H.E. Mr. Ayaz Niyazi Mutalibov, drew my attention to the outbreak of fighting in the Nakhichevan Autonomous Republic. In a letter dated 30 March 1993 the Permanent Representative of Azerbaijan to the United Nations had already informed the President of the Security Council about the grave situation in that district (see S/25501). In these and subsequent communications, the Government of Azerbaijan has stated that Azerbaijan was attacked by forces from the Republic of Armenia and that the capital of Nagorny Karabakh. The Government of Armenia, on the other hand, claims that no military forces from the Republic of Armenia were involved in the hostilities in the Nakhichevan District. The Armenian representation to Armenia to the United Nations, in a letter dated 1 April 1993, informed the President of the Security Council about the Government's view on the reasons for the fighting in the Nakhichevan district (see S/25510).

3. As soon as news had been received of the outbreak of new hostilities in the Nagorny-Karabakh region, the Heads of the United Nations offices in Azerbaijan and Armenia had been instructed, as a matter of urgency, to ascertain the facts on the ground. As their first step, the United Nations representatives undertook, with assistance from their respective host Governments, the evacuation of the wives of families. The United Nations representative in Azerbaijan went on such evacuation on 5 April and from 9 to 10 April 1993. On the second occasion, he travelled from Baku to Stepanakert by helicopter, which was fired on by [illegible] on 7 April 1993 in connection

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with the verification of the presence of an Armenian military group in the region. The acting United Nations Representative in Armenia undertook his missions from 5 to 10 April and on 12 April 2011.

SITUATION ON THE GROUND IN ARTSAKH

4. On his first mission, on 5 April, the United Nations Representative in Azerbaijan visited the contact line in Gazakh, north-east of the Kalbadzhar district, and Kazakh, southern part of the enclave of Nagorny-Karabakh. Local military commanders in Gazakh described the situation as very tense, indicating that the Azeri forces had lost control over the entire Kalbadzhar district. They expected further advances by Armenian forces. Civilian authorities in Gazakh stated that the fighting in Kalbadzhar had led to the displacement of 30,000 inhabitants. Many of them had escaped via snow-covered mountain tracks towards Dashkesan and Gazakh. In Gazakh, their situation appeared to be extremely serious. Many of them had waited in the snow for two to three days and were suffering from extreme exhaustion and frostbite. The local authorities in the area appeared to be overwhelmed by this humanitarian emergency. Most of the displaced people in the Gazakh district were sleeping in open fields. Estimates for the resulting elevations in the Kalbadzhar district varied between 1,000 and 15,000 people.

5. In Kazakh the mission met also the Speaker of the Azeri Parliament, Mr. Oktay Gurbanov, who stated that Armenian forces were occupying Azeri territory and attempting to occupy the town. The town appeared to be under military attack and incoming and outgoing shelling was audible.

6. During the second field mission, from 9 to 10 April, the United Nations Representative again went to Gazakh as well as to the districts of Tap'ut and Kazakh. In Kazakh the mission was informed that Armenian forces had occupied Azeri-populated enclaves within the territory of the Republic of Armenia. The local military commander also reported sporadic shelling and attempts at incursion by Armenian forces. Civilians in that area complained about the movement there of firework by Armenian forces. On the second day, the mission visited Voskar v. Tazakh and Agdere. In Agdere, which is located 2 km west of the Armenian border and south-west of Nagorny-Karabakh, the mission was told that shelling had occurred from the territory of the Republic of Armenia as well as from the Lachin corridor and Nagorny-Karabakh itself. In Tazakh there was no shelling but local officials claimed that shelling had occurred earlier the same day, killing 5 people. The situation in Tazakh remained tense. In Agdere, east of Nagorny-Karabakh, the mission saw no evidence of armament heavy shelling from Nagorny Karabakh.

SITUATION ON THE GROUND IN ARMENIA

7. On his first field mission, from 5 to 10 April, the acting Chief of Mission accompanied by Armenian civilian and military officials visited the northern provinces of Armavir and Kotayk in 20 rural villages near the Azeri border. The mission saw clear evidence of substantial destruction, including some shelling. While visiting the village of Khndzoresk a nuclear shell exploded only about 20 metres away from the United Nations vehicle, which was clearly marked as such. The mission also had to leave one village of Tsaghkavan when fighting broke out. Apparently from the

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territory of Azerbaijan. On 10 April the mission came to the view that because of the very rugged topography only aerial reconnaissance would permit a meaningful assessment of the border area between Armenia and both the Kelbadjar district of Azerbaijan. The Armenian Government was requested to provide a helicopter for this purpose.

8. After many delays, a helicopter was made available on 17 April and the United Nations Representative was able to carry out a reconnaissance, over Armenian airspace, of the border between the Republic of Armenia and the Kelbadjar district of Azerbaijan. No sign of hostilities, artillery movements or presence of the armed forces of the Republic of Armenia was observed.

HUMANITARIAN AID

9. Following the outbreak of fighting in Kelbadjar and the exodus of displaced persons from that area, the Czech mission in Baku immediately dispatched a field team to Ganja and Kelbadjar to assess the sudden emergency situation. The field mission estimated that relief items (blankets, prefabricated heavy sleeping bags and basic foodstuffs) for about 50,000 displaced persons were needed. In Baku, the UNHCR mission discussed the provision of emergency relief with various Government officials, including the Prime Minister and Deputy Prime Minister of Azerbaijan. A plan for the airlifting of emergency items and the sending of food-stuffs are currently being implemented by UNHCR.

CEASE-FIRE

10. The intensification of fighting in and around Nagorny-Karabakh, especially the recent attacks against the Kelbadjar and Fizuli districts of Azerbaijan, posed a serious threat to the maintenance of international peace and security in the South Transcaucasus region. Because of the hostilities, it has not been possible for United Nations personnel to visit the Kelbadjar district and establish the precise facts on the ground. It is clear, however, that there has been a major outbreak of fighting in various locations in Azerbaijan, outside the province of Nagorny-Karabakh. Reports of the use of heavy weaponry, such as T-72 tanks, Mi-24 helicopter gunships and armoured fixed wing aircraft are particularly disturbing and would seem to constitute the involvement of more than local ethnic forces. However, the conversations by the United Nations Representatives in the areas that they were able to visit have not made it possible to confirm this involvement.

11. The fighting in the Kelbadjar district has led to a humanitarian emergency. An estimated 50,000 persons are displaced, adding to the already very serious humanitarian burden of refugees and displaced persons in Azerbaijan. Moreover, many civilians from Kelbadjar are still unaccounted for. Unimpeded access to the area should be granted immediately to international relief organizations to ascertain the humanitarian situation and to provide relief to the civilian population.

12. The conflict over Nagorny-Karabakh, involving both Armenia and Azerbaijan, can only be resolved by peaceful means. A mission of this kind could not contribute to the negotiating process where the OSCE's Minsk process

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Page 4

The recent agreement on the terms of reference for the deployment of an Advance Monitoring Group of the CSCE was an encouraging first step towards a peaceful settlement of the conflict. Speedy progress should now be made to reach further agreements on the remaining documents, thus enabling the deployment of CSCE monitors in the region. I remain prepared, as I have been throughout the past twelve months, to give my full and active support to the CSCE's effort to convene the Minsk Conference as soon as possible and I reaffirm my willingness to lend technical assistance in the deployment of the CSCE monitoring mission.

United Nations A/63/804

General Assembly

Distr.: General
30 March 2009
English
Original: Arabic, English, Russian, Spanish

Sixty-third session
Agenda item 18

The situation in the occupied territories of Azerbaijan

Report of the Secretary-General

Summary

In its resolution 62/243, entitled "The situation in the occupied territories of Azerbaijan", the General Assembly requested the Secretary-General to submit to the Assembly at its sixty-third session a comprehensive report on the implementation of the resolution. In the same resolution, the Assembly inter alia, "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".

The present report reproduces the replies received from the Co-Chairs of the Organization for Security and Cooperation in Europe (OSCE) Minsk Group, Governments of States Members of the United Nations, and the Chairman-in-Office of OSCE.

Since 1992, the OSCE Minsk Group has led efforts to find a political solution to the Nagorno-Karabakh conflict on the basis of the principles, commitments and provisions of OSCE.

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I. Introduction

1. In its resolution 62/243, entitled "The situation in the occupied territories of Azerbaijan", the General Assembly requested the Secretary-General to submit to the General Assembly at its sixty-third session, a comprehensive report on the implementation of the resolution.

2. Pursuant to that request, in notes verbales dated 15 and 24 September 2008, the Under-Secretary-General for Political Affairs, on behalf of the Secretary-General, invited Governments of States Members of the United Nations and the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) to provide any information they might wish to contribute for the preparation of his report.

3. The present report reproduces the replies from the three Co-Chair countries of the OSCE Minsk Group (France, Russian Federation, United States of America), Governments, and the 2008 Chairman-in-Office of OSCE (Finland) that had been received as at 10 February 2009. Replies received after that date will be reproduced as addenda to the present report.

[...]

Azerbaijan[1]

[Original: English]
[18 November 2008]

1. The Republic of Azerbaijan wishes to stress that the General Assembly, in its resolution 62/243, reaffirmed the continued respect and support of the Assembly to the sovereignty and territorial integrity of the Republic of Azerbaijan and invited the Member States of the United Nations to consolidate their support for the settlement of the conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan on the basis of territorial integrity of the Republic of Azerbaijan within its internationally recognized borders. In this regard, Azerbaijan wishes to draw attention to the attached official statements and support extended by the United Nations Member States to the settlement of the conflict on the basis of territorial integrity and sovereignty of Azerbaijan.[2]

[1] In addition to the material reproduced in the present report, the Government of Azerbaijan submitted the following documents to the Secretary-General on 18 November 2008:
Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the annex containing the report entitled "Military occupation of the territory of Azerbaijan: a legal appraisal" (A/62/491-S/2007/615);
letter dated 17 February 2009 from the Permanent Representative of Azerbaijan addressed to the Secretary-General containing a document entitled "Support by the States Members of the United Nations and international organizations to Azerbaijan's position on the conflict in and around the Nagorno-Karabakh region of Azerbaijan" (A/63/730-S/2009/103).
Further, on 22 and 26 December 2008, and 23 January 2009, the Government of Azerbaijan submitted the following documents to the Secretary-General: "Report on the legal consequences of the armed aggression by the Republic of Armenia against the Republic of Azerbaijan" (see A/63/662-S/2008/812, annex); "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 A/63/664-S/2008/823, annex); "Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory" (see A/63/692, annex).

[2] The document entitled "Support by the Member States of the United Nations and international organizations to Azerbaijan's position on the conflict in and around the Nagorno-Karabakh region of Azerbaijan" (see A/63/730-S/2009/103, annex).

2. At the recent meeting of the Presidents of Armenia, Azerbaijan and the Russian Federation in Moscow on 2 November 2008, the Presidents signed a Declaration stating that "the settlement of the conflict should be based on the norms and principles of the international law and the decisions and documents approved within this framework", which also includes General Assembly resolution 62/243, and thus shall also be considered as a support to the settlement of the conflict on the basis of territorial integrity and sovereignty of Azerbaijan.

3. The General Assembly demanded the withdrawal of all Armenian forces from all occupied territories of the Republic of Azerbaijan. In this regard, Azerbaijan would like to recall United Nations Security Council resolution 822 (1993), paragraph 1; resolution 853 (1993), paragraph 3; resolution 874 (1993), paragraph 5; and resolution 884 (1993), paragraph 4; demanding immediate withdrawal of all occupying forces from the occupied areas of Azerbaijan and remind that the provisions of the said General Assembly resolution are still being ignored by the Republic of Armenia.

4. The Assembly further reaffirmed the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes in safety and dignity and stressed the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict-affected territories. Support of the States Members of the United Nations to realize their right to return and restore the pre-conflict demographic situation will allow for both Azerbaijani and Armenian communities of the Nagorno-Karabakh region to participate on an equal basis in the process of definition of an effective democratic system of self-governance of the region within the Republic of Azerbaijan.

5. However, Azerbaijan would like to draw attention to the fact of illegal settlements conducted by the Republic of Armenia in the occupied territories of Azerbaijan, which was raised by Azerbaijan at the United Nations General Assembly in 2004. The Assembly comprehensively addressed the issue and invited OSCE to carry out the fact-finding mission to the occupied territories of Azerbaijan. Unfortunately, the concerns expressed by the General Assembly and the recommendations of the fact-finding mission are being ignored by Armenia.

6. Paragraph 5 of the resolution states that the Member States shall not 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. The Government of Azerbaijan counts on the efforts by the States Members of the United Nations to prevent any attempts to consolidate the results of occupation of the territories of Azerbaijan.

7. A report of the Secretary-General properly reflecting the principled basis for the settlement of the conflict laid down in the United Nations General Assembly and Security Council documents mentioned above as well as reaffirming the support of the Member States of the United Nations to the territorial integrity of the Republic of Azerbaijan and to the return of the Azerbaijani population to the Nagorno-Karabakh region and other territories of Azerbaijan, as it is visible from the documents attached to this letter,[1] will be a sound contribution for mobilizing a strong and unequivocal support of international community for the settlement of this conflict and will persuade Armenia to behave in a constructive manner in the conflict resolution process with a view to bringing stability and prosperity to the South Caucasus.

8. The Republic of Azerbaijan remains committed to the peaceful resolution of the conflict in and around the Nagorno-Karabakh region of Azerbaijan. The mediation efforts conducted for already quite a long period of time within the framework of OSCE have yet to yield results, Azerbaijan continues to be committed to solving the conflict peacefully and in a constructive manner. The strategy of the Government of Azerbaijan is aimed at the liberation of all occupied territories, the return of forcibly displaced population to their homes, and the establishment of durable peace and stability in the Nagorno-Karabakh region of Azerbaijan, as well as in the entire South Caucasus.

9. The ultimate objective of the settlement process is to elaborate and define the model and legal framework of the status of the Nagorno-Karabakh region within Azerbaijan. Having said that, Azerbaijan believes that the process of definition of any status shall take place in normal peaceful conditions with direct, full and equal participation of the entire population of the region, namely, the Armenian and Azerbaijani communities, and in their constructive interaction with the Government of Azerbaijan exclusively in the framework of a lawful and democratic process. A number of important steps have to be taken to reach a stage where the parties concerned can start considerations of the self-rule status for the Nagorno-Karabakh region within Azerbaijan. First, the factor of military occupation must be removed from the conflict settlement context. Delay of return of the territories, which is not justified by the real substantial reasons, can complicate the already difficult settlement process.

10. Secondly, demographic situation, which existed in the region before the outbreak of the conflict, must be restored. It is clear that the status may only be defined through direct participation of both Azerbaijani and Armenian communities, living side-by-side in Nagorno-Karabakh. Thirdly, the regime of interaction between the central authorities of Azerbaijan and local authorities of the Armenian community must be established, until the new legal status of self-rule for the Nagorno-Karabakh region is elaborated.

11. Another important element is a rehabilitation and economic development of the region. This step is essential for the process of normalization of life and the restoration of peaceful coexistence and cooperation between the two communities. It should include the restoration and development of economic links between the two communities, as well as between the central authorities of Azerbaijan and the Nagorno-Karabakh region; and the restoration and opening of all communications for the mutual use by both sides in both directions, including Lachin road. The fifth element entails cooperation between the two communities in the humanitarian sphere, including implementation of the special programmes on education and tolerance.

12. As for the implementation of the peace agreement to be signed between Armenia and Azerbaijan, it will be guaranteed by the commitments undertaken by the two sides under the Agreement, and by the relevant international guarantees.

13. The conflict can only be solved on the basis of respect for the territorial integrity and inviolability of the internationally recognized borders of Azerbaijan, and peaceful coexistence of Armenian and Azerbaijani communities in the Nagorno-Karabakh region, fully and equally enjoying the benefits of democracy and prosperity.

Belarus

[Original: Russian]
[13 November 2008]

1. The Republic of Belarus is interested in a peaceful settlement of the Nagorno-Karabakh conflict and has consistently supported the efforts of the Co-Chairs of the OSCE Minsk Group with regard to this matter.

2. Belarus welcomes the signature of the Nagorno-Karabakh Declaration during the meeting held in Moscow on 2 November 2008 by the President of the Russian Federation, Mr. D. Medvedev, the President of the Republic of Azerbaijan, Mr. I. Aliev, and the President of the Republic of Armenia, Mr. S. Sarkisyan. Belarus hopes that in the near future this positive momentum will be built upon further and that the parties will find a mutually acceptable solution to their remaining differences.

3. Belarus calls on the Azerbaijani and Armenian sides to continue direct negotiations at all levels, including contacts between Ministers of Foreign Affairs and face-to-face meetings between Presidents.

4. Belarus reaffirms its willingness to make every effort to advance the peace process and, in accordance with CSCE/OSCE decisions, to hold a peace conference in Minsk aimed at achieving a definitive settlement of the conflict.

Indonesia

[Original: English]
[29 January 2009]

1. The Government of the Republic of Indonesia supports General Assembly resolution 62/243 on the ground that it reaffirms relevant purposes and principles contained in the Charter of the United Nations in addressing the conflict in and around Nagorno-Karabakh, in particular the principle of respect for territorial integrity and the inviolability of the internationally recognized borders of Member States.

2. Indonesia calls for peaceful settlement of the conflict, and believes that the implementation of the said resolution will contribute to supporting and intensifying efforts to achieve a peaceful and lasting settlement, one acceptable to both sides and in accordance with the norms and principles of international law.

3. In this regard, Indonesia continues to support the international mediation efforts in the framework of the Minsk Group of OSCE, as well as bilateral consultations between the parties. Indonesia urges both parties to remove obstacles to the peace process.

4. Indonesia also associates itself with the position of the Organization of Islamic Conference on the issue.

Kazakhstan

[Original: Russian]
[3 February 2009]

1. The Republic of Kazakhstan advocates the settlement of regional and international conflicts, including the problem of Nagorno-Karabakh, exclusively by peaceful means. It also supports conflict resolution measures in line with United Nations Security Council resolutions and within the framework of the OSCE Minsk Group.

2. Kazakhstan hopes that the search for a peaceful resolution to the situation will continue, shares the concern of the international community regarding the settlement of the Nagorno-Karabakh problem and condemns any form of interference in the internal affairs of States that leads to an escalation of tensions, increases the number of refugees and displaced persons, complicates the humanitarian situation or threatens the territorial integrity, independence, security and stability of sovereign States.

Malaysia

[Original: English]
[14 November 2008]

1. Malaysia remains firm in upholding the purposes and principles of the United Nations as encapsulated in its Charter. Malaysia further remains firm in its adherence to the decisions and resolutions of the various organs of the United Nations, including the General Assembly — the chief deliberative and policymaking organ of universal membership, of the United Nations.

2. In its capacity as Chair of the Islamic Summit Conference for the 2003-2008 term, Malaysia took the lead, on behalf of the member States of the Organization of the Islamic Conference (OIC), and with their support and the cooperation of the Secretariat of OIC, in responding to the situation in the occupied territories of Azerbaijan. The OIC remains consistent in its position on the issue, as described in OIC Resolution No. 12/10-P(IS) entitled "The aggression of the Republic of Armenia against the Republic of Azerbaijan" that was adopted by the Tenth Islamic Summit Conference, held in Putrajaya, Malaysia, from 11 to 18 October 2008.

3. Malaysia is supportive of all efforts by the international community geared towards the peaceful settlement of the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh issue, which must be pursued in accordance with the Charter of the United Nations and international law. Malaysia is further supportive of efforts, in particular, by both Armenia and Azerbaijan and the Organization for Security and Cooperation in Europe in this connection. Malaysia is hopeful that both parties will succeed in resolving the conflict through negotiations, bearing in mind the imperatives as prescribed under paragraphs 1, 2, 3, 4, 5, 6 and 7 of General Assembly resolution 62/243.

Mexico

[Original: Spanish]
[12 January 2009]

Mexico favours the resolution of this question through dialogue and the established regional channels, with the approval of all the parties involved.

Pakistan

[Original: English]

Pakistan supports all efforts for the implementation of this resolution aimed at a peaceful negotiated settlement of the conflict in accordance with the norms and principles of international law.

Slovakia

[Original: English]
[30 October 2008]

1. In accordance with paragraph 6 of General Assembly resolution 62/243 on the situation in the occupied territories of Azerbaijan, the Slovak Republic supports the OSCE Minsk Group as a legitimate format for the resolution of the situation in the conflict area of Nagorno-Karabakh.

2. In accordance with paragraph 7 of the resolution, the Slovak Republic, for its part, strives to contribute to the settlement of the conflict by means of active diplomacy, which is demonstrated by official visits of the Minister of Foreign Affairs of the Slovak Republic to both countries to the conflict, Armenia as well as Azerbaijan, in the first half of 2008. This proves that the position of the Slovak Republic towards the South Caucasus countries has been adequately balanced.

Sudan

[Original: Arabic]
[17 November 2008]

The Government of the Sudan is committed to the provisions of General Assembly resolution 62/243 entitled "The situation in the occupied territories of Azerbaijan", in favour of which it voted on 14 March 2008, and has not recognized as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor rendered aid or assistance in maintaining that situation. The Government of the Sudan also expresses its support for 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 the peaceful settlement of the conflict in accordance with the norms and principles of international law, and recognizes the necessity of intensifying those efforts with a view to achieving a lasting and durable peace in compliance with the aforementioned provisions.

Turkey

[Original: English]
[11 November 2008]

1. As a neighbouring country to the region and a member of the Minsk Group, Turkey is of the view that the Nagorno-Karabakh conflict constitutes an important obstacle for establishing peace and stability in the South Caucasus, and advocates that any resolution to the conflict must be based on the territorial integrity of Azerbaijan.

2. Armenia's occupation of 20 per cent of Azerbaijan's territory, in gross violation of international law and the United Nations Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) as well as General Assembly resolution 62/243, cannot be justified, nor can it be sustained indefinitely.

3. Turkey, in line with its commitment to fully support the territorial integrity of Azerbaijan and the relevant United Nations Security Council, General Assembly and OIC resolutions, does not accord permission to any Turkish official, non-governmental or business structures to operate any activity in the occupied territories of Azerbaijan. In this context, Turkey has made sure that all Turkish non-governmental and business structures are well-informed on the issue. As a result, no Turkish non-governmental and business structure has so far been involved in any economic, political or humanitarian activities in the occupied territories.

Ukraine

[Original: English]
[18 November 2008]

1. The position of Ukraine on the Nagorno-Karabakh conflict remains unchanged. We have been always advocating and keep advocating for its earliest peaceful settlement on the basis of universally recognized norms and principles of the international law, sovereignty, territorial integrity of the Republic of Azerbaijan, inviolability of the internationally recognized borders. We believe that relevant resolutions of the United Nations Security Council and the decisions of OSCE should be duly observed and implemented.

2. The Ukrainian side believes that, in spite of serious discrepancies in the positions of the conflicting parties, the negotiations process with the assistance of the OSCE Minsk Group will go on and succeed in bringing ultimate peace to this region.

3. Ukraine considers the declaration, adopted on 2 November 2008 in Moscow by the Presidents of Armenia, Azerbaijan and the Russian Federation, as a positive step to calm tensions and encourage stability in the region.

4. The work done by the Co-Chairs of the OSCE Minsk Group towards promoting constructive dialogue allowed signing of the first ever declaration on the Nagorno-Karabakh peace process.

5. Ukraine strictly opposes any attempts to use the Kosovo resolution scenario as a precedent for the settlement of other frozen conflicts, including the one in Nagorno-Karabakh.

6. In the framework of GUAM Ukraine (Georgia, Ukraine, Azerbaijan and Moldova Group), Foreign Ministers discussed the issues of political cooperation during the Council meeting in September 2008. The Ministers expressed the necessity to intensify international efforts towards settlement of the protracted conflicts in the GUAM area with respect to the principles of the States' sovereignty, territorial integrity of the States within their internationally recognized borders.

[…]

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United Nations A/62/491–S/2007/615

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Security Council

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Agenda item 20
The situation in the occupied territories of Azerbaijan

Security Council
Sixty-second year

Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the report entitled "Military occupation of the territory of Azerbaijan: legal assessment" (see annex).

With deep regret, I should like to state that a significant part of the territory of my country is still under occupation. Moreover — and this is a very unfortunate fact — the ceasefire is often violated by the Armenian armed forces. During the month of August alone, the positions of the Azerbaijani armed forces in the Goranboy, Tar-Tar, Aghdam, Khojavend, Fuzuli, Gazakh and Gadabay regions were shelled 165 times. I would specifically like to underline that the Gazakh and Gadabay regions are located beyond the line of contact, right on the border with Armenia.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under item 20, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

07-55852 (E) 131107 151107

Annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

[Original: Russian]

Military occupation of the territory of Azerbaijan: a legal appraisal*

Essential facts

At the end of 1987, the Armenian Soviet Socialist Republic (SSR) openly laid claim to the territory of the Nagorny Karabakh Autonomous Region of the Azerbaijani SSR. That marked the beginning of the systematic expulsion of Azerbaijanis from the Armenian SSR and the Nagorny Karabakh Autonomous Region.

On 20 February 1988, at a meeting of the regional soviet of the Nagorny Karabakh Autonomous Region, Armenian representatives adopted a decision on petitioning the Supreme Soviets of the Azerbaijani SSR and the Armenian SSR for the Nagorny Karabakh Autonomous Region to be transferred from the Azerbaijani SSR to the Armenian SSR.[1] This decision set in motion determined actions by the Armenian authorities aimed at the unilateral secession of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR.

The first victims were two Azerbaijanis, killed by Armenians on 24 February 1988 near the town of Askeran in Nagorny Karabakh. On 28 February 1988, inter-ethnic clashes broke out in Sumqayit.

At a meeting of the Nagorny Karabakh regional soviet, held on 12 June 1988 without the participation of any Azerbaijani deputies, an unlawful decision was adopted on the withdrawal of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR.[2]

The Armenian SSR was also actively involved in efforts to legalize the separation of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR. The highest organ of State authority of the Armenian SSR — the Supreme Soviet — adopted a number of decisions that violated the Constitution, the most notorious of which was the resolution of 1 December 1989 on the "reunification of the Armenian SSR and Nagorny Karabakh". This document made provision for the adoption of all the necessary measures for the amalgamation of the political, economic and cultural structures of the Armenian SSR and Nagorny Karabakh into a single State political system.[3]

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* The present document has been prepared by the Centre for Strategic Studies of the Ministry of Foreign Affairs of the Azerbaijani Republic.

[1] See Vaan Arutunyan. *Sobytiya v Nagornom Karabakhe: Khronika* (*Events in Nagorny Karabakh: Chronicle*), part 1, February 1988-January 1989 (Yerevan, Academy of Sciences of the Armenian SSR, 1990), p. 38.

[2] Decision of the eighth meeting of the twentieth convocation of the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region proclaiming the withdrawal of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR, 12 July 1988; see Vaan Arutunyan, pp. 113-115.

[3] Resolution of the Supreme Soviet of the Armenian SSR on the reunification of the Armenian SSR and Nagorny Karabakh, 1 December 1989. *Kommunist* newspaper, 2 December 1989.

The proclamation on 2 September 1991 of the "Nagorny Karabakh Republic" and the declaration of this territorial entity as an "independent State", based on the outcome of a referendum held on 10 December, marked the next step in efforts to legitimize the separation of the Nagorny Karabakh Autonomous Region from Azerbaijan.

The collapse of the USSR finally freed the hands of the Armenian nationalists. Over the period 1992-1993 a considerable area of Azerbaijan was occupied, including Nagorny Karabakh and seven adjacent districts. The resulting war unleashed against Azerbaijan led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without trace.

Collapse of the USSR and legitimization of borders

All the decisions taken with a view to separating Nagorny Karabakh from Azerbaijan ran counter to the Constitution of the Union of Soviet Socialist Republics, which stipulated that the territory of a Union republic could not be altered without its consent, while the borders between Union republics could be altered by mutual agreement of the republics concerned, subject to ratification by the Union of Soviet Socialist Republics.[4]

The Nagorny Karabakh Autonomous Region remained in existence until 26 November 1991, when, pursuant to an act adopted by the Supreme Council of the Republic of Azerbaijan, the autonomous region was abolished as a territorial entity of the country.[5] Until the full restoration of State independence of the Republic of Azerbaijan and its recognition by the international community, Nagorny Karabakh continued to form part of Azerbaijan, and any actions intended to secure the unilateral separation of this region were without legal consequence.

Shortly after the Soviet Union ceased to exist, its former constituent republics were accorded de jure recognition by the international community. The moment the Republic of Azerbaijan gained independence, the former administrative borders of the Azerbaijani SSR, which also encompassed the Nagorny Karabakh Autonomous Region, were deemed henceforth to be international borders and to be protected under international law (*uti possidetis juris*). This tenet is also unequivocally and unconditionally upheld in resolutions of the United Nations Security Council relating to the conflict between Armenia and Azerbaijan.[6] As pointed out by David Atkinson, rapporteur on the Karabakh conflict for the Parliamentary Assembly of the Council of Europe (PACE), "the borders of Azerbaijan were internationally recognized at the time of the country being recognized as an independent State in 1991", the territory of which "included the Nagorno-Karabakh region".[7] Under the rules of international law on State succession, Azerbaijan also inherited the

[4] USSR Constitution (Moscow, 1977), p. 13, art. 78.

[5] Nagorny Karabakh Autonomous Region of the Republic of Azerbaijan (Abolition) Act, 26 November 1991. Gazette of the Supreme Council of the Republic of Azerbaijan, 1991, No. 24, pp. 77 and 78.

[6] Security Council resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 June 1993, 874 (1993) of 14 October 1993 and 884 (1993) of 11 November 1993.

[7] Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe. Document 10364, 29 November 2004. Explanatory Memorandum by the Rapporteur, part III, para. 5.

corresponding sectors of the frontiers of the former USSR with Iran and Turkey, which had been established on the basis of international treaties concluded between the USSR and those States.

Prohibition under international law of the forcible seizure of a territory

The Charter of the United Nations proclaims as one of the purposes of the United Nations the maintenance of international peace and security and, to that end, the taking of effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and the bringing about by peaceful means, and in conformity with the principles of justice and international law, of adjustment or settlement of international disputes or situations which might lead to a breach of the peace.[8]

Pursuant to Article 2, paragraph 4, of the Charter, 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 Charter of the United Nations.[9]

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 24 October 1970 stipulates that a "war of aggression constitutes a crime against the peace, for which there is responsibility under international law". In addition, under the Declaration, "[e]very 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".[10]

Attention is also drawn to the Declaration's conclusion 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" and, accordingly, that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal".[11] This position is also upheld in the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations of 18 November 1987, which stipulates that "[n]either acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation".[12]

As the International Court of Justice established in its judgment in the *Military and Paramilitary Activities in and against Nicaragua* case, principles relating to the

[8] Charter of the United Nations, 26 June 1945 (New York: United Nations Department of Public Information, 2001), Article 1, para. 1.

[9] Ibid.

[10] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970. General Assembly resolution 2625 (XXV). Resolutions adopted by the United Nations General Assembly at its twenty-fifth session. Official records, supplement No. 28 (A/8028), p. 153.

[11] Ibid.

[12] Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, General Assembly resolution 42/22 of 18 November 1987. *Official Records of the General Assembly, Forty-second Session, Supplement No. 41* (A/42/41), p. 403.

use of force that have been incorporated in the United Nations Charter reflect customary international law. The same holds true for the Court's determination of the illegality of territorial acquisition resulting from the threat or use of force.[13] This rule prohibiting the use of force is a conspicuous example of a peremptory norm of international law (*jus cogens*), as defined in article 53 of the Vienna Convention on the Law of Treaties.[14]

The sole exception to this rule is the right of self-defence under Article 51 of the United Nations Charter. Bearing in mind the arguments put forward by the Armenian authorities on this issue, it is important to note that the beneficiaries of this rule are States. As pointed out by the International Court of Justice in its advisory opinion regarding the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State."[15] The entity established on the occupied territory of Azerbaijan by Armenia and rendered subservient to its will is not a State and cannot therefore invoke the right of self-defence.

This understanding is reflected in the corresponding resolutions of the Security Council, adopted in 1993 following the armed seizure of Azerbaijani territory. The resolutions recognize that the Nagorny Karabakh region belongs to Azerbaijan and reaffirm the sovereignty and territorial integrity of the Republic of Azerbaijan, the inviolability of its international borders and the inadmissibility of the use of force for the acquisition of territory. The resolutions demand the immediate cessation of all hostilities and the immediate, complete and unconditional withdrawal of the occupying forces from all occupied regions of the Republic of Azerbaijan and, in this context, call for the restoration of economic, transport and energy links in the region and for measures to assist refugees and displaced persons to return to their homes. In this light it is clear that the actions of the Armenian authorities can only be viewed as a violation of the peremptory norms of international law.

Regarding the issue of Armenia's role in the occupation of Azerbaijani territory

It cannot be denied that the policy pursued by Armenia in the occupied territories of Azerbaijan differs little from comparable activities carried out by occupying countries in other areas of the world. Considerations of time and geographical conditions do not substantially alter the methods employed in the occupation.

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[13] *Military and Paramilitary Activities in and against Nicaragua case* (*Nicaragua v. United States of America*), Judgment of 27 June 1986, *I.C.J. Reports 1986*, paras. 188 and 190; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion of 9 July 2004, *I.C.J. Reports 2004*, para. 87.

[14] Vienna Convention on the Law of Treaties, 22 May 1969. For text, see Ian Brownlie (ed.), *Basic Documents in International Law* (Oxford: Oxford University Press, 5th ed., 2002), pp. 270-297, at p. 285. See also *Military and Paramilitary Activities in and against Nicaragua case* (*Nicaragua v. United States of America*) (Merits), para. 190; Articles on Responsibility of States for Internationally Wrongful Acts. Annex to General Assembly resolution 56/83 of 12 December 2001, article 41, para. 2; Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 6th ed., 2003), pp. 488-489.

[15] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 139.

There have been numerous instances in history of States arguing that situations in which their armed forces have become embroiled do not constitute a military occupation or that, at the very least, are substantially different from the notion of occupation as defined in the 1907 Hague Regulations respecting the Laws and Customs of War on Land[16] and the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.[17]

In addition, the occupiers often disguise their own role in the forcible seizure of the territory of another State by setting up quasi-independent puppet regimes in the occupied territories.[18]

At the same time, the occupying Power generally endeavours to lend its actions a semblance of legality and to confer an appearance of independence on the entities created through those actions, entities that, more often than not, have been formed with the collaboration of certain elements of the population of the occupied country. It is clear, however, that to all intents and purposes they are always subject to the will of the occupying Power.[19] Sometimes actions of this kind are accompanied by attempts to endow the subordinate regimes set up in the occupied territories with a respectable image and to foster the impression that they espouse democratic values.

The features enumerated above are all evidenced in the policies and practices followed by Armenia in the occupied territories of Azerbaijan. Armenia denies both that there is any occupation within the meaning of international law and that it has anything to do with controlling these territories. Thus in a recent interview Prime Minister Serzh Sargsyan claimed once again that only volunteers had fought for Nagorny Karabakh. At the same time, Armenia, in his words, acted as "guarantor of the security of Nagorny Karabakh", prepared to intervene immediately in the event of the outbreak of a new war.[20] The question of Armenia providing guarantees is also mentioned in the country's national security strategy of 7 February 2007.[21] No explanation is provided, however, of how these guarantees, which affect a portion of Azerbaijan's territory, fit with international law.

In addition, the authorities in Yerevan are trying to give the puppet regime they set up in the occupied territories the appearance of legitimacy, independence and

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[16] Annex to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land: Regulations respecting the Laws and Customs of War on Land, 18 October 1907. For text, see Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War* (Oxford: Oxford University Press, 3rd ed., 2003), pp. 73-84. Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For text, see Adam Roberts and Richard Guelff (eds.), pp. 299-369.

[17] Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For text, see Adam Roberts and Richard Guelff (eds.), pp. 299-369.

[18] Adam Roberts, "Transformative military occupation: applying the laws of war and human rights", see website http://ccw.politics.ox.ac.uk/publications/roberts_militaryoccupation.pdf.

[19] Jean Pictet (gen. ed.), International Committee of the Red Cross, Commentary on the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva, 1958), p. 273.

[20] *Caucasus Context* (2007), vol. 4, issue 1, pp. 43-44. See also the message by the Armenian Prime Minister Serzh Sargsyan of 1 September 2007 on the occasion of the "sixteenth anniversary of the independence of the Republic of Nagorny Karabakh". "Hayinfo" website: www.hayinfo.ru/page_rev.php?tb_id=18&sub_id=1&id=18956.

[21] National security strategy of the Republic of Armenia of 7 February 2007, chapter III, see website of the Ministry of Defence of Armenia www.mil.am/eng/?page=49.

democracy. In the words of the Armenian Prime Minister, "the young Republic of Nagorny Karabakh is today taking mature strides towards the formation of statehood and the development of democracy".[22]

It is no secret, however, that democracy cannot be propagated by the sword, and the holding of multiparty elections is not in itself proof of pluralism or the absence of authoritarianism.[23] Generally speaking, however, such attempts to disguise aggression against a neighbouring State are unlikely to be taken seriously, given the incontrovertible evidence of a situation that is the diametric opposite.

In addition to the facts at the disposal of the Azerbaijani authorities attesting to the direct involvement of the Armenian armed forces in the military hostilities against Azerbaijan and the presence of these forces in the occupied territories — issues which merit a separate and careful investigation — the assessment of Armenia's role given by independent observers is also completely unequivocal.

As the PACE rapporteur David Atkinson pointed out, "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".[24]

This view is corroborated by other sources as well. For example, according to the findings of the International Crisis Group, "[t]he highly trained and equipped Nagorno-Karabakh Defence Army is primarily a ground force, for which Armenia provides much of the backbone". According to estimates by this non-governmental organization, the Armenian military presence in the occupied territories of Azerbaijan consists of some 10,000 soldiers from Armenia. Attention is also drawn to reports that many conscripts and contracted soldiers from Armenia are forcibly sent to serve in Nagorny Karabakh as part of their military service, and not as volunteers, as maintained by the Armenian authorities. The Crisis Group states: "There is a high degree of integration between the forces of Armenia and Nagorno-Karabakh. Senior Armenian authorities admit they give substantial equipment and weaponry. Nagorno-Karabakh authorities also acknowledge that Armenian officers assist with training."[25]

In its final report on the outcome of the presidential elections in Armenia in 1998, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) expresses its "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 (Kelbajar) [in Azerbaijan]".[26]

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[22] Message by Serzh Sargsyan, Prime Minister of Armenia, of 1 September 2007.

[23] Adam Roberts, "Transformative military occupation: applying the laws of war and human rights".

[24] Report of the Parliamentary Affairs Committee of the Parliamentary Assembly of the Council of Europe. Document 10364, 29 November 2004. Explanatory memorandum by the Rapporteur, para. 6.

[25] International Crisis Group, "Nagorno-Karabakh: Viewing the conflict from the ground". Europe Report No. 166, 14 September 2005, pp. 9 and 10.

[26] OSCE/ODIHR Final Report of 9 April 1998, see OSCE website: http://www.osce.org/documents/odihr/1998/04/1215_en.pdf.

The Human Rights Watch/Helsinki report entitled “Seven years of conflict in Nagorno Karabakh”, prepared in 1994 following a visit to the region — including the area of hostilities — by representatives of this human rights organization, states outright that the available evidence outweighs the Armenian authorities’ denials. Adducing a wealth of facts based both on their own observations and on interviews with soldiers from the Armenian armed forces conducted during their visit to Nagorny Karabakh, the report’s authors unequivocally conclude: “As a matter of law, Armenian army troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the government of Armenia and Azerbaijan.”[27]

In addition, the economy of Nagorny Karabakh is closely tied to Armenia and, to a large extent, depends on its financial infusions. As noted by the Crisis Group, “State loans” provided by Armenia since 1993 constituted 67.3 per cent of Nagorny Karabakh’s budget in 2001 and 56.9 per cent in 2004. To date, nothing has been repaid against these loans. Moreover, “[a]ll transactions are done via Armenia, and products produced in Nagorno-Karabakh often are labelled ‘made in Armenia’ for export”.[28]

Resolution 1416 (2005) adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe acknowledges the continued occupation of considerable parts of the territory of Azerbaijan and the conduct of ethnic cleansing. The Assembly also draws attention to Armenia’s obligations under international law and points out “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”.[29] The resolution also contains an appeal for compliance with Security Council resolutions, in particular, by withdrawing military forces from any occupied territories.[30]

Accordingly, in view of Armenia’s involvement in it, the conflict falls within the purview of international law and, in particular, the principle of the territorial integrity of States. International practice demonstrates that there is no legal foundation to irredentist claims, which all too often are based on the ethnic affinity between the population of a parent country and the inhabitants of a territory which has separated from it. The irredentist nature of the Armenian Azerbaijani conflict and the application to it of international law are also reaffirmed, inter alia, in the Security Council resolutions on the conflict. While these resolutions may not directly invoke the responsibility of Armenia, they do nonetheless contain a number of telling phrases, such as the “inadmissibility of the use of force for the acquisition of territory” and “occupied territories”, which are generally used in connection with international armed conflicts. Thus Adam Roberts stresses, with reference to the principles of treaties and other legal texts on the occupation, that “an occupation is essentially of an international character”.[31]

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[27] Human Rights Watch/Helsinki, “Seven years of conflict in Nagorno-Karabakh” (1994), pp. 67-73.

[28] International Crisis Group, “Nagorno-Karabakh: Viewing the conflict from the ground”, pp. 12 and 13.

[29] PACE resolution 1416 (2005), entitled “The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference”, 15 January 2005, para. 2.

[30] Ibid., para. 3.

[31] Adam Roberts, “What is a military occupation?”, 55 *British Yearbook of International Law* (1985), pp. 249-305, at p. 255.

The situation in the occupied territories of Azerbaijan on the agenda of the United Nations

It is clear that Armenia is seeking to achieve a transfer of sovereignty over Azerbaijani territories that it seized through military force and in which it has carried out ethnic cleansing. As there is no likelihood that such a transfer will be agreed to by Azerbaijan, whose officials have repeatedly stated that national territory cannot be a subject of compromise,[32] the one hope remaining for Armenia is to solve the problem outside a legal framework, namely by bringing about a situation in which recognition of a fait accompli is inevitable. These plans are being implemented through efforts to alter the demographic composition of the population in the occupied territories and prevent a return to the pre-war situation.

In a letter dated 11 November 2004 from the Minister for Foreign Affairs of the Republic of Azerbaijan addressed to the Secretary-General of the United Nations attention is drawn to Armenia's concerted efforts to transfer its population into the occupied territories, the exploitation of Azerbaijan's natural resources and the destruction and appropriation of its historical and cultural heritage, as well as other illegal activities carried out to consolidate the status quo of the occupation and to prevent the expelled Azerbaijani population from returning to their places of origin, thereby imposing a fait accompli.[33]

Deeply concerned by the far-reaching implications of these activities, Azerbaijan requested that the situation in its occupied territories should be addressed within the framework of the United Nations General Assembly. Accordingly, on 29 October 2004 the General Assembly decided to include in its agenda the item entitled "The situation in the occupied territories of Azerbaijan".[34] This item was considered on 23 November 2004 during the fifty-ninth session of the Assembly.[35]

A fact-finding mission of the Organization for Security and Cooperation in Europe (OSCE) visited the occupied territories of Azerbaijan from 30 January to 5 February 2005. On the basis of material provided by Azerbaijan and obtained during an investigation of the situation on the ground, the mission produced a detailed report which confirmed the facts of the settlement of the occupied territories.[36]

The following year was marked by further escalation of the situation in the occupied territories of Azerbaijan. From mid-May 2006, a portion of these

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[32] See, for example, Elmar Mammadyarov, *Towards peace in the Nagorny Karabakh region of the Republic of Azerbaijan through reintegration and cooperation*, 17 Accord (2005), pp. 18-19.

[33] Letter dated 11 November 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, transmitting a letter dated 11 November 2004 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the illegal activities carried out in the occupied territories of the Republic of Azerbaijan and providing information on the transfer of population into the occupied territories of Azerbaijan. United Nations document A/59/568.

[34] Forty-sixth plenary meeting, 29 October 2004, A/59/PV.46.

[35] Sixtieth plenary meeting, 23 November 2004, A/59/PV.60.

[36] 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 Nagorno-Karabakh (A/59/747-S/2005/187).

territories along the line of contact was swept by large-scale fires, which caused significant harm to the environment and biodiversity in Azerbaijan. The Azerbaijani side stated that the magnitude and character of the fires and the way they had spread confirmed that they were of intentional and artificial origin.[37] Having considered the situation in the occupied territories of Azerbaijan, the United Nations General Assembly adopted at its sixtieth session the resolution submitted by Azerbaijan on the question. The resolution expressed serious concern about the fires in the affected territories and, inter alia, stressed the necessity to urgently conduct an environmental operation to suppress the fires and to overcome their detrimental consequences.[38]

On the basis of that resolution, the occupied territories were visited by an OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorno-Karabakh region from 2 to 13 October 2006. The mission concluded that "[t]he fires resulted in environmental and economic damages and threatened human health and security".[39]

A legal assessment of activities in the occupied territories of Azerbaijan

The policy being pursued by Armenia in the occupied territories of Azerbaijan, which is aimed at achieving a transfer of sovereignty over these territories, is well known in international practice. Such attempts have been made on more than one occasion in the past, leading the international community to draw up regulations to effectively counteract them.

International law is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws.[40] International law also prohibits actions which are based solely on the military strength of the occupying Power and not on a sovereign decision by the occupied State.[41] A generally established rule, upheld by lawyers and confirmed on many occasions by the decisions of international and domestic courts, is that the occupation of a territory in time of war is temporary in nature and thereby does not entail a transfer of sovereignty. Provisions relating to occupation, in particular the relevant articles of the Hague Regulations concerning the Laws and Customs of War on Land and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, are premised on the short-lived nature of a situation of occupation and remain in force for the duration of a war, even in the event of a ceasefire or a truce. The occupation of a territory *jus in bello* does not entail the right to annex that

[37] 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 (A/60/963).

[38] General Assembly resolution 60/285 of 7 September 2006, entitled "The situation in the occupied territories of Azerbaijan".

[39] 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 Nagorno-Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities. United Nations document A/61/696.

[40] Jean Pictet (gen. ed.), p. 273.

[41] Ibid.

territory, since *jus contra bellum* forbids any seizure of territory based on the use of force.[42]

According to the traditional concept of occupation (article 43 of the Hague Regulations concerning the Laws and Customs of War on Land), the occupying authority must be considered as merely being a de facto administrator.[43] Furthermore, occupants should use their powers only for the immediate needs of administration and not for long-term policy changes.[44] Therefore, the occupying Power is obliged to respect the laws of the occupied State unless "absolutely prevented" (article 43 of the Hague Regulations concerning the Laws and Customs of War on Land). In other words, the occupying authority is not entitled to modify the legislation in force, except in cases motivated by military necessity or maintenance of public order.[45]

As noted above, all of Armenia's hopes for the recognition of an eventual fait accompli, and thus of the transfer of sovereignty over the occupied territories of Azerbaijan, involve an altering of the demographic composition of the occupied territories and prevention of a return to the pre-war situation. Indeed, the available information shows that Armenia has pursued a policy and developed practices that call for the establishment of settlements in the occupied Azerbaijani territories. There have been reports of a programme called "Return to Artsax" whose purpose is to artificially increase the Armenian population in the occupied Azerbaijani territories to 300,000 people by 2010. A working group set up to implement this resettlement programme under the leadership of the Prime Minister of Armenia includes both Armenian officials and representatives of non-governmental organizations operating in Yerevan.[46]

During the working visit to Nagorny Karabakh on 2 and 3 September 2000 of Andranik Margaryan, the former Prime Minister of Armenia, an agreement was concluded between the latter and the representative of the subordinate regime in the occupied territories which also includes provisions on the transfer of population to the occupied territories of Azerbaijan.[47] In an interview on 18 December 2003 the Prime Minister confirmed that "Armenia and NKR are within the common economic space" and that their "main purpose is the settlement of NKR and development of its investment field by means of creating the favourable regime for economic subjects".[48]

It should be noted in that connection that the sixth paragraph of article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War prohibits transfers of population to occupied territory. State practice has made that provision one of the norms of customary international law applied in cases of

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[42] Eric David, *Principes de droit des conflits armés* (*Principles of the Law of Armed Conflicts*), (Moscow: MKKK, 2000), pp. 376-378; Jean Pictet (gen. ed.), p. 275.

[43] Jean Pictet (gen. ed.), p. 273.

[44] See, for example, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova — A Report from the Association of the Bar of the City of New York*, p. 69.

[45] Eric David, p. 381.

[46] See United Nations documents A/59/568 and A/59/720-S/2005/132.

[47] See the "Noyan Tapan" report dated 5 September 2000 and the "Mediamaks" report dated 6 September 2000.

[48] See websites www.gov.am/ruversion/premier_2/print.html?=299&url and http://www.menq.am/pls/dbms/mnp.show_npitem?pnp=128&pfile=359977&pnew=y&plgg=3.

international armed conflict.[49] The provision was intended to prevent a practice adopted during the Second World War by certain States, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they had claimed, to colonize those territories.[50] At the Trial of the Major War Criminals before the International Military Tribunal in Nuremberg in 1946, the Tribunal found two of the defendants guilty of attempting to "Germanize" occupied territories.[51]

The legislation and military regulations and codes of many States, including Armenia, include provisions prohibiting a party to a conflict from deporting or transferring part of its population to territory under its occupation. Official announcements and practice reflected in accounts also confirm the prohibition on transferring civilian population to occupied territory.[52]

Attempts to change the demographic composition of the population of occupied territory have been condemned by the United Nations Security Council,[53] the United Nations General Assembly,[54] the United Nations Commission on Human Rights[55] and other international bodies.

The International Committee of the Red Cross (ICRC), in its verbal note of 10 November 2000 addressed to the Permanent Mission of Azerbaijan to the United Nations Office and other international organizations at Geneva, shared "the concern … as regards the 'cooperation agreement' between Armenia and Nagorny Karabakh whereby, according to the 'Noyan-Topan' news agency, there will be a sharp increase in the population of Nagorny Karabakh …". In this regard, ICRC made it clear that "it … endeavours to direct its humanitarian assistance in a way that does not help to consolidate territorial gains by one party to a conflict and that will not encourage resettlement which could be an obstacle to the return of forcibly displaced persons to their homes".

In their recommendations, based on the conclusions contained in the report of the OSCE fact-finding mission on illegal settlement, the Co-Chairs of the OSCE Minsk Group "discouraged any further settlement of the occupied territories" and urged the parties to "accelerate negotiations towards a political settlement in order, inter alia, to address the problem of the settlers and to avoid changes in the demographic structure of the region". The Co-Chairs pointed out in particular that

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[49] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005), vol. I: Rules, p. 462.

[50] Jean Pictet (gen. ed.), p. 283.

[51] Jean-Marie Henckaerts and Louise Doswald-Beck, p. 463.

[52] Ibid., p. 462.

[53] See, for example, Security Council resolutions 446 of 22 March 1979; 452 of 20 July 1979; 476 of 30 June 1980; 465 of 1 March 1980; 677 of 28 November 1990; 752 of 15 May 1992 and 787 of 16 November 1992.

[54] See, for example, General Assembly resolutions 36/147 of 16 December 1981; 37/88 C of 10 December 1982; 38/79 D of 15 December 1983; 39/95 D of 14 December 1984; 40/161 D of 16 December 1985 and 54/78 of 22 February 2000.

[55] See, for example, resolution 2001/7, of 18 April 2001, of the United Nations Commission on Human Rights. See also the report of the Special Rapporteur of the United Nations Commission on Human Rights Subcommission on Prevention of Discrimination and Protection of Minorities entitled *Human rights and population transfer*, United Nations document E/CN.4/Sub.2/1997/23, p. 19, para. 65.

"prolonged continuation of this situation could lead to a fait accompli that would seriously complicate the peace process".[56]

In addition, Armenia, as the occupying Power, is aiming to consolidate the results of ethnic cleansing and denying the right of return to those forced to resettle by encouraging various forms of economic activity in the occupied territories, directly affecting property rights. It should be recalled in this connection that international law, in particular the Hague provisions concerning the laws and customs of war on land (articles 46, 52, 53, 55 and 56) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (articles 53 and 147), imposes on the occupying Power an obligation to respect property located in occupied territory. That rule applies both to the physical integrity and to the ownership of such property.[57] Specific provisions of the Charter of the International Military Tribunal at Nuremberg (article 6 (b))[58] and the Rome Statute of the International Criminal Court (article 8) also cover protection of property.[59] Undoubtedly, the applicable instruments of international law should also include human rights conventions for which an occupying Power holds the primary responsibility for fulfilment in occupied territories.[60]

From a legal point of view, the previous owners of property located in occupied territory are legitimate. As a result, any economic activity undertaken by natural or legal persons jointly with an occupying Power or under the tutelage of that Power's local authorities is illegal and performed at their own risk. There is no point in hoping that such economic activity will be sanctioned after the final resolution of the conflict or that those involved will be able to escape responsibility. It goes without saying that all agreements which provide the basis for altering the economic value of property will be challenged and abrogated once Azerbaijani sovereignty over the occupied territories is restored. Advocating otherwise would be tantamount to justifying the crimes committed and violating the peremptory norms of international law.

Neutral States which fail to take all necessary and feasible action to prevent their nationals from seizing property in occupied territories are considered to be providing indirect assistance for the occupier's illegal activities and are therefore to be considered accountable in ways which could include being forced to provide compensation for the injury inflicted.[61]

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[56] Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, Annex I, "Letter of the OSCE Minsk Group Co-Chairs to the OSCE Permanent Council on the OSCE Minsk Group fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh", United Nations document A/59/747-S/2005/187.

[57] Eric David, p. 389

[58] Judgment (extracts). *The Charter Provisions* see text in Adam Roberts and Richard Guelff (eds.), pp. 177-178, at p. 177.

[59] Rome Statute of the International Criminal Court (Extract), 17 July 1988. See text in Adam Roberts and Richard Guelff (eds.), pp. 667-697, at p. 676, article 8(2)(a)(iv).

[60] See, for example, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 102-113.

[61] Loukis G. Loucaides, "The Protection of the Right to Property in Occupied Territories", *International and Comparative Law Quarterly 2004*, 53(3), pp. 677-690, at p. 686.

Responsibility under international law

As stated in the Articles on Responsibility of States for Internationally Wrongful Acts, developed by the International Law Commission, "[e]very internationally wrongful act of a State entails the international responsibility of that State". Such an act of a State is deemed to occur when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.[62] As early as 1928, in its ruling in the *Factory at Chorzów* case, the Permanent Court of International Justice described the principle of international responsibility as one of the principles of international law and, furthermore, of the general understanding of the law.[63]

The principle of responsibility is closely bound up with the principle of the conscientious fulfilment of obligations under international law (*pacta sunt servanda*). It is important to note that a breach that is of an ongoing nature relates to the entire period over which the act was performed and remains at variance with obligations under international law. Furthermore, in the event that a State breaches its obligations under international law through a series of wrongful acts or omissions, the breach extends over the entire period starting with the first of the acts or omissions in the series and continues for as long as they are repeated and remain at variance with the State's obligations under international law.[64]

The responsibility of the State is incurred for any act or omission of its authorities which occurs either within or beyond its national borders. An internationally wrongful act is also perpetrated by the organs of a State or by its agents, acting *ultra vires* or contrary to instructions.[65]

As noted above, there is a convincing body of evidence attesting to the use of force by Armenia against the territorial inviolability of Azerbaijan and the exercise by Armenia of effective overall military and political control of the occupied territories of Azerbaijan. This control is applied both by the armed forces of Armenia and through the puppet regime set up by it in the occupied territory, which, by performing the functions of a local administration, owes its existence to the support, in military and other terms, of the occupying State.

Armenia's responsibility arises as the consequence both of the internationally wrongful acts of its own organs and agents in the occupied territories and the

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[62] Articles on Responsibility of States for Internationally Wrongful Acts, arts. 1 and 2. See also *Ilaşcu and others v. Moldova and Russia*, ECHR Judgment of 8 July 2004, para. 314, EHCR Portal, UUDOC Collection.

[63] *Factory at Chorzów (Claim for Indemnity) Case (Germany v. Poland)* (Merits), P.C.I.J. Series A (1928) No. 1, Permanent Court of International Justice, see in Martin Dixon and Robert McCorquodale, *Cases and Materials on International Law* (Oxford: Oxford University Press, 3rd ed., 2003), p. 404. See also I. I. Lukashuk, *Mezhdunarodnoe pravo. Osobennaya chast'* (Moscow: Walters Kluwer, 3rd ed., 2007), p. 376.

[64] *Ilaşcu and others v. Moldova and Russia*, paras. 320-321. See also Articles on Responsibility of States for Internationally Wrongful Acts, art. 14, para. 2, and art. 15, para. 2.

[65] *Ilaşcu and others v. Moldova and Russia*, para. 319. See also *Ireland v. United Kingdom*, ECHR Judgment of 18 January 1978, para. 159, ECHR Portal, HUDOC Collection; Articles on Responsibility of States for Internationally Wrongful Acts, article 7.

activities of its local administration. Furthermore, there is responsibility even in the event of consent to, or tacit approval of, the actions of this administration.[66]

Armenia's international responsibility, which is incurred by its internationally wrongful acts, involves legal consequences manifested in the obligation to cease these acts, to offer appropriate assurances and guarantees that they will not recur and to provide full reparation for injury in the form of restitution, compensation and satisfaction, either singly or in combination.[67]

As stated in the commentary to the draft Articles on Responsibility of States for Internationally Wrongful Acts, "[e]very State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations".[68] A significant role in securing recognition of this principle was played by the decision of the International Court of Justice in the *Barcelona Traction* case. This identified the existence of a special category of obligations — obligations towards the international community as a whole. The International Court of Justice states: "By their very nature the former [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."[69] Accordingly, serious breaches of obligations flowing from peremptory norms of general international law may have additional consequences affecting not only the State bearing the responsibility, but also all other States. Inasmuch as all States have a legal interest, they are all entitled to invoke the responsibility of the State which has breached its responsibility *erga omnes*. Furthermore, States must cooperate with a view to ending such breaches by lawful means.[70]

It is generally recognized that the category of serious breaches of obligations under peremptory norms of general international law includes, among others, aggression, genocide and racial discrimination.[71]

As stated in the Articles on Responsibility of States for Internationally Wrongful Acts, "No State shall recognize as lawful a situation created by a serious breach [of obligations under peremptory norms of general international law] ..., nor render aid or assistance in maintaining that situation."[72]

Alongside Armenia's responsibility as the State which unleashed war against Azerbaijan, under the usual norms and treaty rules of international criminal law,

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[66] See *Louizidou v. Turkey*, EHCR Judgment of 23 March 1995, para. 62; *Louizidou v. Turkey*, EHCR Judgment of 18 December 1996, para. 52; *Cyprus v. Turkey*, ECHR Judgment of 10 May 2001, para. 77; *Ilaşcu and others v. Moldova and Russia*, paras. 314-319, ECHR Portal, HUDOC Collection.

[67] See Articles on Responsibility of States for Internationally Wrongful Acts, arts. 28, 30, 31 and 34-37.

[68] Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), comment to art. 1, para. 4.

[69] *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, I.C.J. Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33. See also I. I. Lukashuk, pp. 379-380.

[70] I. I. Lukashuk, pp. 379-380, 394-396; Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), commentary to art. 1, para. 4.

[71] Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), commentary to art. 40, para. 4.

[72] See Articles on Responsibility of States for Internationally Wrongful Acts, art. 41.

certain acts perpetrated in the context of an armed conflict are viewed as international criminal offences and responsibility for them is borne on an individual basis by those participating in the said acts, their accomplices and accessories.

A distinction should be drawn between the two stages in the perpetration during a conflict of the most serious international offences such as genocide, crimes against humanity and military crimes. The first stage can be sited during the active military campaign, which had such tragic consequences for the civilian Azerbaijani population. The events which took place at that time were sufficiently well covered by international organizations, non-governmental human rights bodies and the media. The second stage relates to the situation in the occupied territories of Azerbaijan. Concern about the extent to which the rules of international law were being observed in those territories was heightened when an item on the issue was placed on the agenda of the United Nations General Assembly and when the resolution on the situation in the occupied territories of Azerbaijan was adopted at the Assembly's sixtieth session.

At the same time, when considering this issue and elaborating measures to prevent unlawful activities in the occupied Azerbaijani territories, it is essential that the situation be appraised from the standpoint of international law. Thus, measures undertaken by the occupying Power to change the demographic composition of the population of the occupied territories, including by moving, both directly and indirectly, civilians into the occupied territory,[73] the destruction or appropriation of State and private property in the occupied territory,[74] attacks against cultural properties[75] and effects on the environment,[76] are categorized as military offences — in other words, serious breaches of the law of armed conflicts.

In addition, depending on the specific circumstances, a single action may constitute a number of offences. Thus, the military crimes committed by the Armenians during the conflict in some cases compound other crimes of war, such as genocide and crimes against humanity, or are coterminous with them. For example, the massacre in February 1992 of the civilian Azerbaijani population of the town of Xocali, which constituted a serious breach of the law of armed conflicts, may also be categorized as genocide.[77]

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[73] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. For text see Adam Roberts and Richard Guelff (eds.), pp. 419-479, at p. 471, Article 85 (4) (a); Rome Statute of the International Criminal Court, 17 July 1998, p. 677, Article 8 (2) (b) (viii).

[74] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, p. 352, Article 147; Rome Statute of the International Criminal Court, 17 July 1998, pp. 676-677, Article 8 (2) (a) (iv).

[75] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, p. 471, Article 85 (4) (d); Rome Statute of the International Criminal Court, 17 July 1998, at p. 677, Article 8 (2) (b) (ix).

[76] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, p. 352, Article 147; Rome Statute of the International Criminal Court, 17 July 1998, p. 677, Article 8 (2) (b) (xiii).

[77] Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III), 9 December 1948. For text, see United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, ST/HR/1/Rev.5, vol. 1 (Second Part), New York and Geneva, United Nations 1994, pp. 673-677.

The international community, acting chiefly through the United Nations, has proclaimed and set down in international instruments a compendium of fundamental values, such as peace and respect for human rights. The consensus on them was reflected in the adoption in 1948 of the Universal Declaration of Human Rights, according to which "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". At the same time, the Universal Declaration emphasizes that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".[78]

Regrettably, even some 60 years after the adoption of the Universal Declaration of Human Rights, the conspicuous "silence" in certain international criminal proceedings serves to accentuate a deficiency characteristic of the international community today: the gap between the theoretical values of law and harsh reality, which impedes the application in practice of the rich potential of international law standards. At the same time, if one is to be consistent in upholding universally accepted values, it is essential to take steps to inhibit any brazen attempt to reject these and not to permit lawlessness, including by prosecuting their supposed perpetrators.[79] It is clear that there can be no long-term and sustainable peace without justice and respect for human dignity, rights and freedoms.

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[78] Universal Declaration of Human Rights, General Assembly res. 217 A (III), 10 December 1948. For text see United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, ST/HR/1/Rev.5, vol. 1 (First Part), New York and Geneva, United Nations, pp. 1-7, at p. 1.

[79] See, for example, Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), p. 446.

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

The situation in the occupied territories of Azerbaijan

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

08-66916 (E) 300109

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 into *jus ad bellum* pertaining to the legality of war (as well as cognate issues) and *jus in bello* 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 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 bello* in the course of intra-State conflicts,[2] 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*,[3] but also the crucial issue of the *jus ad bellum*. Article 2(4) (quoted *supra* 3) is the mainstay of that *jus 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.[4] 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).[5]

6. 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.*[6] The Commission's position was quoted

[1] Charter of the United Nations, 1945, 9 *International Legislation* 327, 332 (M.O.Hudson ed., 1950).
[2] 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).
[3] 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.
[4] 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.
[5] Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits), [1986] Reports of the International Court of Justice 14, 99-100.
[6] Report of the International Law Commission to the General Assembly, 18th Session, [1966] II *Yearbook of the International Law Commission* 172, 247.

with apparent approval by the ICJ in the *Nicaragua* case.[7] 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.[8] 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".[9] 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".[10] It follows 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 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.[11] The principle was presented by the Court in a non-restrictive, all-inclusive, fashion.

8. 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.[12] 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.*)[13] (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

[7] *Nicaragua* case, *supra* note 5, at 100.
[8] Vienna Convention on the Law of Treaties, 1969, [1969] *United Nations Juridical Yearbook* 140, 154.
[9] *Ibid*., 153.
[10] *Fisheries Jurisdiction* case (Jurisdiction of the Court) (UK v. Iceland), [1973] *Reports of the International Court of Justice* 3, 14.
[11] *Nicaragua* case, *supra* note 5, at 100.
[12] 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.
[13] Charter of the United Nations, *supra* note 1, at 343 ff.

Socialist Republics as a subject of international law and a geopolitical reality no longer exists".[14] 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 territorial integrity and the inviolability of existing borders".[15] The 1993 Charter of the Commonwealth of 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".[16] 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.[17]

10. The Security Council explicitly referred in Resolution 884 (1993) to "the conflict in and around the Nagorny 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".[18] Similar language had been used earlier, especially in Resolution 853 (1993).[19] General Assembly Resolution 62/243 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".[20]

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".[21] 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".[22] 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

[14] Minsk Agreement, 1991, 31 *International Legal Materials* 143, *id*. (1992).
[15] Alma Ata Declaration, 1991, 31 *International Legal Materials* 147, 148 (1992).
[16] Charter of the Commonwealth of Independent States, 1993, 34 *International Legal Materials* 1279, 1283 (1995).
[17] 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).
[18] Security Council Resolution 884 (1993), 48 *Resolutions and Decisions of the Security Council* 73, *id*. (1993).
[19] Security Council Resolution 853 (1993), 48 *Resolutions and Decisions of the Security Council* 71, *id*. (1993).
[20] General Assembly Resolution 62/243, Article 1 (14 March 2008).
[21] R.Mullerson, "The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia", 42 *International and Comparative Law Quarterly* 473, 486 (1993).
[22] Charter of the United Nations, *supra* note 1, at 332.

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".[23] In the *Nicaragua* Judgment, the ICJ construed the expression "inherent right" appearing in Article 51 as a reference to customary international law.[24] 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 to preserve (at least in essence).[25]

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".[26]

(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*).[27]

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 armée", *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.[28] 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, it is stated: "An armed attack triggering the right of self-defence must be of a certain degree of gravity. Acts

[23] Charter of the United Nations, *supra* note 1, at 346.
[24] *Nicaragua* case, *supra* note 5, at 94.
[25] *Ibid.*
[26] Charter of the United Nations, *supra* note 1, at 343.
[27] For the latter, see N.Melzer, *Targeted Killing in International Law* 270 (2008).
[28] See A.Randelzhofer, "Article 51", 1 *The Charter of the United Nations: A Commentary* 788, 790 (B.Simma ed., 2nd ed., 2002).

involving the use of force of lesser intensity may give rise to countermeasures in conformity with international law".[29]

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,[30] 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".[31]

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.[32] 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.[33] 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".[34]

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.[35] 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.[36]

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

[29] *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).
[31] *Ibid*.
[32] See K.C.Kenny, "Self-Defence", 2 *United Nations: Law, Policies and Practice* 1162, 1164 (R.Wolfrum ed., 1995).
[33] *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).
[34] A.Aust, *Handbook of International Law* 229 (2005).
[35] See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* 170 (2003).
[36] 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).

to "local Armenian forces", see *infra* 18).[37] 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".[38] In Resolution 874 (adopted on 14 October 1993), the Council called for "withdrawal of forces from recently occupied territories".[39] And in Resolution 884 (adopted on 13 November 1993), the Council condemned "the occupation of the Zangelan district and the city of Goradiz".[40] 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".[41]

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).[42] 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.[43] 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".[44] 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.[45]

19. The occupation of Nagorny Karabakh and surrounding areas, resulting from the invasion of the Republic 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.[46] The presence of Armenian conscripts in the Nagorny Karabakh region – as late as 2005 – is confirmed in a Crisis Group report on Nagorny Karabakh.[47]

[37] Security Council Resolution 822 (1993), 48 *Resolutions and Decisions of the Security Council* 70, *id*. (1993).
[38] Security Council Resolution 853 (1993), *supra* note 19, at 71.
[39] Security Council Resolution 874 (1993), 48 *Resolutions and Decisions of the Security Council* 72, 73 (1993).
[40] Security Council Resolution 884 (1993), *supra* note 18, at 73.
[41] General Assembly Resolution 62/43, *supra* note 20, Article 2.
[42] Security Council Resolution 822 (1993), *supra* note 37, at 70.
[43] Security Council Resolution 884 (1993), *supra* note 18, at 73.
[44] 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).
[45] The evidence is presented in a Letter from the Chargé d'Affaires of the Permanent Mission of Azerbaijan to the UN Secretary-General (with annexed photocopies) (Doc. S/1994/147, 14 February 1994).
[46] OSCE, Office for Democratic Institutions and Human Rights, Republic of Armenia Presidential Election Observation, Final Report, page 8 (Issued 9 April 1998).
[47] Crisis Group, Nagorno-Karabakh: Viewing the Conflict from the Ground at p. 9 (Europe Report No. 166, 14 September 2005).

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".[48]

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".[49] 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".[50] The two conditions of necessity and proportionality were reaffirmed by the ICJ in its Judgments in the 2003 *Oil Platforms* case,[51] and in the 2005 *Armed Activities* case.[52]

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".[53] 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

[48] See J.Combacau, "The Exception of Self-Defence in U.N. Practice", *The Current Legal Regulation of the Use of Force* 9, 21 (A.Cassese ed., 1986).
[49] *Nicaragua* case, *supra* note 5, at 94.
[50] Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 12, at 245.
[51] *Case Concerning Oil Platforms* (Iran v. United States) (International Court of Justice, 2003), 42 *International Legal Materials* 1334, 1361-1362 (2003).
[52] *Case Concerning Armed Activities on the Territory of the Congo*, *supra* note 33, at 306.
[53] O.Schachter, "The Right of States to Use Armed Force", 82 *Michigan Law Review* 1620, 1635 (1984).

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

24. Immediacy has not been recognized by the ICJ as a condition to the exercise of the right of self-defence. By contrast, some scholars[54] believe that it is. All the same, immediacy does not present any real difficulty to the Republic of Azerbaijan in the present case, taking the view that, "although immediacy serves as a core element of self-defence, it must be interpreted reasonably".[55] More 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 as the summer of 1992 (shortly after the onset of the armed attack by the Republic of Armenia and without any undue time-lag). The fact that fighting was later suspended through acceptance of a cease-fire (*infra* 26) means that what is at balance today is not an initial invocation but a resumption of the exercise of the right of self-defence.

(iii) In any event, when an armed attack produces continuous effects (through occupation) – and in 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 of 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".[56] 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 to 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

[54] See, e.g., Y.Dinstein, *War, Aggression and Self-Defence* 210 (4th ed., 2005); Akehurst's *Modern Introduction to International Law* 316 (P. Malanczuk ed., 7th ed., 1997).
[55] T.D.Gill, "The Temporal Dimension of Self-Defence: Anticipation, Pre-emption, Prevention and Immediacy", 11 *Journal of Conflict & Security Law* 361, 369 (2006).
[56] N.Ronzitti, "The Expanding Law of Self-Defence", 11 *Journal of Conflict & Security Law* 343, 352 (2006).

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).[57] 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".[58] A cease-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".[59] 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

[57] 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.
[58] 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).
[59] 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).

Azerbaijan,[60] it is appropriate to consider the legal implications of such a potential intervention. When one posits an armed attack committed by the Republic of Armenia against the Republic of Azerbaijan (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 of 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".[61]

And the corollary:

> "States do not have a right of 'collective' armed response to acts which do not constitute an 'armed attack'".[62]

So, since an armed attack was committed by the Republic of Armenia against the Republic of Azerbaijan, a third State can exercise its own right of (collective) self-defence against the Republic of 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". [63]

Furthermore, according to the ICJ, a request for help from a third State has to be extended by the direct victim of the armed attack: in the absence of such a request, collective self-defence by the third State is excluded.[64] In the *Oil Platforms* case, the Court reiterated this requirement of a request that has to be made to the third State by the direct victim of the armed attack.[65]

[60] See N.Stürchler, *The Threat of Force in International Law* 305 (2007).
[61] *Nicaragua* case, *supra* note 5, at 104.
[62] *Ibid.*, 110.
[63] *Ibid.*, 104.
[64] *Ibid.*, 105.
[65] *Case Concerning Oil Platforms, supra* note 51, at 1355.

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.[66] 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".[67]

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

[66] *Nicaragua* case, *supra* note 5, at 544-545.
[67] *Ibid.*, 544.

international border", but also the dispatch of armed bands or "irregulars" into the territory of another State.[68] 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".[69]

The ICJ specifically took paragraph (g) of Article 3 "to reflect customary international law".[70] In the post-*Nicaragua* period, ICJ again has come back to rely on Article 3(g) in the *Armed Activities* case.[71] 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 another State".[72]

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 other support to such bands cannot be equated with armed attack".[73] The ICJ did "not believe" that "assistance to rebels in the form of the provision of weapons or logistical or other support" rates as an armed attack.[74] 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"'.[75] 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.[76]

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

[68] *Ibid.*, 103.
[69] General Assembly Resolution 3314 (XXIX), supra note 30, at 143.
[70] *Nicaragua* case, *supra* note 5, at 103.
[71] *Case Concerning Armed Activities on the Territory of the Congo*, *supra* note 33, at 306.
[72] General Assembly Resolution 2625 (XXV), 25 *Resolutions of the General Assembly* 121, 123 (1970).
[73] *Nicaragua* case, *supra* note 5, at 126-127.
[74] *Ibid.*, 104.
[75] *Ibid.*, 543.
[76] *Ibid.*, 349.

territories, adding however the caveat that no claim has been made in the *Wall* proceedings that the attacks "are imputable to a foreign State".[77] 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.[78] 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.[79]

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.[80] 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.[81] Yet, the ICJ held that it is not enough to have "general control by the respondent State over a force 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.[82] "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".[83]

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 *Tadić* case, sharply assailed the *Nicaragua* prerequisite of close operational control – as an absolute

[77] Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, 43 *International Legal Materials* 1009, 1050 (2004).
[78] See (Dissenting) Declaration by Judge Buergenthal (*ibid*., 1079) and Separate Opinions by Judges Higgins and Kooijmans (*ibid*., 1063, 1072).
[79] See Starke's *International Law* 176 (I.A. Shearer ed., 11th ed., 1994).
[80] Report of the International Law Commission, 53rd Session (2001), General Assembly Doc. A/56/10, at 43, 104.
[81] *Nicaragua* case, *supra* note 5, at 62.
[82] *Ibid*., 64.
[83] *Ibid*., 65.

condition of "effective control" – maintaining that it is inconsonant with both logic and law.[84] 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 the controlling State concerning the commission of each of those acts".[85]

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".[86]

The *Tadić* 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 *Tadić* case.[87]

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.[88] 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.[89] The phrase quoted is borrowed from Article 8 of the ILC 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts, which reads:

[84] *Prosecutor v. Tadić*, Judgment, ICTY Appeals Chamber, 1999, 38 *International Legal Materials* 1518, 1540-1545 (1999).
[85] *Ibid.*, 1545. Emphasis in the original.
[86] *Ibid*.
[87] For details, see E.La Haye, *War Crimes in Internal Armed Conflicts* 19 (2008).
[88] *Case Concerning Armed Activities on the Territory of the Congo*, *supra* note 33, at 306.
[89] *Ibid*., 308.

> "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".[90]

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".[91] 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".[92] The reference to direction or control of a specific conduct, rather than the general or overall direction or control, is the telling point.[93] 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.[94] Secondly, the ILC stressed[95] a dictum from the *Tadić* 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.[96] 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".[97] 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".[98]

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 *Tadić* criticism rejected.[99] 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 *Tadić*), 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

[90] Report of the International Law Commission, *supra* note 80, at 45.
[91] *Ibid*., 105.
[92] *Ibid*., 104.
[93] See A.J.J. de Hoogh, "Articles 4 and 8 of the 2001 ILC Articles on State Responsibility, the *Tadić* 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).
[94] Report of the International Law Commission, *supra* note 80, at 106-107.
[95] *Ibid*., 106.
[96] *Prosecutor v. Tadić*, *supra* note 84, at 1541.
[97] Report of the International Law Commission, *supra* note 80, 108.
[98] *Ibid*.
[99] *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).

which are not among its official organs".[100] 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".[101] The ICJ again cited Article 8 of the ILC's Draft Articles, once more underlining the importance of attributability.[102]

45. The *Genocide* Judgment did not lay to rest the dispute between the ICJ and the ICTY.[103] Yet, neither the 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 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 *Blaškić* 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.[104]

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 (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

[100] *Ibid*., 288.
[101] *Ibid*.
[102] *Ibid*.
[103] See A.Cassese, "The *Nicaragua* and *Tadić* tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia", 18 *European Journal of International Law* 649-668 (2007).
[104] *Prosecutor v. Blaškić* (ICTY Trial Chamber, 2000), 122 *International Law Reports* 2, 54-55.

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".[105] 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".[106]

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).[107]

[105] Charter of the United Nations, *supra* note 1, at 339.
[106] *Ibid*.
[107] 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.

A. Article 51 of the Charter

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".[108] 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".[109] Failure to report was also noted in the *Armed Activities* case.[110] While the consequences of such a failure may not be as grave as the ICJ envisioned in *Nicaragua*,[111] 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 not 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 be wrong, 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.[112]

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, the 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.[113] The Council usually prefers neither to identify the attacker nor to attribute

[108] 1 Oppenheim's *International Law* 422 (R.Jennings and A.Watts eds., 98th ed., 1992).
[109] *Nicaragua* case, *supra* note 5, at 105.
[110] *Case Concerning Armed Activities on the Territory of the Congo*, *supra* note 33, at 306.
[111] For details, see Dinstein, *supra* note 54, at 216-218.
[112] See S.A.Alexandrov, *Self-Defence against the Use of Force in International Law* 98 (1996).
[113] 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 and Decisions of the Security Council* 20, *id*. (1950).

responsibility: instead, it calls on both Parties to cease fire, withdraw their forces and seek an amicable solution to the conflict.[114] A paradigmatic illustration of this tendency can be found in Resolutions 822 and 853 of 1993 as regards the the Nagorny Karabakh conflict.[115] 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).[116]

56. 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".[117]

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.[118] 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" was acknowledged by the Security Council in Resolutions 822, 853, 874 and 884 of 1993.[119] 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

[114] See C.Gray, *International Law and the Use of Force* 96-97 (2nd ed., 2004).
[115] Security Council Resolution 822 (1993), *supra* note 37, at 70; Security Council Resolution 853 (1993), *supra* note 19, at 71.
[116] Charter of the United Nations, *supra* note 1, at 347.
[117] *Ibid*., 343.
[118] See B.Conforti, *The Law and Practice of the United Nations* 179 (2nd ed., 2000).
[119] 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.

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.[120] 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".[121] 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.[122]

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,[123] 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.[124] 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".[125] And, basically, it is for the State acting in self-defence to evaluate whether the Council's efforts have been crowned with success.[126] 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

[120] See J.A.Frowein and N.Krisch, "Article 39", 1 *The Charter of the United Nations: A Commentary*, *supra* note 28, at 717, 723.
[121] 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).
[122] See T.Bruha, "Security Council", 2 *United Nations: Law, Policies and Practice*, *supra* note 32, at 1147, 1148.
[123] 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).
[124] See O.Schachter, "United Nations Law in the Gulf Conflict", 85 *American Journal of International Law* 453, 458 (1991).
[125] 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.
[126] See L.M.Goodrich, E.Hambro and A.P.Simons, *Charter of the United Nations: Commentary and Documents* 352 (3rd ed., 1969).

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.[127] 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".[128]

63. 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.[129]

65. In its Judgment of 1946, the International Military Tribunal (IMT) at Nuremberg held that Article 6(a) of the London Charter is declaratory of modern international law, which regards war of aggression as a grave crime.[130] 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.[131] The Tribunal declared:

[127] 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.
[128] *Ibid*., 1256.
[129] Charter of the International Military Tribunal for the Far East, 1946, 14 *Department of State Bulletin* 361, 362 (1946).
[130] International Military Tribunal (*Nuremberg* trial), Judgment (1946), 1 *International Military Tribunal* (Blue Book Series) 171, 219-223.
[131] *Ibid*., 219.

> "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".[132]

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".[133]

66. The Nuremberg criminalization of war of aggression was upheld, in 1948, by the International Military Tribunal for the Far East (IMTFE) at Tokyo.[134] 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).[135]

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".[136] 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 of policies can be held liable for crimes against peace.[137]

68. The limitation of individual accountability for the crime of aggression to leaders or organizers is clear also from the 1996 text of Article 16 of the Draft Code of Crimes against the Peace and Security of Mankind (quoted *infra* 77). 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".[138]

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[132] *Ibid.*, 223.
[133] *Ibid.*, 186.
[134] 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.
[135] *USA v. Von Weizsaecker et al.* ("*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.
[136] *USA v. Von Leeb et al.* ("*High Command* case") (Nuremberg, 1948), 11 *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10* 462, 486.
[137] *USA v. Krauch et al.* ("*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.
[138] M.C.Bassiouni and B.B.Ferencz, "The Crime against Peace", 2 *International Criminal Law* 313, 347 (M.C.Bassiouni, ed., 2nd ed., 1999).

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".[139]

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.[140] 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.[141] The phrase "shape or influence" is patently flexible, catching in its net not only those at the very top.[142]

71. Relevant leadership echelons are by no means curtailed to the armed services. Crimes against peace may equally be committed by civilians.[143] 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".[144] However, Article 5(2) of the Statute defers action to a future time:

> "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".[145]

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).[146] 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

[139] *High Command* case, *supra* note 136, at 486.
[140] *Ibid*., 486-487.
[141] *Ibid*., 488-489.
[142] See K.J.Heller, "Retreat from Nuremberg: The Leadership Requirement in the Crime of Aggression", 18 *European Journal of International Law* 477, 486 *et seq*. (2007).
[143] See M.Greenspan, *The Modern Law of Land Warfare* 455-456 (1959).
[144] Rome Statute of the International Criminal Court, 1998, *The Laws of Armed Conflicts, supra* note 1, at 1314, 1315.
[145] *Ibid.*
[146] *Ibid*., 1372-1373.

jurisdiction in the absence of a Security Council determination that an act of aggression has occurred.[147]

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".[148]

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.[149] In 1947, the General Assembly instructed the ILC to formulate these principles and also to prepare a Draft Code of Offences against the Peace and Security of Mankind.[150] The ILC composed the "Nürnberg 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.[151]

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".[152]

[147] See M.H.Arsanjani, "The Rome Statute of the International Criminal Court", 93 *American Journal of International Law* 22, 29-30 (1999).
[148] General Assembly Resolution 2625 (XXV), *supra* note 73, at 122.
[149] General Assembly Resolution 95 (I), 1(2) *Resolutions of the General Assembly* 188, *id*. (1946).
[150] General Assembly Resolution 177 (II), 2 *Resolutions of the General Assembly* 111, 112 (1947).
[151] Principles of International Law Recognized in the Charter of the Nürnberg 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.
[152] 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.

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.[153]

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).[154] 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".[155]

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.[156] The counter-argument 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 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".[157]

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).[158] As the Court put it, immunity does not mean impunity.[159] Accordingly,

[153] *Ibid*., 43.
[154] See A.Cassese, *International Criminal Law* 113-114 (2003).
[155] R.Cryer, "Aggression at the Court of Appeal" 10 *Journal of Conflict & Security Law* 209, 228 (2005).
[156] See G.Gaja, "The Long Journey towards Repressing Aggression", 1 *The Rome Statute of the International Criminal Court: A Commentary* 427, 435 (A.Cassese *et al*. eds., 2002).
[157] *Institut de Droit International*, Resolution, "Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law", 69 *Annuaire de l'Institut de Droit International* 743, 753 (Vancouver, 2001) (Article 13(2)).
[158] *Case Concerning the Arrest Warrant of 11 April 2000*, [2002] *Reports of the International Court of Justice* 3, 25.
[159] *Ibid*.

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.[160]

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".[161]

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".[162]

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".[163]

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.

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[160] *Ibid*., 25-26.
[161] Rome Statute, *supra* note 144, at 1327.
[162] Charter of the International Military Tribunal, *supra* note 127, at 1257.
[163] International Military Tribunal (*Nuremberg* trial), Judgment, *supra* note 130, at 223.

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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

08-67089 (E) 300109

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 by the Republic of Armenia ("Armenia").

2. Such revisionist claims have been made with regard to the Nagorny 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

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

substantially agreed territorial framework. As Oppenheim has noted, "a state without a territory is not possible".[2]

7. 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.

8. 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.

9. It was emphasised in the *Island of Palmas* 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]

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[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; G.Distefano, *L'Ordre International entre Légalité et Effectivité: 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] 1 RIAA 829, 839 (1928).

[5] *Ibid*., at 838.

10. Accordingly, the concept of state sovereignty can only be exercised through exclusive territorial control so that such control becomes the cornerstone of international law, while the exclusivity of 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 meant that territory became "perhaps the fundamental concept of international law".[6] This principle is two-sided. It establishes both the supervening competence of the state over its territory and the absence of 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. The International Court clearly underlined in the *Corfu Channel* case, that, "[b]etween independent states, 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 International Justice, for example, emphasised in the *Lotus* case that:

> "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",[8]

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"[9] and noted in the *Asylum* case that "derogation from territorial sovereignty cannot be recognised unless its legal basis is established in each case".[10]

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

[6] D. P. O'Connell, *International Law*, 2nd ed., London, 1970, vol. I, p. 403.
[7] ICJ Reports, 1949, pp. 4, 35.
[8] PCIJ, Series A, No. 10, p. 18.
[9] ICJ Reports, 1949, pp. 6, 22.
[10] ICJ Reports 1950, pp. 266, 275.

relations".[11] 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".[12]

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.[13]

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".[14]

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

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[11] M.G.Kohen, "Introduction" in M.G.Kohen (ed.), *Secession: International Law Perspectives*, Cambridge, 2006, p. 6.

[12] See the Opinion on the "Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty" by Professors Franck, Higgins, Pellet, Shaw and Tomuschat on 8 May 1992, para. 2.16, <http://www.uni.ca/library/5experts.html>.

[13] See further below, para. 66 and following.

[14] Declaration on Principles of International Law 1970, General Assembly resolution 2625 (XXV).

international legal system and one that both explains and generates associated legal norms".[15] The International Court, for example, has referred particularly to "the permanence and stability of the land frontier" in the *Tunisia/Libya Continental Shelf* case,[16] to the need for "stability and finality" in the *Temple of Preah Vihear* case,[17] and to the "stability and permanence" of boundaries in the *Aegean Sea Continental Shelf* case.[18] 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".[19]

19. 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 definitiveness and permanence".[20]

c) The Norm of Territorial Integrity as Enshrined in International Instruments of a 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,[21] while the London Protocol 1852 guaranteed that of Denmark and the Treaty of Paris 1856 that of the Ottoman Empire.[22] 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

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[15] 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.
[16] ICJ Reports, 1982, pp. 18, 66.
[17] ICJ Reports, 1962, pp. 6, 33.
[18] ICJ Reports, 1978, pp. 3, 36.
[19] *Temple of Preah Vihear*, ICJ Reports, 1962, pp. 6, 34.
[20] HMSO, 1977, p. 11.
[21] See e.g. Markus Kutter, *Die Schweizer und 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 Osmańczyk and Anthony Mango, *Encyclopedia of the United Nations and International Agreements*, 3rd ed., 2004, vol. 4, p. 2294.
[22] *Ibid*.

small states alike".[23] This constituted 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.[24]

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

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

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

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 states…".

27. The UN Millennium Declaration, adopted by the General Assembly on 8 September 2000,[25] noted the rededication of the heads of state and of government gathered at the UN to supporting *inter alia* "all efforts to uphold the sovereign equality of all States, [and] respect for their territorial integrity and political independence". This Declaration was reaffirmed in the World Summit Outcome 2005, in which world leaders agreed "to support all efforts to uphold the sovereign equality of all states, [and] respect their territorial integrity and political independence".[26] In its turn, this provision in the World Summit Outcome was explicitly reaffirmed by the UN Global Counter-Terrorism Strategy 2006.[27]

28. References to territorial integrity may also be found in multilateral treaties of a global character. 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 sea of a coastal sea "shall be considered to be prejudicial to the peace, good order or security of the

[25] General Assembly resolution 55/2.

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

[27] 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.

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".[28]

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".[29] 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".[30]

32. The UN, while underlining the presumption of territorial integrity with regard to colonial territories in the move to independence,[31] 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:

[28] See also article 39 providing for a similar rule with regard to the transit passage of ships and aircraft.

[29] General Assembly resolution 1514 (XV).

[30] General Assembly resolution 2625 (XXV).

[31] See further, below, para. 79 and following.

> "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 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".[32]

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.[33] 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 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".

[32] See further, below, para. 142 and following.

[33] A/61/L.67.

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.[34] 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).[35] The Charter for European Security, adopted in November 1999,[36] 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 law, including the principle of the sovereignty and territorial integrity of states".

[34] See OSCE Handbook, 2007, p. 83, <http://www.osce.org/publications/sg/2007/10/22286_1002_en.pdf>.

[35] S/1/96.

[36] PCOEW389.

43. Secondly, the Framework Convention for the Protection of National Minorities, adopted on 1 February 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".

iii) 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[37] and came into force on 20 April 1994 following the addition of further signatories. This treaty declared in article 2 that in

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

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,[38] 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,[39] 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 States

49. Article 5 of the Pact of the League of Arab States, adopted on 22 March 1945,[40] 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[41] 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:

[38] 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>.

[39] 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.

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

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

> "(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 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, by a state outside the region against the territorial integrity, sovereignty or independence of a Central American state shall be considered an act of aggression against the other Central American states".

vi) 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, *r*ecognised 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 principles of "sovereignty, territorial integrity and non-interference in internal affairs of states".[42] 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 all member states "undertake to respect national sovereignty, independence and territorial integrity of 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 Treaty Organisation. In article II, the parties agreed "separately and jointly, by means of continuous 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 the Treaty of Amity and Cooperation in Southeast Asia, 1976, the states parties agreed to be bound by a number of "fundamental principles" laid down in article 2, including "[m]utual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations". Article 10 provides that "[e]ach High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, 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, non-interference, consensus and unity in diversity".[43] 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".

[42] A/51/915.

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

58. Further, the Charter of the South Asian Regional Association for Regional Cooperation,[44] 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 "[c]ooperation 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".[45]

61. Further, a series of agreements between eastern European states after the end of the Cold War provided for the mutual recognition of borders.[46] 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,

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

[45] 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.

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

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).[47]

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,[48] Ukraine,[49] Iraq,[50] Afghanistan,[51] Angola,[52] East Timor,[53] Sierra Leone,[54] Burundi,[55] Lebanon,[56] Georgia,[57] Cyprus,[58] the Comoros,[59] the Democratic Republic of the Congo,[60] Rwanda

[47] 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."

[48] Security Council resolution 687 (1991).

[49] See Security Council Presidential statement of 20 July 1993, S/26118.

[50] *Ibid* and resolutions 1770 (2007), 1790 (2007) and 1830 (2008).

[51] See Security Council resolutions 1267 (1999), 1776 (2007).

[52] See Security Council resolution 1268 (1999). See also General Assembly resolution 52/211.

[53] See e.g. Security Council resolutions 389 (1976), 1272 (1999), and 1745 (2007).

[54] Security Council resolution 1306 (2000).

[55] Security Council resolution 1719 (2006).

[56] 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.

[57] See e.g. Security Council resolutions 1752 (2007), 1781 (2007) and 1808 (2008).

[58] See e.g. General Assembly resolutions 3212 (XXIX) and 37/253.

[59] See e.g. General Assembly resolution 37/43.

[60] See e.g. Security Council resolutions 1756 (2007), 1771 (2007), 1794 (2007), 1804 (2008) and 1807 (2008). See also General Assembly resolution 60/170.

and other states in the region,[61] Burundi,[62] Côte d'Ivoire,[63] Somalia,[64] Sudan,[65] Chad and the Central African Republic,[66] Haiti,[67] the states of the Former Yugoslavia,[68] and Nepal.[69]

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".[70]

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".

[61] See e.g. Security Council resolutions 1771 (2007), 1804 (2008) and 1807 (2008).
[62] See e.g. Security Council resolution 1791 (2007).
[63] See e.g. Security Council resolutions 1739 (2007), 1765 (2007), 1795 (2008) and 1826 (2008).
[64] See e.g. Security Council resolutions 1766 (2007), 1772 (2007), 1801 (2008), 1811 (2008) and 1816 (2008).
[65] See e.g. Security Council resolutions 1769 (2007), 1784 (2007), 1841 (2008) and 1828 (2008).
[66] See e.g. Security Council resolution 1778 (2007).
[67] See e.g. Security Council resolutions 1780 (2007) and 1840 (2008).
[68] See e.g. Security Council resolution 1785 (2007).
[69] See e.g. Security Council resolution 1796 (2008).
[70] *Reference Re Secession of Quebec* [1998] 2 S.C.R. 217, para. 112.

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".[71]

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,[72] 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:

> "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 the Law of Treaties noted that "the law of the Charter concerning the prohibition of the use of force in itself 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,[73]

[71] General Assembly resolution 375 (IV).

[72] General Assembly resolution 2625 (XXV).

[73] *Yearbook of the International Law Commission*, 1966, vol. II, pp. 247-8.

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".[74] 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,[75] but also uncontradicted statements by Governments in the course of the Vienna Conference on the Law of Treaties[76] and the view of the International Court in the *Military and Paramilitary Activities in and against Nicaragua* case.[77]

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".

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[74] J.Crawford, *The International Law Commission's Articles on State Responsibility,* Cambridge, 2002, p. 246.

[75] See footnote 72 above.

[76] 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; 55th 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.

[77] 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.

74. The International Court in the *Construction of a Wall* advisory opinion[78] emphasised that just as the principles as to the use of force incorporated in the Charter reflected customary international law, "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 of Preah 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 not dependent upon the continued life of the treaty under which the boundary is agreed".[79]

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.[80] 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

[78] ICJ Reports, 2004, pp. 136, 171. See also General Assembly resolution ES-10/14, 8 December 2003.

[79] ICJ Reports, 1994, pp. 6, 37.

[80] 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.

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.[81] 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.[82]

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 (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 so-called "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",[83] while the Arbitration Commission established by the International Conference on Yugoslavia stated in Opinion No. 3 that "all external frontiers 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".[84]

[81] ICJ Reports, 1974, pp. 3, 18.

[82] *Yearbook of the International Law Commission* (1966 II), p. 259.

[83] 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.

[84] 92 *International Law Reports*, pp. 170, 171.

c) The Principle of *Uti Possidetis Juris*[85]

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,[86] "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 modern 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 succeeded to the boundaries of the former Spanish colonies or administrative units.[87] 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

[85] See e.g. M.Kohen, *Possession Contestée et Souveraineté Territoriale*, Geneva, 1997, chapter 6, and *ibid*., "*Uti Possidetis*, Prescription et Pratique Subséquent à un Traité dans l'Affaire de l'*Ile de Kasikili/Sedudu* devant la Cour Internationale de Justice", 43 German YIL, 2000, p. 253; G.Nesi, *L'Uti Possidetis Iuris nel Diritto Internazionale*, Padua, 1996; Luis Sánchez Rodríguez, "L'*Uti Possidetis* et les Effectivités dans les Contentieux Territoriaux et Frontaliers", 263 Hague Recueil, 1997, p. 149; J.M.Sorel and R.Mehdi, "L'*Uti Possidetis* Entre la Consécration Juridique et la Pratique: Essai de Réactualisation", AFDI, 1994, p. 11; T.Bartoš, "*Uti Possidetis. Quo Vadis*?", 18 Australian YIL, 1997, p. 37; "L'Applicabilité de l'*Uti Possidetis Juris* dans les Situations de Sécession ou de Dissolution d'Ētats", Colloque, RBDI, 1998, p. 5, and M.N.Shaw, "Heritage of States", *loc.cit.*

[86] ICJ Reports, 1986, pp. 554, 566. See also the *Tunisia/Libya* case, ICJ Reports, 1982, pp. 18, 65-6.

[87] See *Colombia-Venezuela*, 1 *Reports of International Arbitral Awards*, pp. 223, 228 and *El Salvador/Honduras (Nicaragua Intervening)*, ICJ Reports, 1992, pp. 351, 387.

overtones. It was carefully analysed by the International Court in the *Burkina Faso/Mali* case as an element in a wider situation.[88]

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".[89]

85. This definition was reaffirmed in the *El Salvador/Honduras* case and referred to as an authoritative statement.[90] The Court declared that *uti possidetis* was essentially "a retrospective principle, investing as international boundaries administrative limits intended originally for quite other purposes".[91] It was underlined in the *Burkina Faso/Mali* case[92] 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[93] 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".[94]

88 ICJ Reports, 1986, pp. 554, 565-6.

89 *Ibid*, at 566.

90 ICJ Reports, 1992, pp. 351, 386.

91 *Ibid*, at 388.

92 ICJ Reports, 1986, pp. 554, 568.

93 *Ibid*, at 565.

94 *Ibid*. See also the Separate Opinion of Judge Kooijmans, *Qatar v Bahrain*, ICJ Reports, 2001, pp. 40, 230-2.

87. This formulation was repeated and affirmed in the decision of the International Court recently in *Nicaragua v Honduras*.[95]

88. That *uti possidetis* is a general principle appears also from later practice. This may be seen, for example, with regard to the former USSR,[96] Czechoslovakia[97] 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".[98]

89. 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)*".[99]

90. This approach was confirmed, for example, by the Under-Secretary of State of the Foreign and Commonwealth Office of the UK, who stated in a Note in January 1992[100] that:

> "the borders of Croatia will become 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

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[95] ICJ Reports, 2007, paras. 151 and following.

[96] See e.g. R.Yakemtchouk, "Les Conflits de Territoires and de Frontières dans les Etats de l'Ex-URSS", *AFDI*, 1993, p. 401. See further below, paragraphs 92-94 and following.

[97] See J.Malenovsky, "Problèmes Juridiques Liés à la Partition de la Tchécoslovaquie", *AFDI*, 1993, p. 328.

[98] 92 *ILR*, p. 168. See also A.Pellet, "Note sur la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1991, p. 329, and Pellet, "Activité de la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1992, p. 220.

[99] 92 *ILR*, p. 171.

[100] UKMIL, 63 *BYIL*, 1992, p. 719.

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,[101] 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),[102] 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.[103]

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".[104] This reference was thus not restricted to international frontiers and 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

[101] See 31 *ILM,* 1992, p. 138 and p. 147 and following, and 34 *ILM,* 1995, p. 1298.

[102] 31 *ILM,* 1992, p. 148.

[103] See Malenovsky, "Problèmes", *loc.cit*.

[104] 92 *ILR*, p. 174 (emphasis added).

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.[105]

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[106] and Ruanda-Urundi[107] 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[108]

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 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,[109] its influence can be detected in the various provisions for minority protection[110] and in the establishment of the mandates

[105] 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.
[106] See General Assembly resolution 181 (II) and Shaw, "Heritage", *loc.cit.*, p. 148.
[107] *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).
[108] 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.
[109] 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.
[110] See e.g. I.Claude, *National Minorities*, Cambridge, 1955, and J.Lador-Lederer, *International Group Protection*, Leiden, 1968.

system based as it was upon the sacred trust concept.[111] 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.[112]

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.[113] 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".[114]

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[111] See e.g. H.D.Hall, *Mandates, Dependencies and Trusteeships*, Washington, 1948 *and* Q.Wright, *Mandates under the League of Nations*, Chicago, 1930.

[112] 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.

[113] 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.

[114] 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

102. The 1970 Declaration on Principles of International Law Concerning Friendly Relations, which can be regarded as constituting an authoritative interpretation of the seven Charter provisions it 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.[115] 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 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[116] the International Court emphasised that "the subsequent development of international law in regard to non-self-governing territories as enshrined in the

[115] 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).
[116] ICJ Reports, 1971, pp. 16, 31.

Charter of the United Nations made the principle of self-determination applicable to all of them". The *Western Sahara* advisory opinion reaffirmed this point.[117]

107. The Court moved one step further in the *East Timor (Portugal v. Australia)* case[118] when it declared that "Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable." The 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,[119] 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.[120] 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".[121]

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

[117] ICJ Reports, 1975, pp. 12, 31.

[118] ICJ Reports, 1995, pp. 90, 102.

[119] ICJ Reports, 2004, pp. 136, 172. See also *ibid*, p. 199.

[120] [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.

[121] *Ibid*, para. 115.

instruments[122] 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 "peoples" as defined in a political–sociological sense[123] 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

111. 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.[124] 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.[125]

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.[126] The UN based its policy on the proposition that "the

[122] 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".

[123] 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.

[124] 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.

[125] See e.g. *Certain Phosphate Lands in Nauru*, ICJ Reports, 1992, pp. 240, 257 and *Cameroon v. Nigeria*, ICJ Reports, 2002, pp. 303, 409.

[126] 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 Wall* case, ICJ Reports, 2004, pp. 136, 172.

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.[127] 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".[128]

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.[129]

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.[130]

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[131] and by the International Court in the *Construction of a Wall* case.[132] Further example of this might include, amongst others, Afghanistan under Soviet occupation.[133]

[127] 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".
[128] [1998] 2 S.C.R. 217, para. 132.
[129] *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.
[130] The *Quebec Secession* case, [1998] 2 S.C.R. 217, para. 138.
[131] 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.
[132] ICJ Reports, 2004, pp. 136, 183, 197 and 199. See also e.g. Cassese, *Self-Determination, op.cit.*, pp. 90–9.
[133] See e.g. Cassese, *Self-Determination, op.cit.*, p. 94 and following.

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

117. Cassese has written that:[134]

> "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.

i) 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.[135] 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".[136] The Committee takes the view, as Higgins has noted,[137] 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".

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134 *Self-Determination, op.cit*., p. 101.

135 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.

136 General Comment 12: see HRI/GEN/1/Rev.1, 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*, A/47/40, 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.

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

120. In its discussion of self-determination, the Committee has encouraged states parties to provide in their reports details about participation in social and political structures,[138] 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.[139] 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…".[140]

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".[141]

[138] 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.1, 1995, p. 4.

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

[140] A/51/18.

[141] [1998] 2 S.C.R. 217, para. 126. Emphasis in original.

ii) Minorities

123. The international protection of minorities has gone through various guises.[142] 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.[143] 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.[144] After the Second World War, 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.[145]

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.[146] 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

[142] 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.1, 1979.

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

[144] See e.g. the Capotorti Report, *op.cit*., pp. 20–2.

[145] 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.

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

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 "[n]othing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states".[147]

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 "[n]othing 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.[148] 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.[149] 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

[147] Article 8 (4).

[148] 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.

[149] General Assembly resolution 61/295.

rights law, specifically recognised their right to self-determination.[150] 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.[151] 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)[152] 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[153] or to the population of a non-self-governing or trust territory.[154] 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 turn underlined the principle of non-intervention by states into the domestic affairs of other states.

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 "the terms 'peoples' too … in connection with 'equal

[150] Articles 1 and 3.

[151] 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).

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

[153] 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.

[154] See articles 73 and 76 respectively.

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".[156]

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,[157] 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",

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155 *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.I/1/I of 16 May 1945, 6 *UNCIO Docs.*, p. 296.

156 "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.

157 See above, para. 95.

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".

135. 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".[158]

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".

[158] 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.[159] 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".[160]

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",[161]

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".[162]

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".[163]

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

[160] *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.

[161] 92 *ILR*, p. 168.

[162] [1998] 2 S.C.R. 217, paras. 122 and 127.

[163] *Op.cit*., p. 122.

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".[164]

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".[165]

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".[166]

(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".[167]

[164] *Ibid*., p. 339.

[165] *Op.cit*., p. 390.

[166] *Ibid*., p. 415.

[167] See also the similar clause in the Vienna Declaration of the UN World Conference on Human Rights 1993.

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 "[e]very 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-determination is absolutely beyond reach. Extreme and unremitting persecution and the lack of any reasonable prospect for peaceful challenge may make secession legitimate",[168]

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".[169]

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.[170]

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[168] *Op.cit.*, p. 120.

[169] *Op.cit.*, p. 119.

[170] [1998] 2 S.C.R. 217, para. 135.

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.[171]

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.[172] 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.[173] Moreover, it is also well documented that the region possessed all essential elements of self-

[171] 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.

[172] See e.g. Note Verbale, *op.cit.*, p. 4 and Initial Report to the Human Rights Committee, *op.cit.*, pp. 6-7.

[173] *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.

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'".[174]

153. Armenia's view is that "[o]n the date the Republic of Azerbaijan obtained its recognition, the Republic of Nagorny Karabakh no longer formed part of it",[175] while the process by which this entity became independent reflected the right of self-determination.[176]

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:[177]

> "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:[178]

[174] See Note Verbale, *op.cit.*, pp. 7-9.
[175] See Initial Report to the Human Rights Committee, *op.cit.*, p. 8.
[176] "Nagorno-Karabagh: Legal Aspects", *op.cit.*, p. 20.
[177] ICJ Reports, 1986, pp. 554, 566. This was reaffirmed in *El Salavador/Honduras*, ICJ Reports, 1992, pp. 351, 386-7.
[178] ICJ Reports, 1986, p. 568.

> **"**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".[179] 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.[180] 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".[181]

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

[179] *Ibid*., p. 570.

[180] *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.

[181] ICJ Reports, 1992, pp. 351, 559.

respectively.[182] 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.[183]

160. On 1 December 1989, the Supreme Soviet of Armenia adopted a resolution calling for the reunification of the Armenian SSR with Nagorny Karabakh.[184] 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.[185] 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.[186]

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]

[182] 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.
[183] See "Nagorno-Karabagh: Legal Aspects", *op.cit.*, pp. 9-10 and Note Verbale, *op.cit.*, p. 5.
[184] *Ibid.*
[185] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 3, p. 38.
[186] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 15, pp. 303-308.

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".[187] 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).[188]

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[189] meant that Azerbaijan succeeded to the boundaries of its former incarnation is equally fallacious. It is 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.[190] 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.

[187] Cassese, *Self-Determination, op.cit.*, pp. 264-265.

[188] *Ibid.*, p. 266.

[189] See e.g. the terms of the Declaration of 30 August 1991and article 2 of the Declaration of 18 October 1991.

[190] See e.g. M.N.Shaw, *Title to Territory in Africa*, Oxford, 1986, chapter 4.

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".[191] Thus, the process of secession from Azerbaijan was instituted. This was claimed to be on the basis of the right to self-determination.[192]

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.

[191] 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.
[192] See "Nagorno-Karabagh: Legal Aspects", *op.cit.*, p. 20.

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.

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

The situation in the occupied territories of Azerbaijan

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).

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

09-22170 (E) 250209

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 customary international law.

[1] For more information on the matter, see also the Reports entitled "Military Occupation of the Territory of Azerbaijan: a Legal Appraisal", A/62/491-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*, 2nd 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.

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".

7. 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]

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.[5] 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.[6] Accordingly, no action taken by Armenia or by its subordinate local authority within the occupied territories can

[3] Adopted in General Assembly resolution 2625 (XXV).
[4] *Op.cit*., p. 242. See also Benvenisti, *Op.cit*., p. 8. Note in addition *Prefecture of Voiotia 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 September 2005, 129 International Law Reports, pp. 241, 252.
[5] See article 47 of Geneva Convention IV.
[6] See article 4 of Additional Protocol I.

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".

10. This provision is considered to be a rule of customary international law and thus binding on all states.[7] 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".[8]

11. 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".[9]

12. 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".[10]

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

[7] See *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 172.
[8] *Ibid*., p. 167.
[9] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 229-30.
[10] See also article 3 of Additional Protocol I.

armed conflict within the meaning of article 2".[11] That this happened from the early 1990s is indisputable as is the continuing outbreak of low-level hostilities and loss of life.[12]

14. The International Court of Justice has discussed the meaning of this paragraph in its advisory opinion in the Construction of a Wall case.[13] 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.[14] 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".[15]

15. 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 belligerents dispute the status of territory … respecting international protections in such situations does not prejudice the status of the territory".[16]

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.

[11] Pictet (ed.), *Commentary*, *Op.cit*., p. 20.
[12] 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-76RMYP?OpenDocument>. 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.
[13] ICJ Reports, 2004, pp. 136, 174-5.
[14] *Ibid*., p. 175.
[15] *Ibid*., p. 177.
[16] Partial Award, Central Front, Ethiopia's Claim 2, The Hague, 28 April 2004, para 28. See also article 4 of Additional Protocol I.

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[17] 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.[18] 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.[19] 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.[20]

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

[17] 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 – "Dağlıq Qarabağ" (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.
[18] See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* 170 (2003).
[19] 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).
[20] *Seven Years of Conflict in Nagorno-Karabakh*, New York, 1994, pp. 69-73.

Azerbaijan explicitly to "[t]he situation of armed conflict with a neighbouring country".[21] 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".[22]

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".[23] Concern with "the conflict in the Nagorny-Karabakh region" was also expressed in the Committee's Concluding Observations on Azerbaijan on 14 April 2005.[24]

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".[25] The Committee also referred to the "conflict with Armenia" in its Concluding Observations on Azerbaijan on 14 December 2004.[26]

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 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".[27]

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

[21] 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.
[22] CERD/C/304/Add.75, at para. 3.
[23] *Ibid*, at para. 7.
[24] CERD/C/AZE/CO/4, at para. 10.
[25] E/C.12/1/Add.20, at para. 12.
[26] E/C.12/1/Add.104, at para. 11.
[27] <http://www.state.gov/g/drl/rls/hrrpt/2006/78799.htm>.

> the line of contact. According to the national agency for mine actions, landmines killed two persons and injured 15 others during the year".[28]

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",[29]

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".[30]

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.[31]

[28] <http://www.state.gov/g/drl/rls/hrrpt/2006/78801.htm>.
[29] <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.
[30] "Nagorno-Karabakh: A Plan for Peace", Report No. 167, p. I.
[31] S/26326, 18 August 1993.

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".[32]

30. Resolution 1416 (2005), adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe, noted particularly that "[c]onsiderable parts of the territory of Azerbaijan are still occupied by Armenian 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 "[a]ccording 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 [Nagorny Karabakh]", while "[f]ormer 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".[33]

[32] David Atkinson, "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", Explanatory Memorandum, para. 6.
[33] "Nagorno-Karabakh: Viewing the Conflict from the Ground", Report no. 166, 14 September 2005, pp. 9-10.

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 ***C***onvention 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.[34]

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

1) *General*

34. In the official statement of the ICRC delivered by Thürer 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".[35]

35. 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 [*l'ordre et la vie publics*], while respecting, unless absolutely prevented, the laws in force in the country".

[34] See Pictet, *Geneva Convention IV*, p. 60 with which the official statement of the International Committee of the Red Cross ("ICRC") delivered by D. Thürer on 21 October 2005 agrees, <http://www.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.
[35] <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/occupation-statement-211105?opendocument>.

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".[36]

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.[37] 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".[38]

2) Protection of the Existing Local Legal System

38. International humanitarian law provides for the keeping in place of the local legal system during 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.[39]

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,

[36] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 231.
[37] See Benvenisti, *Op.cit.*, pp. 7-8. See also M. Sassòli, "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.
[38] *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.
[39] See Sassòli, *loc. cit.*, pp. 668-9.

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.[40] Further, protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.[41] 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.[42]

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.[43]

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

[40] See articles 67 and 69-75 of Geneva Convention IV and article 75 of Additional Protocol I.
[41] Article 76 of Geneva Convention IV.
[42] Article 143.
[43] See also article 14 of Additional Protocol I.

purposes, but even then requisitioning must take into account the needs of the civilian population.[44] Pillage is forbidden,[45] while reprisals against the property of protected persons are prohibited.[46]

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.[47] It is a grave breach of the Convention to engage in extensive destruction not so justified.[48]

4) Protecting Protected Persons

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).

[44] Article 52 of the Hague Regulations and article 55 of Geneva Convention IV.
[45] Article 47 of the Hague Regulations.
[46] Article 33 of Geneva Convention IV.
[47] See also article 23 (g) of the Hague Regulations.
[48] Article 147 of Geneva Convention IV.

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.[49]

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[50] 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

[49] See also General Assembly resolutions 61/155, adopted on 19 December 2006, and 63/183, adopted on 18 December 2008.
[50] According to the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, 4210 citizens of Azerbaijan are registered missing in connection with the conflict as of 1 January 2008, of them 47 children, 256 women and 355 elderly.

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".[51]

53. Such activity also constitutes a grave breach of Additional Protocol I[52] and, indeed, a breach of Armenia's own domestic legislation.[53] Attempts to change the demographic composition of occupied territories have also been condemned by the Security Council.[54] 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",[55] 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.[56] This view was endorsed by the Sub-Commission in its consideration of the Report.[57]

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.[58] The report also noted that some 3,000 settlers lived in Lachin town[59] and emphasised that "[s]ettlement incentives are readily apparent".[60] The US Committee for Refugees and Immigrants in its World Refugee Survey 2002 Country Report on Armenia stated that:

[51] *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 183.
[52] 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).
[53] See J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, vol I: Rules*, ICRC, Cambridge, 2005, p. 462, footnote 36.
[54] See e.g. resolutions 446, 452, 465, 476, 677.
[55] A/50/18, 1995, para. 26.
[56] 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.
[57] Sub-Commission resolution 1997/29.
[58] A/59/747-S/2005/187, at page 26.
[59] *Ibid*., at page 29.
[60] *Ibid*., at page 30.

> "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".[61]

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 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".[62]

57. The International Crisis Group report of September 2005 reported that:

> "Stepanakert[63] 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".[64]

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

[61] <http://refugees.org/countryreports.aspx?__VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpH b0J1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH &CountryDD%3ALocationList>.
[62] E/CN.4/Sub.2/AC.5/2003/WP.7, 5 May 2003 at pages 34-35.
[63] 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".
[64] *Op.cit.*, p. 7.

> established infrastructure and institutions in clear violation of international law prohibitions on settlement in occupied territories".[65]

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".

61. 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".[66] It is clear, 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".[67]

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".

[65] *Op.cit.*, p. 22. See also the full analysis of the settlement programme presented by the Permanent Representative of Azerbaijan to the UN in November 2004, A/59/568.
[66] "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 American Journal of International Law, 2006, pp. 580, 586.
[67] *Op.cit.*, p. 282.

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".[68]

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.[69]

65. The Court returned to this matter in its advisory opinion on the *Construction of a Wall*, where it declared more generally that:

> "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".[70]

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.[71] 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 préparatoires* of, for example, the International Covenant on Civil and Political Rights and with the constant practice of the Human Rights Committee established under it.[72]

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

[68] *Congo v Uganda*, ICJ Reports, 2005, pp. 168, 231 and 242 and following.
[69] ICJ Reports, 1996, pp. 226, 239.
[70] ICJ Reports, 2004, pp. 136, 178.
[71] *Ibid*.
[72] *Ibid.*, pp. 179-82.

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".[73]

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.[74] The Court interestingly referred 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.[75]

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".[76]

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);

[73] *Ibid*., pp. 180 and 181.
[74] 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.
[75] ICJ Reports, 2004, pp. 136, 181 (emphasis added).
[76] ICJ Reports, 2005, pp. 178, 242-43.

vii) Convention against Torture (13 September 1993).[77]

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;

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).

[77] 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.

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.[78] 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".[79]

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".[80] Such responsibility would cover acts of a state supporting the installation of a separatist state within the territory of another state.[81] 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".[82]

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

[78] 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, *Ilaşcu v Moldova and Russia*, Judgment of 8 July 2004.
[79] 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.
[80] Judgment of 10 May 2001 at para. 77 and Judgment of 8 July 2004 at paras. 312 and the following.
[81] Judgment of 8 July 2004, para. 312.
[82] Judgment of 8 July 2004, para 318. See also Judgment of 10 May 2001, para 81.

fact. As article 1 of the Articles on State Responsibility adopted by the International Law Commission on 9 August 2001[83] 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.[84]

78. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.[85] 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.[86] 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,[87] 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".[88]

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.[89] 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.

81. 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,[90] and to disseminate knowledge of the principles contained therein.[91] A

[83] Commended to governments in General Assembly resolution 56/83. See also General Assembly resolutions 59/35 and 62/61.
[84] See e.g. *Chorzów Factory* case, PCIJ, Series A, No. 9, p. 21 and the *Rainbow Warrior* case, 82 International Law Reports, p. 499.
[85] Article 3.
[86] See the *Gabčíkovo–Nagymaros Project* case, ICJ Reports, 1997, pp. 7, 38.
[87] 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.
[88] The *Chorzów 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.
[89] Article 30. See also the *Rainbow Warrior* case, 82 International Law Reports, pp. 499, 573.
[90] Common article 1.
[91] See e.g. article 144 of Geneva Convention IV and article 83 of Additional Protocol I.

variety of enforcement methods also exist, although the use of reprisals has been prohibited.[92] One of the means of implementation is the concept of the 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.[93]

82. Additional Protocol I also provides for an International Fact-Finding Commission[94] with competence to inquire into grave breaches[95] 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.[96]The parties to a conflict may themselves, of course, establish an ad hoc inquiry into alleged violations of humanitarian law.[97]

83. An important monitoring and indeed implementation role is played by the International Committee of the Red Cross.[98] 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.[99] 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".[100] 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.[101]

[92] See e.g. articles 20 and 51(6) of Additional Protocol I.
[93] See article 9 of Geneva Convention IV.
[94] See article 90 of Additional Protocol I.
[95] 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/1994/674.
[96] 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>.
[97] Articles 52, 53, 132 and 149 of the four 1949 Conventions respectively.
[98] 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.
[99] See e.g. article 142 of Geneva Convention IV.
[100] ICJ Reports, 2004, pp. 136, 175-6.
[101] Partial Award, Prisoners of War. Ethiopia's Claim 4 case, 1 July 2003, paras. 58 and 61-2.

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.[102] In such cases, pursuit of such individuals may be undertaken through the 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;

[102] See e.g. A. Cassese, *The International Criminal Court*, 2nd edn, Oxford, 2008; W. Schabas, *An Introduction to the International Criminal Court*, 3rd 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*, 2nd edn, London, 2003; and G. Werle, *Principles of International Criminal Law*, The Hague, 2005.

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;

20) 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.

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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-fourth year

Letter dated 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

On 14 March 2008, the United Nations General Assembly adopted at its sixty-second session resolution 62/243, entitled "The situation in the occupied territories of Azerbaijan".

By paragraph 8 of the resolution, the General Assembly requested the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the resolution.

In view of this provision, Member States were requested to provide relevant information on the matter. Azerbaijan responded to this request by submitting the relevant documents covering a wide range of issues pertaining to the conflict between Armenia and Azerbaijan. This written contribution by Azerbaijan included among others the document entitled "Support by States Members of the United Nations and international organizations to Azerbaijan's position on the conflict in and around the Nagorny Karabakh region of Azerbaijan" (see annex).

Insofar as the existing page limit requirement prevents the content of this document from being reflected in the report of the Secretary-General, I should be grateful if you would have the present letter and the aforementioned document 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") of its sixty-third session, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

09-24601 (E) 250209

Annex to the letter dated 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Support by States Member of the United Nations and international organizations to Azerbaijan's position on the conflict in and around the Nagorny Karabakh region of Azerbaijan

The statements and documents are given in a chronological order corresponding to occupation of the territories of Azerbaijan starting with the accession of the Republic of Azerbaijan to the United Nations and consideration of the conflict by the Security Council in the first quarter of 1992.

The **Organization of the Islamic Conference** has been consistently taking the principled position regarding the illegal use of force against the sovereignty and territorial integrity of Azerbaijan and occupation of its territories. Since the evolution of the issue, the OIC has explicitly determined the actions of Armenia on the territory of Azerbaijan as the **aggression by the former against the sovereignty and territorial integrity of Azerbaijan** and included this issue as the permanent item on its agenda. Vast number of the OIC decisions and resolutions on the conflict between Armenia and Azerbaijan and individual support of Member States of this Organization have been instrumental in addressing occupation of the territories of Azerbaijan by the international community and in particular by the United Nations General Assembly and the Security Council.

On 12 May 1992, in response to the occupation of **Shusha** on 9 May 1992 – the last Azerbaijani populated district in the Nagorny Karabakh region of Azerbaijan – the **Security Council** adopted its first **Presidential Statement** on the conflict. The Council welcomed the dispatch by the United Nations Secretary-General of the fact-finding mission and referred to the United Nations Charter principles pertaining to the peaceful settlement of disputes and the non-use of force. Subsequent occupation of the **Lachin** region of Azerbaijan on 14 May 1992, adjacent to Nagorny Karabakh and bordering Armenia, prompted a series of reaction.

The **United States** Department of State declared on 21 May 1992 that the United States "will not accept unilateral changes in the status of Nagorny-Karabakh, Nakhichevan, or any other territory by military actions or violence".[3]

In its **Statement** of 23 May 1992 the Ministry of Foreign Affairs of the **Russian Federation** made it clear that "No current circumstances can permit the State to resort to the annexation of foreign territory. No one can count on the support of Russia for such unlawful actions".[3]

In its **Statement** of 22 May 1992 the **European Community** declared that "the Community and its Member States condemn in particular ... any actions against territorial integrity or designed to achieve political goals by force, including the driving out of civilian population".[4]

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[1] S/23904.
[2] S/24053.
[3] *Ibid.*
[4] A/47/221.

The **North Atlantic Council** stated on 22 May 1992 that "Any action against Azerbaijan' or any other State's territorial integrity or to achieve political goals by force would represent a flagrant and unacceptable violation of the principles of international law and CSCE". The Council called for taking "immediate steps to de-escalate the conflict, including withdrawal from occupied areas".[5]

In the **Statement** by the **President of the United Nations Security Council** of 5 April 1993 the Security Council "expresse[d] its serious concern at the deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan, and at the escalation of hostile acts in the Nagorny-Karabakh conflict, especially the invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces". The Council "demand[ed] the immediate cessation of all such hostilities, which endanger peace and security of the region, and the withdrawal of these forces". "In this context, the Security Council, reaffirming the sovereignty and territorial integrity of all States of the region and the inviolability of their borders, expresse[d] its support for the CSCE peace process" and "request[ed] the Secretary-General, in consultation with the CSCE, to ascertain facts, as appropriate, and to submit urgently a report to the Council containing an assessment of the situation on the ground".[6]

The **United Nations Secretary-General's Report** submitted to the Security Council, in particular its paragraph 10, determined that "The intensification of fighting in and around Nagorny-Karabakh, especially the recent attacks against the Kelbadjar and Fizuli districts of Azerbaijan, poses a serious threat to the maintenance of international peace and security in the entire Transcaucasus region.". According to the Report, "It is clear ... that there has been a major outbreak of fighting in various locations in Azerbaijan, outside the enclave of Nagorny-Karabakh. 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 [Armenian] forces*" (emphasis added).[7]

The **United Nations Security Council resolution 822 (1993)** adopted in response to the occupation of **Kelbadjar region** of Azerbaijan, reaffirmed the respect for sovereignty and territorial integrity of all states in the region, the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory. The Council demanded the immediate withdrawal of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan. It also reaffirmed that all parties are bound to comply with principles and rules of international humanitarian law.

At the second summit of the **Economic Cooperation Organization**, held in Istanbul on 6-7 July 1993, the Heads of States or Governments of Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan adopted the **Statement** in which they condemned the continuation of the Armenian aggression against Azerbaijani territories and the escalation and widening of hostilities towards Agdam, Fizuli, Jebrail, Gubatli and Agdere regions of Azerbaijan. Reaffirming the principle of

[5] S/24003.
[6] S/25539.
[7] S/25600.

inadmissibility of acquisition of territory by force and non-use of force for gaining political advantages, the participating states called upon the international community to use its influence over Armenia for putting an end to this aggression.[8]

The **CSCE Chairman of the Minsk Conference** in its **Report** submitted for consideration by the United Nations Security Council in response to the occupation on 23 July 1993 of the **Agdam region** clearly indicated that Agdam posed no serious military threat to Nagorny Karabakh. The CSCE Chairman, on behalf of the nine members of the CSCE Minsk Group, condemned the seizure of Agdam, as an act that cannot be justified on self-defense grounds and that contradicts the commitment to a peaceful settlement of the conflict. He further spelled out that those who encourage the Armenian community of the Nagorny Karabakh [region of Azerbaijan] to continue the fighting and the encroachment on the surrounding territories share responsibility for the continuing loss of Armenian lives and destruction of the Armenian economy.[9]

In its **resolution 853 (1993)** the **United Nations Security Council** reaffirmed the sovereignty and territorial integrity of Azerbaijan and demanded the immediate, unconditional and complete withdrawal of all occupying forces involved from the Agdam region and all other recently occupied areas of Azerbaijan. The Council urged States to refrain from the supply of any munitions and weapons which might lead to an intensification of the conflict or the continued occupation of the territory.

The 17 August 1993 **Statement** by the Ministry of Foreign Affairs of **Turkey** expressed its deep concern over the continued occupation of the territories of Azerbaijan in defiance of the Security Council resolutions and CSCE peace process. It underlined that if there is a desire for peace, stability and cooperation in the region, then the use of force should be avoided and the immediate, complete and unconditional withdrawal of Armenian forces from all occupied Azerbaijani territories should be secured.[10]

In the **Presidential Statement** of 18 August 1993 the **United Nations Security Council** condemned the attacks on the **Fizuli region** from the Nagorny Karabakh region of Azerbaijan. The Council demanded the immediate, complete and unconditional withdrawal of occupying forces from the area of Fizuli, and from the Kelbadjar and Agdam regions and other recently occupied areas of Azerbaijan. The Council strongly reaffirmed its calls for States to refrain from supplying any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of the territory of Azerbaijan. The Council called upon the **Government of Armenia** to ensure that the forces involved are not provided with the means to extend their military campaign still further.[11]

On 29 August 1993, the Minister for Foreign Affairs of the **Islamic Republic of Iran** addressed the **letter** to the United Nations Secretary-General informing him on the new and critical stage in the escalation of the conflict caused by the ongoing offensives by the

[8] S/26067.
[9] S/26184.
[10] S/26324.
[11] S/26326.

Armenian forces against the territory of the Republic of Azerbaijan. In the light of Iran's experience in mediation in the area and in view of its knowledge of the complex issues involved, the Minister believed that in order to curb the spread of the war and achieve a just solution it was essential that the United Nations took immediate and effective measures to implement Security Council resolutions 822 (1993) and 853 (1993) and decisively compel the aggressive forces to accept a cease-fire and to withdraw to the internationally recognized borders.[12]

The **Statement** by the **European Community and its Member States** of 6 September 1993 condemned the recent offensives by local Armenian forces in Nagorny Karabakh resulting in deeper and deeper incursions into Azerbaijani territories. They noted with regret that such actions were extending the area of armed conflict to encompass more and more of the Azerbaijani territory and were creating a very serious refugee problem in Azerbaijan and one already involving neighboring countries, with a concomitant threat to regional security. The Community and its Member States reaffirmed their support for the territorial integrity and sovereignty of the States in the region. The Community and its Member States called upon Armenia to ensure that the local Armenian forces carrying out offensives in Azerbaijan territory were not given the material means of further extending such offensives.[13]

Statement of 7 September 1993 by the Official Spokesman of the Ministry of External Affairs of the Government of **India** on the conflict between Armenia and Azerbaijan over Nagorny Karabakh pointed out that the Government of India followed with great concern the escalation of hostilities in and around Nagorny Karabakh with the considerable ingress of Armenian forces into Azerbaijan. The Government of India appealed to the parties concerned urgently to take the remedial steps required to respect international borders, to restore peace and to resolve mutual differences through early peaceful negotiations.[14]

In its **resolution 874 (1993)** of 14 October 1993 the **United Nations Security Council** reaffirmed the sovereignty and territorial integrity of Azerbaijan, the inviolability of its international borders, the inadmissibility of the use of force for the acquisition of territory and that the Nagorny Karabakh region is inalienable part of Azerbaijan. The Council expressed its grave concern at the human suffering the conflict has caused and at the serious humanitarian emergency and the displacement of large numbers of civilians in Azerbaijan. The Council, *inter alia*, called for withdrawal of occupying forces from the occupied territories of Azerbaijan and requested the Secretary-General and relevant international organizations to assist refugees and displaced persons to return to their homes in security and dignity.

The Permanent Representative of **Turkey** to the United Nations in his **letter** of 27 October 1993 addressed to the President of the United Nations Security Council stated that "at a time when H.E. Margaretha af Ugglas, Chairperson of the CSCE, was paying the visit to the region in order to promote a dialogue between the interested parties, the Armenian forces initiated a new and large-scale attack on the Zangelan region of Azerbaijan and the town of

[12] S/26389.
[13] S/26417.
[14] S/26421.

Horadiz. As a result of this new Armenian aggression, the city of Zangelan remained besieged by the Armenian forces and the alarming reports indicate that the inhabitants of Zagelan, in addition to tens of thousands of Azerbaijanis who had been encircled near the Iranian border, are desperately striving to evacuate the city in order to reach safer areas. It had become clear that, despite serious warnings of the Security Council and all the efforts of the CSCE Minsk Group, Armenia persisted to control close to 20% of the Azerbaijani territories it had occupied and was determined to continue its aggressive policy against Azerbaijan".[15]

The Spokesman of the Ministry of Foreign Affairs of **Turkey** in the **Statement** of 27 October 1993 in connection with the attacks on the city of Horadiz and Zangelan region of Azerbaijan emphasized that "not only the countries of the region, but the international community as well must, without further delay, react against the ongoing Armenian aggression, which is being carried out in blatant violation of the relevant Security Council resolutions and CSCE principles. In an attempt to halt Armenian aggression, as a first step, the logistical supply enabling the continuation of the Armenian attacks must be cut off and other necessary enforcement measures, including sanctions, should be adopted by the international community at once".[16]

The Deputy Permanent Representative of the Islamic Republic of **Iran** to the United Nations in his **letter** dated 28 October 1993 addressed to the President of the United Nations Security Council expressed its "extreme concern about the fresh Armenian military offensives and continued occupation of the territories of Azerbaijan. Local Armenian forces, supported by forces of the Republic of Armenia, are grabbing more lands as they push deeper inside the territory of Azerbaijan. The recent military operations have already resulted in significant casualties and so far, 30,000 citizens of Azerbaijan, fleeing their homes, have entered the territory of the Islamic Republic of Iran seeking safe refugee. The Islamic Republic of Iran reaffirms full support for the sovereignty and territorial integrity of Azerbaijan and underlines the importance of respect for the cease-fire and the immediate withdrawal of all Armenian forces from the entire occupied territory of the Republic of Azerbaijan".[17]

The European Union in its **Statement** dated 9 November 1993 concerning Nagorny Karabakh condemned the breach of cease-fire agreement reached on 24 October 1993 in the region of Nagorny Karabakh and called upon all forces to withdraw from recently occupied territories. The EU reiterated the importance it attached to the territorial integrity and sovereignty of the Republic of Azerbaijan, in accordance with the principles of the CSCE. The EU was particularly concerned at the fate of tens of thousands of civilians who had been fleeing the fighting and pledged to continue its humanitarian aid to the affected population.[18]

The **Chairman of the CSCE Minsk Conference** in his **letter** addressed on behalf of the nine Minsk Group countries (**Germany, United States of America, Belarus, France, Italy, Russian Federation, Sweden, Czech Republic and Turkey**) to the President of the United

[15] S/26650.
[16] S/26665.
[17] S/26662.
[18] S/26728

Nations Security Council condemned the seizure of the territories of Azerbaijan by force and defined that such actions constitute unacceptable violations of the CSCE principle of non-use of force and undercut their efforts to find a peaceful solution to this conflict. They also condemned the looting, burning and destruction of villages and towns, which cannot be justified under any standards of civilized behavior. The nine countries declared that no acquisition of territory by force can be recognized, and occupation of territory cannot be used to obtain international recognition or to impose a change of legal status and requested the unilateral withdrawal from the occupied territories of Azerbaijan.[19]

Complete occupation of the **Zangilan region** of Azerbaijan and the **city of Horadiz** and the expulsion of all Azerbaijani population considerably worsened the humanitarian situation in Azerbaijan and impelled the **United Nations Security Council** to respond again. The Council in its **resolution 884 (1993)** reaffirmed the sovereignty and territorial integrity of Azerbaijan and condemned the occupation of the Zangilan region and the city of Horadiz, and the attacks on civilians and bombardments of territory of the Republic of Azerbaijan. The Council demanded the unilateral withdrawal of occupying forces from the occupied Zangilan region and the city of Horadiz and from other recently occupied territories of Azerbaijan and requested the Secretary-General and relevant international agencies to provide urgent humanitarian assistance and to assist refugees and displaced persons to return to their homes in security and dignity.

"Noting with alarm that the humanitarian situation in Azerbaijan has continued to deteriorate seriously.... and that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million", the **United Nations General Assembly** in its **resolution 48/114** entitled "**Emergency international assistance to refugees and displaced persons in Azerbaijan**" "urgently appeale[d] to all States, organizations and programmes of the United Nations, specialized agencies and other intergovernmental and non-governmental organizations to provide adequate and sufficient financial, medical and material assistance to the Azerbaijani refugees and displaced persons".

The **Statement** of the President of the **United Nations Security Council** of 26 April 1995 basically reaffirmed the essence of the Council's previous resolutions on the matter.[20]

The OSCE Chairman-in-Office in his **Statement** at the OSCE Lisbon Summit of 1996 outlined the three principles which should form part of the settlement of the Nagorny Karabakh conflict, which were recommended by the Co-Chairmen of the Minsk Group. These principles were supported by all OSCE participating States, except for Armenia. They are:

- territorial integrity of the Republic of Armenia and the Republic of Azerbaijan;
- legal status of Nagorny Karabakh defined in an agreement based on self-determination which confers on Nagorny Karabakh the highest degree of self-rule within Azerbaijan;
- guaranteed security for Nagorny Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

[19] S/26718
[20] S/PRST/1995/21

On 29 October 2004, the **United Nations General Assembly** decided to include the item entitled **"The situation in the occupied territories of Azerbaijan"** to the agenda of its 59th session. The 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 this dangerous practice to an end.

On 7 September 2006, the **United Nations General Assembly** adopted without a vote **resolution 60/285** entitled **"The situation in the occupied territories of Azerbaijan"** in regard to the incidents of massive fires taken place in the occupied territories. The resolution stressed the necessity of the urgent conduct of the environmental operation, called 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 emphasized the readiness of the parties to cooperate and called upon the organizations and programs of the United Nations system, in particular the United Nations Environment Program to cooperate with the OSCE.

The European Union in the **Action Plan of the European Neighbourhood Policy** set ambitious objectives based on mutual commitments of the EU and its Member States and Azerbaijan to common values, including the respect of and support for the sovereignty, territorial integrity and inviolability of internationally recognized borders of each other and compliance to international and European norms and principles as well as support for effective implementation of political, economic and institutional reforms.

In the **NATO Riga (2006) and Bucharest (2008) Summits' Declarations** the NATO Member States underlined their "... support to the territorial integrity, independence, and sovereignty of Armenia, Azerbaijan, Georgia and Republic of Moldova...".

The Embassy of **Japan** in Azerbaijan in response to the so-called "presidential elections" held in the Nagorny Karabakh region in 2007 by the illegal separatist regime established in the occupied territories of Azerbaijan stressed that "it is important to settle the conflict in a peaceful way basing on a principle of the territorial integrity of the Republic of Azerbaijan within the internationally recognized borders".

The **European Union** in response to the so-called "presidential elections" held in the Nagorny Karabakh region of Azerbaijan in 2007 issued the **Statement** in which it "underlined that EU does not recognize the independence of Nagorno-Karabakh. Neither does it recognize the legitimacy of these 'presidential elections', which should not have any impact on the peaceful settlement of the Nagorno-Karabakh conflict. Furthermore, the EU recalls that refugees and internally-displaced persons should be given the right to a safe, secure and dignified return of their homes in order to fully participate in electoral acts".

Mr. Liu Jianchao, Foreign Ministry Spokesman of **China**, in response to the so-called "presidential elections" held in the Nagorno-Karabakh region of Azerbaijan in 2007 emphasized that "the Chinese Government respects the independence, sovereignty and territorial integrity of the Republic of Azerbaijan, supports the UN Security Council's resolutions on Nagorno-Karabakh Region".

H.E. Mr. Bernard Kouchner, Minister of Foreign and European Affairs of **France**, in his **letter** of April 2008 addressed to his Azerbaijani counterpart stressed that "France has always supported, supports and will support the territorial integrity of Azerbaijan... As a consequence of this support to the territorial integrity of Azerbaijan, France has never, in the past, considered Nagorno-Karabakh as an independent state. This position remains unchanged. Moreover, France does not recognize the independence of Nagorno-Karabakh, notwithstanding with the results of the solutions of other conflicts elsewhere".

On 14 March 2008, the **United Nations General Assembly** adopted at its 62nd session **resolution 62/243** entitled **"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 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. At the same time, the Assembly reaffirmed the inalienable right of the population expelled from the occupied territories to return to their homes. It has been 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.

At the meeting of the **Presidents of Armenia, Azerbaijan and the Russian Federation** in Moscow on 2 November 2008, they signed the **Declaration** stating that "the settlement of the conflict should be based on the norms and principles of international law and the decisions and documents adopted in this framework", which indisputably implies the United Nations General Assembly and Security Council resolutions on the conflict.

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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-fourth year

Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit herewith the report entitled "The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences" (see annex).

I should be grateful if you would have the present letter and the aforementioned report circulated as a document of the General Assembly, under agenda items 14 and 18 of its sixty-fourth session, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

09-54444 (E) 271009

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Annex to the letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences

I. Introduction

1. At the end of 1987, the Armenian Soviet Socialist Republic (hereinafter Armenian SSR) openly laid claim to the territory of the Nagorny Karabakh Autonomous Oblast (hereinafter NKAO) of the Soviet Socialist Republic of Azerbaijan (hereinafter Azerbaijan SSR). That marked the beginning of the expulsion of Azerbaijanis from the Armenian SSR and the NKAO, as well as initiated taking a number of illegal decisions aimed at unilateral secession of the NKAO from the Azerbaijan SSR.

2. The collapse of the USSR finally freed the hands of the Armenian nationalists. At the end of 1991 and the beginning of 1992 the conflict reached the military phase. Armenia began combat operations on the territory of Azerbaijan. Over the period of 1992-1993 a considerable area of Azerbaijan was occupied by Armenia, including Nagorny Karabakh and seven adjacent districts. The war unleashed against Azerbaijan led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without a trace. Most serious international crimes have been committed in the course of the war.

3. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in the relevant Security Council and General Assembly resolutions, as well as in the appropriate documents and decisions of the Organization for Security and Cooperation in Europe (OSCE) and other international organizations. These documents confirm, inter alia, that the occupation by force of the territories of the Republic of Azerbaijan constitutes a flagrant breach by the Republic of Armenia of the territorial integrity of the Republic of Azerbaijan.

4. By letters dated 22 and 26 December 2008, and 23 January and 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the Republic of Azerbaijan submitted the reports on "the legal consequences of the armed aggression of the Republic of Armenia against the Republic of Azerbaijan",[1] on "the fundamental norm of the territorial integrity of states and the right to self-determination in the light of Armenia's revisionist's claims",[2] on "the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory"[3] and the information entitled "Support by Member States of the United Nations and international

[1] A/63/662-S/2008/812, 24 December 2008.
[2] A/63/664-S/2008/823, 29 December 2008.
[3] A/63/692-S/2009/51, 27 January 2009.

organizations to Azerbaijan's position on the conflict in and around the Nagorny Karabakh region of Azerbaijan",[4] respectively.

5. In these documents the Republic of Azerbaijan formulated its view and approach as to the issues pertaining to the resolution of the conflict on the basis of the applicable norms and principles of international law.

6. The Permanent Representative of Armenia to the United Nations by his letter dated 23 March 2009 circulated the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy"[5] that purports to be a response to the aforementioned documents submitted by Azerbaijan.

7. In reality, this document represents yet another attempt of the Republic of Armenia to mislead the international community by means of blatant falsification of facts and thus to justify its annexationist policy.

8. It is curious that while listing in the aforementioned memorandum a number of declaratory documents on the conflict, the Armenian side omits referring to the relevant resolutions of the Security Council[6] and General Assembly,[7] which are the most authoritative rulings on the problem, as well as to other important documents adopted by international organizations, such as a statement by the OSCE Chairman-in-Office at the OSCE Lisbon Summit of 1996, supported by all OSCE participating states except Armenia, and resolution 1416 (2005) adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe.

9. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatory states "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favorable conditions for economic development and comprehensive cooperation in the region".

10. It should be noted in this regard that in the aforementioned memorandum circulated at the request of Armenia the document signed by the heads of three states is referred to as the "Declaration on Nagorny Karabakh conflict",[8] though, in reality, it is entitled "Joint Declaration of the Republic of Armenia, the Republic of Azerbaijan and the Russian Federation".[9] Further to this misinterpretation, whereas the signatory states declare in the Joint Declaration that "they will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles of international law and the decisions and documents adopted

[4] A/63/730-S/2009/103, 20 February 2009.
[5] A/63/781-S/2009/156, 24 March 2009.
[6] Resolutions 822 (1993) dated 30 April 1993; 853 (1993) dated 29 July 1993; 874 (1993) dated 14 October 1993 and 884 (1993) dated 12 November 1993.
[7] Resolutions 48/114 dated 20 December 1993, 60/285 dated 7 September 2006, and 62/243 dated 14 March 2008.
[8] A/63/781-S/2009/156, p. 5, para. 10.
[9] See the annex to the letter dated 10 November 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, S/2008/702.

in this framework …", the Armenian memorandum drops the reference to such important words as "the decisions and documents adopted in this framework" and thus grossly distorts the content of the document signed by the heads of three states.[10]

11. The Joint Declaration clarifies that "a political settlement … will create favorable conditions for economic development and comprehensive cooperation in the region". This indication makes speculations of the Armenian side as to the "blockade imposed on Armenia"[11] absolutely irrelevant. In fact, it confirms the validity of Azerbaijan's view, according to which any cooperation with Armenia is unacceptable unless this state clearly demonstrates its constructiveness on the settlement of the conflict resulting in putting an end to the occupation of the territories of Azerbaijan.

12. By disregarding the resolutions of the Security Council and General Assembly, with which the primary responsibility for maintenance of international peace and security lies, and by misinterpreting the essence of other relevant documents, including the Joint Declaration signed in Moscow by the Presidents of Armenia, Azerbaijan and the Russian Federation, Armenia clearly demonstrates who is actually pursuing the destructive and militaristic policy.

13. Armenia blames Azerbaijan for increasing its military budget and violation of arms limitation norms. At the same time, it omits to say that annual defence spending of Azerbaijan remains in line with overall budget increases, that Azerbaijan continues to spend a much smaller percentage of its gross domestic product (GDP) on the army than Armenia and that the size of the armed forces of Azerbaijan is proportional to its population, territory and length of borders and remains less than Armenia's.[12] Armenia also passes over in silence that the arms control mechanism is not effective in the occupied territories of Azerbaijan and that it deploys, beyond international control, a great number of armaments and ammunitions in these territories.

14. Furthermore, Armenia acknowledges in the said memorandum that it considers the Nagorny Karabakh problem as one that dates back to the distant past.[13] Against this background, it makes a series of historical assertions that distort the very essence of the problem and carry a danger of revisionist claims based upon historical arguments, the objective of which in fact is to substantiate the policy of territorial expansionism at the expense of not only Azerbaijan but other neighbouring states likewise. In other words, Armenia confirms that its territorial claims towards and military actions against Azerbaijan were aimed from the very beginning at seizing the territories by means of force and fundamental change of their demographic composition.

15. While accusing Azerbaijan of "anti-Armenian propaganda, instilling racial hatred and intolerance against the Armenians",[14] Armenia disregards the fact that, unlike itself, which has purged its territory of all non-Armenians and become a

[10] A/63/781-S/2009/156, p. 5, para. 10.
[11] Ibid., p. 14, para. 46.
[12] See, e.g., *Azerbaijan: Defence Sector Management and Reform*, International Crisis Group policy briefing No. 50, 29 October 2008, p. 5.
[13] A/63/781-S/2009/156, p. 7, para. 21 and further.
[14] Ibid., p. 2.

uniquely mono-ethnic state, Azerbaijan has preserved its ethnic diversity to the present day.

16. Instead of trying to contribute to restoring peace, security and stability in the region and putting an end to the protracted conflict, Armenia, which bears the primary responsibility for unleashing war against Azerbaijan, gives preference to escalation with unpredictable consequences. The stance of Armenia, as it is reflected in the aforementioned memorandum and other similar documents and statements, testifies that it is far from even thinking to engage in a sober and efficient search for peace.

17. The Republic of Azerbaijan considers the provocative attitude of Armenia and its bellicose rhetoric as an open challenge to the ongoing peace efforts and political settlement perspectives, unconcealed propaganda for war of aggression and a serious threat to regional peace and security.

18. The information below is illustrative as to the aggressive, annexationist and discriminatory policy of Armenia based on historical, ethnic and religious prejudices and aimed at creating a mono-ethnic culture both within its own country and in the occupied territories of Azerbaijan.

19. In this regard, Azerbaijan expects that Member States would convince Armenia to cease its destructive policies, to respect the generally accepted norms and principles of international law and to negotiate in good faith with a view to finding a durable solution to the conflict.

II. Historical background

20. 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 “bağ” (garden).[15] 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.

21. From ancient times up to the occupation by Russia 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 Russian rule.

22. The Gulustan peace treaty, signed between Russia and Iran 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 Russia-Iran war (1826-1828) — Iran confirmed its relinquishment of Northern Azerbaijan, including the Nakhchyvan and Iravan khanates.

[15] 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.

23. 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.[16] The First World War also contributed to the increase in the number of Armenians in the South Caucasus.[17] 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.

24. 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.

25. 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.

26. 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.

27. 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”.

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[16] See, e.g., I. Shopen, *Historical monument of the status of the Armenian oblast in the period of its annexation to the Russian Empire* (Saint-Petersburg: Publishing House of the Emperor’s Academy of Sciences, 1852), pp. 636, 639-641, 706; N. Shavrov, *A new challenge to the Russian issue in Transcaucasia: Upcoming sale of Mughan to foreigners* (Saint-Petersburg: Publishing House of the Editorial Board of the Ministry of Finance Periodicals, 1911), pp. 59-60.

[17] See, e.g., *History of the Armenian people* (Yerevan: Yerevan University Press, 1980), p. 268; *Compilation of statistical data of the Caucasus* (Tiflis, 1869), volume I, chapter I, part III; *Caucasian calendar for 1917* (Tiflis: Press Office of the Governor-General E.I.B of the Caucasus, 1916), pp. 183, 219-221; *Acts of the Archeological Commission of the Caucasus* (Tiflis, 1870), volume IV, doc. 37, p. 37.

28. 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; 16 states established their missions in Baku.

29. 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.

30. 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 centre 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.[18] This fact completely disproves the allegations of the Armenian side that Nagorny Karabakh possessed at that time the status of "an independent legal entity"[19] or "an independent political unit".[20]

31. The population welcomed the "provisional agreement" warmly and hopefully. Celebrations were held in Shusha in honour of the agreement that brought peace and order to Karabakh. The delegation of Karabakh Armenians[21] 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

[18] Provisional agreement between the Government of Azerbaijan and the Armenians of Nagorny Karabakh, 26 August 1919 года. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials* (Baku: Azerneshr, 1989), pp. 23-25. See also Tadeusz Swietochowski, *Russia and Azerbaijan: A Borderland in Transition* (New York: Columbia University Press, 1995), pp. 75-76.

[19] See, e.g., A/63/781-S/2009/156, p. 7, para. 23.

[20] See, e.g., *Legal aspects for the right to self-determination in the case of Nagorny Karabakh*, Annex to the note verbale dated 21 March 2005 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, E/CN.4/2005/G/23, 22 March 2005, p. 2.

[21] Note: Russia's plans to occupy Turkey also sealed the fate of the Caucasian Albanians adhering to Christianity. Caucasian Albanians are one of the ancestors of the Azerbaijani people. They had their own state, which existed from the 4th century BC to the early 8th century on the territory from the Araz River in the south to Darband in the north, had declared Christianity the State's official religion in the 4th century. After the conquest of Arabs in the early 8th century, most of the Albanians adopted Islam, while a small part adhered to Christianity. However, beginning from the early 19th century, after the signing of the Gulustan and Turkmanchay treaties, the independent Albanian Catholicosate was liquidated; its dioceses were annexed to the Armenian Echmiadzin Catholicosate and the Caucasian Albanians adhering to Christianity — with the exception of those living in the Gabala and Oghuz districts of Azerbaijan — were assimilated by Armenians. The present-day Armenian population of the Nagorny Karabakh region of Azerbaijan, with the exception of those resettled there later, mostly consists of the Armenianized Albanians.

Azerbaijan, for the first time in the South Caucasus, through guaranteeing rights of the Armenians of Nagorny Karabakh, set in practice an example of a peaceful and civil solution to the problem of minority groups.

32. 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".[22] He adds further: "[b]oth people were ready to continue peacefully their course of life and would do so, if not for 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".[23]

33. All aforementioned facts testify against the allegations of the Armenian side that "[f]ollowing 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".[24]

34. 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.

35. While the Bolsheviks were approaching the Azerbaijani borders and the major part of Azerbaijani forces was concentrated in the country's northern borders, on the night of Nowruz 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.

36. Armenia's territorial claims towards Azerbaijan and efforts to annex Nagorny Karabakh were an evident reality for most authors in the former Soviet Union, including Armenian ones. Thus, according to the 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 ...".[25]

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

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[22] State Archive of the Republic of Azerbaijan, f. 894, inv. 10, f. 103, p. 18.
[23] Ibid., p. 11.
[24] A/63/781-S/2009/156, p. 7, paras. 21-22.
[25] Great Soviet Encyclopedia (Moscow: "Soviet Encyclopedia" JSC, 1926), vol. 3, p. 437.

38. 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.

39. 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 de jure 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."[26]

40. 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,[27] including the requirement to be a fully self-governing state. It is obvious that the state, a 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 Nations.

41. 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 the Paris Peace Conference derived from the government that had been in power at Baku until April 1920. Thus, 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 authority over the whole territory of the country.

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[26] League of Nations. *Memorandum by the Secretary-General on the Application for the Admission of the Republic of Azerbaijan to the League of Nations*. Assembly Document 20/48/108.

[27] 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.

42. 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".[28] 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.

43. 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"[29] and "refused to recognize Azerbaijan because of its claims over the Armenian-populated territories in Eastern Transcaucasia, namely Nagorno-Karabakh".[30]

44. 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.[31]

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

45. 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.

46. 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

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

[29] A/63/781-S/2009/156, p. 8, para. 26.

[30] 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, E/1990/5/Add.36, 9 December 1998, p. 3, paras. 3 and 17 (a).

[31] 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 *Admission of new Members to the League of Nations. Armenia*. Assembly Document 209, pp. 2-3; Assembly Document 251.

on 29 May 1918[32] — formed a minimum of 8,000,[33] 9,000[34] and a maximum of 10,000 sq. km[35] in the western part of present-day Armenia. During the existence of this Armenian state from 1918-1920, it failed to expand its territories at the expense of neighbours.

47. 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.

48. 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.

49. 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.

50. 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.[36] The next step towards the artificial change of the demographic composition of the population in Armenia was a decree by J. Stalin in November 1945 on the immigration of foreign Armenians, according to which Armenia received more than 50,000 immigrants in 1946, 35,400 in 1947, and about 10,000 in 1948.[37]

51. 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

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

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

[34] 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.

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

[36] Ibid., p. 336.

[37] Ibid., p. 366.

immigrated to Armenia[38] and between 1962 and 1973 the number of immigrants consisted of 26,100 people.[39]

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

IV. The Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR

53. 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".[40] In this regard, the following observations need to be made.

54. 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 telegram to G. Chicherin, People's Foreign Affairs Commissioner of Russian Soviet Federative Socialist Republic, stating that Soviet rule is declared in Karabakh and Zangazur and they "consider themselves to be part of the Soviet Republic of Azerbaijan".[41]

55. 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, Boyuk-Vedi and Davali and the eastern part of Novo Bayazet".[42]

56. 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,[43] i.e. 7 days following the de facto recognition of Azerbaijan and Georgia by the League of Nations, i.e. on 12 January,[44] was shortly replaced by "Soviet" Armenia in the winter of 1920-1921.

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[38] *Documents of Foreign Policy of the USSR* (Moscow: State Publishing House of Political Literature, 1962), volume 6, note 33, p. 611.
[39] *History of the Armenian people*, p. 418.
[40] A/63/781-S/2009/156, p. 8, paras. 27-29.
[41] *State Archive of Political Parties and Social Movements of the Republic of Azerbaijan*, f. 609, in. 1, f. 21, p. 100.
[42] *Central State Archive of Red Army*, f. 195, in. 4, f. 385, p. 53.
[43] *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 and 901.
[44] Ibid., p. 904.

57. 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 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".[45] As is seen, contrary 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".

58. 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 an 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".[46] 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.

59. Moreover, the Armenian side distorts the text of a decree by Soviet Armenia dated 21 June 1921, presenting it as "a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia".[47] 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 the Soviet Republics of Armenia and Azerbaijan, the Revolutionary Committee of Soviet Armenia declares that from this day on Nagorny Karabakh is an inseparable part of the Soviet Republic of Armenia".[48] In other words, the decree confirms that until June 1921 Nagorny Karabakh could not have been a part of Armenia.

60. 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".[49]

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[45] *Communist* (Baku), 2 December 1920, p. 1.

[46] *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, p. 75; *Great October Socialist Revolution and victory of the Soviet rule in Armenia* (Collection of documents) (Yerevan: Aypetrat, 1957), doc. 295, pp. 441-442.

[47] A/63/781-S/2009/156, p. 8, para. 28.

[48] *Khorurdain Ayastan*, 19 June 1921, p. 1.

[49] *State Archive of the Republic of Azerbaijan*, f. 379, inv. 1, f. 7480, p. 10.

61. 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 1 December 1920.

62. Furthermore, another Armenian official source (information entitled "Legal aspects for the right to self-determination in the case of Nagorny Karabakh" circulated at 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 "[a]ccording 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'".[50]

63. 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 recognized 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/63/781-S/2009/156).

64. Furthermore, in the view of the Armenian side, "[f]ollowing 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",[51] "[f]rom 1918 to 1920 … possessed all necessary attributes of statehood, including army and legitimate authorities" and was "an independent legal entity"[52] or "independent political unit",[53] 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".[54] At the same time, according to the Armenian side, following the declaration allegedly made by Azerbaijan on 30 November 1920,

[50] E/CN.4/2005/G/23, pp. 3-4.
[51] A/63/781-S/2009/156, p. 7, para. 21.
[52] Ibid., p. 7, para. 23.
[53] E/CN.4/2005/G/23, p. 2.
[54] A/63/781-S/2009/156, p. 7, para. 24.

"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".[55] 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.

65. It is natural 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 "[n]eglecting the reality, on 5 July the Caucasian Bureau of the Communist Party, acting 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".[56] 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)".[57] The question arises as to why 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.

66. 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.

67. 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:

(a) To retain Karabakh as part of Azerbaijan;

(b) To hold a referendum with the participation of all the Armenian and Muslim population in the whole of Karabakh;

(c) To include the mountainous part of Karabakh in Armenia;

(d) To hold a referendum only in Nagorny Karabakh, i.e. among the Armenians.

[55] E/CN.4/2005/G/23, p. 3.
[56] A/63/781-S/2009/156, p. 8, para. 30.
[57] E/CN.4/2005/G/23, p. 4.

68. 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".[58]

69. 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 Nagorny Karabakh within the Azerbaijan SSR, not to "transfer" or "subject" it to Azerbaijani rule, as the Armenian side claims:[59]

> "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".[60]

70. In this regard, 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".[61] 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".[62] On the contrary, as per the document circulated at 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

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[58] *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.

[59] A/63/781-S/2009/156, pp. 8-9, paras. 30 and 34.

[60] *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.

[61] A/63/781-S/2009/156, p. 8, para. 30.

[62] E/1990/5/Add.36, p. 3, para. 2.

Nagorny Karabakh only' was the last legal document on the status of Nagorny Karabakh to be legally adopted without procedural violations".[63]

71. 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 the fact that Nagorny Karabakh was retained within Azerbaijan, it was given the status of autonomy, though the more than half-a-million strong Azerbaijani community compactly residing in Armenia at that time was refused the same privilege.

72. On 7 July 1923, the Central Executive Committee of the Azerbaijan SSR issued a Decree "On the Formation of the Nagorny Karabakh Autonomous Oblast".[64] 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.

73. 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 percent, around 48,000 Azerbaijanis — 25.3 per cent, and around 2,000 representatives of other nationalities — 1.2 per cent.[65]

74. The allegations of discrimination against the Armenian population of Nagorny Karabakh[66] do not stand up to scrutiny. In reality, the NKAO possessed all essential elements of self-government.

75. The status of Nagorny Karabakh as an autonomous oblast within the Azerbaijan SSR was stipulated in the USSR Constitutions of 1936 and 1977.[67] 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.[68] 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.

76. 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

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[63] E/CN.4/2005/G/23, p. 4.

[64] 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.

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

[66] A/63/781-S/2009/156, p. 9, paras. 32-33.

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

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

radio broadcasts and the publication of newspapers and magazines in the Armenian language were all guaranteed in the NKAO.

77. 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.

78. 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 of "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.[69]

79. 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".

80. 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 Robert Kocharian of Armenia.[70] The discriminatory conduct of Armenia towards Azerbaijanis, especially the aforementioned statement 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'".[71]

V. The rising of the contemporary phase of the conflict

81. 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

[69] See, e.g., A/57/18, paras. 277, 278, 280, 282 and 283; CRC/C/15/Add.119, paras. 24, 32, 46 and 48; CCPR/C/79/Add.100, paras. 14, 15, 16 and 17; and E/C.12/1/Add.39, para. 10.

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

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

aspects pertaining to the real situation on the ground. Another 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 to the United Nations as document A/63/781-S/2009/156.

82. Thus, the present-day stage of the Armenian-Azerbaijani conflict began at the end of 1987[72] 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.

83. 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.[73]

84. 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.

85. On 26-28 February 1988, 26 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 neighbourhoods. 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 means 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 ...".[74]

86. 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

[72] According to Thomas de Waal, as early as in February 1986 one activist of the separatist movement, Muradian, travelled 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 Nagorny 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.

[73] A/63/781-S/2009/156, pp. 9-10, para. 36.

[74] *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/comment/obituaries/article2970324.ece.

Armenians of the NKAO with the view of securing the unilateral secession of Nagorny Karabakh from Azerbaijan.[75]

87. 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.[76]

88. 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.

89. 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 a document of the General Assembly and the Security Council.[77]

90. 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.

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

VI. Escalation of the conflict, its course and consequences

92. 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 external military assistance combat operations in Nagorny Karabakh.

93. 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 thousands of Azerbaijanis; the

[75] For more information, see A/63/664-S/2008/823, p. 45, para. 152.
[76] A/63/781-S/2009/156, p. 11, para. 43.
[77] A/63/664-S/2008/823.

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 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.

94. 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.

95. 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).

96. 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 (ASALA), 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.

97. 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.[78]

[78] 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, 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, A/C.6/51/5, 8 November 1996.

98. Furthermore, there are unquestionable facts testifying about the active use by Armenia of mercenaries to attack Azerbaijan.[79]

99. 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.

100. 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 ceasefire line, Armenians also attack civilians residing in the adjacent territories.

101. The aggression against the Republic of Azerbaijan has severely damaged the socio-economic sphere of the country. In the occupied territories 6 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 manufacturing, agricultural and other kinds of factories and plants have been pillaged. The hundred kilometres-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 per cent of the summer pastures of Azerbaijan remains in the occupied zone.

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

103. The war against Azerbaijan has also had catastrophic consequences for its cultural heritage both in the occupied territories and in Armenia.[80]

104. Contrary to the numerous statements of the official Yerevan that Armenia is not directly involved in 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/63/781-S/2009/156 is 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

[79] 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", A/49/362, pp. 24-29, paras. 69-72.

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

against a sovereign state.[81] At the same time, "NKR" in its current manifestation is an ethnically constructed illegal entity and its organs must also be so tainted. The area of Nagorny Karabakh and the surrounding occupied territories remain under the effective control of Armenia.

105. 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 the rule prohibiting the use of force.

VII. The current situation in the occupied territories of Azerbaijan

106. 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 European Union, 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.

107. 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.

108. Taking advantage of the favourable 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.

109. Sources, including Armenian ones, report on tens of thousands of 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 programme" has been adopted with the declared purpose to increase the number of the population in the Nagorny Karabakh region to 300,000 by the year 2010.

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[81] 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, A/62/491-S/2007/615, 23 October 2007, pp. 5-8; A/63/662-S/2008/812, pp. 7-8, paras. 16-19; 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 (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 Chargé d'affaires of the Permanent Mission of Azerbaijan to the United Nations Secretary-General (with annexed photocopies), S/1994/147, 14 February 1994.

110. 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 international control, poses serious threats to regional peace and security.

111. Highly alarmed by the far-reaching implications of this activity, Azerbaijan has requested to address the situation in its occupied territories within the 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.

112. On 29 October 2004, the General Assembly decided to include the item entitled "The situation in the occupied territories of Azerbaijan" on the agenda of its fifty-ninth session. On 11 November 2004, a report on the transfer of population into the occupied territories of Azerbaijan was submitted to the General Assembly.[82] The General 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.

113. A visit to the occupied territories of the OSCE fact-finding mission from 30 January-5 February 2005 became a logical consequence of Azerbaijan's initiative to raise the issue on the situation in its occupied territories before the 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 the transfer of settlers into 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 basis for further consideration and resolution of the problem.[83]

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

115. On 7 September 2006, the General Assembly adopted resolution 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.[84]

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[82] *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, A/59/568, 11 November 2004.

[83] 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*, A/59/747-S/2005/187, 21 March 2005.

[84] 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, A/60/963.

116. The resolution stresses the necessity of the urgent conduct of an environmental operation, and 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 programmes of the United Nations system, in particular the United Nations Environment Programme to cooperate with OSCE.

117. The OSCE fact-finding mission, carried out from 2 to 13 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".[85]

118. On 14 March 2008, the General Assembly adopted at its sixty-second session resolution 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 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.

119. By paragraph 8 of resolution 62/243, the General Assembly requested the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the resolution. This report was issued on 30 March 2009 and reproduced the replies received from Governments of States Members of the United Nations.[86]

VIII. Mediation efforts

120. Since February 1992 the process of mediation on the settlement of the Armenia-Azerbaijan conflict within the Conference on Security and Cooperation in Europe (hereinafter CSCE)[87] has continued. At the Additional Meeting of the CSCE Council of Ministers, held in Helsinki on 24 March 1992, a decision to convene as soon as possible a conference on Nagorny Karabakh in Minsk under the auspices of CSCE to provide an ongoing forum for negotiations towards a peaceful settlement

[85] 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*, A/61/696.

[86] A/63/804 and Corr.1 and Add.1.

[87] Since 1 January 1995 the CSCE has been transformed into the Organization for Security and Cooperation in Europe.

of the crisis on the basis of the principles, commitments and provisions of CSCE was adopted.

121. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) and General Assembly resolution 62/243, as well as in the appropriate documents and decisions of OSCE and other international organizations. The above-mentioned Security Council resolutions were adopted in 1993 in response to the occupation of the territories of Azerbaijan and reaffirmed respect for the sovereignty, territorial integrity and inviolability of the international borders of the Republic of Azerbaijan and all other states in the region. The resolutions demanded immediate cessation of all hostile acts, and immediate, complete and unconditional withdrawal of occupying forces from all occupied regions of the Republic of Azerbaijan, and called for the restoration of economic, transport and energy links in the region, ensuring the return of refugees and displaced persons to their homes. The Security Council approved also the efforts of the OSCE Minsk Group on the achievement of the peaceful solution to the conflict and called for the search of ways of conflict settlement within the OSCE Minsk process. None of these resolutions was implemented by Armenia.

122. On 12 May 1994, the ceasefire was established. According to the decision taken at the CSCE Budapest Summit (5-6 December 1994), Heads of States and Governments of the CSCE participating states set up the office of the Co-Chairmanship of the Minsk Conference for the coordination of all mediation efforts within the CSCE framework. The Budapest Summit tasked the CSCE Chairman-in-Office to conduct negotiations aimed at the conclusion of the political agreement on the cessation of the armed conflict, implementation of which would remove the consequences of the conflict and would allow convening the Minsk Conference. The Summit also adopted a decision on the deployment of the CSCE multinational peacekeeping forces after the achievement of the agreement between the Parties on the cessation of the armed conflict, and the establishment of the High-Level Planning Group located in Vienna and aimed at the preparation of the peacekeeping operation. It superseded an earlier Initial Operations Planning Group, which was established in May 1993.

123. The OSCE Chairman-in-Office issued on 23 March 1995 the mandate for the Co-Chairmen of the Minsk Process.[88]

124. At the OSCE Lisbon Summit of the Heads of States and Governments of the CSCE participating states, held on 2-3 December 1996, the Co-Chairmen of the OSCE Minsk Group and the OSCE Chairman-in-Office recommended the principles, which should have been the basis for the settlement of the Nagorny Karabakh conflict. Armenia was the only 1 out of 54 OSCE participating states not to support them.

125. Then the OSCE Chairman-in-Office made a statement with the inclusion of those principles. They are as follows:

– territorial integrity of the Republic of Armenia and the Azerbaijan Republic;

[88] OSCE Doc. 525/95.

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

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

126. After the Lisbon Summit the office of the triple Co-Chairmanship, including Russia, France and the United States of America, was established in 1997 (since 1992 the Chairmen of the Minsk Conference were Italy in 1992-1993, Sweden in 1994, Russia and Finland in 1995-1996). Since April 1997 the negotiations were suspended and substituted by the visits of the Co-Chairmen to the region. On 1 June 1997, the Co-Chairmen presented the draft of a comprehensive agreement on the settlement of the Nagorny Karabakh conflict, which consisted of the Agreement on the cessation of the armed conflict and the Agreement on the status of Nagorny Karabakh. Despite the readiness of Azerbaijan to start constructive consultations on the essence of the mentioned documents, Armenia categorically rejected the proposed approach.

127. On 19-23 September 1997, the Co-Chairmen, during their visit to the region, presented new proposals based on the "stage-by-stage" approach to the settlement, according to which it was planned at the first stage to liberate six occupied districts, to deploy the OSCE peacekeeping operation, to return the displaced persons to the liberated territories and to restore main communications in the conflict zone. At the second stage the issues of Lachyn and Shusha were to be solved and the main principles of the status of Nagorny Karabakh were to be adopted. As a result, the OSCE Minsk Conference ought to be convened. On 10 October 1997, the Presidents of Azerbaijan and Armenia in their joint Statement in Strasbourg pointed out that "the recent proposals of the Co-Chairmen were a hopeful basis for the resumption of negotiations within the framework of the Minsk Group".

128. But after the resignation in February 1998 of President Levon Ter-Petrossian of the Republic of Armenia, and with coming to power in March 1998 of Robert Kocharian, the next visit of the Co-Chairmen to the region took place, when Armenia officially withdrew the consent to the proposals on the "stage-by-stage" settlement of the conflict.

129. On 9 November 1998, the Co-Chairmen put forward the proposals based on the concept of a "common state". According to this concept, Nagorny Karabakh would have the status of a state and a territorial unit in the form of a republic, which, together with Azerbaijan, would constitute the common state within the internationally recognized borders of Azerbaijan. Azerbaijan rejected those proposals insofar as they disregarded its sovereignty and contradicted the Lisbon principles. Since then no new proposals have been made and the Minsk process practically has reached a deadlock.

130. In order to give an additional impetus to the negotiations, since April 1999 direct talks between the Presidents of Azerbaijan and Armenia on the achievement of conflict settlement have taken place.

131. During the visit to the region in March 2002 the OSCE Minsk Group Co-Chairmen proposed to conduct negotiations at the level of special representatives of the Presidents of Azerbaijan and Armenia. The proposal was accepted by the heads of both states. On March 13-15 and July 29-30 2002, the two

meetings of the special representatives of the Presidents of Armenia and Azerbaijan took place near Prague.

132. Since 2004 the direct talks between the Foreign Ministers of Armenia and Azerbaijan have started within the so-called “Prague Process”.

133. Nevertheless, despite positive signs in the drive to find a settlement to the conflict, the parties could not achieve a substantial breakthrough. The OSCE Minsk Group Co-Chairmen reported on 22 June 2006 to the OSCE Permanent Council that during the past seven months they intensified mediation efforts and worked hard to achieve the agreement of both sides on basic principles for a settlement. For that purpose they visited Baku and Yerevan three times together and several more times separately, organized two meetings of the Ministers for Foreign Affairs of Armenia and Azerbaijan and two summits between the Presidents of both states — first in Rambouillet in February and then in Bucharest in early June. For the first time since 1997, when the current format of the Co-Chairmanship of the Minsk Group was established, a joint Mission of Representatives of the Co-Chair countries at the Deputy Foreign Minister level travelled to the region in May in order to make clear to the Presidents of both states that 2006 was the necessary window of opportunity for reaching an agreement on Nagorny Karabakh.

134. According to the Co-Chairmen, a set of core principles had been proposed to Presidents Aliyev and Kocharian. They clarified that their approach was not aimed at solving all aspects of the conflict in one phase. Instead, in the words of the Co-Chairmen, their principles sought to achieve a major degree of progress but deferred some very difficult issues to the future and envisioned further negotiations.

135. Nevertheless, the Co-Chairmen stated that since the two Presidents failed to agree they had reached the limits of their creativity in the identification, formulation and finalization of these principles. They made clear that if the two sides were unable to agree on those principles, which had been put forward, it was now contingent upon the parties themselves to work together to reach an alternative agreement that both found acceptable. The Co-Chairmen pointed out that they saw no point in continuing the intensive shuttle diplomacy and in initiating further presidential meetings.

136. In response to the statement of the Minsk Group Co-Chairmen and comments made on that by the Armenian side, which has traditionally attempted to distort the reality of the settlement process, the Ministry of Foreign Affairs of the Republic of Azerbaijan clarified, inter alia, that definition of the legal status of the Nagorny Karabakh region of the Republic of Azerbaijan is impossible under the conditions of continuing occupation and ethnic cleansing and, accordingly, envisages liberation of the occupied territories of Azerbaijan, demilitarization of the whole conflict zone, provision of appropriate international security guarantees therein and return of the forcibly displaced population of Azerbaijan to their homes.

137. Azerbaijan once again reaffirmed its readiness to grant Nagorny Karabakh the highest status of self-rule within the internationally recognized territorial integrity of the Republic of Azerbaijan and based on its Constitution.

138. The Ministry also pointed out that with the aim of establishing inter-communal peace and harmony, as well as creating objective conditions for defining the region’s status, and also taking into consideration the perspective of the region’s further development, Azerbaijan would be prepared to review, in conformity with the

precedents existing in international practice, implementation of a complex of economic and other incentives for the population of Nagorny Karabakh after the restoration of its ethnic composition as of the pre-conflict period.

139. Along with that, Azerbaijan's adherence to continuing talks to achieve lasting and fair peace in the region has been repeatedly reaffirmed.

140. On 13 July 2007, the Co-Chairmen of the OSCE Minsk Group issued a statement in which they provided assessment of the emerging situation in the settlement process for the conflict in light of the meeting between the President of the Republic of Azerbaijan, Ilham Aliyev, and the President of the Republic of Armenia, Robert Kocharian, in St. Petersburg on 9 June 2007. The Co-Chairmen stated that during the meeting the Presidents concentrated their discussion on a limited number of obstacles that stood in the way of agreement on a set of "basic principles" for the peaceful settlement of the conflict. The Co-Chairmen further stated that the Presidents could not overcome these remaining differences. The Co-Chairmen in their statement took note of the initiative to organize a joint visit to the Nagorny Karabakh region, Yerevan and Baku of a group of intellectuals from Azerbaijan and Armenia. The Co-Chairmen welcomed and highly appreciated that event, which they considered as a first concrete confidence-building measure.

141. In its statement following the adoption by the General Assembly on 14 March 2008 of resolution 62/243, the Ministry of Foreign Affairs of the Republic of Azerbaijan made it clear that the draft paper on "basic principles" for the peaceful settlement of the conflict, prepared by the Co-Chairmen of the OSCE Minsk Group, contained more disagreements and unsettled issues rather than clarity.

142. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatories "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favourable conditions for economic development and comprehensive cooperation in the region". Thus, the heads of three states underlined that the principles and norms of international law and the decisions and documents adopted in this framework, which undoubtedly includes in the first place the Security Council resolutions of 1993 as well as the General Assembly resolutions of 2006 and 2008, are the basis of a political settlement of the conflict between Armenia and Azerbaijan.

143. The conflict settlement issue is being routinely addressed at all OSCE Summits and Ministerial Council meetings, which stress generally the importance of the peace dialogue and efforts to achieve an early settlement of the conflict based on the norms and principles of international law.

144. The issue of the consequences of the conflict also remains on the agenda of the Council of Europe. Thus, consideration of the matter in question during the January 2005 session of the Council of Europe Parliamentary Assembly resulted in adoption of resolution 1416 entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference". The Parliamentary Assembly reaffirmed the occupation of a considerable part of the territory of Azerbaijan and expressed 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 made it clear 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 reaffirmed the right of displaced persons from the area of conflict to return to their homes safely and with dignity. The Assembly also recalled the relevant resolutions of the Security Council and urged the parties concerned to comply with them, in particular by withdrawing military forces from any occupied territories.

IX. Position of Azerbaijan towards the conflict settlement

145. Although the mediation efforts conducted for already quite a long period of time within the framework of OSCE have not always been consistent and have yet to yield results, Azerbaijan continues to be committed to solving the conflict by political means and in a constructive manner.

146. The strategy of the Government of Azerbaijan is aimed at the liberation of all occupied territories, the return of forcibly displaced population to their homes, and the establishment of durable peace and stability in the Nagorny Karabakh region of Azerbaijan, as well as in the entire South Caucasus.

147. The final stage of the settlement process provides for elaboration and definition of the model and legal framework of the status of the Nagorny Karabakh region within Azerbaijan. Having said that, Azerbaijan believes that the process of definition of any status shall take place in normal peaceful conditions with direct, full and equal participation of the entire population of the region, namely, the Armenian and Azerbaijani communities, and in their constructive interaction with the Government of Azerbaijan exclusively in the framework of a lawful and democratic process.

148. A number of important steps have to be taken to reach a stage where the parties concerned can start consideration of the self-rule status for the Nagorny Karabakh region within Azerbaijan.

149. Firstly, the factor of military occupation must be removed from the conflict settlement context. Delay of return of the territories, which is not justified by any substantial reasons, can complicate the already difficult settlement process.

150. Secondly, the demographic situation which existed in the region before the outbreak of the conflict must be restored. It is clear that the status may only be defined through direct participation of both Azerbaijani and Armenian communities, living side-by-side in Nagorny Karabakh.

151. Thirdly, the regime of interaction between the central authorities of Azerbaijan and local authorities of the Armenian community must be established, until the new legal status of self-rule for the Nagorny Karabakh region is elaborated.

152. Another important element is a rehabilitation and economic development of the region. This step is essential for the process of normalization of life and restoration of peaceful coexistence and cooperation between the two communities. It should include restoration and development of economic links between the two communities, as well as between the central authorities of Azerbaijan and the Nagorny Karabakh region, and restoration and opening of communications for

mutual use by both sides in both directions. This will in particular provide a connection for the Armenian population of the Nagorny Karabakh region with Armenia, and for Azerbaijan with its Autonomous Republic of Nakhchyvan through the Lachyn road.

153. The fifth element entails cooperation between the two communities in the humanitarian sphere, and implementation of the special programmes on education and tolerance.

154. As for the implementation of the peace agreement to be signed between Armenia and Azerbaijan, it will be guaranteed by the commitments undertaken by the two sides under the Agreement, and by the relevant international guarantees.

155. It is obvious at the same time that the success of the peace process depends on a constructive approach of both sides, as well as on the active contribution of the international community, especially of the OSCE Minsk Group and its Co-Chairmen.

156. However, it is very difficult to hope for a substantial breakthrough judging from a position, on which Armenia persists. Indeed, it is exactly for the purpose of unilateral secession that Armenia wants to retain control over some occupied districts surrounding Nagorny Karabakh, prevents the displaced Azerbaijani population from returning to their homes and thus excludes equal consideration of opinions of both communities. It is obvious that this approach of Armenia cannot serve as a sound basis for the conflict resolution.

157. While being committed to solving the conflict peacefully and in a constructive manner, Azerbaijan, however, will never accept a solution compromising its territorial integrity, ignoring the rights of its people and legalizing the current status quo. To hold otherwise would be tantamount to legitimizing the consequences of ethnic cleansing and other serious breaches of the rule of law and human rights.

158. The conflict can only be solved on the basis of respect for the territorial integrity and inviolability of the internationally recognized borders of Azerbaijan, and peaceful coexistence of Armenian and Azerbaijani communities in the Nagorny Karabakh region, fully and equally enjoying the benefits of democracy and prosperity.

159. The continuation of the “no peace-no war” situation without concrete prospects for the soonest resolution of the conflict is the main source of instability in the whole South Caucasus.

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

The situation in the occupied territories of Azerbaijan

Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to address the issue of utmost importance for my country. The Government of the Republic of Azerbaijan has repeatedly stated that, despite ongoing political efforts towards the earliest resolution of the conflict in and around the Nagorno-Karabakh region of Azerbaijan on the basis of the generally accepted norms and principles of international law, the policy and practice of the Republic of Armenia clearly testify to its intention to secure the annexation of Azerbaijani territories that it has captured through military force and in which it has carried out ethnic cleansing. Thus, consistent measures aimed at further consolidation of the current status quo of the occupation are being undertaken in the occupied territories of Azerbaijan, including settlement activities, destruction and appropriation of historical and cultural heritage and systematic interference with the property rights of Azerbaijani displaced persons.

From 30 January to 5 February 2005, the Organization for Security and Cooperation in Europe (OSCE) fact-finding mission visited the occupied territories of Azerbaijan. The main outcome of the mission was its report, which was based on comprehensive analysis of the situation on the ground. The most important conclusion in the report was that, during its visit, the mission found evidence of the presence of Armenian settlers in the occupied territories of Azerbaijan (see A/59/747-S/2005/187, annex II).

Based on the findings in the mission's report, the OSCE Minsk Group Co-chairs, in their letter dated 2 March 2005 addressed to the OSCE Permanent Council, discouraged any further settlement of the occupied territories of Azerbaijan. In view of the extensive preparations that would be required before the return of refugees and internally displaced persons to their places of origin in these

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territories, the Co-chairs recommended that "the relevant international agencies re-evaluate the needs and funding assessments in the region, inter alia, for the purpose of resettlement" of those moved into the occupied territories of Azerbaijan. They also urged the parties "to accelerate negotiations toward a political settlement in order, inter alia, to address the problem of the settlers and to avoid changes in the demographic structure of the region, which would make more difficult any future efforts to achieve a negotiated settlement". The Co-chairs emphasized in this regard that "the longer [settlers] remain in the occupied territories, the deeper their roots and attachments to their present places of residence will become" and that "prolonged continuation of this situation could lead to a fait accompli that would seriously complicate the peace process" (see A/59/747-S/2005/187, annex I).

More than five years have passed since the fact-finding mission visited the occupied territories of Azerbaijan and the OSCE Minsk Group Co-chairs submitted their recommendations. However, against the background of the unconstructive position of Armenia in the ongoing peace process, nothing has been done to dismantle settlements and discourage further transfer of settlers into the occupied territories. Moreover, numerous reports, including Armenian ones in particular (see annex), show that the Republic of Armenia, directly by its own means or indirectly through the subordinate separatist regime and with the assistance of Armenian Diaspora, continued the illegal activities in the occupied territories of Azerbaijan. Thus, during this period Armenian settlers have been encouraged to move into these territories, including the districts adjacent to the occupied Nagorno-Karabakh region of Azerbaijan, in particular the districts of Lachin, Kalbajar and Zangelan. In addition, this period was marked by consistent measures aimed at altering the historical and cultural features of the occupied areas depopulated of their Azerbaijani inhabitants. In this regard, alleged "reconstruction" and "development" projects for Shusha, one of the most beautiful cultural and historical centres of Azerbaijan, and "archaeological excavations" in Aghdam, both carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots and substantiating the policy of territorial expansionism, give rise to serious concern and justified indignation.

It must be pointed out in this regard that, as the occupying Power, Armenia is subject to a series of duties under international humanitarian law, as stipulated in the 1907 Hague Regulations (being part of customary international law), together with the Fourth Geneva Convention and its Protocol I, to both of which Armenia is a party. Thus, article 49 of the Fourth Geneva Convention 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.

Armenia is also a party to 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its 1954 and 1999 protocols, which, inter alia, prohibit and prevent in relation to the occupied territory any archaeological excavation or any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

In addition to the traditional rules of humanitarian law, in regard to the occupied territories, Armenia is also bound by the provisions of those international human rights treaties to which it is a party, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights.

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. It is important to note in this regard that, as the occupying Power, Armenia is responsible not only for the actions of its own armed forces and other organs and agents of its Government, but also for the actions of the subordinate separatist regime illegally created by it in the occupied territories.

Taking into consideration the aforementioned and with the view to ensuring respect for the principles of justice and the rule of law in conflict settlement efforts, the Government of the Republic of Azerbaijan has requested the OSCE Minsk Group Co-chairs to conduct a fact-finding mission to the occupied territories of Azerbaijan to investigate the situation on the ground in the light of the clear-cut commitments of the States concerned, as set forth in the relevant international legal instruments.

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 14 and 18, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

Annex to the letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The facts documented by Armenian sources, testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan[a]

1. "NKR government" allocated 700 million Armenian drams for the realization of a mortgage crediting programme, 19 March 2007[b]

700 million Armenian drams is allocated from the state budget of the "Nagorno-Karabakh Republic (NKR)" for the realization of a mortgage crediting programme. Mediamax reports that the "NKR Prime Minister" Anushavan Danielian said this, answering the questions of the visitors of the "Azat Artsakh" newspaper's website. He noted that the possibility to improve housing conditions will be given not only to young families, but also to the citizens, which will be chosen by the expert commission. "'The Nagorno-Karabakh Republic' is the only country in the region which, at the expense of the state budget, took up the realization of a mortgage crediting programme on preferential terms — by a 6 per cent annual interest rate and up to 20 years time to run", Anushavan Danielian stated. The "NKR" government is also working out a social mortgage programme, the realization of which is planned to start in 2008.

2. Arts revival: plan to rebuild "Shushi" by returning to its roots as a centre of culture, 15 June 2007[c]

Proposals to turn the town of "Shushi" into a centre for arts, crafts, education and tourism by 2020 have been drawn up by an American company, Sema Associates. At the request of the "Shushi" Revival Fund, a group of the company's architects, headed by Iranian Armenian Seda Yagubyan, visited the town in Nagorno-Karabakh last year. They finalized the design plan after four months of work, which they provided free of charge ... The foundation opened the 400-seat Yerevan Cinema in "Shushi", equipped with advanced German and Japanese technology, this year on May 9, which is traditionally marked as "Shushi" Liberation Day ... the restoration of "Shushi" will promote investment in the town, leading to an increase in jobs and population.

[a] The present annex, containing the information from Armenian sources, refers to the native names of historical Azerbaijani places Shusha, Lachin, Kalbajar and Zangelan in Armenian toponyms "Shushi", "Berdzor-Kashatagh", "Karvachar" "Kovsakan", respectively, which is the yet another evidence of Armenia's purposeful efforts aimed at defacing the Azerbaijani historical and cultural heritage in the occupied territories. Therefore, these and other distorted names and historical events are given throughout the text as edited in quotation marks.

[b] See http://banks.am/en-news-2-1340.html.

[c] See http://www.armenianow.com/features/7429/arts_revival_plan_to_rebuild_shush.

3. Diaspora is interested in resettlement of these territories, 18 June 2007[d]

'We solved the problem by military actions, but we had to go on to settle these territories,' said Vahram Gevorgyan, chair of the Promised Land NGO, set up in 2000. The organization implements projects for the settlement of the liberated territories from 2001. Gevorgyan added, 'we have just realized that these territories must be settled. If we had managed to launch settlement with assistance from Armenians worldwide, the issue of territories would not be under negotiation, and Azerbaijan would not lay claim to these territories ...'.

4. Population promotion: Nagorno-Karabakh residents have good reasons to marry and have children, 11 January 2008[e]

The "state" is planning to ensure population increase through a settlement programme. The programme is carried out all throughout Karabakh. Serzh Amirkhanyan, head of "NKR Department on Migration, Refugees and Immigrants", says that in 2007 within the framework of the settlement programme, 67 houses were built in Karabakh and 23 restored. Eight hundred million drams ($2,667,000) were allocated to immigrants for house purchasing. He stressed that 20-30 families have filed applications for settling in "Karvachar", where from 8 to 10 houses are built annually … According to Amirkhanyan, the funds allocated to the settlement programme have to be at least doubled. The "state" budget allocates up to 1 billion drams (about $330,000) annually. Amirkhanyan thinks that private funds have to be raised for this purpose as well … In 2007, 241 families moved to Karabakh for permanent residency, the settlement programme served 445 people.

5. "NKR President": the "Kashatagh region" is of strategic significance for the Armenian nation, 1 April 2008[f]

A three-day (March 28-30) conference took place in the "Berdzor district centre" of the "Nagorno-Karabakh Republic Kashatagh region", which was devoted to the development of the region. 'This conference, which is devoted to the development of the "Kashatagh region", is the first sui generis, and I hope that it will become a basis for holding similar events in the future. It will promote effective solution to the problems existing in the region, as well as realization of programmes aimed at its further development', "NKR President" Bako Sahakian said in his speech made at the opening of the conference.

6. 30 Armenian families live in liberated "Van", 20 February 2009[g]

"Van", Nagorno-Karabakh — Vardan Vardanian and his wife moved to the village of "Van" when it was established in 1999. Their two children, five-year-old son Sergo and two-year-old daughter Ani-

[d] See http://aramanoogian.blogspot.com/2007/06/diaspora-is-interested-in-resettlement.html.

[e] See www.armenianow.com/features/8051/population_promotion_nagornokarab.

[f] See www.armeniandiaspora.com/forum/showthread.php?t=127936.

[g] See www.reporter.am/go/article/2009-02-20-30-armenian-families-live-in-liberated-van.

Van, were born here. The village of "Van" is in the "Kashatagh region" of Nagorno-Karabakh on the banks of the "Voghji" River. Mr. Vardanian and his family live in one of the rooms on the second floor of the local school, which is only three kilometres away from the Araks River, the border with Iran. 'When we came here, life was a bit hard in Armenia. I am from Berd city and my wife is from Sevan. When we came to live in "Van", the monthly salary of a teacher here was twice that of a teacher in Armenia. Those who move here no longer want to leave. Apart from the fact that my wife and I are teachers and receive our monthly wages, we can also keep animals and tend orchards,' he says [...] Yurik Yeghian, head of the village, agrees: '"Van" faces housing issues.' He adds that recently, state officials approached the residents and began allocating funds for different community projects as well as loans for the purchase of animals. [...] In the past, during the Soviet era, "Van" was called Jhangirbeyli and was populated only by Azerbaijanis [...] Mr. Vardanian does not even want to hear that one day these lands might be handed over to Azerbaijan as peace guarantees. 'There are such rumours, but these lands were not given as gifts; these lands were liberated with blood and these lands will never be returned. How can you return land? These are our ancestral lands, this is Armenia. I do not believe that anyone would be despicable enough to sign a document returning these lands. I cannot imagine such an Armenian traitor,' he says emphatically ... The residents of "Van" are mainly from the village of Daratumb in the Yeghegnadzor region of Armenia. Daratumb is en route to the Selim mountain pass toward Lake Sevan. For more than half of the year, it is cold and the living conditions are not good. 'Since present-day Daratumb is too small for its residents, part of the village, mainly the younger families, moved to "Van". Currently this village has 30 families and 127 residents. We have families with many children. For example, Husik Khachatrian has seven children, one of whom is already married. The village is expanding not only because of resettlement, but also because of natural growth. This year we have already had five births,' says Mr. Yeghian … "Van" was established in 1999. Felix Hayrapetian was the founder of the village and the first village head. Why did they name the village "Van"? This is how the village head explains it: 'Well, since its neighbours were "Moush", "Alashkert", and "Berkri", naturally this village had to be "Van".' "Moush", "Alashkert", and "Berkri" are the names of settlements in historic Armenia, now part of Turkey; the city of "Van" in today's Turkey is the cradle of Armenian civilization. Mr. Vardanian, the school director, adds, 'It was the initiative of Alexan Hakobian, the former head of the "Kashatagh region", to restore the historical names.' Mr. Vardanian believes that those who have stayed there will never return and no one can return these lands, as they already have graves there.

7. Hovanessian stresses urgency of resettling "liberated" territories, 21 May 2009[h]

The urgency to resettle the "liberated" territories surrounding the "Nagorno-Karabakh Republic" was a topic of heated discussion Thursday during a weekly parliamentary round table with Armenia's Prime Minister Tigran Sargsyan ... Discussion on the issue began when Vahan Hovanessian, the leader of the Armenian Revolutionary Federation's parliamentary bloc, asked the Prime Minister about the status of resettlement efforts in the "liberated" territories … The Prime Minister insisted that Karabakh will always be an important priority in Armenia's economic, foreign and domestic policies and as a result the economic development of Karabakh will always be part of Armenia's governmental programmes. 'The development of all facets of [life in] Karabakh should be

[h] See www.asbarez.com/62784/hovanessian-stresses-urgency-of-resettling-liberated-territories/.

accelerated, in order to create more enhanced living and growth conditions,' said Sargsyan, adding that the resettlement issue was a constant topic of discussion with the Karabakh president and Prime Minister.

8. Grow roots: while peace process goes on, Karabakh focuses on demographic and social issues, 22 May 2009[i]

Up to 12,000 people currently reside in the "Kashatagh region" alone. In 2008, 47 families (462 people) moved to the region ... In 2008, "Kashatagh" farmers were given up to 70 million drams ($190,000) in agricultural loans, due to which 9,500 hectares of fields were sowed. In 2009, 16 irrigation channels are to be restored with public funds and agricultural equipment will be leased. Two multi-apartment residential buildings are being constructed in the regional centre "Berdzor", 10 houses for large families with many children have been built ...

9. Battle of "Shushi": pan-Armenian charity plans landmark fundraising for key Karabakh town, 29 May 2009[j]

The funds to be raised through this year's annual telethon of the All-Armenian Fund "Hayastan" (Armenia) in November will be spent on the reconstruction of "Shushi", a strategically important stronghold town in Nagorno-Karabakh … A number of projects were implemented in "Shushi" in 2008: the water pipe system and water line connecting "Shushi" with the Tadevos spring that supplies the town with water were partly restored. Installation of gas supply systems is near completion. About one and a half billion drams ($5 million) from the state budget was spent on the projects. The "Shushi" Revival Fund has supported the construction of a tourism centre in the town as well as the current reconstruction of a printing house and the historical "Green" pharmacy. Works on the reconstruction of an urban water sewage network are in progress. Oriental bathhouses and the old market are also under reconstruction. The Tufenkian Foundation sponsored the renovation of the museum of local lore of "Shushi" … "Shushi" now has a population of 3,600 people.

10. New excavations, new hotels, more tourists: Nagorno-Karabakh gets ready for tourism boom this year, 12 June 2009[k]

The year of 2009 promises to be crucial for tourism in Karabakh with the new programmes the "Nagorno-Karabakh government" assigns for boosting tourism and a presumably large flow of tourists this year in the "country". This year the "Government" assigned 40 million drams ($108,000) to the development of the sphere, which is four times more as compared with the same figure of the previous year. The "Government" announced that tourism is a priority sphere of the economy in Karabakh, and it provides funds for reconstruction projects of historical monuments there … In 2009, the "Government" will assign 350 million drams (about $945,000) for the renovation of monuments and cultural heritage. Renovation works will be carried out in "Amaras" and "Gtchavank", "Ptkes

[i] See http://armenianow.com/hy/node/9874.

[j] See www.armenianow.com/features/9914/battle_of_shushi_panarmenian_char.

[k] See www.armenianow.com/hy/node/9988.

Berk Vank Church" in "Ulupap", "Togh", "Davidavank", Askeran Fortress and "Chankatag". Excavations will be carried out in "Azohskaya" cave and in "Tigranakert". New monuments are being added to this list all the time. A wonderful and beautiful "Khachkar" (13th century) was recently found in the territory of Novrughlu village, Aghdam region.

11. Birth rate is five times the death rate in "NKR Kashatagh region", 17 July 2009[l]

Currently, regional population size in the "NKR Kashatagh region" is about 8,000 people. According to "Kashatagh regional administration head" Kamo Martirosyan, the population rate in the region has been increasing since October 2008. 'Villagers are provided with interest-free credits to conduct agriculture works. In September 2009, they will be given credit for the purchase of cattle,' Kamo Martirosyan said. The "administration head" emphasized that current issues are connected mainly with lodging provision, infrastructure development, roads and communications restoration and water supply provision.

12. Tufenkian Foundation unveils new "Kashatagh" initiative, 23 October 2009[m]

"Kashatagh", "Nagorno-Karabakh Republic" — In a recent day of celebration, residents of this small, remote village joined political dignitaries and members of the international community to mark the re-opening of "Hak's" historic "St. Minas Church". The church blessing was combined with the unveiling of a new drinking water supply for the village, making the ceremony a momentous occasion reaffirming Armenians' commitment to restore and protect their ancient heritage in this war-torn enclave ... "Hak village" sits in a remote corner of "Kashatagh" (formerly Lachin), the strategically vital area connecting Karabagh with Armenia ... The "Hak village" project is the latest initiative of the New York-based Tufenkian Foundation. Through a range of social and economic projects, the Foundation has fostered the development and resettlement of "Kashatagh" since the war. In parallel, the Foundation is working to restore and preserve the Armenian monuments found throughout this land. Ms. Virginia Davies of New York City tendered the generous support that allowed the Foundation to restore "St. Minas Church" and establish "Hak's" water supply. Having flown in especially for the ceremony, Davies spoke boldly and proudly about the project, which she has dedicated in loving memory of her grandmother, Virgine Mouradian, a survivor of the "1915 Armenian Genocide" ... 'This is only the beginning,' Davies said. 'After "Hak", we will start projects in the next two villages — "Mirig" and "Hochants".' Those projects, like the work in "Hak", will consist of restoring ancient churches ..., alongside development and infrastructure projects for the current resettlers there. 'After these two villages, there will be another two, and it will go on for the entire area.'

[l] See www.panarmenian.net/eng/society/news/34308/Birth_rate_is_5_times_the_death_rate_in_NKR_ Kashatagh _region.
[m] See www.asbarez.com/70860/tufenkian-foundation-unveils-new-kashatagh-initiative/.

13. Telethon 2009: President Sargsyan launches fund-raising for pan-Armenian charity with Moscow reception, 27 October 2009[n]

On 25 October, the President of the Republic of Armenia and Chairman of the Board of Trustees of the All-Armenian Hayastan Fund, Serzh Sargsyan, hosted a fund-raising reception in the framework of the annual Telethon 2009, reports the presidential press service. The event took place at the Ararat Park Hayat Hotel in Moscow and was attended by over 80 entrepreneurs of the Armenian descent. The money raised will be used in the programmes aimed at the development of "Shushi". Addressing our compatriots present at the reception, the President of Armenia said: 'As you know, the annual fund-raising of the All-Armenian Hayastan Fund, which is often called the "national pledge", has commenced. This fund-raising is conducted for the "Shushi" development programmes — for the "Shushi" that was one of the educational and cultural centres of Eastern Armenia, the "Shushi" … I urge you to participate generously in this fund-raising as our benefactors and Maecenases have been doing for hundreds of years. Whatever we give will never be more than the blood that given by those who liberated "Shushi". Let's rise to their sacred deed.'

14. Prime Minister of Armenia calls on government members to personally contribute to recovery of "Shushi", 26 November 2009[o]

Prime Minister of Armenia Tigran Sargsyan called on the government members to personally contribute to the recovery of the town of "Shushi", the Prime Minister said at Thursday's government session. He recalled that an annual International Fundraising Telethon of Hayastan All Armenian Fund will be held on November 26 in Los Angeles (USA), and the major part of the funds gathered will be directed to recovery of "Shushi" … 'Recovery of Shushi is a matter of national dignity for us. All of us present here have to take part in the donation and inspire our relatives and friends by the personal example in order to ensure wide participation. My family and I will also take part in this donation and make a contribution', Sargsyan said.

15. Armenian officials told to donate to Karabakh, 26 November 2009[p]

Prime Minister Tigran Sargsyan urged his ministers and other senior government officials on Thursday to actively participate in a Diaspora-backed annual fund-raising event organized by a pan-Armenian charity to finance infrastructure projects in Nagorno-Karabakh.

16. Knights send $425,000 in medical supplies to Armenia, 24 March 2010[q]

"Berdzor" is better equipped, with eight doctors, five nurse practitioners, a midwife and 10 nurses. In "Kovsakan" … the "government" plans to build a large clinic ...

[n] Available from www.armenianow.com/hy/node/10716.
[o] See www.nkrusa.org/news/daily_news.php?id=1670.
[p] See www.azatutyun.am/content/article/1888788.html.
[q] See www.mirrorspectator.com/?p=3175.

17. Russian Armenians fund "Shushi" streets renovation, 26 March 2010[r]

With its recently initiated reconstruction of the "Garegin Nzhdeh" and "Alec Manoogian" streets, "Shushi's" two main thoroughfares, the Hayastan All-Armenian Fund has begun to restore the city's economic and social infrastructures. The street revitalization project is being realized through contributions made by the Russian-Armenian community during Telethon 2009. Following the construction of sewage, water delivery and drainage systems, the streets and sidewalks (about 950 metres) will be paved and refurbished, and lightposts will be installed throughout. The project will be completed with the installation of 1.5-metre-wide lawns separating the streets from the sidewalks. 'Prior to the launch of this project, the people of "Shushi" no longer believed that things would improve in their city,' said Grigori Avanesyan, director of the "Shushi Administration's Urban Development and Architecture Department". 'There is a great deal of bustle in this part of town. Residents frequently use the telephone station and the bank or visit the cultural centre, whereas up till now the streets remained in a terrible state.' "Alec Manoogian Street" is also home to the fire station and the much-visited, 1847-built "Hovhannes Mkrtich Church", better known as the "Green Church" because of the colour of its dome. 'This year our main goal is to implement a number of projects aimed at helping "Shushi" stand on its feet,' said Ara Vardanyan, executive director of the Hayastan All-Armenian Fund. 'I hope that our revitalization efforts will go a long way in strengthening "Shushi" residents' bond with their city, and not be limited to the Fund initiatives only'.

18. United States representative Frank Pallone praises Armenia Fund's humanitarian efforts, 7 April 2010[s]

Los Angeles — Congressman Frank Pallone (D-NJ), Co-Chair of the Congressional Caucus on Armenian Issues, visited the Armenia Fund United States Western Region offices on Monday, 29 March, and met with its board of directors and staff. Armenia Fund United States Western Region Chair Ara Aghishian welcomed Congressman Pallone and thanked him for taking his time and visiting the Fund's office. 'I want to express my appreciation to the Congressman for his continued support of Armenia as well as for spearheading increased levels of humanitarian aid to Armenia and "Artsakh", stated Aghishian. Congressman Pallone congratulated the Armenia Fund for hosting a successful Telethon during 2009 that raised nearly $16 million for the reconstruction of the cradle of Armenian civilization, the heroic town of "Shushi". He commended the humanitarian and developmental efforts of the Fund, specifically its infrastructure projects in Armenia's and "Artsakh's" remote borderline villages that have been bringing a positive change to the lives of tens of thousands for the past 18 years ... Armenia Fund, Inc., is a non-profit 501(c)(3) tax-exempt corporation established in 1994 to facilitate large-scale humanitarian and infrastructure development assistance to Armenia and Nagorno-Karabakh. Since 1991, the Armenia Fund has rendered more than $190 million in development aid to Armenia and Nagorno-Karabakh. Armenia Fund, Inc. is the United States Western Region affiliate of the "Hayastan" All-Armenian Fund, tax identification number 95-4485698.

[r] See www.reporter.am/go/article/2010-03-26-russian-armenians-fund-shushi-streets-renovation.
[s] See www.asbarez.com/79030/u-s-rep-frank-pallone-praises-armenia-funds-humanitarian-efforts/.

19. Armenia: the governmental delegation of Armenia has visited "Shushi" city, 13 April 2010[t]

The governmental delegation of the Republic of Armenia, led by Prime Minister Tigran Sargsyan, visited the city of "Shushi" as part of a three-day working visit to the "Nagorno-Karabakh Republic". As reported, the inaugural computer class was held at the senior school named by Muratsana, and the heads of the governments of the Armenian states, Tigran Sargsyan and Ara Arutyunyan, presided over the official ceremony. The class was provided with computers donated by the government of Armenia at a cost of about 3 million drams. The Prime Minister of Armenia has become personally familiar with technical possibilities in this regard. Completed and planned building recovery projects in "Shushi" were subsequently discussed in the "Shushi" centre for arts, crafts and tourism. Emphasis was placed on the building programmes carried out by the "Hayastan" All-Armenian Fund. Cabinet members and governors of Armenia accompanied the Prime Minister of Armenia, Tigran Sargsyan, in the framework of the three-day working visit to "NKR".

20. "Shushi" renaissance: Foundation intends to restore "Shushi's" fame by turning it into cultural centre of Armenians, 27 April 2010[u]

For 10 years, Bakur Karapetyan, a writer and a photographer with more than 45 years of experience, has been developing the idea of creating a National Art Gallery of Photography in "Shushi". The photos displayed in his dream gallery will be collected from Armenians from all corners of the world to give a true picture of cultural and social life of the Armenian people, the cities and towns they lived, architectural monuments they built and wars and trials they endured. "'Shushi" was crowned as a hero city, a symbol of victory … The photos will save it from oblivion,' says Karapetyan. The "Shushi" non-governmental organization founded by Karapetyan makes appeals through its website (www.shoushi.am) for people to contribute to the foundation of the gallery by providing photos ... Karapetyan says that a building in "Shushi" could be turned into a gallery if he can find $300,000 for renovation and equipment ... However, founding the gallery is not the final goal of the photographer. He says it is just a small part of his ambitious plan to turn "Shushi" into a nationwide cultural, educational and tourism centre, to make it more than a town which was crowned as a symbol of Armenian victory. The foundation wants to see "Shushi" become a centre of pan-Armenian culture and research. 'Shushi was crowned as a hero city, a symbol of victory. It deserves much more attention than it gets now' … Even after the Karabakh war, "Shushi" preserved most of its monuments, dating from a time when it was a noted publishing and cultural centre. The "Shushi" foundation, together with professors and students from the Yerevan Engineering University, carried out architectural research in "Shushi".

[t] See www.kavkazweb.net/news/news.cgi?action=view&nid=01&yy=2010&mm=4&dd=13&message_id=12711710698691ZeuN5DxGZvtmy.

[u] See http://armenianow.com/arts/7182/shushi_renaissance_foundation_int.

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

The situation in the occupied territories of Azerbaijan

Elimination of racism, racial discrimination, xenophobia and related intolerance

Promotion and protection of human rights

The rule of law at the national and international levels

Security Council
Sixty-seventh year

Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to bring to your attention the report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility (see annex). The report addresses the following issues: (a) the violation of the rights of the citizens of the Republic of Azerbaijan by their forcible displacement (or expulsion or deportation) from the occupied territories of the Republic of Azerbaijan (Daghlyq Garabagh (Nagorno-Karabakh) and surrounding areas) by the armed forces of the Republic of Armenia or by subordinate forces for which it is internationally responsible; (b) the violation of the principle of non-discrimination in regard to Azerbaijani internally displaced persons, including the implantation of ethnic Armenian settlers in the occupied territories of Azerbaijan; (c) the prevention of access of Azerbaijani internally displaced persons to their property in the occupied territories by Armenia and those for whom it is responsible; (d) the right of return of Azerbaijani internally displaced persons to their homes in the internationally recognized territory of the Republic of Azerbaijan; and (e) the consequences flowing from the violation of the rights of the Azerbaijani internally displaced persons, including restitution and compensation.

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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 35, 39, 67, 69 and 83, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

Annex to the letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Report on the international legal rights of the Azerbaijani internally displaced persons[1] and the Republic of Armenia's responsibility

1. The present report addresses the following issues:

(a) The violation of the rights of the citizens of the Republic of Azerbaijan by their forcible displacement (or expulsion or deportation) from the occupied territories of the Republic of Azerbaijan (Nagorno-Karabakh[2] and surrounding areas) by the armed forces of the Republic of Armenia or by subordinate forces for which it is internationally responsible;

(b) The violation of the principle of non-discrimination in regard to Azerbaijani internally displaced persons, including the implantation of ethnic Armenian settlers in the occupied territories of Azerbaijan;

(c) The prevention of access of Azerbaijani internally displaced persons to their property in the occupied territories by Armenia and those for whom it is responsible;

(d) The right of return of Azerbaijani internally displaced persons to their homes in internationally recognized territory of the Republic of Azerbaijan;

(e) The consequences flowing from the violation of the rights of the Azerbaijani internally displaced persons, including restitution and compensation.

I. Preliminary issues

A. The Constitutional background

2. It is helpful at this stage to lay out some of the key facts underpinning the legal situation to be discussed in this paper. Both Armenia and Azerbaijan existed as republics within the Union of Soviet Socialist Republics (USSR) from the early 1920s with Nagorno-Karabakh possessing the status of an autonomous oblast (NKAO) within the Soviet Socialist Republic of Azerbaijan (Azerbaijan SSR) as

[1] It is to be emphasized that this paper does not deal at all with the rights of refugees under international law (that is, displaced persons who have crossed an international frontier), but confines itself to the rights of internally displaced persons within the framework of the internationally recognized territory of the Republic of Azerbaijan which is currently occupied by the Republic of Armenia.

[2] The term "Nagorno-Karabakh" (or "Nagorny Karabakh" or Nagorno Karabakh) is a Russian translation of the original name in the Azerbaijani language — Dağlıq Qarabağ (pronounced Daghlyq Garabagh), which literally means mountainous Garabagh. Garabagh in its turn consists of two Azerbaijani words: "qara" (black) and "bağ" (garden). In order to avoid confusion the widely referred terms "Nagorno Karabakh", "Nagorny Karabakh" or "Karabakh" will be used here, as appropriate.

from 1923.[3] The present-day stage of the conflict between Armenia and Azerbaijan began at the end of 1987[4] with the former's overt territorial claims on Nagorno-Karabakh and the attacks on the Azerbaijanis both in the autonomous oblast and Armenia itself. These actions marked the beginning of the expulsion of Azerbaijanis from the Armenian SSR and Nagorno-Karabakh, as well as initiated taking a number of illegal decisions aimed at unilateral secession of the NKAO from the Azerbaijan SSR. On 20 February 1988, the members of the Armenian community represented in the local self-government institutions of the NKAO adopted a resolution seeking the transfer of the autonomous oblast from the Azerbaijan SSR to the Armenian SSR (within the USSR). This was accepted by the Armenian SSR on 15 June 1988, but was rejected by the Azerbaijan SSR two days previously and again on 17 June 1988.

3. On 12 July 1988, the members of the Armenian community of the NKAO adopted a decision on the unilateral secession of the autonomous oblast from the Azerbaijan SSR. Azerbaijan rejected that decision the same day, declaring it null and void.

4. On 18 July 1988, the Presidium of the Supreme Soviet of the USSR, the body with the primary relevant authority, made a formal decision to leave the NKAO within the Azerbaijan SSR. In other words, it was confirmed that Nagorno-Karabakh formed part of the Azerbaijan SSR.

5. On 1 December 1989, the Supreme Soviet of the Armenian SSR passed a resolution calling for the unification of Armenia with Nagorno-Karabakh. 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 Nagorno-Karabakh Adopted by the Armenian SSR Supreme Soviet on 1 December 1989 and 9 January 1990", declaring the illegality of the claimed unification of the Armenian SSR with Nagorno-Karabakh without the consent of the Azerbaijan SSR.

6. On 2 September 1991, the Armenians of Nagorno-Karabakh adopted a "Declaration of Independence of the Nagorno-Karabakh Republic" ("NKR"). This was declared invalid by Azerbaijan and on 27 November 1991 by the USSR State Council and the following day by the USSR Committee of the Constitutional Oversight. However, the Armenian side did not cease its unlawful and provocative actions. Thus, a "referendum on independence" was held in Nagorno-Karabakh on 10 December 1991 (without the support or consent of Azerbaijan of which it legally constituted a part), which was confirmed two days later by an "Act on the Results of the Referendum on

[3] On 7 July 1923, the Central Executive Committee of the Azerbaijan SSR adopted a Decree "On the Formation of the Nagorno-Karabakh Autonomous Oblast". Nagorno-Karabakh as an autonomous oblast within the Azerbaijan SSR was referred in the USSR Constitutions of 1936 (art. 24) and 1977 (art. 87), while its legal status was governed by the Law "On the Nagorno-Karabakh Autonomous Oblast" adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981. See also Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, New York, 2003; Svante E. Cornell, "The Nagorno-Karabakh Conflict", 1999, Report No. 46, Department of East European Studies, University of Uppsala; International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict From the Ground", Europe Report No. 166, 14 September 2005.

[4] According to Thomas de Waal, as early as in February 1986 one activist of the separatist movement, Muradian, travelled 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 Nagorno-Karabakh from Azerbaijan and its annexation to Armenia, op. cit., pp. 17-20.

the Independence of the Nagorno-Karabakh Republic". On 28 December that year, "parliamentary elections" were held there and on 6 January 1992, the newly convened "parliament" of the separatist entity adopted a "Declaration of Independence", followed two days later by the adoption of a "Constitutional Law 'On Basic Principles of the State Independence of the Nagorno-Karabakh Republic'". Thus, the process of unilateral secession from Azerbaijan was instituted.

7. Azerbaijan had declared independence on 18 October 1991. This was confirmed on 29 December 1991 by a nationwide referendum. On 8 December 1991, a formal declaration was made by the States-founders of the USSR that "the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists".[5]

8. Armenia's view is that following the collapse of the USSR, on the territory of the former Azerbaijan SSR two States were formed: the Republic of Azerbaijan and the "Nagorno-Karabakh Republic" and that "[t]he establishment of both States has similar legal basis".[6]

9. However, this approach is fundamentally flawed. The critical period for the purposes of the legitimate inheritance of territorial frontiers (the principle of *uti possidetis*) is the period immediately preceding independence. The International Court has made this very clear. In *Burkina Faso/Mali*, for example, the Court declared that:[7]

> "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*" (emphasis added).

10. What mattered, therefore, from the point of view of international law, was the frontier "which existed at the moment of independence".[8] The position in this regard as far as Azerbaijan (including Nagorno-Karabakh) and Armenia are concerned is clear. On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of any attempts aimed at either unification of Nagorno-Karabakh with Armenia or its secession from Azerbaijan 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 Nagorno-Karabakh. Accordingly, Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognized as having as the Azerbaijan SSR within the USSR.

11. The factual basis for the operation of the legal principle of *uti possidetis* is beyond dispute in this case. It follows from this that Armenia's claims as to the claimed "independence" of Nagorno-Karabakh or its unification with Armenia are contrary to the internationally accepted principle of *uti possidetis* and therefore unsustainable in international law.

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[5] Agreement Establishing the Commonwealth of Independent States, 8 December 1991, 31 *International Legal Materials* 143 (1992).

[6] See e.g. United Nations document A/63/781-S/2009/156, 24 March 2009, p. 11, para. 43.

[7] ICJ Reports, 1986, pp. 554, 566. This was reaffirmed in *El Salvador/Honduras*, ICJ Reports, 1992, pp. 351, 386-7.

[8] Ibid., p. 570.

12. In contrast to what Armenia asserts in regard to "NKR", 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 territorial integrity and the inviolability of existing borders".[9] The 1993 Charter of the Commonwealth of Independent States (CIS), to which both Armenia and Azerbaijan are parties, stresses, in article 3, the principle of "inviolability of State frontiers, recognition of existing frontiers and renouncement of illegal acquisition of territories".[10] Indubitably, a firm stand was taken by all the States members of CIS, to retain their former administrative (intra-State) borders as their inter-State frontiers following the dissolution of the USSR.[11]

13. The Security Council of the United Nations explicitly referred in its resolutions 853 (1993), 874 (1993) and 884 (1993), adopted in response to the occupation of the territories of Azerbaijan, to "the conflict in and around the Nagorny 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". Similar language had been used earlier in resolution 822 (1993). United Nations General Assembly resolution 62/243 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". The European Court of Human Rights has recently concluded that "the 'NKR' is not recognized as a State under international law by any countries or international organizations".[12]

14. The situation following the independence of Azerbaijan and actions of Armenia is also clear. Any attempt by Armenia to encourage, procure or sustain the secession of Nagorno-Karabakh is simply unlawful in international law as amounting to a violation of the principle of the respect for the territorial integrity of sovereign States and imports the responsibility of that State.[13]

B. Armenia's intervention and continuing occupation: the fundamental facts

15. The fact that Armenian forces seized the territories of Azerbaijan, including but not limited to the Nagorno-Karabakh area, has been well evidenced. For example, in its Fact Sheet on the History of the Minsk Conference, dated 30 March 2001, the United States Department of State wrote that:

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[9] Alma-Ata Declaration, 1991, 31 *International Legal Materials* 147, 148 (1992).

[10] Charter of the Commonwealth of Independent States, 1993, 34 *International Legal Materials* 1279, 1283 (1995).

[11] See Steven R. Ratner, "Drawing a Better Line: *Uti Possidetis* and the Borders of New States", 90 *American Journal of International Law* 590, 597 (1996).

[12] *Elkhan Chiragov and Others v Armenia*, ECHR Judgement of 14 December 2011, para. 102.

[13] See e.g. the following reports: "The Legal Consequences of the Armed Aggression of the Republic of Armenia Against the Republic of Azerbaijan", United Nations document A/63/662-S/2008/812, 24 December 2008; "The Fundamental Norm of the Territorial Integrity of States and the Right to Self-determination in the Light of Armenia's Revisionist Claims", United Nations document A/63/664-S/2008/823, 29 December 2008; "The International Legal Responsibilities of Armenia as the Belligerent Occupier of Azerbaijani Territory", United Nations document A/63/692-S/2009/51, 27 January 2009.

> "In May 1992, Armenian and Karabakhi forces seized Susha (the historical, Azerbaijani-populated capital of the region) and Lachin (thereby linking N-K to Armenia). By October 1993 Armenian and Karabakhi forces eventually succeeded in occupying almost all of N-K, Lachin and large areas in southwestern Azerbaijan. As Armenian and Karabakhi forces advanced, hundreds of thousands of Azerbaijani refugees fled to other parts of Azerbaijan".[14]

16. In the report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe concerning "The Conflict over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference", dated 29 November 2004, it was emphasized that: "Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan".[15]

17. Further, the Human Rights Watch report entitled "Seven Years of Conflict in Nagorno-Karabakh" published in 1994 refers at several points to the involvement of forces from Armenia in the conflict with Azerbaijan including the statement of an ICRC official[16] and concluded that: "While Armenia has supported Karabakh forces since the beginning of the conflict, evidence gathered by Human Rights Watch/ Helsinki establishes the involvement of the Armenian army as part of its assigned duties in the conflict, especially since December 1993".[17] This report also refers to testimony from Armenian prisoners of war as evidencing that Armenian army units were sent into Nagorno-Karabakh in 1993-4.[18] This included an interview with one Armenian draftee who said that he had been sent to Lachin in April 1993.[19] The report concluded by stating that: "As a matter of law, Armenian troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the government of Armenia and Azerbaijan".[20]

18. The Secretary-General of the United Nations stated in his 1993 report 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".[21] Indeed, the Representative of the Secretary-General noted in his report dated 25 January 1999 that: "It is generally accepted that the Karabakh Armenian cause has received considerable economic and military support from Armenia and the ethnic Armenian diaspora".[22]

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[14] United States Department of State: Fact Sheet on the History of the Minsk Conference, issued on 30 March 2001.

[15] Document 10364. Explanatory Memorandum by the Rapporteur (David Atkinson), part III, para. 6.

[16] www.hrw.org/en/reports/1994/12/01/seven-years-conflict-nagorno-karabakh, at pp. 31-32. See also p. 49.

[17] Ibid., at p. 67.

[18] Ibid., pp. 68-72.

[19] Ibid., at p. 72.

[20] Ibid., at p. 73.

[21] Report of the United Nations Secretary-General pursuant to the statement of the President of the Security Council in connection with the situation relating to Nagorny-Karabakh, United Nations document S/25600, 14 April 1993, para. 10.

[22] Report of the Representative of the United Nations Secretary-General, Francis M. Deng, "Profiles in Displacement: Azerbaijan", United Nations document E/CN.4/1999/79/Add.1, 25 January 1999, p. 8, para. 23.

19. This clear intervention in the territory and domestic affairs of an independent sovereign State did not, however, end with the ceasefire negotiated at Bishkek on 5 May 1994. Mounting evidence demonstrates the grip that Armenia continues to have upon Nagorno-Karabakh and the other occupied territories of Azerbaijan that had been seized during the conflict.

20. The United States Department of State, in its human rights report on Armenia for 2006, declared that: "Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories".[23] The equivalent report on Azerbaijan noted that: "Armenian forces controlled most of Nagorno-Karabakh, as well as large portions of adjacent Azerbaijani territory"[24] and "Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories".[25]

21. In the above-mentioned 2004 Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe concerning the conflict, it was further noted that: "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".[26]

22. In its report on presidential elections held in Armenia on 16 and 30 March 1998, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) declared that: "it is of extreme concern that one of the mobile boxes has crossed the national border of the Republic of Armenia to collect votes of Armenian soldiers stationed abroad (Kelbajar)".[27] In other words, that Armenian troops are based in the occupied territories of Azerbaijan is acknowledged by international observers and formally reported by OSCE. Further, such troops were permitted by Armenia to participate in the presidential elections of March 1998.

23. Documents emanating from the Minsk Conference — the OSCE process which is aimed at providing an ongoing forum for discussions towards a negotiated settlement of the conflict — also demonstrate the existence of Armenian soldiers in the occupied territories. For example, the "package" proposal of July 1997 contained a requirement in Agreement I on the end of hostilities, that "The armed forces of Armenia will be withdrawn to within the borders of the Republic of Armenia",[28] while the "step-by-step" proposals of December 1997 provided that "All Armenian forces located outside of the borders of the Republic of Armenia will be withdrawn to locations within those borders"[29] and the "common State" proposal of November 1998 similarly contained a requirement that "All armed forces of Armenia deployed outside of the borders of the Republic of Armenia will be withdrawn to within those

[23] Country Reports on Human Rights Practices, 2006, Armenia, sect. 1 (a).
[24] Country Reports on Human Rights Practices, 2006, Azerbaijan, introductory section.
[25] Ibid., sect. 1 (a).
[26] Explanatory memorandum by the Rapporteur (David Atkinson), op. cit, part III, para. 6.
[27] Final report issued on 9 April 1998, p. 8. The footnote to this sentence notes that "This sentence was changed on April 15, 1998, to read as follows: Moreover it is of extreme concern that one of the mobile boxes has crossed the national border of the Republic of Armenia to collect votes of Armenian soldiers posted in the region of Kelbajar". Kelbajar is in the occupied territory of Azerbaijan.
[28] Unofficial translation from the Russian original, reproduced in the key texts section of *Accord*, 2005, published by Conciliation Resources, at p. 77.
[29] Ibid., p. 79.

borders".[30] Such provisions would not have been laid down in the absence of the deployment of Armenian forces within the occupied areas of Azerbaijan.

24. Various NGO reports attest to the presence of Republic of Armenia forces in Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan. The International Crisis Group Report of 14 September 2005, for example, concluded that there was a high degree of integration between the forces of Armenia and Nagorno-Karabakh and that substantial weaponry, equipment and training was provided by Armenia to Nagorno-Karabakh.[31] The European Court of Human Rights has concluded that Republic of Armenia forces serve in the occupied areas and indeed that the detention, questioning and prosecution of such soldiers took place in the occupied territories.[32]

25. Instances of non-combat violence among Armenian military personnel serving in the occupied territories of Azerbaijan also provide a solid piece of evidence testifying to this country's military presence on those territories. Several incidents that took place in recent times and were acknowledged by the Ministry of Defence of the Republic of Armenia revealed that the servicemen involved had the Republic of Armenia's citizenship, were drafted into that country's armed forces and assigned to serve in the occupied territories of Azerbaijan by the Republic of Armenia's Military Registration and Enlistment Office.[33]

26. To summarize: Armenian soldiers drafted into the Republic of Armenia's armed forces by that country's Military Registration and Enlistment Office are assigned to serve in the occupied territories of Azerbaijan;[34] Armenian soldiers serving in the occupied Nagorno-Karabakh have voted in Republic of Armenia elections;[35] Armenian residents of Nagorno-Karabakh travelling abroad use Armenian passports;[36] Nagorno-Karabakh "is closely tied to Armenia and highly dependant on its financial inputs. All transactions are done via Armenia and products produced in Nagorno-Karabakh often are labelled 'made in Armenia' for export. Yerevan provides half the budget" so that "Nagorno-Karabakh is highly dependent on external financial support, primarily from Armenia";[37] while the same persons often hold high political offices, including the highest, at different times both in Nagorno-Karabakh and Armenia. Indeed, the current President of Armenia served for four years as head of the "NKR Self-Defence Forces Committee" from 1989 to 1993,[38] while the previous President had been "President of the NKR" in the three preceding years.[39] Finally, the Government of Armenia has encouraged and facilitated the settlement of ethnic Armenian settlers within the occupied

[30] Ibid., p. 83.
[31] International Crisis Group Report of 14 September 2005, op. cit., p. 10.
[32] *Haratyunyan v Armenia*, ECHR Judgement of 28 June 2007, paras. 4, 5 and 17, in particular; and *Zalyan, Sargsyan and Serobyan v Armenia*, ECHR Judgement of 11 October 2007, pp. 2, 3 and 11, in particular.
[33] See e.g. United Nations documents A/65/601-S/2010/615, 7 December 2010; A/65/808-S/2011/226, 11 April 2011; A/66/528-S/2011/668, 27 October 2011.
[34] See above, paras. 21, 24 and 25.
[35] See above, para. 22.
[36] See above, para. 21.
[37] International Crisis Group Report of 14 September 2005, op. cit., p. 12.
[38] See www.president.am/president/biography/eng/.
[39] See www.president.am/library/presidents/eng/?president=2.

territories. There is significant third party evidence of this practice, which clearly demonstrates and manifests the exercise of effective control by Armenia.[40]

27. Accordingly, not only was the Republic of Armenia's role as the aggressor clear but the level of its continuing control over Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan is significant, and these actions entail State responsibility under international law. To these legal issues, we now turn.

C. The applicable law

28. A key preliminary question is that of the applicable law. As has been seen above, until the moment of Azerbaijan's independence the relevant law in relation to the status of territorial areas was the constitutional law of the USSR. At the moment of independence, the position with regard to the USSR, as has been seen, was incontrovertible: Nagorno-Karabakh formed part of the Azerbaijan SSR. Any attempt to change this established legal position without the consent of the Azerbaijan SSR would constitute a violation of Soviet constitutional law. After independence, the applicable law insofar as Azerbaijan's territorial integrity (as protected through the transitional norm of *uti possidetis*) is concerned is that of international law. This is particularly so with regard to third States, such as Armenia.

29. The full range of international legal principles is thus applicable to the situation concerning the territories of Azerbaijan currently under the occupation of Armenia: that is, Nagorno-Karabakh and the surrounding territories seized during the armed conflict of the early 1990s. Such legal principles include those relating to the use of force; international humanitarian law; international human rights law and international responsibility.

30. However, in addition to the general application of public international law, both Azerbaijan and Armenia are member States of the Council of Europe[41] and High Contracting Parties to the European Convention on Human Rights.[42] The Convention thus constitutes *lex specialis* for these States insofar as human rights issues are concerned. This adds a further layer of applicable law, incorporating both rights and duties, with regard to Azerbaijan and Armenia. It also adds an additional dimension in the context of remedial action.

D. Armenia's responsibility

31. That Armenia bears international responsibility for the actions and omissions of itself and of subordinate forces for which it is liable under international law is self-evident and forms the cornerstone of this paper. Such responsibility is established both under general international law and, more particularly, with regard to the provisions of the European Convention on Human Rights.

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[40] See United States Committee for Refugees and Immigrants, World Refugee Survey 2002, Country Report on Armenia.

[41] Both Armenia and Azerbaijan acceded to the Council of Europe on 25 January 2001; see www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en.

[42] Armenia ratified the Convention on 26 April 2002 and Azerbaijan on 15 April 2002.

1. Under general international law

32. The key provisions of international responsibility are laid down in the articles on State responsibility adopted by the United Nations International Law Commission ("ILC") on 9 August 2001[43] and commended to States by the General Assembly on 12 December 2001.[44] Article 1 declares that: "Every 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: (a) Is attributable to the State under international law; and (b) Constitutes a breach of an international obligation of the State".[45]

33. Article 4 (1) addresses the question of the attribution of conduct to a State, something of particular importance for the purposes of this opinion. This provision declares that:

> "The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State".

34. This principle, which is one of long standing in international law,[46] was underlined by the International Court in the *LaGrand* case declaring that: "the international responsibility of a state is engaged by the action of the competent organ and authorities of the state, whatever they may be"[47] and reiterated in the *Genocide Convention* case, where it was noted that it was:

> "One of the cornerstones of the law of state responsibility, that the conduct of any state organ is to be considered an act of the state under international law, and therefore gives rise to the responsibility of the state if it constitutes a breach of an obligation of the state".[48]

35. The ILC commentary to the articles on State responsibility underlined the broad nature of this principle and emphasized that the reference to State organs in this provision:

> "Is not limited to the organs of central government, to officials at high level or to persons with responsibility for the external relations of the state. It extends to organs of government of whatever kind or classification, exercising

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[43] United Nations document A/56/10, 2001. See also James Crawford, *The International Law Commission's Articles on State Responsibility*, Cambridge, 2002, and James Crawford, Alain Pellet, Simon Olleson (eds.), *The Law of International Responsibility*, Oxford, 2010.

[44] United Nations General Assembly resolution 56/83. See also General Assembly resolutions 59/35 and 62/61 and document A/62/62.

[45] See e.g. the *Chorzow Factory* case, PCIJ, series A, No. 9, p. 21 and the *Rainbow Warrior* case, 82 ILR, p. 499.

[46] See e.g. the *Moses* case, John B. Moore, *International Arbitration*, vol. III, pp. 3127, 3129 (1871).

[47] Provisional Measures, ICJ Reports, 1999, pp. 9, 16.

[48] ICJ Reports, 2007, para. 385. It was held that this principle constituted a rule of customary international law, ibid. See also *Immunity from Legal Process of a Special Rapporteur*, ICJ Reports, 1999, pp. 62, 87.

> whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level".[49]

36. Similarly, article 5 provides that the conduct of a person or entity which is not an organ of the State under article 4, but which is empowered by the law of the State to exercise elements of governmental authority shall be considered as an act of the State under international law, provided that the person or entity in question was acting in that capacity in the instance in question. Accordingly, activities by armed units of the State, including those empowered so to act, will engage the responsibility of the State. Thus Armenia is responsible internationally for actions (and omissions) of its armed forces in their activities in Azerbaijan.

37. A key element of State responsibility, and one particularly significant for present purposes, is the rule enshrined in article 8 that:

> "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".

38. This provision essentially covers two situations: first, where persons act directly under the instructions of State authorities and, secondly, where persons are acting under the "direction or control". The latter point is critical. It means that States cannot avoid responsibility for the acts of secessionist entities where in truth it is the State which is controlling the activities of the body in question. The difference between the two situations enumerated in article 8 is the level of control exercised. In the former case, the persons concerned are in effect part of the apparatus of the State insofar the particular situation is concerned. In the latter case, the power of the State is rather more diffuse.

39. The International Court addressed the matter in the *Nicaragua* case, where it was noted that in order for the State to be responsible for the activities, it would need to be demonstrated that the State "had effective control of the military or paramilitary operation in the course of which the alleged violations were committed".[50] This approach was reaffirmed in the *Genocide Convention* case.[51]

2. Under the European Convention on Human Rights

40. As noted above, both Armenia and Azerbaijan are contracting parties to this Convention, which further constitutes *lex specialis*. Jurisdictional rules, that is those concerning State responsibility are not the same as those that apply in general international law. The European Court of Human Rights has made it clear that a contracting party's responsibility covers not only the acts of its own agents and officials but extends on the basis of "effective overall control" to include acts of a "local administration" which survives by virtue of its support.[52]

41. The rationale behind this was explained by "the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings" and by the mission of the Court, as set out in

[49] See Crawford, op.cit., p. 95.
[50] ICJ Reports, 1986, pp. 14, 64-5.
[51] ICJ Reports, 2007, at para. 398 and following.
[52] ECHR Judgement of 10 May 2001 at para. 77.

article 19 of the Convention, "to ensure the observance of the engagements undertaken by the High Contracting Parties". Accordingly, where a Government was unable to exercise its Convention obligations due to being ousted in fact from control, the Court concluded that any other finding would result in a "regrettable vacuum in the system of human rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court".[53]

42. The European Court of Human Rights further clarified this approach, noting in particular that:

> "According to the relevant principles of international law, a State's responsibility may be engaged where, as a consequence of military action — whether lawful or unlawful — it exercises in practice effective control of an area situated 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".[54]

43. The Court emphasized that it was not necessary for "detailed control" to be demonstrated, as "overall control" would suffice, while in addition, the responsibility of the State in question could be engaged by the acquiescence or connivance of the authorities of the State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction and that this was "particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognized by the international community".[55] It was also noted that under the Convention, a State's authorities were strictly liable for the conduct of their subordinates and consequently under a duty to impose their will. They could not shelter behind their inability to ensure that it was respected.[56]

44. Thus, the State in question is responsible not only for its own activities, but for those of a "subordinate local administration *which survives there by virtue of its military and other support*".[57] Whether such is the case is a matter of fact. The Court regarded a State's responsibility to be engaged in respect of unlawful acts committed by a separatist regime in part of the territory of another member State in the light of military and political support given to help set up that separatist regime.[58]

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[53] Ibid., para. 78.

[54] ECHR Judgement of 8 July 2004 at para. 314. See also ECHR Judgement of 23 February 1995 at para. 62 and ECHR Judgement of 28 November 1996 at para. 52; ECHR Judgement of 12 December 2001 at para. 66 and following; and ECHR Judgement of 29 March 2010 at para. 62 and following.

[55] ECHR Judgement of 8 July 2004 at para. 318.

[56] Ibid., paras. 314-9. See also ECHR Judgement of 16 November 2004, para. 65 and following, especially para. 69, and ECHR Judgement of 18 January 1978, series A No. 25, at para. 159. See also article 7 of the International Law Commission's Articles on State Responsibility and the *Cairo* case heard by the General Claims Commission, (1929) Reports of International Arbitral Awards 5 (RIAA), p. 516.

[57] ECHR Judgement of 8 July 2004 at para. 316.

[58] Ibid., para. 382.

45. Accordingly, the conclusion must be that due to its initial and continuing aggression against Azerbaijan and persisting occupation of this State's internationally recognized territory accomplished both directly through its own organs, agents and officials and indirectly through local Armenian forces and the subordinate local administration in the occupied Nagorno-Karabakh over which the Republic of Armenia exercises the requisite degree of effective control as it is understood under international law and the European Convention on Human Rights system, the Republic of Armenia bears full international responsibility for the breaches of international law that have occurred and continue to occur.

46. We turn now to the substantive breaches of international law for which Armenia is liable.

II. The forcible displacement[59] of the citizens of the Republic of Azerbaijan from the occupied territories

47. The rights of the citizens of the Republic of Azerbaijan have been violated by their expulsion from the occupied areas of Azerbaijan (Nagorno-Karabakh and surrounding areas) by the armed forces of Armenia or by subordinate forces for which it is internationally responsible. These rights flow from international law. It is, however, to be noted that article 3 (1) of Protocol No. 4 to the European Convention on Human Rights, 1963, provides that "No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national." Although both Armenia and Azerbaijan are parties to this Protocol, this is dated from the date of accession[60] and the expulsions in question predate the coming into force of the Convention for the two States. The act of expulsion or deportation itself constitutes an instantaneous act and thus outside of the jurisdiction of the European Court. Nevertheless, the existence of the obligation for Armenia as from the date of its accession to the Convention reinforces the prohibition of the expulsions under general international law. The continuing consequences of the refusal to permit the return of expellees are examined below.[61]

48. The fact that all Azerbaijanis were expelled from the occupied territories is well attested. In a number of resolutions adopted in 1993 specifically concerning the conflict between Armenia and Azerbaijan over Nagorno-Karabakh, the Security Council of the United Nations expressed grave concern at "the displacement of a large number of civilians".[62] In its resolution of 20 December 1993, the General Assembly of the United Nations noted with alarm "that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million".[63]

[59] This term is explained below together with its relationship to the concepts of deportation and transfer, see para. 64 and following.

[60] In Armenia's case from 26 April 2002 and for Azerbaijan from 15 April 2002.

[61] See below, para. 117 and following.

[62] See United Nations Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

[63] United Nations General Assembly resolution 48/114, entitled "Emergency international assistance to refugees and displaced persons in Azerbaijan".

49. The Representative of the United Nations Secretary-General concluded that "internal displacement in Azerbaijan is a direct consequence of the conflict over the territory of Nagorno-Karabakh".[64]

50. Beehner has written that:

> "In 1992, full-scale war between Azerbaijan and Armenia broke out. By the middle of the year, Armenia controlled the bulk of Nagorno-Karabakh and pushed further into Azerbaijani territory to establish the so-called Lachin Corridor, an umbilical cord linking the breakaway republic with Armenia proper. By 1993, Armenian forces had occupied nearly 20 percent of the Azerbaijani territory surrounding Nagorno-Karabakh and expelled hundreds of thousands of ethnic Azeris".[65]

51. The International Crisis Group underlined that:

> "Before the war the 424,900 inhabitants of those districts were almost exclusively Azeris, none of whom remain. Towns like Agdam (28,200), Kelbajar (8,100), Jebrail (6,200) and Fizuli (23,000) have been systematically levelled so that only foundations remain. Even electrical wiring, pipes, and other infrastructure have been sold as scrap".[66]

52. International law deals with questions of expulsions or deportations in the framework of the laws of armed conflict (or international humanitarian law). There are clear provisions, buttressed in recent years by case law.

53. Of overwhelming importance, article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 ("Geneva Convention IV")[67] provides in its first paragraph that:

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".

54. This was not, however, the first reference to deportation. Indeed, it may well be possible to trace the origins in positive law to the United States Lieber Code of 1863, article 23 of which provided that, under the civilized norms of warfare, "[p]rivate citizens are no longer murdered, enslaved, or carried off to distant

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[64] United Nations document E/CN.4/1999/79/Add.1, para. 20. See also para. 30. The Representative of the Secretary-General on the human rights of internally displaced persons stated in his report dated 15 April 2008, that 686,585 persons from Nagorno-Karabakh and seven adjacent regions were registered as displaced, "one of the highest proportions of displaced persons in the world", United Nations document A/HRC/8/6/Add.2, para. 7. It may also be added that it was concluded that: "Given the magnitude of the problem of forced displacement in Azerbaijan the Representative was impressed by the Government's achievements, which compare very favourably with national responses in many other countries affected by internal displacement", para. 61.

[65] "Nagorno-Karabakh: The Crisis in the Caucasus", 2005, Council for Foreign Relations, www.cfr.org/publication/9148/nagornokarabakh.html.

[66] International Crisis Group Report of 14 September 2005, op. cit., p. 7. See also International Crisis Group, "Tackling Azerbaijan's IDP Burden", Policy Briefing No. 67, 27 February 2012, p. 3.

[67] See Jean Pictet, *Commentary on the Geneva Conventions of 12 August 1949: IV Geneva Convention*, Geneva ICRC, 1958, p. 277.

parts".[68] There was no mention of deportations as such in the Hague Regulations of 1907, but in his authoritative *Commentary*, Pictet regarded the absence as being due to the fact that the practice had "fallen into abeyance".[69] However, the cumulative effect of a number of the provisions in the Regulations may be taken as being akin to the prohibition of deportation.[70]

55. Article 6 of the Charter of the International Military Tribunal (the Nuremberg Charter) refers to the phenomenon in two places. Article 6 (b) provides that war crimes include "deportation to slave labour or for any other purpose of civilian population of or in occupied territory", while article 6 (c) includes in the definition of crimes against humanity, "deportation, and other inhumane acts committed against any civilian population, before or during the war".[71] Article II of the 1945 Allied Control Council Law No. 10, 1945, was to the same effect.[72] Article 6 appeared as Principle VI (b) and (c) of the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, adopted by the International Law Commission.[73] Many of the judgements of the Tribunal underlined this.[74] Accordingly, it has been concluded that article 49 (1) simply reiterated existed customary law.[75]

56. It is also to be noted that article 53 provides that any destruction by the occupying power of 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, is prohibited, except where such destruction is rendered "absolutely necessary by military operations".

57. By virtue of article 147 of Geneva Convention IV and of article 85 (4) (a) of Additional Protocol I to the Geneva Conventions 1977, such deportations constitute a "grave breach" of the Convention. Further, article 22 (2) (a) of the 1991 International Law Commission's Draft Code of Crimes against the Peace and Security of Mankind stipulates that the "deportation or transfer of the civilian population" is regarded as an "exceptionally serious war crime".[76] This provision was relevant in the war crimes instruments that shortly followed.

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[68] Francis Lieber, *Instructions for the Government of Armies of the United States in the Field*, issued as General Order No. 100 (1863), see e.g. Theodor Meron, "The Humanization of Humanitarian Law", 94 American Journal of International Law, 2000, pp. 239, 245, noting that article 23 of the Lieber Code "anticipat[ed] the prohibition on deportations in the Fourth Geneva Convention".

[69] Op. cit., p. 279. See also Georg Schwarzenberger, *International Law As Applied by International Courts and Tribunals: The Law of Armed Conflict*, London, 1968, p. 227.

[70] See e.g. articles 42 to 56 of the Regulations.

[71] 82 UNTS 279, 39 AJIL Supp. 258 (1945). See also Jean-Marie Henckaerts, *Mass Expulsions in Modern International Law and Practice*, The Hague, Nijhoff, 1995, p. 154; and Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge, 2009, p. 160.

[72] See also article 5 (c) of the 1946 IMT Charter (Tokyo), which established individual responsibility for crimes against humanity, including "deportation, and other inhumane acts committed against any civilian population, before or during the war".

[73] United Nations document A/1316, 1950.

[74] See e.g. *United States v. Milch*, 2 *Trials of War Criminals Before the Nuremberg Military Tribunals*, 1946-49, pp. 353, 790. See also Alfred de Zayas, "International Law and Mass Population Transfers", 16 Harvard International Law Journal, 1975, pp. 207, 217 and following.

[75] Ibid., p. 210.

[76] United Nations document A/46/10, 1991, article 22 (2) (a).

58. Under article 2 (g) of the Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993, the power of the Tribunal includes the prosecution of persons for the unlawful deportation or transfer of civilians as a grave breach of the 1949 Geneva Convention IV,[77] while article 5 (d) provides that deportation, when committed against any civilian population, constitutes a crime against humanity. Article 3 (d) of the Statute of the International Criminal Tribunal for Rwanda, 1994, declares that deportation committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds constitutes a crime against humanity.[78]

59. The Statute of the International Criminal Court, 1998 ("the Rome Statute"),[79] also enshrines the prohibition of deportation. Article 7 (1) (d) provides that "[d]eportation or forcible transfer of the population" when committed as "part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", constitutes a crime against humanity. Article 8 (2) (a) (vii) declares that "[u]nlawful deportation or transfer" constitutes a war crime in international armed conflicts, while article 8 (2) (b) (viii) states that "the deportation or transfer [by the Occupying Power] of all or parts of the population of the occupied territory within or outside [the territory it occupies]", constitutes a war crime in international armed conflicts and article 8 (2) (e) (viii) holds that "[o]rdering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand", constitutes a war crime in non-international armed conflict.

60. The Elements of Crimes adopted by the States parties to the Rome Statute,[80] which forms part of the applicable law for the International Criminal Court,[81] with regard to article 7 (1) (d) requires that:

> "1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
>
> 2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
>
> 3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
>
> 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

[77] United Nations Security Council resolution 827 (1993), as amended by resolutions 1166 (1998) and 1329 (2000).

[78] United Nations Security Council resolution 955 (1994), as amended by resolutions 1165 (1998) and 1329 (2000).

[79] Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998, United Nations document A/CONF.183/9.

[80] CC-ASP/1/3 (part II-B) adopted on 9 September 2002. Under article 9 (1) of the Statute the Elements of Crimes "shall assist the Court in the interpretation and application of articles 6, 7 and 8" and are to be adopted by a two-thirds majority of the members of the Assembly of States Parties.

[81] See article 21 of the Statute.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[82]

61. The Elements of Crimes with regard to article 8 (2) (a) (vii) are the following:

"1. The perpetrator deported or transferred one or more persons to another State or to another location.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The perpetrator was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict."

62. The relevant provisions in the Elements of Crimes with regard to article 8 (2) (b) (viii) requires that:

"1. The perpetrator: ...

(b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.

2. The conduct took place in the context of and was associated with an international armed conflict.

3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict."

63. It is thus clear that the prohibition of deportation is established in both conventional and customary international law and is thus binding upon the Republic of Armenia.

64. Recent case law has also clarified the meaning of deportation. For example, the issue as to whether the deportation needs to be accomplished by force in order to fall within the prohibition has been debated, but the provisions of the Rome Statute cited above are clear at least as to the law to be applied by the International Criminal Court. The broad definition of "force" in this framework is particularly to be noted.[83] Further, the International Court of Justice has referred to the "forcible transfer of populations and deportations, which are prohibited under article 49, paragraph 1 [of Geneva Convention IV]".[84] In the *Blaskic* case, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") declared that, "The deportation or forcible transfer of civilians means 'forced displacement of the persons concerned by expulsion or other coercive acts from the area in which

[82] The term "forcibly" was defined in a footnote as "not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment", while it was noted in a footnote that "deported or forcibly transferred" was interchangeable with "forcibly displaced".

[83] See previous footnote.

[84] ICJ Reports, 2004, pp. 136, 192.

they are lawfully present, without grounds permitted under international law'".[85] This has been underlined in a number of other cases.

65. One distinction that has been made is that deportation involves expulsion across a national border whereas forced transfer involves the displacement of people from one area of a State to another area, which may take place within the same national borders.[86] The Trial Chamber in the *Krstic* case defined both deportation and forcible transfer as "the involuntary and unlawful evacuation of individuals from the territory in which they reside".[87] Indeed, the provisions of the Rome Statute follow this approach as article 8 (2) (b) (viii) refers clearly to the "deportation or transfer of all or parts of the population of the occupied territory within or outside this territory".

66. In the view of the Appeals Chamber in the *Stakić* case, the crime of deportation required the displacement of individuals across a border. It was noted that the default principle under customary international law with respect to the nature of the border is that there must be expulsion across a de jure border to another country, as in article 49 of Geneva Convention IV. However, customary international law also recognized that displacement from "occupied territory", as expressly set out in article 49 of Geneva Convention IV and as recognized by numerous Security Council resolutions, was also sufficient to amount to deportation. The Appeals Chamber also accepted that under certain circumstances displacement across a de facto border may be sufficient to amount to deportation.[88]

67. The issue was discussed in the *Milutinovic* case by the ICTY Trial Chamber judgement of 26 February 2009.[89] Bypassing the, for present purposes semantic, dispute over deportation and forcible transfer by referring to forcible displacement as encompassing both phenomena, the Chamber noted that:

> "The *actus reus* of forcible displacement is (a) the displacement of persons by expulsion or other coercive acts, (b) from an area in which they are lawfully present, (c) without grounds permitted under international law. The *mens rea* for the offence is the intent to displace, permanently or otherwise, the victims within the relevant national border (as in forcible transfer) or across the relevant national border (as in deportation)".[90]

68. In an important and very relevant statement of principle, the Trial Chamber declared that:

> "An essential element is the involuntary nature of the displacement. Trial and Appeals Chambers have consistently held that it is the absence of 'genuine choice' that makes a given act of displacement unlawful. In this context, the Appeals Chamber has held that genuine choice cannot be inferred from the fact that consent was expressed where the circumstances deprive the consent of any value. In addition, Trial and Appeals Chambers have inferred a lack of genuine choice from threatening and intimidating acts that are calculated to deprive the

[85] Case No. IT-95-14, 2000, at para. 234 and 122 International Law Reports, pp. 1, 88.
[86] See e.g. *Simic*, IT-95-9-PT, 2003, para. 122; *Naletilic & Martinovic*, IT-98-34-T, 2003, para. 670; and *Krnojelac*, IT-97-25-T, 2002, paras. 474 & 476.
[87] IT-98-33-T, 2001, para. 521.
[88] *Stakić* Appeal Judgement, IT-97-24-A, 2006, para. 300.
[89] IT-05-87-T, 2009.
[90] Ibid., para. 164 (footnotes omitted).

civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property, and the commission of or the threat to commit other crimes 'calculated to terrify the population and make them flee the area with no hope of return'".[91]

69. What needs to be emphasized is that the prohibition does not require the intention permanently to displace the people in question from their homes.[92] But only that they must be intentionally displaced.[93] As to whose intention is required, it has been stated that the intent to displace the victims may be that of "either the physical perpetrator or the planner, orderer, or instigator of the physical perpetrator's conduct, or a member of the joint criminal enterprise".[94] This is particularly important in cases such as the occupied territories of Azerbaijan where the State responsible seeks to deny responsibility.

70. While it is true that the second paragraph of article 49 of Geneva Convention IV provides that "the Occupying Power may undertake total or partial evacuation of a given area is the security of the population or imperative military reasons so demand", such action:

"May not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".[95]

71. The Chamber in *Milutinovic* addressed this issue and concluded that:

"The chief distinction between an illegitimate forcible displacement and a permissible evacuation is that, in the case of the latter, 'persons thus evacuated [are] transferred back to their homes as soon as the hostilities in the area in question have ceased.' It is therefore unlawful to use evacuation measures as a pretext to forcibly dislocate a population and seize control over a territory".[96]

72. The Security Council of the United Nations in a range of resolutions has condemned the forcible displacement of persons,[97] while in resolution 1674 (2006) on the protection of civilians in armed conflict, the Council expressly recalled "the prohibition of the forcible displacement of civilians in situations of armed conflict under circumstances that are in violation of parties' obligations under international humanitarian law". The General Assembly of the United Nations has also adopted numerous resolutions to the same effect covering a wide range of situations.

73. Further in recommendation 1198 adopted in 1992 on the crisis in the Former Yugoslavia, the Parliamentary Assembly of the Council of Europe considered that the expulsion of civilians was a crime against humanity and that persons responsible for such crimes should be held personally accountable.

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[91] Ibid., para. 165 (footnotes omitted).
[92] See *Stakić* Appeal Judgement, IT-97-24-A, 2006, paras. 307, 317.
[93] *Milutinovic*, para. 167.
[94] Ibid.
[95] Note that by the third paragraph of article 49, the occupying Power must ensure that the evacuation is carried out in satisfactory conditions of safety, health, nutrition and accommodation.
[96] Op. cit., para. 166 (footnotes omitted). See also *Blagojević* Trial Judgement, para. 597.
[97] See e.g. resolutions 752 (1992); 819 (1993); 1019 (1995); 1034 (1995).

74. Accordingly, it may be concluded that Armenia's actions, whether by its own forces or by those forces for whom it bears responsibility, in precipitating and maintaining the forcible displacement (or expulsion or deportation or forcible transfer) of the Azerbaijani population of Nagorno-Karabakh and other occupied territories is consistent with the international law offence as described above. The intention to displace was manifestly evidenced by the expulsions themselves coupled with the restriction of such deportations to those of Azerbaijani ethnicity and the refusal to countenance the return of the displaced persons.

75. Indeed, Armenia's actions may be characterized as "ethnic cleansing", a term defined by the International Court of Justice as: "in practice used, by reference to a specific region or area, to mean 'rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area'".[98]

III. The violation of the principle of non-discrimination in regard to Azerbaijani internally displaced persons, including the implantation of ethnic Armenian settlers in the occupied territories of Azerbaijan

A. Discrimination by forcible displacement of ethnic Azerbaijanis

76. The rights of the internally displaced Azerbaijani persons to non-discriminatory treatment have been violated by Armenia and those for whom Armenia is internationally responsible.

77. The principle of non-discrimination is well established in international law, appearing in a number of international treaties.[99] It is also fair to conclude that discrimination on racial grounds is also contrary to customary international law.[100] This conclusion may be reached on the basis inter alia of Articles 55 and 56 of the Charter of the United Nations, articles 2 and 7 of the Universal Declaration of Human Rights, the International Covenants on Human Rights, regional instruments

[98] *Genocide Convention*, ICJ Reports, 2007, para. 190. See also United Nations document S/35374 (1993), para. 55.

[99] See e.g. the International Convention on the Elimination of All Forms of Racial Discrimination, 1965; the International Covenants on Human Rights, 1966; and the International Convention on the Elimination of All Forms of Discrimination against Women, 1979. See also e.g. Javaid Rehman, *International Human Rights Law*, second ed., 2010, London, chapter 12; Wouter Vandenhole, *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, Antwerp, 2005; Anne Bayefsky, "The Principle of Equality or Non-discrimination in International Law", 11 Human Rights Law Journal, 1990, p. 1; Warwick McKean, *Equality and Discrimination under International Law*, Oxford, 1983, and Theodor Meron, *Human Rights Law-Making in the United Nations*, Oxford, 1986, chapters 1-3.

[100] See e.g. the Dissenting Opinion of Judge Tanaka in the *South-West Africa* cases, ICJ Reports, 1966, pp. 3, 293.

on human rights protection and general State practice. Discrimination on grounds of religion is also contrary to customary international law.[101]

78. The same principle appears in international humanitarian law. The prohibition of discrimination appears clearly in common article 3 (1) of the four Geneva Conventions, 1949, with regard to non-international armed conflicts in the following form:

> "(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria".

79. In the case of international armed conflict, article 13 of Geneva Convention IV provides that the provisions of the Convention concerning protection of populations "cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war".[102] The International Committee of the Red Cross ("ICRC") in its work on customary international humanitarian law regarded this prohibition of discrimination as established by State practice as a rule of customary international law with regard to both international and non-international armed conflicts.[103]

80. In particular, as the United Kingdom *The Manual of the Law of Armed Conflict* puts it:

> "It is prohibited to move them [civilians] for reasons based on race, colour, religion or faith, sex, birth, or wealth, or any similar criteria or in order to shield military targets from attack".[104]

81. The prohibition of discrimination appears also in article 14 of the European Convention on Human Rights, which provides that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

82. The test of discrimination is the absence of any "objective and reasonable justification", for the distinction, that is, where the difference does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality

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[101] See e.g. the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981, United Nations General Assembly resolution 36/55. See Odio Benito, *Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief*, New York, 1989, and Bahiyyih G. Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*, Dordrecht, 1995. The United Nations Human Rights Committee produced a general comment on article 18 concerning freedom of thought, conscience and religion, see general comment No. 22, 1993, HRI/GEN/1/Rev.1, 1994.

[102] This is also regarded as a fundamental guarantee in article 75 (1) of Additional Protocol I and article 4 (1) of Additional Protocol II of 1977. See also United Kingdom Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, pp. 395-6.

[103] See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Cambridge, ICRC, 2005, vol. I: Rules, p. 308 and following (Rule 88).

[104] Op. cit., p. 390.

between the means employed and the aim sought to be realised".[105] Further, the Court has declared that "very weighty reasons" are required in order to justify a difference in treatment on the ground of nationality.[106]

83. Article 14 of the Convention is not a freestanding right and is only applicable in conjunction with other articles of the Convention. The established facts merely need to fall within the scope of one or more Convention rights.[107]

84. It is clear that due to Armenian military operations and occupation of Azerbaijani territories, ethnic Azerbaijanis were forced to leave their homes and possessions in these territories and permission to return is refused. Ethnic Armenians do not suffer the same treatment from the Armenian authorities and forces, thus precipitating a violation of article 14 of the Convention. The military action taken by Armenia and those for whom it bears international responsibility on the territory of Azerbaijan had the aim of creating a mono-ethnic culture there, both by expelling the indigenous ethnic Azerbaijani population and by refusing to permit their return.[108] Human Rights Watch, in particular, concluded that:

> "The Azeri civilian population was expelled from all areas captured by Karabakh Armenian forces, Azeri civilians caught by advancing Karabakh Armenian forces during their offensives of 1993 were taken hostage, and many Azeris were killed by indiscriminate fire as they attempted to escape".[109]

85. In the 2004 report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe concerning the conflict the situation was described as follows:

> **"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. The military action, and the widespread ethnic hostilities which preceded it, led to the large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing."**[110]

86. On the basis of this report the Parliamentary Assembly of the Council of Europe adopted resolution 1416 in which:

> "[T]he Assembly expresses its concern that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic

[105] See e.g. ECHR Judgement of 16 September 1996, para. 42.
[106] Ibid.
[107] See ECHR Judgement of 23 July 1968, series A No. 6, pp. 33-34, para. 9. See also ECHR Judgement of 27 October 1975, para. 45; ECHR Judgement of 28 November 1984, para. 29; ECHR Judgement of 16 September 1996, para. 36; and ECHR Judgement of 27 March 1998, para. 28.
[108] See International Crisis Group Report of 14 September 2005, op. cit., para. 2 of the executive summary.
[109] Human Rights Watch Report, 1994, op. cit., p. VIII.
[110] Report of the Political Affairs Committee to the Parliamentary Assembly of the Council of Europe, document 10364 of 29 November 2004, para. 1 of the summary.

expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing".[111]

87. The discriminatory displacement from the occupied territories of Azerbaijan is reflected by the demographic changes. According to the International Crisis Group[112] and the Directorate General of Political Affairs of the Council of Europe,[113] there are "virtually no Azeris left" in Nagorno-Karabakh. The United States Committee for Refugees and Immigrants stated in its country report on Azerbaijan that:

> **"Because Armenian forces continue to control Nagorno-Karabakh and six surrounding provinces that make up about 20 percent of Azerbaijan's territory, the vast majority of the displaced [Azerbaijanis] cannot return to their home regions."**[114]

B. Discrimination by implantation of ethnic Armenian settlers in the occupied territories of Azerbaijan

88. Article 49, paragraph 6 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 is regarded as a "grave breach" pursuant to article 85 (4) (a) of Additional Protocol I, 1977, and as a war crime in article 8 (2) (b) (viii) of the Rome Statute.[115] The International Court of Justice in the *Wall* case, regarded this provision as prohibiting "not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an Occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory".[116] The ICRC study on customary international humanitarian law regards this provision as constituting a rule of customary international law applicable in international armed conflicts.[117]

89. The Armenian policy for implanting ethnic Armenian settlers in the occupied territories has proceeded apace. Various incentives are provided for Armenians to

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[111] Resolution 1416 of the Parliamentary Assembly of the Council of Europe, adopted on 25 January 2005, para. 2. It is to be noted that in a speech made at the diplomatic academy in Moscow in 2003, the then President of Armenia, Robert Kocharian, was reported as saying that there was an "ethnic incompatibility" between Armenians and Azerbaijanis, see the press article by Artur Terian published on 16 January 2003, www.armenialiberty.org. This comment provoked Peter Schieder, the then President of the Parliamentary Assembly of the Council of Europe, to declare that "since its creation the Council of Europe has never heard the phrase 'ethnic incompatibility'", cited in a letter from the Permanent Representative of Azerbaijan to the United Nations, United Nations document A/64/475-S/2009/508, 6 October 2009. See also reference made to Armenian ethnic distinctiveness on the basis of genetic studies, letter from the Permanent Representative of Azerbaijan to the United Nations, United Nations document A/65/534-S/2010/547, 22 October 2010.

[112] International Crisis Group Report of 14 September 2005, op. cit., p. 4.

[113] Appendix IV to the report of the Political Affairs Committee to the Parliamentary Assembly of the Council of Europe, op. cit, p. 2.

[114] World Refugee Survey 2001, country report on Azerbaijan.

[115] See Dinstein, op. cit., p. 238 and following; and Henckaerts, op. cit., p. 148 and following.

[116] ICJ Reports, 2004, pp. 136, 183. See also United Nations Security Council resolutions 446 (1979); 452 (1979); 465 (1980); 476 (1980); 677 (1990) and 752 (1992).

[117] Henckaerts and Doswald-Beck, op. cit., p. 462.

settle in the territory in question, such as "free housing, social infrastructure, inexpensive or free utilities, low taxes, money and livestock",[118] as well as tax exemptions, newly built houses, plots of land, advantageous loans.[119] In its report, the OSCE fact-finding mission ("FFM") in 2005 sought to analyse the situation of settlers in the occupied areas outside of Nagorno-Karabakh. It noted that "disparate settlement incentives traceable to the authorities within and between the various territories" existed,[120] and concluded that:

> "Settlement figures for the areas discussed in this report, whose populations the FFM has interviewed, counted or directly observed, are as follows: in Kelbajar District approximately 1,500; in Agdam District from 800 to 1,000; in Fizuli District under 10; in Jebrail District under 100; in Zangelan District from 700 to 1,000; and in Kubatly District from 1,000 to 1,500. Thus, the FFM's conclusions on the number of settlers do not precisely correspond with population figures provided by the local authorities, which were higher".[121]

90. In 2010, the OSCE Minsk Group Co-Chairs, joined by the OSCE and United Nations High Commissioner for Refugees (UNHCR) officials, conducted a field assessment mission in the occupied territories of Azerbaijan. It concluded that about 14,000 Armenian settlers have replaced the more than half a million Azerbaijanis forced to leave.[122]

91. The picture is particularly clear with regard to Lachin, an occupied area between Nagorno-Karabakh and Armenia itself. For example, the United States Committee for Refugees and Immigrants in its World Refugee Survey 2002 country report on Armenia stated that:

> "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…. Settlers choosing to reside in and around Nagorno-Karabakh reportedly receive the equivalent of $365 and a house from the de facto authorities".[123]

92. 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 United Nations Sub-Commission on the Promotion and Protection of Human Rights, the following was stated:

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[118] International Crisis Group Report of 14 September 2005, op. cit., p. 7.

[119] Ibid. See also United Nations document A/59/568, letter from the Permanent Representative of Azerbaijan to the United Nations dated 11 November 2004 including annex with enclosure, pp. 7-12.

[120] Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh, 28 February 2005, United Nations document A/59/747-S/2005/187, p. 35.

[121] Ibid., p. 33.

[122] Report of the OSCE Minsk Group Co-Chairs' field assessment mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh, executive summary, 31 March 2011. See also International Crisis Group policy briefing of 27 February 2012, op. cit, p. 3, and United Nations document A/65/801-S/2011/208, letter from the Permanent Representative of Azerbaijan to the United Nations dated 29 March 2011.

[123] http://refugees.org/countryreports.aspx?__VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpHb0J1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH&CountryDD%3ALocationList.

> "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 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. At present, the numbers are small — between 20,000 to 28,000, according to local authorities. However, if this process continues (and the expectation is that Armenian labour migrants who will be returning from Russia, will be encouraged to go there), Israel-type scenario can be easily envisaged and it would be even more difficult to reach a 'peace for territories' settlement".[124]

93. This is supported by the International Crisis Group, which reported that:

> "Stepanakert 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".[125]

94. The conclusion is, therefore, clear. Despite efforts made by the international community generally to condemn and discourage settlement of the occupied territories and to call for the prohibition of changing the demographic structure of the region,[126] such settlement has continued. Together with the forcible displacement of ethnic Azerbaijanis, the emplacement of ethnic Armenians in the occupied territories of Azerbaijan has, contrary to international law, altered the demographic balance in a discriminatory manner.

IV. The prevention of access of Azerbaijani internally displaced persons to their property in the occupied areas by Armenia and those for whom it is responsible

95. The rights of the internally displaced Azerbaijanis to their property and to access to such property have been violated by Armenia and by those for whom Armenia is responsible.

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[124] United Nations document E/CN.4/Sub.2/AC.5/2003/WP.7, 5 May 2003 at pp. 34-35.

[125] At p. 7, footnotes omitted. See also the International Crisis Group, "Nagorno-Karabakh: A Plan for Peace", Europe Report No. 167, 11 October 2005, at p. 22, footnotes omitted, and International Crisis Group Policy Briefing of 27 February 2012, op. cit., at p. 3. A full analysis of the settlement programme was presented by the Permanent Representative of Azerbaijan to the United Nations on 11 November 2004 and 27 April 2010, United Nations documents A/59/568 and A/64/760-S/2010/211.

[126] See e.g. Parliamentary Assembly of the Council of Europe Recommendations 1570 (2002) and 1497 (2006).

96. The ICRC in its work on customary international humanitarian law has noted that State practice has established the rule of respect for the property rights of displaced persons as a norm of customary international law applicable in both international and non-international armed conflicts.[127] The Guiding Principles on Internal Displacement, for example, provide that "property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use",[128] while the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords states that "all refugees and displaced persons … shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them".[129]

97. However, it is the provisions of the European Convention on Human Rights, which are of particular application for present purposes as a clear jurisprudence has developed on the matter. Article 1 of Protocol No. 1 to the Convention provides that:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

98. The case law of the Court has established three rules contained in this article described as follows:

> "The first, which is expressed in the first sentence of the first paragraph (P1-1) and which is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph (P1-1), covers the deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph (P1-1), recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule."[130]

99. As the third rule is not of relevance in this case, a description of this rule in detail can be left aside. Insofar as the principle of peaceful enjoyment of possessions is concerned, it is established that the term "possessions" is to be flexibly interpreted to include not only the ownership of physical goods such as a plot of land and a house, but also "certain other rights and interests constituting assets" which have a certain economic value.[131] In addition, a person's legitimate

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[127] See Henckaerts and Doswald-Beck, op. cit., p. 472.

[128] See further on the Guiding Principles, below, para. 112.

[129] Article 1 (1) of annex 7 of the Dayton Peace Agreement documents initialled in Dayton, Ohio, on 21 November 1995 and signed in Paris on 14 December 1995, see www1.umn.edu/humanrts/icty_/dayton/daytonannex7.html.

[130] ECHR Judgement of 20 November 1995, para. 33. See also ECHR Judgement of 23 September 1982, para. 61; and ECHR Judgement of 9 December 1994, para. 56.

[131] ECHR Judgement of 29 June 2004, para. 138. The Court further noted that the applicants had unchallenged rights over the common lands in the village, such as pasture, grazing and forest, and that they earned their living from stockbreeding and tree-felling. All of these economic resources and the revenue that the applicants derived from them were held capable of qualifying as "possessions" for the purposes of article 1, ibid., para. 139.

expectation of being able to carry out a proposed development has to be regarded, for the purposes of article 1 of Protocol No. 1, as a component part of the property.[132] Thus, article 1 of Protocol No. 1 affords protection not only against an interference with the right to property taken as a whole (for example an expropriation), but also against interferences with the various constituent elements of that right, taken individually, for example, the right to dispose of one's property.[133]

100. In a number of cases, the Court has established that denial of access to a person's property constitutes a violation of the right to the peaceful enjoyment of possessions.[134]

101. The military action taken by Armenia and those for whom it bears international responsibility resulted in the forcible displacement of ethnic Azerbaijanis from the occupied territories. Since the Azerbaijanis were obliged to flee from their normal places of residence with immediate or almost immediate effect, there was little opportunity to take their property and belongings with them. Beside private buildings, houses and land plots, they also left behind their domestic animals (cows, sheep, chickens etc.) as well as other possessions (such as cars and furniture). It was also extremely difficult to retain or retrieve official documents.[135]

102. The enormous damage caused by the unlawful seizure of the sovereign territory of the Republic of Azerbaijan by Armenian forces has been described in some detail in the report of the Republic of Azerbaijan entitled "On results of Armenian aggression against Azerbaijan and recent developments in the occupied territories".[136] The Security Council of the United Nations has on a number of occasions expressed its deep concern at the situation in the occupied territory of Azerbaijan which resulted in the destruction of property.[137] Further, as the report of the International Crisis Group has emphasized:

> "Armenia is not willing to […] allow the return of Azerbaijan internally displaced persons (IDPs) to Nagorno-Karabakh, until the independence of Nagorno-Karabakh is a reality." [138]

103. Thus, the Azerbaijani internally displaced persons have no access to their possessions to date and have lost all control over them. Consequently, their right to the peaceful enjoyment of their possessions guaranteed by article 1 of Protocol No. 1 has

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[132] See e.g. ECHR Judgement of 29 November 1991, para. 51.

[133] ECHR Judgement of 13 June 1979, para. 63.

[134] ECHR Judgement of 18 December 1996, para. 63. The principle was reaffirmed in subsequent cases, see e.g. ECHR Judgements of 10 May 2001, paras. 172, 187 and 189, and of 29 June 2004, para. 143.

[135] See e.g. International Crisis Group Report of 11 October 2005, op. cit., p. 27. See also International Crisis Group Report of 14 September 2005, op. cit., p. 24, and International Crisis Group Policy Briefing of 27 February 2012, op. cit, p. 3.

[136] Annex to the letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations, United Nations document A/58/594-S/2003/1090, 13 November 2003.

[137] See the statements made by the President of the United Nations Security Council on 12 May 1992, S/23904; 26 August 1992, S/24493; and 27 October 1992, S/24721. As to reports of damage, see also the report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh, op. cit, and the report of the OSCE Minsk Group Co-Chairs' field assessment mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh, executive summary, op. cit.

[138] International Crisis Group Report of 11 October 2005, op. cit., p. i.

been denied by Armenia and by those for whom Armenia bears international responsibility.

V. The right of return of Azerbaijani internally displaced persons to their homes in internationally recognized Azerbaijani territory

104. The rights of Azerbaijani internally displaced persons to return to their homes and to their property and possessions have been violated by Armenia and by those for whom Armenia is internationally responsible.

105. The ICRC commentary on customary international humanitarian law declares that, "displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist" and concludes that State practice has established this principle as a norm of customary international law in both international and non-international armed conflicts.[139]

106. The right of return of the internally displaced[140] flows from several distinct sources.

107. The first relevant source is international humanitarian law. Article 49, paragraph 2, of Geneva Convention IV provides that persons who have been evacuated must be transferred back to their homes as soon as hostilities in the area in question have ceased. This may be interpreted logically as extending to displacement, both voluntary and forcible. The test is the absence of fighting in the area in question and is thus a question of fact. It would certainly apply to most areas of the occupied territories of Azerbaijan, apart from arguably the area proximate to the Line of Contact (the ceasefire line under the Bishkek Protocol of 1994). It most certainly cannot be denied with regard to the area between the occupied Nagorno-Karabakh and Armenia, which is far from the ceasefire line (for example, Lachin).

108. Further, article 85 (4) (b) of Additional Protocol I declares as a grave breach of the Convention the unjustifiable delay in the repatriation of civilians when committed wilfully and in violation of the Geneva Conventions and the Protocol.[141]

109. The second relevant source is international human rights law. The Universal Declaration of Human Rights recognizes that "everybody has the right … to return to his country",[142] while article 12 (4) of the International Covenant on Civil and Political Rights, 1966, declares that, "no-one shall be arbitrarily deprived of the right to enter his own country".[143] Since the persons concerned are Azerbaijani nationals and since the territories in question are internationally recognized as being part of Azerbaijan, the criteria are fulfilled. The internally displaced thus have the right not to be prevented from returning. It cannot be argued that this right is limited

[139] Henckaerts and Doswald-Beck, op. cit., p. 468.
[140] This paper does not deal with the rights of refugees in international law.
[141] Armenia has been a party to Protocol I since 7 June 1993.
[142] Article 13 (2). The Declaration was adopted by the United Nations General Assembly in its resolution 217 A (III) of 10 December 1948.
[143] See also article 22 (5) of the Inter-American Convention on Human Rights, 1969, and article 12 (2) of the African Charter on Human and Peoples' Rights, 1981.

to particular areas of the country in question. It must apply to all parts of the country and in particular, therefore, to the place of permanent or habitual residence from which they were displaced illegally.

110. The third relevant source is regional human rights law and particularly the European Convention on Human Rights. Article 2 (1) of Protocol No. 4 provides that, "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence", while article 3 (2) provides that, "no-one shall be deprived of the right to enter the territory of the state of which he is a national". This Protocol binds both Armenia and Azerbaijan and is applicable since the deprivation of the right (unlike the original forcible displacement) is not an instantaneous act taking place before the instrument came into force for the parties, but is a continuing breach. Armenia is thus liable for this violation of the Convention.

111. Further, it is a necessary implication of article 8 of the Convention concerning the right to respect for private and family life and home and of article 1 of Protocol No. 1 concerning the right to peaceful enjoyment of possessions (see above section), that States parties to the Convention permit individuals to return to their homes from which they have been displaced in order to be able to exercise their rights.

112. Fourthly, there are a range of resolutions, recommendations and declarations, which while not necessarily binding in themselves, do point to the existence of State practice underlining the right of internally displaced persons to return to their homes. The Guiding Principles on Internal Displacement were presented by the Representative of the Secretary-General on internally displaced persons to the United Nations Commission on Human Rights in April 1998. Both the Commission and the General Assembly, in unanimously adopted resolutions, took note of the Principles, welcomed their use as an important tool and standard, and encouraged United Nations agencies, regional organizations and NGOs to disseminate and apply them.[144] In his 2005 report entitled "In larger freedom" the Secretary-General referred to the Principles as "the basic international norm for protection" of internally displaced persons,[145] while the Representative of the Secretary-General on the human rights of internally displaced persons noted in his final report dated 5 January 2010 that, "the Guiding Principles reflect and are consistent with international human rights and humanitarian law, restating existing norms and tailoring them to the needs of the displaced".[146] Indeed, the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, for example, obliges the 10 member States to incorporate the Guiding Principles into their domestic law.[147]

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[144] United Nations document E/CN.4/1998/53/Add.2, 11 February 1998. See also Catherine Phuong, *The International Protection of Internally Displaced Persons*, Cambridge, 2005, p. 56 and following; Simon Bagshaw, "Internally Displaced Persons at the Fifty-fourth Session of the UN Commission on Human Rights, 16 March-24 April 1998", 10 International Journal of Refugee Law, 1998, p. 548; and Walter Kälin, "Guiding Principles on Internal Displacement: Annotations", Studies on Transnational Legal Policy, No. 32. 2000.

[145] United Nations document A/59/2005, 21 March 2005, para. 210.

[146] A/HRC/13/21, 5 January 2010, para. 10.

[147] Ibid., para. 12.

113. Principle 28 of the Guiding Principles provides that:

> "Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, to allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country".

114. Further relevant documents include the following instruments. Recommendation Rec (2006) 6 adopted by the Committee of Ministers of the Council of Europe on 5 April 2006, while supporting the United Nations guidelines, declares in paragraph 12 that, "Internally displaced persons have the right to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle in another part of the country in accordance with the European Convention on Human Rights".[148] Recommendation 1877 (2009) of the Parliamentary Assembly of the Council of Europe emphasizes that, "IDPs' right to return under international humanitarian law, as well as under the freedom of movement deriving from international and regional human rights law, must be unconditionally observed and ensured by all responsible authorities".[149] These statements of general principle have been supplemented by consideration of specific issues in the United Nations and regional intergovernmental organizations.

115. Specific instruments have also called for the return of internally displaced persons, such as the Panmunjon Armistice Agreement concerning Korea of 27 July 1953[150] and the Dayton Peace Accords of 14 December 1995.[151]

116. It may be concluded, therefore, that the weight and consistency of State practice provides that internally displaced persons should be permitted to their homes, particularly those areas where hostilities have ceased in effect. This would cover the bulk of the occupied territories. The relevant States must facilitate this opportunity, where it is the free will of the internally displaced persons concerned.

VI. The consequences flowing from the violation of the rights of the Azerbaijani internally displaced persons, including restitution and compensation

117. There are a number of consequences that flow from the continuing violations of the rights of Azerbaijani internally displaced persons as detailed above. Brief comments only will be made.

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[148] Note also the London Declaration of International Law Principles on Internally Displaced Persons adopted by the International Law Association in 2000, which provides in article 5 that, "all internally displaced persons have the right to return to their homes or places of habitual residence freely and in security and dignity, as soon as the conditions giving rise to their displacement have ceased". 69 International Law Association, *Conference Report*, 2000, p. 794.

[149] See also the Report of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe of 8 June 2009, document 11942, para. 10.

[150] Article III (59) (a).

[151] Article 1 of annex 7. Other examples include the Quadripartite Voluntary Agreement on Georgian Refugees and Internally Displaced Persons, 4 April 1994, para. 5; the Cotonou Agreement on Liberia, 25 July 1993, article 18 (1) and the Comprehensive Peace Agreement in the Sudan, 9 January 2005, chapter 4, para. 3 (a) and chapter 5, para. 2.

118. The primary consequence revolves around the responsibility of Armenia for such violations committed by itself directly, or indirectly by its subordinate local administration for whom it bears responsibility under the tests propounded by general international law and by the European Convention system.

A. Under general international law

119. The articles on State responsibility drawn up by the International Law Commission and commended to States by the General Assembly of the United Nations and which in relevant part reflects customary international law lays down the necessary framework.[152]

120. The primary principle is that every internationally wrongful act of a State entails the international responsibility of that State.[153] As the Permanent Court put it in the *Chorzow Factory* case:

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form".[154]

121. A State which is thus responsible is under an obligation to cease the wrongful act or acts and to offer appropriate assurances and guarantees of non-repetition.[155] Further, there is a duty of reparation, which must "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[156] This obligation, which exists irrelevant of any provision in domestic law,[157] has been formulated in article 31 of the ILC articles as follows:

> "(1) The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
>
> (2) Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State".

122. The required full reparation may take the form of restitution, compensation and satisfaction either singly or in combination.[158] Restitution is the first of the forms of reparation laid down and involves the re-establishment of the situation existing before the internationally wrongful act.[159] It is the primary rule[160] and, in the words of the commentary to the ILC articles, "is of particular importance where

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[152] See above, para. 32 and following.

[153] Article 1 of the ILC articles. See also the *Phosphates in Morocco* case, *Preliminary Objections*, PCIJ, series A/B, No. 74, pp. 10, 28 (1938) and the *Corfu Channel*, I.C.J. Reports, 1949, pp. 4, 23.

[154] PCIJ, series A, No. 17, p. 21 (1928).

[155] See article 30 of the ILC articles. See also the *Rainbow Warrior*, 82 International Law Reports, pp. 499, 573 and the *LaGrand* case, I.C.J. Reports, 2001, p. 466.

[156] *Chorzow Factory*, PCIJ, series A, No. 17, pp. 47-8 (1928). See also the *Gabcikovo-Nagymaros* case, I.C.J. Reports, 1997, pp. 7, 80 and the *Genocide Convention* case, I.C.J. Reports, 2007, para. 460.

[157] Article 32.

[158] Article 34.

[159] Article 35, provided that by article 35 (a) this is "not materially impossible" and by article 35 (b) that it does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

[160] See *Chorzow Factory*, PCIJ, series A, No. 17, p. 48 (1928). See also the commentary to the ILC articles, Crawford, op. cit., p. 213.

the obligation breached is of a continuing character, and even more so where it arises under a peremptory norm of general international law".[161]

123. Accordingly, the primary obligation upon Armenia is to ensure that the occupation of Azerbaijani territory is ended and that the various rights of the internally displaced persons of Azerbaijani ethnicity as detailed above are recognized and implemented. The forced displacement of ethnic Azerbaijanis constitutes a grave breach of Geneva Convention IV and may thus be seen as a breach of a peremptory norm. A similar conclusion is clear with regard to the discriminatory treatment of ethnic Azerbaijanis as the prohibition of ethnic or racial discrimination can be seen also as a peremptory norm.[162]

124. Other means of reparation, such as compensation, are only operative to the extent that restitution is "materially impossible"[163] and this is not the case with regard to the violations discussed above.[164] However, where used as a supplementary or complementary form of reparation to restitution, it is of current relevance. To the extent that restitution of property and possessions falls below the loss and/or damage suffered, monetary compensation would be required. This would cover, for example, the situation where property was damaged or destroyed or as a recompense for loss of access to possessions over the period of inaccessibility.

B. Under Geneva Convention IV

125. It should also be noted that under the regime of Geneva Convention IV, the breaches of article 49, as discussed above,[165] amount to "grave breaches" under article 147. Article 86 of Additional Protocol No. I provides that the parties to the Convention and Protocol are under a particular duty to "repress grave breaches". Further, the parties "shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Convention or of this Protocol".[166] This has implications for proceedings that may be brought both before domestic tribunals and before any relevant international tribunal, such as the International Criminal Court, jurisdiction permitting. It may also be a relevant factor in any inter-State proceeding that may, again jurisdiction permitting, be brought.

C. Under the European Convention on Human Rights

126. While an examination of the remedial system of the European Convention on Human Rights cannot be attempted in this paper, certain points need to be made.

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[161] Ibid., p. 215.

[162] See e.g. the *Barcelona Traction* case, I.C.J. Reports, 1970, pp. 3, 32 and the *Nicaragua* case, I.C.J. Reports, 1986, pp. 14, 100.

[163] See above, footnote 158.

[164] The other means of reparation, satisfaction, involves an acknowledgement of the breach plus a formal apology and while relevant as an additional factor is clearly not apposite or appropriate on its own in situations such as those under consideration, see article 37.

[165] See para. 53 and following.

[166] Article 88 of the Protocol.

127. Many of the violations of international law discussed above, also, as noted, constitute violations of the European Convention. To this extent, the mechanisms of the Convention are relevant. Individual or inter-State applications may be made, and the remedies concerned will involve the duty of the State found in violation to ensure that the breaches in question are ended and to provide compensation in form of "just satisfaction" under article 41.

VII. Conclusions

128. Armenia's actions, both directly by the use of its own forces and agents and indirectly through the use of its subordinate local administration in the occupied Nagorno-Karabakh and other elements for which it bears international responsibility, has breached international law in seizing and continuing to occupy and otherwise control Nagorno-Karabakh and surrounding areas of Azerbaijan. All these territories are internationally recognized as subject to Azerbaijan's sovereignty and have not been accepted as having any other status.

129. Such responsibility derives from effective control as that term has been defined in both general international law and under the European Convention on Human Rights.

130. Such responsibility includes liability for the violation of the relevant rights of the ethnic Azerbaijani internally displaced persons.

131. The violations of both general international law and of the European Convention have included the following:

(a) Forcible displacement from the occupied territories;

(b) Violation of the principle of non-discrimination on ethnic grounds both by the treatment of the internally displaced persons themselves and by the implantation of Armenian settlers in the occupied territories;

(c) Prevention of access to their properties and possessions;

(d) Failure to permit the return of the internally displaced persons to their homes.

132. The consequences of such violations under international law import obligations to cease the internationally unlawful acts and to afford restitution.

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

The situation in the occupied territories of Azerbaijan

Elimination of racism, racial discrimination, xenophobia and related intolerance

Measures to eliminate international terrorism

Security Council
Sixty-seventh year

Letter dated 9 May 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to refer to the letter dated 5 May 2012 from the Permanent Representative of the Republic of Armenia addressed to the Secretary-General, transmitting a statement by the Ministry of Foreign Affairs of Armenia (S/2012/301). That statement pretends to respond to the speech of the President of the Republic of Azerbaijan at the Security Council meeting held on 4 May under the agenda item "Threats to international peace and security caused by terrorist acts". In reality, the said statement of the Ministry of Foreign Affairs of Armenia is yet another illustration of sophisticated and blatant falsification, by means of which the Armenian side attempts unsuccessfully to deny its responsibility for the most serious crimes of concern to the international community, including acts of terrorism, committed in the course of its ongoing aggression against Azerbaijan.

As is well known, international Armenian terrorism has bloody historic antecedents connected with the perpetration of numerous terrorist acts in various countries and killings of many foreign citizens and diplomats. Thus, according to mass media reports and analysis of civil society organizations, between 1973 and the present, with the exception of terrorist attacks against Azerbaijan and its citizens, Armenian terrorist groups, such as the Armenian Secret Army for the Liberation of Armenia and the Justice Commandos of the Armenian Genocide, committed approximately 239 acts of terrorism in different countries of North America, Europe, the Middle East and the Pacific region, which killed at least 70 and wounded 524 people; 105 people were taken hostage, 12 of whom were

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executed. Those terrorist acts included at least 160 bomb attacks and accounted for the vast majority of deaths and wounding, as they were generally committed in crowded public areas, such as airports, city squares and shopping malls.

According to the Federal Bureau of Investigation, between 1980 and 1986, Armenian terrorism accounted for 24.1 per cent of all terrorist incidents in the United States of America. Among a number of countries targeted by Armenian terrorism also was the former Soviet Union. Thus, on 8 January 1977, a series of three explosions in the subway and market centres in the Soviet capital, Moscow, claimed the lives of seven people and injured dozens. In January 1978, another bomb blew up in the Moscow subway causing scores of deaths and injuries among passengers. Three nationals of the Soviet Union of Armenian origin, S. Zatikyan, Z. Bagdasaryan and A. Stepanyan, were identified and brought to justice as the perpetrators of those terrorist acts.

It should be particularly noted that, while the international community, particularly through the United Nations General Assembly and the Security Council, has repeatedly expressed its profound solidarity with the victims of terrorism and their families, stressed the importance of assisting victims of terrorism, and provided them and their families with support to cope with their loss and grief, the leadership of Armenia has consistently demonstrated its solidarity with, and support and sympathy for the perpetrators of terrorist acts. Evidence of the special relationship in Armenia can be seen in the glorification of terrorists, including raising them to the status of national heroes and granting State decorations to them. Examples include, inter alia, the collection of the signatures of 1,277,473 nationals of Armenia in defence of the Armenian terrorist Varujan Karapetyan, who was sentenced in France to life imprisonment for placing an explosive device at Orly airport. Moreover, the sixth grade at a school in Yerevan was named in his honour, and in Yerevan and Echmiadzin, exhibitions of his paintings were organized. Expressions of sympathy for terrorists by the leadership of Armenia have included, for example, the appeal by the President of Armenia to the President of France for a pardon for Varujan Karapetyan, as well as the presence of the head of the Armenian State at the funeral of the well-known international terrorist, Monte Melkonian. It is notable that Melkonian was conferred the title of national hero and was posthumously awarded the highest military honours and decorations in Armenia.

Against this background, the hopeless attempts of the Ministry of Foreign Affairs of Armenia to blame Azerbaijan and link it with international terrorist networks seem curious, to say the least. Likewise, it is absurd when the leadership of Armenia, which makes no secret of the promotion and dissemination of the odious ideas of racial superiority and differentiation and which has purged both the territory of its own country and the occupied areas of Azerbaijan of all non-Armenians and thus succeeded in creating mono-ethnic cultures there, has the cheek to ascribe its own crimes to others.

There are more than sufficient facts which expose the methods of nefarious fabrications used by the Armenian propaganda, and these have repeatedly been brought to the attention of the international community. Suffice it to recall the famous interview of 15 December 2000 with President Serzh Sargsyan of Armenia, who in answer to the question as to whether things could have happened differently and whether he had any regrets about the deaths of thousands of people as a result of Armenian attacks against Azerbaijani civilians, frankly said that he “has absolutely

no regrets", since "such upheavals are necessary, even if thousands have to die" (see http://carnegieendowment.org/2012/02/24/president-interview-andtragic-anniversary/9vpa).

Valid references to Armenia made in the context of deliberations in the Security Council regarding threats to international peace and security caused by terrorist acts gave rise to the inadequate and irresponsible reaction of the Ministry of Foreign Affairs of Armenia. In this regard, in accordance with instructions received from the Government of the Republic of Azerbaijan, I have the honour to draw your attention to some facts testifying to the organization and implementation by Armenia of terrorist acts against 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 35, 39, 67 and 109, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

Annex to the letter dated 9 May 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Information on some facts testifying to the organization and implementation by Armenia of terrorist acts against Azerbaijan

After the open assertion by Armenia in the late 1980s of its territorial claims on Azerbaijan and the launching of armed operations in the Daghlyq Garabagh (Nagorno Karabakh) region of Azerbaijan, terrorism has been actively used as one of the means to achieve annexationist aspirations. In all, as a result of terrorist acts against Azerbaijan perpetrated since the late 1980s by the Armenian secret service and Armenian terrorist organizations closely connected with it, over 2,000 citizens of Azerbaijan have been killed, the majority of them women, the elderly and children.

It is notable that the first entry in the tragic list of crimes by Armenian terrorists in the territory of Azerbaijan was made before the beginning of the conflict when in 1984, in Baku, a passenger bus on the No. 106 route was blown up, killing one woman — the mother of two children — and injuring several other people. The identified terrorist responsible for that crime was an Armenian named Vartanov.

In December 1988, a military transport aircraft on the Baku-Yerevan route with rescue workers and humanitarian aid for victims of the Armenian earthquake on board suffered a disaster near Yerevan in circumstances which remain unexplained. Some versions speak of firing and others of the deliberate disorientation of the pilot by air traffic control at Yerevan airport (in view of the low altitude of the flight and the mountainous terrain). The underlying motive for this planned “air disaster” is completely unprecedented, in that the victims of this crime were 79 people who had been sent on a humanitarian mission from Azerbaijan to Armenia, despite the difficulties that had by then arisen in relations between the two republics.

On 27 May 1989, on a train from Yerevan to Baku, an Armenian citizen, V. Minasyan, was arrested and found to be in possession of an explosive device. In her testimony, Ms. Minasyan confessed that she had been intending to set that device to go off in the capital of Azerbaijan, Baku.

On 24 July 1989, there was an explosion on a train of Azerbaijan Railways at Karchevan station.

On 7 October 1989, the road bridge across the river Khalfalichai on the southern edge of the town of Khankandi was blown up. On 29 April 1992, the perpetrator of this terrorist act — one A. Abramyan — was sentenced to 15 years’ imprisonment.

Over the period from 19 January to 17 February 1990, a terrorist group carried out numerous raids from the territory of Armenia targeting the inhabitants of the frontier villages of Kheyrymly and Sofulu in the Gazakh district of Azerbaijan. The same terrorist group carried out an attack on a patrol vehicle of the Gazakh district division of internal affairs and plotted the destruction of a railway locomotive. Two

members of the group, L. Arutyunyan and A. Mkrtchyan, were sentenced to five and six years' imprisonment, respectively.

On 18 February 1990, 13 people were injured by an explosion in an intercity bus on the Shusha-Baku route, at the 105 km marker on the Yevlakh-Lachyn road.

On 4 March 1990, the Nabiyar-Shusha pipeline, which supplied the town of Shusha in the Daghlyq Garabagh region with drinking water, was blown up.

On 11 July 1990, between the settlements of Getavan and Charaktar in the Tartar district of Azerbaijan, an armed assault was launched on a road convoy, travelling under troop escort and conveying people and goods to the town of Kalbajar. In that terrorist act, three people were killed and 23 injured. The investigation identified one A. Airiyan as the perpetrator of this crime.

On 10 August 1990, in the Khanlar district of Azerbaijan, terrorists blew up an intercity bus operating on the Tbilisi-Aghdam route, killing 20 passengers and injuring 30. The perpetrators of that terrorist act were arrested before they were able to carry out their plan to blow up, on 17 June 1991, a bus on the Aghdam-Tbilisi route. Two Armenians, A. Avanesyan and M. Tatevosyan, were found guilty of those crimes.

In November 1990, a terrorist group, set up by one M. Grigoryan, a member of the terrorist organization "Ergraparkh", based in the territory of Armenia and composed of inhabitants of the Echmiadzin district of Armenia, was sent into the territory of Azerbaijan. This group was disarmed by the law enforcement agencies of Azerbaijan while attempting to carry out terrorist acts.

On 9 January 1991, at the 5 km marker on the Lachyn-Shusha road in the area of Galadarasi village, terrorists fired on a UAZ-469 vehicle belonging to military unit No. 44688 of the city of Gandja, killing the driver, Sergeant I. I. Goek, the commander of the reconnaissance battalion, Lieutenant Colonel A. P. Larionov, the chief of staff in the commandant's office of military unit No. 3505 (the command centre for the special units of the interior forces of the Ministry of Internal Affairs of the Union of Soviet Socialist Republics), Major I. D. Ivanov, and a journalist from the newspaper "Molodezh Azerbaidzhana", Ms. S. A. Asgarova. The investigation identified A. Mkrtchyan, G. Petrosyan, A. Mangasaryan, G. Arutyunyan and G. Arustamyan as the perpetrators of this crime.

On 30 May 1991, 11 people were killed and 22 injured following an explosion on a passenger train from Moscow to Baku near Khasavyurt station (Dagestan, Russian Federation).

In May 1991, officials of the law enforcement agencies arrested S. Aznaryan, an inhabitant of the Noyemberyan district of Armenia, on a Baku-Tbilisi train at Shamkir station and removed from his possession two mines, a sub-machine gun and maps of the Azerbaijan rail and road network.

On 31 July 1991, a Moscow-Baku passenger train was blown up near Temirgau station (Dagestan, Russian Federation), killing 16 people and injuring 20.

The law enforcement agencies of Azerbaijan detained and disarmed two members of the Armenia-based terrorist organization "Urartu", A. Tatevosyan and V. Petrosyan, who, on 2 August 1991, had carried out terrorist attacks in the territory of the Kalbajar district of Azerbaijan.

On 20 November 1991, an MI-8 helicopter carrying a group of representatives from the Russian Federation and Kazakhstan and senior Azerbaijani leadership was shot down near the village of Garakand in the Khojavand district of Azerbaijan. The killing of 22 people, including statesmen from three countries, effectively put an end to the first attempt to settle the Armenia-Azerbaijan conflict peacefully and prompted an escalation of violence in the region.

The single successful terrorist act carried out by Armenian terrorists against vessels of the Azerbaijan Caspian Shipping Line occurred on 8 January 1992. An explosion on the ferry *Sovietskaya Kalmykia* operating between Krasnovodsk and Baku claimed the lives of 25 people and injured 88. In the same year, an attempt to carry an explosive device onto the steamer *Sabit Orujov* was prevented in time.

On 28 January 1992, a civilian helicopter flying on the Aghdam-Shusha route was shot down by terrorists over the Azerbaijani town of Shusha in the Daghlyq Garabagh region, killing 41 passengers, most of them women and children, as well as the crew.

On 28 February 1993, 11 people were killed and 18 injured near Gudermes station (Dagestan, Russian Federation) by a bomb placed on a Baku-Kislovodsk train.

On 2 June 1993, a passenger carriage was blown up in a siding at the Baku railway station. On 22 July 1994, I. Khatkovsky, a Russian national and correspondent for the newspaper *Demokratichesky Tilzit*, resident of the village of Gastelovo in the Slavsky District of the Kaliningrad region of the Russian Federation, was found guilty of committing this crime and sentenced to eight years' imprisonment by the Supreme Court of the Republic of Azerbaijan. The investigation process revealed that Mr. Khatkovsky had been recruited by the Directorate for National Security (the former State Security Committee) of Armenia and provided with detailed instructions on how to organize the bombing of transportation and communications facilities and vital services in Azerbaijan, gather intelligence information and commit terrorist acts in the territory of the Russian Federation. The case of Mr. Khatkovsky helped to uncover and neutralize a group of agents of the Directorate for National Security of Armenia who were responsible for organizing terrorist acts in Azerbaijan, Georgia and the Russian Federation. The head of the group was Lieutenant-Colonel Jan Oganesyan, the chief of the department of intelligence and subversive operations in the territory of an adversary. Lieutenant-Colonel Oganesyan and his two subordinates, Ashot Galoyan and Boris Simonyan, were sentenced by the military tribunal of the Tambov garrison, Russian Federation, to various terms of imprisonment.

On 1 February 1994, a Kislovodsk-Baku passenger train was blown up at Baku station, killing three people and injuring more than 20.

On 9 April 1994, a railway car was blown up at Khudat station.

On 17 March 1994, an Iranian C-130 transport aircraft was shot down over the territory of Azerbaijan occupied by Armenian armed forces, resulting in the deaths of 32 people who were citizens of the Islamic Republic of Iran.

On 19 March 1994, a bomb placed in one of the carriages of a train exploded at the 20 January subway station in Baku. As a result of this act, 14 people were killed and 42 were injured, some seriously.

On 26 March 1994, an explosive device was found in a railway carriage at Gazymammad station of Azerbaijan railways, thus averting another tragedy.

Six people were killed and three wounded at the Dagestanskiye Ogni station (Russian Federation) on 13 April 1994 as a result of an explosion on a Moscow-Baku passenger train.

On 3 July 1994, there was an explosion in a train between the 28 May and Ganjlik subway stations, killing 14 people and wounding 54.

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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
Seventy-first year

Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to submit to you the report of the Ministry of Foreign Affairs of the Republic of Azerbaijan entitled "Illegal economic and other activities in the occupied territories of Azerbaijan" (see annex).*

The facts, figures and statistical data contained in the report, gathered mainly from Armenian public sources, provide sufficient and convincing evidence testifying to the continued activities of the Republic of Armenia in the Nagorno-Karabakh region and other occupied territories of the Republic of Azerbaijan,[1] in breach of international law, including the implantation of settlers from Armenia and abroad, destruction and appropriation of historical and cultural heritage, depredatory exploitation and pillage of and illicit trade in assets, natural resources and other wealth in those territories, accompanied by substantial and systematic interference with public and private property rights.

Those activities are carried out despite earlier warnings, demands and condemnation by the international community, and against the background of ongoing efforts towards the earliest political settlement of the conflict. In reality,

* The annex is being circulated in the language of submission only.

[1] The territories of the Republic of Azerbaijan occupied by the Republic of Armenia are as follows: the Nagorno-Karabakh region, seven adjacent districts: Lachyn, Kalbajar, Zangilan, Gubadly, Jabrayil, Fuzuly and Aghdam; and three exclaves surrounded by the territory of the Republic of Armenia: the villages of Yukhary Askipara and Barkhudarly of the Gazakh district of Azerbaijan, and the village of Karki of the Sadarak district of the Nakhchivan Autonomous Republic of the Republic of Azerbaijan.

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Armenia imitates its engagement in the conflict settlement process, while undertaking consistent measures aimed at further consolidating the volatile status quo of the occupation. Armenia's policy and practices in the occupied territories of Azerbaijan undermine the prospects of achieving a political settlement of the conflict and pose an imminent threat to peace, security and stability in the region.

Attempts to cover up the illegal activities in the occupied territories of Azerbaijan under the guise of "human rights" or "humanitarian assistance" are fundamentally flawed. It is irrefutable that:

- First of all, one cannot demand privileges at the very core of which are gross and systematic violations of international law, including international humanitarian and human rights law, and the discriminatory denial of fundamental rights and freedoms with respect to others, in particular the significantly larger Azerbaijani population that was expelled from the occupied territories as a result of Armenia's aggression against Azerbaijan.
- Secondly, humanitarian relief actions by States, international organizations and other entities and bodies should, by definition, be exclusively humanitarian in nature. They must be carried out in conformity with the principles of neutrality, impartiality and consent of the affected country, while fully respecting the sovereignty, territorial integrity and national unity of States in accordance with the Charter of the United Nations, as reaffirmed in the guiding principles on humanitarian assistance contained the annex to resolution 46/182 on "Strengthening of the coordination of humanitarian emergency assistance of the United Nations", adopted by the General Assembly on 19 December 1991.

Above all, attempts to change the demographic composition in the occupied territories of Azerbaijan existing before the outbreak of the conflict by artificially increasing the number of Armenians in those territories and preventing the return to their homes and properties of hundreds of thousands of Azerbaijani internally displaced persons, along with the destruction or appropriation of property, can in no way be humanitarian in nature and consistent with human rights standards and the above-mentioned guiding principles.

Another discreditable and reprehensible fact revealed in the report is that the exploitation of natural resources and other wealth in the occupied territories of Azerbaijan has turned into a lucrative business and is one of the sources of income for Armenia and the subordinate separatist regime it has set up in those territories. The report establishes unequivocally the existence of a clear link between the exploitation and pillage of natural resources and other wealth in the occupied territories of Azerbaijan and the unconstructive position of Armenia in the conflict settlement process.

International law prohibits the acquisition of territory by force, so that any military occupation is considered temporary in nature and does not entail a transfer of sovereignty over the occupied territory. In its resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), the Security Council condemned the use of force against Azerbaijan and occupation of its territories and reaffirmed the sovereignty and territorial integrity of Azerbaijan and the inviolability of its internationally recognized borders. In those resolutions, the Council reaffirmed that the Nagorno-

Karabakh region was an integral part of the Republic of Azerbaijan and demanded the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan. Other international organizations have adopted a similar position.

The international community has the responsibility to ensure the strict compliance by Armenia with its international obligations. It is equally important that all States, in accordance with their international obligations, take effective measures that would prevent any activities by their natural and legal persons against the sovereignty and territorial integrity of Azerbaijan, including the participation in or facilitation of any unlawful activity in the Nagorno-Karabakh region and other occupied territories of Azerbaijan.

The unlawful presence of the armed forces of Armenia in the occupied territories of Azerbaijan is the major destabilizing factor, with the potential to escalate at any time, and the main obstacle in the settlement of the conflict.

The conflict can only be resolved on the basis of the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders. The military occupation of the territory of Azerbaijan does not and shall never represent a solution to the conflict.

The sooner Armenia reconciles with this reality and withdraws its armed forces from the occupied territories of Azerbaijan, the earlier the conflict will be resolved and both countries and their peoples will benefit from the prospects of cooperation and economic development, thus enabling them to implement successfully the 2030 Agenda for Sustainable Development.

As you rightly noted in your statement at the Security Council high-level meeting on 11 February 2011, “Peace, security and development are interdependent” (S/PV.6479, p. 2). In the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, the Heads of State and Government and High Representatives, meeting in New York in September 2015, stated that there could be no sustainable development without peace and no peace without sustainable development. They emphasized that the Agenda was to be implemented in a manner that was consistent with the rights and obligations of States under international law, reaffirming the need to respect the territorial integrity and political independence of States, and that every State had, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic activity (see General Assembly resolution 70/1, preamble, para. 8; and para. 18).

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 35 and 40, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

Annex to the letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Illegal economic and other activities in the occupied territories of Azerbaijan

A. Introduction

1. At the end of 1987, the Soviet Socialist Republic of Armenia (Armenian SSR) overtly laid claim to the territory of the Nagorno-Karabakh autonomous oblast (NKAO) of the Soviet Socialist Republic of Azerbaijan (Azerbaijan SSR). Nationalistic demands marked the beginning of the assaults on the Azerbaijanis in, and their expulsion from, both the NKAO and Armenia itself. At the end of 1991 and the beginning of 1992, when the USSR ceased to exist and both Armenia and Azerbaijan attained independence and were accorded international recognition, armed hostilities and attacks against populated areas within Azerbaijan and mounted from the territory of Armenia intensified and escalated into a full-fledged inter-state war. As a result, a significant part of Azerbaijan's territory, including Nagorno-Karabakh, seven adjacent districts (Lachyn, Kalbajar, Zangilan, Gubadly, Jabrayil, parts of Fuzuli and Aghdam) and the Azerbaijani exclaves surrounded by the territory of Armenia,[2] was occupied by Armenia.[3] The war led to the deaths and wounding of thousands of people; hundreds of thousands of the citizens of Azerbaijan were forced to leave their homes.

2. The international community has consistently deplored and condemned the use of military force against Azerbaijan and the resulting occupation of its territories. In 1993, the United Nations Security Council adopted resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), condemning the use of force against Azerbaijan and occupation of its territories and reaffirming the sovereignty and territorial integrity of Azerbaijan and the inviolability of its internationally recognized borders. In those resolutions, the Security Council reaffirmed that the Nagorno-Karabakh region is part of Azerbaijan and demanded the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan.[4] The United Nations General Assembly adopted three resolutions on

[2] The villages of Yukhari Askipara and Barhudarli, forming part of the Gazakh district in the North-West of the Republic of Azerbaijan, and the village of Karki – part of the Sadarak district of the Nakhchyvan Autonomous Republic of the Republic of Azerbaijan, are Azerbaijani exclaves surrounded by the territory of the Republic of Armenia. See inserts "a" and "b" on the map in Annex 2.

[3] See the map of the occupied territories of the Republic of Azerbaijan in the Annex 2.

[4] See Repertoire of the Practice of the Security Council, Chapter VIII, Consideration of questions under the responsibility of the Security Council for the maintenance of international peace and security, Agenda Items in 1993-1995, Part 19, Items relating to the situation between Armenia and Azerbaijan, available at <http://www.un.org/en/sc/repertoire/93-95/Chapter%208/EUROPE/93-95_8-19-ARMENIA%20AND%20AZERBAIJAN.pdf>.

the conflict,[5] and since 2004 the special item entitled "The situation in the occupied territories of Azerbaijan" has been included in the agenda of the regular sessions of the General Assembly.[6]

3. The UN Security Council in the above resolutions clearly established that the territory of Azerbaijan was the object of military occupation with all the legal consequences that this determination entails.[7] The Council, *inter alia,* reaffirmed that the parties are bound to comply with the principle sand rules of international humanitarian law[8] and called on them to refrain from all violations of international humanitarian law.[9] The international humanitarian law instruments specifically prohibit any activities aimed at altering the legal system and changing the physical, cultural and demographic character of an occupied territory, including deportations and transfers of civilians, infringement on private and public property, pillage, exploitation of the inhabitants, the resources or other assets of the territory under occupation for the benefit of the occupying power or its population (see below).

4. Since 1992 the Organization for Security and Cooperation in Europe (OSCE) has engaged in efforts to achieve a settlement of the conflict under the aegis of its Minsk Group, currently under the co-chairmanship of the French Republic, the Russian Federation and the United States of America.[10]

5. Despite the ongoing conflict settlement process, the policy and practice of Armenia clearly testify to its intention to secure the annexation of Azerbaijani territories that it has captured through military force and in which it has carried out ethnic cleansing on a massive scale.

6. Azerbaijan has presented to the international community the irrefutable well-documented evidence attesting to consistent measures undertaken by Armenia in the occupied territories of Azerbaijan with a view to further consolidating the current status quo of the occupation. Such measures include implantation of settlers from Armenia and abroad, destruction and appropriation of historical and cultural heritage, illegal economic and other activities, exploitation and pillage of natural resources, accompanied by substantial and systematic interference with the public and private property rights.[11] This has been also confirmed in a consistent manner by a variety of independent sources. These activities are pursued against the

[5] UN General Assembly resolutions 48/114 of 20 December 1993, entitled "Emergency international assistance to refugees and displaced persons in Azerbaijan", 60/285 of 7 September 2006 and 62/243 of 14 March 2008, both entitled "The situation in the occupied territories of Azerbaijan".

[6] See UN Doc. A/59/236, 14 October 2004, and UN Doc. A/59/236/Add.1, 20 October 2004.

[7] See UN Doc. A/63/662-S/2008/812, 24 December 2008, and UN Doc. A/63/692-S/2009/51, 27 January 2009.

[8] See resolution 822 (1993) of 30 April 1993, operative para.3; resolution 853 (1993) of 29 July 1993, operative para. 11.

[9] See resolution 874 (1993) of 14 October 1993, operative para. 9.

[10] The OSCE Minsk Group's permanent members are Turkey, Belarus, Germany, Italy, Sweden and Finland, as well as Azerbaijan and Armenia. On a rotating basis, also the OSCE Troika is a permanent member.

[11] See UN Doc. A/59/720-S/2005/132, 1 March 2005.

background of pronouncements by Armenia at the highest level that Nagorno-Karabakh is "inseparable part" of Armenia.[12]

7. At the request of the Government of Azerbaijan, the OSCE conducted a fact-finding mission into the occupied territories between 30 January and 5 February 2005. The main outcome of the mission was its report, which is based on the analysis of the situation on the ground. The most important conclusion in the report was that, during its visit, the mission found evidence of the presence of Armenian settlers in the occupied territories of Azerbaijan, thus having shared the concerns of Azerbaijan.[13] The OSCE Minsk Group co-chairmen, proceeding from the conclusions contained in the mission's report, emphasized that "[p]rolonged continuation of this situation could lead to a *fait accompli* that would seriously complicate the peace process." They "discourage[d] any further settlement of the occupied territories of Azerbaijan" and "urge[d] the parties […] to avoid changes in the demographic structure of the region, which would make more difficult any future efforts to achieve a negotiated settlement".[14]

8. The OSCE Minsk Group co-chairmen conducted another field assessment mission to the occupied territories, from 7 to 12 October 2010, to assess the overall situation there. In their subsequent report, the co-chairmen again urged "[...] to avoid any activities in the territories […] that would prejudice a final settlement or change the character of these areas."[15]

9. More than five years have passed since the last OSCE field assessment mission. However, nothing has been done to put an end to the settlement practices and other illegal activities. The evidence shows that Armenia, directly by its own means and indirectly through the subordinate separatist regime and with the assistance of Armenian diaspora, not only continued, but expanded the illegal activities in the occupied territories, accompanied by interference with the public and private property rights. In total disregard of international humanitarian law and the appeals from the OSCE Minsk Group and the wider international community, Armenia and its subordinate separatist regime do the opposite, trying to artificially increase the number of Armenians in the occupied territories, including in the districts adjacent to the Nagorno-Karabakh region of Azerbaijan, namely, in Lachyn, Kalbajar, Zangilan, Gubadly, Jabrayil and parts of Fuzuli and Aghdam, with the sole purpose of annexing these territories and preventing the expelled Azerbaijani population from returning to their homes in those areas.

10. The present report documents the continued unlawful activities of Armenia in these territories. The report is based on the collection and analysis of information

[12] See the speech by the President of Armenia Serzh Sargsyan at the "6th session of the State Commission on Coordination of the Events for the Commemoration of the 100th Anniversary of the Armenian Genocide", 26 September 2015, <http://www.president.am/en/press-release/item/2015/09/26/President-Serzh-Sargsyan-meeting-Genocide-100/>.

[13] See UN Doc. A/59/747-S/2005/187, 21 March 2005, annex II.

[14] See "Letter of the OSCE Minsk Group Co-Chairs to the OSCE Permanent Council on the OSCE Minsk Group Fact-Finding Mission (FFM) to the occupied territories of Azerbaijan Surrounding Nagorno-Karabakh (NK)", UN Doc. A/59/747-S/2005/187, 21 March 2005, annex I, pp. 4 and 5.

[15] For the Executive Summary of the OSCE field assessment mission report, see <http://www.osce.org/mg/76209?download=true> and Press release of the Ministry of Foreign Affairs of the Republic of Azerbaijan, UN Doc. A/65/801-S/2011/208, 29 March 2011.

from various public sources, predominantly Armenian ones, covering mostly the period of 2010-2015. It consists of seven parts: Part (A) is an introduction, providing some background information on the subject matter and methodology used in data analysis; Part (B) provides the executive summary of key findings; Part (C) contains the evidence attesting to the effective control by Armenia over the occupied territories, manifested in its dominant role in the financial, economic, social and other organization within the occupied territories; the role of Armenia in providing economic support to the illegal regime in the occupied territories; and close, virtually integrated political links at all levels of the government structures of Armenia with the subordinate regime; Part (D) contains the information attesting to the illegal activities carried out in the occupied territories, including organized illegal settlement practices, continued illegal economic and other activities for Armenia's own economic gain, such as the exploitation and pillage of natural resources and other wealth and permanent infrastructure changes; Part (E) presents the obligations and responsibility under international law arising from the continuing unlawful occupation by Armenia of the territories of Azerbaijan and illegal activities in those territories; Part (F) provides the list of urgent measures to cease and reverse immediately unlawful economic and other activities in the occupied territories of Azerbaijan; and Part (G) contains annexes to this report.

11. Press reports are an important source for establishing existence of the facts, as ruled by the International Court of Justice.[16] The information gathered from the Armenian public sources shows that Armenia's continued military and other presence in the occupied territories and its involvement in the above activities has received wide coverage in the Armenian and world media and hence constitutes a matter of general repute and public knowledge, which contributes to corroborating the existence of the facts on the ground. It is also well-recognized in the sources of general international law that admissions against interest may constitute evidence of the intention of a State at a particular time. As is seen from the information below, there are abundant admissions on the part of Armenian high-level political and military officials. The report also contains images depicting the unlawful activities in the occupied territories.[17]

12. To assess the reliability of the information provided in the collected press reports, the data triangulation was employed to crosscheck the information and verify the facts with a view to establishing a comprehensive picture of the situation in the occupied territories of Azerbaijan. The information examined in this report is not exhaustive, but more than 500 press reports that contain also admissions concerning the facts on the part of government officials of Armenia and the agents of the subordinate separatist regime in the occupied territories, provide sufficient

[16] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment of the International Court of Justice of 27 June 1986 (Merits), I.C.J. Reports (1986), paras. 62 and 63.

[17] The images presented are for illustrative purpose only and do not imply endorsement or authorization in any way of the visits to the occupied territories of Azerbaijan. The Ministry of Foreign Affairs of the Republic of Azerbaijan warns that individuals visiting the occupied territories without prior authorization of the authorities of Azerbaijan in violation of the national legislation and international law will be included into the list of persons whose entry to the Republic of Azerbaijan is prohibited with all the legal consequences that it entails. For more on travel restrictions, see <www.mfa.gov.az>.

and convincing evidence testifying to Armenia's purposeful attempts to consolidate the occupation of the territories of Azerbaijan and to impose a *fait accompli* situation.

B. Executive summary

13. The examined evidence attests to Armenia's continuing military presence in and occupation of the territories of Azerbaijan, including its Nagorno-Karabakh region and seven adjacent districts. High-ranking political and military officials of Armenia, including the President, the Prime-Minister, the Minister of Defence and the Chief of General Staff of the armed forces of the Republic of Armenia, regularly visit the occupied territories. They admitted on a number of occasions the presence and involvement of the armed forces of Armenia in military operations on the territory of Azerbaijan both at a time of occupation of these territories and at present. Indeed, the armed forces of Armenia are engaged in active duties in the occupied territories; the armed formations of the subordinate separatist regime established by Armenia in the occupied territories of Azerbaijan are highly integrated with and are essentially an extension of the armed forces of Armenia; the subordinate separatist regime and its armed formations act on the instructions of and under the direction and control of the organs of Armenia and survive by virtue of Armenia's military, political, financial and other support.

14. There is a pattern of close political links at all levels between Armenia and its subordinate separatist regime in the occupied territories. As is well-known, the former and incumbent Presidents of Armenia, Robert Kocharyan and Serzh Sargsyan, came from within the ranks of the separatists. In addition to the senior command posts in the armed forces, this also involves both the political and social strata. The existence of close and persistent political, social and other links is apparent from a series of events in the public domain. The ministries and other government bodies of Armenia and the structures of the separatist regime hold joint sessions in the occupied territories. High-ranking officials of Armenia engage in joint planning and implementation of various programmes.

15. Close coordination between the government bodies of Armenia and the structures of the subordinate separatist regime, access to the occupied territories only from Armenia and with the permission of Armenia's armed forces or its local agents attest to the full knowledge of, acquiescence and connivance by the State organs of Armenia – from the President, the Prime-Minister and government ministers to the lowest enforcing agencies – in the acts of the subordinate separatist regime and the Armenian armed forces, as well as in the involvement of Armenian and foreign natural and legal persons in unlawful activities in the occupied territories, including pillaging and illegal exploitation of natural resources.

16. Armenia spares no effort to consolidate the results of the unlawful use of force and occupation and to politically promote its annexationist aspirations. The Government of Armenia, Armenia registered private companies and entities, as well as foreign businesses, including those run by the Armenians or based on the Armenian capital, play a decisive role in funding, enabling and facilitating permanent changes in economic, demographic and cultural character of the occupied

territories both for private gain and for supporting the prolongation of the occupation of these territories.

17. Armenia undertakes efforts towards incorporating the occupied territories into its socioeconomic space and its customs territory, in violation of its international obligations, including those assumed within the World Trade Organization (WTO). Armenia attempts to incorporate the occupied territories into its banking and financial sector, through extending Central Bank of Armenia's (CBA) regulating and oversight authority over these territories. CBA exercises full control over the financial transactions in and out of the occupied territories. Furthermore, Armenia illegally assigns its unique numbering code to the occupied territories, exploits Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies, in violation of the relevant Regulations and Acts of the International Telecommunication Union.

18. The subordinate separatist regime in the occupied territories is highly dependent on external financial support, primarily from Armenia, but also from Armenian diaspora worldwide. Armenia provides more than half of "budgetary" spending of the subordinate separatist regime through loans and grants from its State budget. Annual monetary transfers from the Government of Armenia reportedly covered 52 per cent of spending of the separatist regime in 2015. Actual spending of Armenia to sustain the subordinate regime and the illegal activities in the occupied territories is considerably higher and includes the budgets of various ministries of Armenia that allocate funding for approved joint action plans with the subordinate regime, providing technical, material support and other expertise to implement projects in these territories. This financial support, which amounts to a State policy, is critical in funding settlements and sponsoring illegal economic activities in the occupied territories.

19. Armenian diaspora organizations, including the Lebanon-based Artsakh Roots Investment ("ARI") company, play a major role in enabling and facilitating the occupation. A large amount of funding for settlements and other activities is provided by foreign private investors, mostly of Armenian origin, and from charity non-profit organizations, like the US-based Tufenkian Foundation, Armenian General Benevolent Union (AGBU), Cherchian Family Foundation and others, which benefit from their tax-exempt status in host countries and are channelling large amounts into the illegal activities and settlements throughout the occupied territories, providing other material assistance to support these activities either directly or indirectly, at the instruction and/or encouragement of Armenia.

20. Over the past years, the transfer of Armenian settlers from Armenia and elsewhere into the occupied territories, including the areas adjacent to the occupied Nagorno-Karabakh region of Azerbaijan, in particular the districts of Lachyn, Kalbajar, Gubadly, Zangilan and Jabrayil, has continued with accelerated pace. Armenia is directly involved in the settlement practice through its Ministry of Diaspora and other State organs, as well as through charity organizations and the subordinate structures in the occupied territories. Armenia-founded and controlled Hayastan All-Armenian Fund designed and implemented a special "Re-population of the villages of Artsakh" project. Settlement activities in the occupied territories are carried out in a pre-planned and organized manner with clearly defined objective and geographic focus. Settlements are being established and permanent social and

economic infrastructure in support of settlement enterprise is being constructed in pre-identified village clusters, usually comprising of several villages in the so-called "strategic areas", including in particular those depopulated of their Azerbaijani inhabitants, to facilitate further repopulation of these territories with the ultimate goal of maintaining the *status-quo*, to create a new demographic situation on the ground, prevent the return of the Azerbaijani population to their places of origin and impose a *fait-accompli.*

21. A scheme of subsidies and incentives has been put in place to encourage Armenian settlers to move to the occupied territories. Various methods employed at different stages of the settlement process include the provision of subsidies, mainly related to discounted or free utilities, free construction materials, low or no taxes, offers of attractive employment opportunities, free provision of material support (a house/apartment, land and other assistance), and the promotion of private entrepreneurship, the provision of agricultural grants, credits and cattle etc. Special social programmes (mainly in the form of one-time financial assistance for the first, second and more children and the provision with a house for families with six children under the age of 18), are designed to stimulate natural growth among the settlers and indicate the existence of policy driven repopulation efforts.

22. According to the contracts signed with Armenian settlers, they are granted "legal ownership" of the donated properties at no cost, on condition that they live there for more than 10 years.

23. If until 2005 potential settlers were receiving information about the so-called "target areas" from family members and friends who had previously settled in the occupied territories or had been recruited by the entity called "Artsakh Committee", based in Yerevan (Armenia), which has provided consultation, orientation and selection of specialists needed in those "target areas", since 2010 recruitment of settlers from within Armenia and abroad has become more organized and massive in scale, with TV channels in Armenia reportedly informing about privileges available and professions needed.

24. Armenian statistical information shows that the number of settlers in the occupied territories has been increasing progressively. Settlements in the occupied Kalbajar, Lachyn, Gubadly and Zangilan districts stand out as of particular importance to Armenia, reportedly due to significant economic potential, including water resources, minerals and energy potential and agricultural opportunities in those areas. The declared target is to increase the population of at least some of the villages in those occupied districts minimum to 1,000 each by 2017.

25. In a new settlement wave, Armenia encourages and facilitates resettlement of Syrian Armenians in the occupied territories. Government agencies of Armenia, including its Ministry of Diaspora, as well as other organizations of Armenia, in particular the Armenian Revolutionary Federation (ARF), which designed special Yerevan-headquartered "Help Your Brother" programme for this purpose, are directly involved in encouraging Syrian Armenians to move to the occupied territories. Armenians from Syria (many from Qamishli and Aleppo cities in Syria) are settled mainly but not exclusively in the occupied Zangilan, Gubadly and Lachyn districts. Maintenance of and support for the settlements with Syrian Armenian communities serve as an incentive for more their compatriots and

relatives to move from Syria and from Armenia, given the continuing instability in Syria and the dire economic situation in Armenia.

26. There are reports that Syrian Armenians settled in the occupied territories are being recruited to serve in the Armenian armed forces deployed there.

27. Armenia is also resorting to other incentive tricks, like granting to the new and existing settlements the geographic names with clear historical connotation (like "New Cilicia", "Van" etc.) in an effort to draw historical parallels, exploit sentiments and thus encourage more Armenians to move to the occupied territories.

28. The evidence presented refutes allegations that Armenia is not directly engaged in settling Armenians in the occupied territories of Azerbaijan and that they move on their own accord and leaves no doubt as to the existence of the government policy of encouragement of settlement of the Armenian population in those territories, in breach of international humanitarian law.

29. Armenian press reports and other sources confirm that almost all native toponyms of historical Azerbaijani places in the occupied territories were altered in yet another clear sign of Armenia's annexationist aspirations and purposeful efforts aimed at destroying the character of Azerbaijani historical and cultural heritage in the occupied territories.[18]

30. Armenia continues permanent energy, agriculture, social, residential and transport infrastructure changes in the occupied territories, including the construction of irrigation networks, water supply systems, roads, electrical transmission lines and other economic and social facilities. Building of infrastructure in the occupied territories is declared a priority and is linked directly to supporting the maintenance of settlements and to bringing and keeping more Armenian settlers in those territories. Economic activities generated by settlements result in appropriation of land and natural resources and other public and private property. Armenia's direct involvement in building infrastructure in the occupied territories, including the areas depopulated of their Azerbaijani population, is evident from State loans provided to the subordinate separatist regime, channelling funds for such purposes through the Armenia-founded and controlled Hayastan All-Armenian Fund, supply of construction materials, heavy machinery and equipment, as well as from design and implementation of infrastructure projects by Armenia's institutions and companies.

31. Infrastructure projects carried out in the occupied territories include also the construction/ reconstruction of roads envisaged exclusively for connecting Armenia and the occupied territories and the Armenian settlements within the occupied territories. Among them is the Goris-Khankandi road, passing through the occupied Lachyn district, linking Armenia and the occupied territories, the so-called "North-South" highway, connecting the northern part of the occupied territories with the

[18] As the presented Armenian press reports indicate, almost all native toponyms of historical Azerbaijani places in the occupied territories were altered (for example Shusha, Khankandi, Lachyn, Kalbajar and Zangilan are referred to by Armenia as "Shushi", "Stepanakert", "Berdzor", "Karvachar" and "Kovsakan", respectively). To reveal these unlawful methods, the above-mentioned and other distorted names are listed in the annex 1 to this report. Unless used in quotes from the Armenian sources, geographic designations throughout the report are given in their original, Azerbaijani spelling.

south and the Vardenis-Aghdara highway, passing through the occupied Kalbajar district of Azerbaijan.[19]

32. Over the past years, the scale of construction and renovation of residential buildings/houses and other social facilities has considerably increased. Building of social infrastructure in the occupied territories is directly linked to promoting settlements in these areas and is yet another testimony of the efforts towards creating a new demographic situation on the ground and preventing the return of the Azerbaijani displaced persons to their homes. Many facilities and residential houses are built on the ruins of demolished buildings/houses, confirming the earlier reports that public and private property has been appropriated, that empty houses of Azerbaijani internally displaced persons were often dismantled for use as construction materials or that new houses are being built on their lands and properties.

33. Armenia exercises pervasive control over the entire economic and commercial system in the occupied territories, including inbound and outbound trade flows and economic resources. Armenian companies and businesses registered in Armenia or elsewhere or established in the occupied territories with the assistance of Armenian entities or Armenian capital control the entire market and manage the export of settlement produce to international markets. Many Armenian companies operate farms, orchards and production facilities in the occupied territories. Technology and equipment is provided to the occupied territories from Armenia and from other countries through Armenia. Armenia supplies a variety of heavy engineering machinery, including tractors, combines and bulldozers and other equipment. There are hundreds of various types of USA-manufactured Caterpillar machines, farm tractors and equipment of US-based John Deere and Germany's Deutz-Fahr companies, South Korean Hyundai trucks, Belarus MT3-82,3 model farm tractors, as well as other heavy machinery utilized in illegal activities, including in mining, agriculture, expansion of settlements and construction of the associated infrastructure.

34. Apart from the agricultural equipment, as an additional settlement incentive diesel fuel for planting and ploughing, financial assistance in the form of interest-free loans, agricultural support equipment, like disk harrows, seeders, fertilizers, distributors and pesticide sprinklers and other equipment is provided from Armenia.

35. Certain foreign natural and legal persons play a major role in Armenia's colonial enterprise in the occupied territories. A large number of foreign entities operating in the occupied territories are run by the Armenians or have close connections with Armenian diaspora. A number of businesses were established in the occupied territories to export settlement produce, raw materials and natural resources from there. Others are engaged in settlement activities, housing construction and agricultural projects. Many of those enterprises are affiliates or wholly owned subsidiaries of Armenia-registered companies. The true ownership of most of those companies and their production facilities in the occupied territories remains unclear, as many of them are subsidiaries of larger conglomerates, oftentimes registered offshore in Cyprus, Liechtenstein and elsewhere. Armenia's

[19] For the locations of the towns and villages, referred to in this report, see the map in the Annex 3.

government structures and affiliated entities actively promote illegal activities by foreign companies in the occupied territories.

36. Since Armenia and its subordinate separatist regime are largely deprived of the possibility of attracting international financial and credit resources to finance illegal activities in the occupied territories, they rely on Armenian diaspora that make donations through charitable organizations or individual contributions. Many foreign entities provide desperately needed investments to sustain these illegal activities in exchange for the shares in the sectors to which they invest and thus profit from and support the occupation. Such funding is channelled through the branches of Armenian banks operating in the occupied territories and conducting international financial transactions via intermediary banks in Russia, several European countries and elsewhere.

37. Many facilities in the occupied territories process their materials at least partially in Armenia. Some of the raw materials for processing are brought in from Armenia or from elsewhere. Many Armenian companies source their raw materials from the occupied territories. A number of foreign retailers, including in Russia, the United States and some European countries, in particular in France, Bulgaria, Ukraine, Hungary, Belgium, Germany, the Czech Republic, The Netherlands, as well as in Australia and UAE, have supply contracts with Armenian companies or their wholly owned subsidiaries in the occupied territories, thus becoming complicit with Armenia's occupation of the territories, expansion of illegal settlements and the colonization of the territory of Azerbaijan and its resources.

38. Armenia is supporting and encouraging production and export of the products illegally produced in the occupied territories. Armenia's high-ranking officials, including President Serzh Sargsyan, Prime Minister Hovik Abrahamyan and other ministers, routinely visit the occupied territories and inspect production facilities there. The State organs of Armenia provide logistical support to Armenian and foreign enterprises operating in the occupied territories to export their products to international markets and promote ties with foreign businesses and organize trips of foreign companies to the occupied territories to explore investment opportunities there.

39. To camouflage the illegal nature of settlement produce, Armenian agricultural and liquors export companies, including "Stepanakert Brandy Factory" and "Artsakh Fruit CJSC", routinely mislabel the products wholly or partially produced or packed in the occupied territories as originating from Armenia, thus misleading governments, international retailers and consumers.

40. The agricultural lands in the occupied territories along the Araz River, including in Zangilan and Jabrayil districts, have been illegally appropriated and extensively exploited by Armenia, its companies and the subordinate separatist regime due to their economic potential, climate, water and other resources. Agricultural land used for sowing in these districts is expanding annually. Harvested crops are transported to Armenia, in particular to the Syunik district for distribution by retailers.

41. Exploitation of agricultural resources is pursued not only for economic, but also demographic reasons. In fact, illegal settlements in the occupied territories rely primarily on agriculture development, and the existence of many settlements is

dependent on access to arable lands and water resources. This is why Armenia and its diaspora organizations encourage the transfer of Armenian settlers into the arable lands in the Araz River Valley, in particular the occupied Zangilan and Jabrayil districts, expecting that land cultivation, including crops and other vegetable growing and agricultural exports, will generate sufficient revenue for the settlers to stay and expand their communities. Settlement of Syrian Armenians in the occupied territories is also largely driven by their experience in agriculture development in their home country that Armenia hopes will be a significant boost to the colonization of those territories.

42. Given the highly subsidized character of agriculture in the occupied territories, intensive agricultural production there is heavily dependent on financial assistance and the development of water, power and transport infrastructure. This makes access to and control of water resources, in particular those in the occupied Kalbajar, Lachyn, Zangilan and Jabrayil districts, an important factor in the colonial enterprise of Armenia. In order to service the settlements and farming, as well as to maximize the exploitation of water resources in the occupied territories, a number of actions were taken, including capture and diversion of waters of the rivers and their headwaters for the settlements' use in the Araz Valley and elsewhere, constructing new or using existing artesian wells, pump-stations and irrigation canals that fell into disuse after the Azerbaijani population was forced to abandon their places of residence. By its involvement in rehabilitation and construction of the irrigation system in those territories, Armenia's ArmWaterProject Company Ltd. directly participates in appropriation of water resources from there. Exports of agricultural produce grown in the occupied territories and using water illegally requisitioned from the occupied territories contribute to the colonization of the Azerbaijani territories.

43. Water resources in the occupied territories are used not only for irrigation, but also for power generation. For this purpose, a series of power plants, including small hydro-power plants, were built and are operating in the occupied territories.

44. If dismantling of infrastructure, such as notorious stripping of metals, pipes, bricks and other construction materials from the ruins of demolished Azerbaijani households and public buildings was previously conducted by individual Armenian settlers and soldiers, the examined evidence shows that this practice is currently replaced with more organized system of pillage, under the direction and control of Armenia, with the scope and the geographic area of that pillage dramatically expanded to include also depredatory exploitation of natural resources and other forms of wealth across the occupied territories.

45. Mining of the precious minerals and metals is one of the main enterprises in the occupied territories. Predatory exploitation of Gyzylbulag underground copper-gold mine near Heyvaly village in the occupied Kalbajar district by Base Metals CJSC, which is a wholly owned subsidiary of Armenia's Vallex Group CJSC, registered in Liechtenstein, led to its almost complete depletion. In May 2013, Base Metals CJSC launched exploitation of Demirli open-pit copper and molybdenum mine located near Demirli, Gulyatag and Janyatag villages in the occupied part of the Tartar district. In 2014, Gold Star CJSC reportedly started exploitation of the gold mine near Vejnali village in the occupied Zangilan district of Azerbaijan. Since

2007, GPM Gold, a subsidiary of Russia-based GeoProMining Ltd., has been extracting ore in Soyudlu gold mine in the occupied Kalbajar district.

46. There is an illegal traffic in natural resources across the occupied section of the international border between Azerbaijan and Armenia that is controlled by the armed forces of Armenia. Armenia is a transport base for movement of minerals and other wealth from the occupied territories of Azerbaijan to international markets. The construction of the Vardenis-Aghdara highway through the occupied Kalbajar district of Azerbaijan is directly linked to gaining access to the areas in the occupied territories rich in natural resources and to facilitate exporting goods and minerals out of the occupied territories to Armenia and international markets. The Government of Armenia, in particular through its Energy Ministry, is directly involved in building of this road. The ore concentrate from Gyzylbulag mine has been transported to Armenia, where it is further processed into gold containing copper and exported to international markets, mainly in Europe. Armenia is also extracting coal from the mine near Chardagly village in the occupied part of the Tartar district to supply the power plant in Yerevan, Armenia.

47. This and other evidence confirm that Armenia is directly involved in exploitation and pillage of natural resources in the occupied territories of Azerbaijan for its own economic benefit. Armenia and its subordinate separatist regime are profiteering economically and financially from the armed conflict and occupation of the territories of Azerbaijan. Exploitation of natural resources and other forms of economic wealth in the occupied territories turned into a lucrative business and is the major source of income for Armenia and its subordinate regime.

48. There is a clear correlation between the exploitation and pillage of natural resources and other forms of wealth of Azerbaijan and the uncompromised position of Armenia, unwilling to withdraw its armed forces from the occupied territories of Azerbaijan. It is obvious that Armenia is seeking to prolong the occupation with a view to retaining control over the mineral, agricultural and water resources and other wealth in those territories.

49. Armenian officials and the agents of the subordinate separatist regime confirm that the exploitation of natural resources is directly linked to solving the "demographic issues", implying that at least part of the finances accumulated from such exploitation is allocated to settlement programmes that ultimately serve the purpose of prolongation of occupation and preventing the Azerbaijani internally displaced persons from returning to their homes and properties in the occupied territories. Thus said, illegal economic activities in the occupied territories produce the notorious "conflict diamonds" effect and contribute to sustaining the *status-quo* and to the continuation of the armed conflict.

50. Armenia not only failed to take adequate measures to put an end to the exploitation of resources in the occupied territories by any natural and legal persons, wherever located, but, as the examined evidence reveals, also encourages them to engage in such activities. The illegal activities in the occupied territories and the exploitation of natural resources also raise a number of environmental concerns. The mining companies that acquire illegal "licenses" for exploitation of mineral resources in the occupied territories have poor environmental record in Armenia and continue the same depredatory practice in those territories, paying no regard

whatsoever to the environment. As a result, the exploitation of resources in the occupied territories severely damages the environment. There are already millions of tons of waste in tailing dumps, which are saturated with heavy metals and other dangerous substances. Environmental degradation in the occupied territories has reached such a fast and unobstructed pace that even Armenia-based environmental organizations raised red flag. Valuable species of trees, including nut-trees, oaks, Eldar's pine-tree, persimmon and others that are under special protection are subjected to felling and cutting for timber, which is exported out of the occupied territories for furniture, barrel and rifle production. Many species of trees for a long time are on the verge of disappearance. Armenian sources, including statistical data, confirm that illegal tree felling in the occupied territories is on the rise.

51. Armenia takes consistent measures aimed at altering the Azerbaijani historical and cultural features of the occupied territories. Alleged "reconstruction" and "development" projects in the occupied territories, including in Shusha, one of the cultural and historical centres of Azerbaijan, and archaeological excavations are carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots, constructing fake historical narratives to substantiate Armenia's policy of territorial expansionism.

52. Armenia also exploits tourism as a tool for its annexationist policies. In particular, tourism is being abused by Armenia to propagate the illegal separatist entity and generate financial means to consolidate the results of the occupation. On a number of occasions, international tourism fairs and other events were used to mislead the general public by promoting the occupied territories of Azerbaijan as a "tourist destination", in particular through creating booths and disseminating materials about the illegal separatist entity established by Armenia in those territories. These actions are clear negation of tourism and put in danger the safety and security and even life of international travellers, who may be unaware of the dangers associated with their visits to the occupied territories and of the legal consequences flowing from such visits without formal permission of Azerbaijan.

53. Accordingly, the conclusion must be that, due to its initial and continuing use of force against Azerbaijan and persisting occupation of Azerbaijan's territory, accomplished both directly through its own organs, agents and officials and indirectly through its subordinate separatist regime in the occupied Nagorno-Karabakh region and adjacent districts over which Armenia exercises effective control as it is understood under international law, Armenia bears full international responsibility for the breaches of international law.

C. Occupation by Armenia of the territories of Azerbaijan and their attempted annexation

54. The examined evidence refutes Armenia's allegations of non-involvement aimed at disguising its military presence and occupation of the territories of Azerbaijan and in general its own role in regard to what is happening in reality in the occupied territories. Armenia spares no effort to consolidate the results of the unlawful use of force and to this end, continues to undertake efforts to unlawfully change the demographic, cultural and physical character of the occupied territories of Azerbaijan.

1. Effective control by Armenia over the occupied territories

55. The close, almost umbilical, links between Armenia and the subordinate separatist regime have a strong personal element at the highest level, in addition to a whole range of other connections. Military occupation and control of the territories of Azerbaijan by Armenia's armed forces and, in general, accessibility of the occupied territories only from Armenia and with the permission of Armenia's local agents attest to the acquiescence and connivance of the State organs of Armenia in the acts of subordinate regime, its military formations, as well as of natural and legal persons, private individuals and entities of Armenia and some other countries, operating in the occupied territories. The presented evidence leaves no doubt that the subordinate separatist regime and its armed formations act on the instructions and under the direction and control of the organs of the Republic of Armenia and survive by virtue of Armenia's military and other support.

56. Thus, the high-ranking political and military officials, including the incumbent President of Armenia Serzh Sargsyan and the Minister of Defence of Armenia Seyran Ohanyan, who were commanders of the Armenian armed forces during the invasion of the territories of Azerbaijan in 1992-1994, on a number of occasions admitted the presence and involvement of the armed forces of Armenia in military operations both at a time of occupation of the territories and at present.

57. It is obvious from the large number of Armenia's armed forces engaged in active duties in the occupied territories of Azerbaijan that those territories are under the occupation and effective control of Armenia. The armed formations of the subordinate separatist regime are closely integrated with and are essentially an extension of Armenia's armed forces, as evidenced by close links at all levels, including senior command posts, the joint military planning that includes the whole range of issues from military built-up[20] to planning and carrying out of military operations, as well as routine joint operational and tactical military exercises.[21] S.Sargsyan and S.Ohanyan, as well as other senior military commanders of the armed forces of Armenia routinely visit the occupied territories, inspect deployed military units and military hardware, examine the frontline engineering and fortification works, exercise command and control and give instructions to the field commanders.[22] S.Ohanyan routinely visits the occupied territories to participate in

[20] See UN Doc. A/68/133/Add.1, 17 September 2013.

[21] See Press release of the Ministry of Defence of Armenia of 10 November 2014, "The Armenian military exercises – Unity 2014", <http://www.mil.am/1415617726/page/10>; Press release of the Ministry of Defence of Armenia of 27 November 2014, "The results of the "Unity 2014" military exercises have been summarized", <http://www.mil.am/1417099727/page/8>.

[22] See "Ohanian visits Karabakh after Deadly Fighting", *Azatutyun.am,* 23 March 2015, <http://www.azatutyun.am/ articleprintview/26916300.html>; "Artsakh Republic President Bako Sahakyan received defence minister of the Republic of Armenia Seyran Ohanyan", *Artsakhtert.com*, 16 January 2015, <http://artsakhtert.com/eng/index.php?option=com_ content&view =article&id=1670:artsakh-republic-presidentbako-sahakyan-received-defence-minister-of-the-republic-of-armenia-seyran-ohanyan&catid=11:official&Itemid=23>; "Armenian Defence Chief Visits Karabakh Frontline", *Azatutyun.am*, 16 December 2014, <http://www.azatutyun.am/content/article/26747394.html>; Press release of the Ministry of Defence of Armenia, "Working visit to the Republic of Nagorno-Karabagh", 13 November 2013, <http://www.mil.am/1384347865/page/24>; "Military leadership meets in Karabakh", *Panorama.am*, 24 July 2013, <http://www.panorama.am/en/region/2013/07/24/karabakh-meeting/>; "Working visit of President Serzh Sargsyan to the Nagorno Karabakh Republic", *President.am*, 25 October 2012, <http://www.president.am/en/Artsakh-visits/item/2012/10/22/ President-Serzh-Sargsyan-Artsakh-working-visit/>.

the so-called "Defence Army's Military Council" meetings, where the military planning is carried out.[23] Other top military officials of Armenia, including the Chief of General Staff of the armed forces of Armenia, colonel general Yuri Khachaturov, the first Deputy Chief of General Staff, lieutenant-general Enrico Apryamov, Chief Military Inspector of the President of Armenia, colonel-general Michael Haroutyunyan, regularly visit the occupied territories to coordinate joint activities.[24] Citizens of Armenia drafted into the armed forces of Armenia are doing their compulsory military service in the occupied territories of Azerbaijan.[25] Wounded and otherwise disabled Armenian servicemen serving in the occupied territories are treated in the Central Military Hospital of the Ministry of Defence of Armenia.[26] Deceased active duty servicemen of Armenia's armed forces killed in action in the occupied territories are buried in "Yerablur" military pantheon in Armenia.[27] Armenia awards military decorations to veterans and servicemen of the

[23] See "On 16 January Artsakh Republic President Bako Sahakyan partook in a meeting of the Defence Army's Military Council dedicated to summing up the activities carried out in 2014 activities and the 2015 action plan", *Artsakhtert.com*, 16 January 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1671:-on-16-january-artsakh-republic-president-bako-sahakyan-partookin-a-meeting-of-the-defence-armys-military-council-dedicated-to-summing-up-the-acti vities-carried-out-in-2014-activities-and-the-2015action-plan&catid=11:official&Itemid=23>.

[24] See "On 16 February President of the Artsakh Republic Bako Sahakyan met first deputy head of the General Staff of the Republic of Armenia's Armed forces lieutenant-general Enrico Apryamov", *Artsakhtert.com*, 17 February 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1700:-on-16-february-president-of-the-artsakh-rep ublic-bako-sahakyan-met-first-deputyhead-of-the-general-staff-of-the-republic-of-armenias-armed-forces-lieutenant-general-enri co-apryamov-&catid=11:official&Itemid=23>; "On 24 February Artsakh Republic President Bako Sahakyan received chief military inspector of the President of the Republic of Armenia colonel-general Michael Haroutyunyan", *Artsakhtert.com*, 24 February 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1710:-on-24-february-artsakh-republic-president-bako-sahakyan-received-chief-military-inspector-of-thepresident-of-the-republic-of-armenia-colonel-general-michael-haroutyunyan-&catid=11:official&Itemid=23>.

[25] See "The Thousand Yard Stare: On the Nagorno-Karabakh Front", *Saraanjargolian.com*, <http://www.saraanjargolian.com/ thousandyard-stare/>; "Officer Knocks Out Soldier's Eye at Karabakh Military Post: Haykakan Jamanak", *Epress.am*, 16 February 2011, <http://www.epress.am/en/2011/12/16/officer-knocks-out-soldiers-eye-at-karabakh-military-post-haykakan-jamanak.html>; "Another suspicious death of an Armenian soldier reported", *Hetq.am*, 7 September 2011, <http://hetq.am/eng/news/4139/another-suspicious-death-of-anarmenian-soldier-reported.html>; "There is an atmosphere of impunity and permissiveness in the army", *Aravot.am*, 7 September 2011, <http://en.aravot.am/2011/09/07/160455/>; "14 years have passed, yet still no one responsible for the soldier's death", *Hetq.am*, 14 February 2014, <http://hetq.am/rus/news/32571/proshlo-14-let-no-za-smert-soldata-nikto-ne-pones-nakazaniya.html>.

[26] See Press release of the Ministry of Defence of Armenia of 3 December 2014, "The Defence Minister pays a visit to disabled veterans", <http://www.mil.am/1417614850/page/7>; Press release of the Ministry of Defence of Armenia of 13 November 2014, "Visit to the military hospital", <http://www.mil.am/1415868465/page/9>; Press release of the Ministry of Defence of Armenia of 31 May 2014, "The ARM Defence Minister`s visit to the Central Clinical Military Hospital", <http://www.mil.am/1401544524/page/15>.

[27] See "Armenian Defence Minister: Our soldiers have pushed away the enemy in an unequal battle", *News.am*, 22 March 2015, <http://news.am/rus/news/258276.html>.

military units deployed in the occupied territories.[28] The Chief Military Office of the Bureau of Criminal Investigation of Armenia initiates criminal cases concerning the death of Armenian soldiers killed in action or in non-combat circumstances in the occupied territories in accordance with the Criminal Code of the Republic of Armenia.[29] The Committee dealing with Armenian prisoners of war and missing persons chaired by the Minister of Defence S.Ohanyan is in charge of repatriation of Armenian prisoners of war.[30]

58. The movement of personnel in political and military leadership echelons between Armenia and the subordinate separatist regime and reshuffling of military commanders of Armenia with the warlords of the separatist regime is another striking evidence of their integration. The most recent example is the rotation between the Deputy Chief of General Staff of the armed forces of Armenia, Levon Mnatsakanyan, and the so-called "minister of defence" of the separatist regime, Movses Akopyan, officially approved by the decree of President Serzh Sargsyan of Armenia, dated 15 June 2015.[31]

59. The European Court of Human Rights (ECHR), having examined the evidence, confirmed in its judgment on the *Chiragov and others v. Armenia* case that "the Republic of Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date", that "[t]his military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue" and that "…the evidence … convincingly shows that the armed

[28] See "On occasion of Army Day solemn award-giving ceremony takes place at RA Presidential Palace", *President.am*, 28 January 2015, <http://www.president.am/en/press-release/item/2015/01/28/President-Serzh-Sargsyan-decoration-ceremony-January-28/>; "Armenian President posthumously awards servicemen Karen Galstyan and Artak Sargsyan", *Panorama.am*, 26 January 2015, <http://www.panorama.am/en/society/2015/01/26/galstyan-sargsyan/>; "President awards servicemen distinguished during military exercises", *1tv.am*, 14 November 2014, <http://www.1tv.am/en/news/2014/11/14/President-awards-servicemen-distinguished-during-militaryexercises/3359>; "Armenia president awards "Karabakh war veteran", *News.am*, 22 September 2014, <http://news.am/eng/news/230240.html>; "Killed Armenian serviceman awarded posthumously", *News.am*, 6 August 2014, <http://news.am/eng/news/222804.html>; "Serzh Sargsyan awarded Armenian servicemen on the occasion of Army Day", *Times.am*, 28 January 2014, <http://times.am/?p=37642&l=en>; "President Serzh Sargsyan awarded a group of servicemen and "freedom fighters", *Armenpress.am*, 25 January 2013, <http://armenpress.am/eng/news/706172/>; "A group of servicemen and freedom fighters were awarded by President Serzh Sargsyan with the awards of the Republic of Armenia", *Lurer.com*, 27 January 2012, <http://lurer.com/?p=10240&l=en>.

[29] See "A criminal case was initiated on the death of two servicemen in NKR", *News.am*, 1 March 2015, <http://news.am/rus/ news/254900.html>; "Mil. Prosecutor visits Karabakh to supervise probe into soldier's death", *Tert.am*, 30 August 2011, <http://www.tert.am/en/news/2011/08/30/kostanyan/338324>.

[30] See Press release of the Ministry of Defence of the Republic of Armenia of 18 December 2014, "This year's final stage of annual meetings of the panel dealing with Armenian prisoners of war, hostages and missing people", <http://www.mil.am/14189 11394/page/6>.

[31] See "Karabakh Defence Minister gets office in capital Yerevan", *News.am*, 15 June 2015, <http://news.am/eng/news/271978 .html>; "Levon Mnatsakanyan appointed Defence Minister of Artsakh", *Mediamax.am*, 17 June 2015, <http://www.mediamax.am/en/news/karabakh/14532/>.

forces of Armenia and the "NKR" are highly integrated".[32] Based on the evidence testifying to the political, financial and other dependence of the separatist entity from Armenia, the ECHR concluded that:

> … the Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR", that the two entities are highly integrated in virtually all important matters and that this situation persists to this day" and that "the "NKR" and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin.[33]

2. Continued attempts of Armenia to incorporate the occupied territories into its economic space

60. Continued efforts are being made by Armenia towards incorporating the occupied territories into its socioeconomic space and its customs territory, in violation of its international obligations, including those assumed within WTO.[34] The occupied territories of Azerbaijan are alleged by the Armenian side to be in a common customs zone with Armenia. Imports to these territories are regulated according to the Customs Code of the Republic of Armenia.[35] Azerbaijan's customs checkpoints along the occupied section of the international border between Armenia and Azerbaijan are destroyed. Despite Armenia's commitment not to extend the would-be trade preferentials to the occupied territories of Azerbaijan within the context of Armenia's accession to the Eurasian Economic Union (EEU), declarations by Armenian officials that no customs checkpoints will separate the occupied territories from Armenia testify to its attempts to incorporate those areas into its customs territory.[36] Prime Minister of Armenia, Hovik Abrahamyan, is quoted to have said that "Armenia will continue to form a single economic territory with Nagorno-Karabakh even after joining the Russian-led Customs Union. We will remain a single territory, and I believe there can be no other formulations on this issue."[37]

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[32] *Chiragov and others v. Armenia*, Grand Chamber of the European Court of Human Rights, Judgment (Merits) of 16 June 2015, Application no. 13216/05, available at <http://hudoc.echr.coe.int/eng?!=001-155353>, para. 180.

[33] *Ibid.*, para. 186.

[34] During the WTO accession process, the Republic of Armenia reaffirmed that its obligations under WTO Agreements and the provisions of these Agreements shall only apply to the territory of the Republic of Armenia as recognized by the United Nations. See WTO Doc. WT/ACC/ARM/22, 22 November 2002.

[35] See "Doing Business in Karabakh", Guide prepared by "Grant Thornton Amyot CJSC" (2003).

[36] "Armenian Deputy Foreign Minister excludes possibility of putting border checkpoints between Artsakh and Armenia", *Armenpress.am,* 5 May 2013, <http://armenpress.am/eng/news/731897/zamministra-id-armenii-isklyuchaet-vozmozhnost-vnedreniya.html>; "No customs checkpoint will separate Armenia from Nagorno-Karabakh, says premier", *Tert.am*, 2 October 2014, <http://www.tert.am/en/news/2014/10/02/arayik-harutyunian/1207158>.

[37] See "Armenia, Karabakh to Remain Single Territory", *Azatutyun.am*, 16 May 2014, <http://www.azatutyun.am/articleprintv iew/25387895.html>.

61. Agents of the subordinate separatist regime also allege that they are in the "same social-economic field" with Armenia and that once the trade regime of the EEU becomes operational, the produce from the occupied territory will reach freely the markets of the Union. The so-called "deputy prime minister" of the separatist regime Arthur Aghabegyan submitted that since Armenia and so-called "Artsakh" are in a "common economic zone", membership in the EEU would not alter or change the economic structure of the "Nagorno-Karabakh Republic".[38] The so-called "prime minister" of the subordinate separatist regime Araik Arutyunyan is quoted to have said that:

> Speaking of the Republic of Armenia's accession to the EAEU [Eurasian Economic Union] and its influence on the NKR, it is necessary to take into consideration one important fact. It is that Armenia and the NKR have identical economic system, and any influence would have the same effect on both republics. I see the main perspective in the opening up of a huge market, which would allow us to both export goods from Artsakh, and import goods from the EAEU on more favourable conditions.[39]

62. Extending trade preferentials to the occupied territories is one of the major incentives of the government of Armenia to sustain the illegal economic activities in those territories and facilitate exports of the settlement produce to international markets.

63. Armenia applies its standards to the occupied territories. So-called "director" of the "centre of standardization, metrology, and certification" of the subordinate separatist regime, Sergey Harutyunyan, confirmed that "…we cannot have national standards, so we apply the standards of the Republic of Armenia. The measuring means used in Armenia are the standard for us, or our measurement tools are tested and certified in Armenia".[40]

3. The subordinate separatist regime in the occupied territories is highly dependent on external financial support, primarily from Armenia, but also from the Armenian diaspora worldwide

64. The subordinate separatist regime in absolute terms is receiving increasing external support. Armenia provides more than half of "budgetary" spending of the subordinate separatist regime through loans and grants from its State budget. That financial support, which amounts to a State policy, is critical in subsidizing settlements and sponsoring illegal economic activities in the occupied territories.

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[38] See "Calif. Armenian Business Leaders Explore Investment Opportunities in Artsakh", *Asbarez.com*, 9 July 2014, <http://asbarez.com/124804/calif-armenian-business-leaders-explore-investment-opportunities-in-artsakh/>.

[39] See "'Our main objective is providing for a fast-paced economic development of the country', – Prime-Minister of NKR and leader of the 'Free Motherland party'", *Artsakhpress.am*, 30 April 2015, <http://artsakhpress.am/rus/news/18163/osnovnoiy-nasheiyzadacheiy-ostayotsya-obespechenie-biystriykh-tempov-ekonomicheskogo-razvitiya-straniy-%E2%80%93-premer-ministr-nkr-ilider- partii-svobodnaya-rodina.html> (in Russian language).

[40] See "We are Struggling against the Production of Substandard Goods", *Artsakhtert.com*, 28 March 2014, <http://www. artsakhtert.com/eng/index.php?option=com_content&view= article&id=1412:qwe-are-struggling-against-the-production-of-subst andard-goodsq& catid=6:economy&Itemid=18>.

65. Armenia is the only donor of financial and credit resources to the subordinate separatist regime. Annual subsidies from the Government of Armenia covered 52 per cent (45 billion Armenian drams) of spending of the separatist regime in 2015.[41] In addition, since 1993 Armenia has provided State loans to fund the separatist regime and the illegal activities in the occupied territories. On 16 April 2015, the Government of Armenia approved another loan of $20 million.[42] In April 2015, the Government of Armenia decided to accelerate allocation of a credit to the illegal regime. Minister of Finance of Armenia, Gagik Khachatryan, confirmed the plans of the Government to allocate 21.8 billion drams for the first six months of 2015.[43] On 18 August 2015, the Government of Armenia adopted a decision to provide the separatist regime a budget loan of 9 billion 600 million drams from the stabilization deposit account, which was reportedly disbursed in the 3rd quarter of 2015. Deputy Minister of Finance of Armenia, Armen Alaverdyan, informed that the loan would be secured with an annual interest rate of 8.5 per cent until 10 September 2020.[44]

66. Substantial economic assistance has been provided by the Hayastan All-Armenian Fund. This organisation is controlled by Armenia's political leadership[45] and is subordinated to Armenia's authorities and typifies the political and economic symbiosis between Armenia and the subordinate separatist regime in the occupied territories of Azerbaijan. Even Armenian observers note that "[a]s a result of the Fund's growing subordination to the authorities, funding of projects by diaspora Armenians became more and more dependent on the political decisions made by the country's president".[46] Armenians from Armenia and those residing in the occupied territories amount to around 40 per cent of all the benefactors of the Fund. The method of mandatory donation has been widely exercised to collect money from the public employees in Armenia. The authorities are reportedly forcing people to donate money or arbitrarily deduct donations from the salaries of the employees.[47] Such a method of collecting financial resources for the Fund is believed to be nothing other than an attempt to whitewash corrupt practices in the

[41] See "Within the 2015 State budget, Armenia will provide Karabakh with 45 bln AMD", *Aysor.am*, 28 October 2014, <http://www.aysor.am/ru/news/2014/10/28/hovik-abrahamyan/863269>; "Strong Economic Growth Reported in "Artsakh", *Asbarez.com*, 26 December 2014, <http://asbarez.com/130231/strong-economic-growth-reported-in-artsakh/>.

[42] See "Armenia to provide loan to Karabakh", *News.am*, 16 April 2015, <http://www.news.am/rus/news/262261.html>.

[43] See "Armenian government will accelerate providing funds to Karabakh", *News.am*, 2 April 2015, <http://www.news.am/ eng/news/260124.html>

[44] See "Armenian Government adopts decision of providing budget loan to Karabakh Republic", *Artsakhpress.am*, 18 August 2015, <http://artsakhpress.am/eng/news/24292/armenian-government-adopts-decision-of-providing-budget-loan-to-karabakh-republic.html>.

[45] The Hayastan All-Armenian Fund was founded by the Decree of the President of Armenia in 1992. Under the Fund's Charter, the President of Armenia is the President of the Fund's Board of Trustees. All Fund-financed projects are approved, hence directed and controlled by the Government of Armenia.

[46] See Ara K. Manoogian, "To Donate or Not to Donate: A White Paper on Hayastan All-Armenian Fund" (Shahan Natalie Family Foundation Inc., November 2013), <http://www.thetruthmustbetold.com/wp-content/uploads/haaf-eng.pdf>.

[47] *Ibid*.

Fund by showing to the diaspora its "popularity" within Armenia and thus encouraging more donations from abroad (see below).[48]

67. Actual spending of Armenia to sustain the subordinate separatist regime and the illegal activities in the occupied territories is considerably higher and includes the budgets of various ministries and approved joint action plans with the subordinate separatist regime to provide technical support and other expertise to implement projects in those territories. Armenia is also funding military training in Armenia and abroad for the servicemen of the armed formations of the subordinate separatist regime.

68. A substantial part of the funding for illegal activities derives from Armenian diaspora organizations, private investors, mostly of Armenian origin and from charity non-profit organizations, such as the US-based Cherchian Family Foundation, Armenian General Benevolent Union (AGBU), Tufenkian Foundation, Gerald Turpanjian Educational Foundation, Cafesjian Family Foundation, Lincy Foundation, Shahan Natalie Family Foundation Inc., Armenian Cultural Association of America, Inc. and others, which benefit from their tax-exempt status in host countries and are directly involved in channelling large amounts into settlements and other illegal activities throughout the occupied territories and play a major role in enabling and facilitating the occupation, either directly or indirectly, at the instruction or encouragement of Armenia.[49] For example, US-based Armenian National Committee of America (ANCA) and Armenian Assembly of America (AAA) have long been petitioning the United States Congress and Administration to provide funding for the "developmental aid to Nagorno-Karabakh".[50]

69. In November 2014, "Artsakh Fund" of the Armenian Cultural Association of America held a kick-off reception in New York (USA) to announce its expansion plans for the "Arajamugh" settlement in the occupied Jabrayil district of Azerbaijan.[51] This settlement was created in 2004-2006 by Tufenkian Foundation, in conjunction with the so-called "NKR department of resettlement and refugee affairs". As of 2014, the village had 19 houses and 85 settlers. "Artsakh Fund" chairman Alex Sarafyan informed the participants about the plans to expand the village to 50 houses, as well as associated facilities, including a clinic and community centre. Sarafyan also announced that over $90,000 in donations and pledges have already been secured toward this effort. According to him, the goal of this phase is $250,000, which would cover the construction in 2015 of approximately 10 new houses in the village. On 13 September 2015, a reception and presentation took place in the home of Harry and

[48] *Ibid*.

[49] See e.g. "The Vice Premier expects new investments in Artsakh from the Diaspora's Armenian businessmen", 4 July 2014, <http://gov.nkr.am/en/official-news/item/2014/07/04/diaspora/>; "Agricultural Project Supports Syrian Armenians in Nagorno-Karabakh Republic", Armenian General Benevolent Union, 16 January 2014, <http://agbu.org/news-item/agricultural-project-supports-syrianarmenians-in-nagorno-karabakh-republic/>.

[50] See "Support Armenian American Foreign Aid Priorities", <http://cqrcengage.com/anca/app/write-a-letter?0&engagementId =84993>; Armenian Assembly of America, Fiscal Year 2016 Testimony, <http://www.aaainc.org/fileadmin/aaainc/pdf/2015/AAA_Testimony_SFOPS-FY16.pdf>.

[51] See "Artsakh Fund Raises Money for Village Expansion Project", *Armenianweekly.com*, 1 December 2014, <http://armenianweekly.com/2014/12/01/artsakh-fund-raises-money-for-village-expansion-project/#prettyPhoto>.

Katrina Glorikyan in Lexington, Massachusetts (USA), to raise money for this project. More than $25,000 were raised in support of this settlement.[52] Sarafyan, who was present at the fundraiser, is reported to have said that the goal is to turn it into a "model village for resettlement purposes".[53]

4. Attempts by Armenia to incorporate the occupied territories into its banking and financial sector

70. So-called "minister of industrial infrastructures" of the subordinate separatist regime, Hakob Ghahramanyan, admitted that the regime has no independent monetary policy and is dependent on the bank system and credit policy of Armenia.[54] The national currency of Armenia (the dram) is illegally used in the occupied territories of Azerbaijan. According to the Central Bank of Armenia (CBA), the occupied territories are "part of the economic territory of Armenia, because the dram is the legal tender there and all banking institutions operating in Karabagh are licensed and supervised by the CBA".[55]

71. CBA is directly involved in the development of the "banking system" in the occupied territories, increasing assets of banks operating there and their crediting capacity. In 2011, CBA opened its branch in the occupied town of Shusha.[56] CBA regulations are applied to the occupied territories and it exercises full control over the banking sector and financial transactions in and out of the occupied territories, including cash circulation there.[57] CBA has the authority to influence Armenian commercial banks operating in the occupied territories with a view to directing bank capital to particular areas, including the agricultural sector.[58]

72. The branches of Armenian banks operating in the occupied territories are licensed by CBA. According to the Head of Financial Monitoring Centre of CBA Daniel Azatyan, all financial entities operating in those territories, including the branches of Armenian financial institutions, submit reports on their activities to CBA.[59] The so-called "NKR office in the USA" admitted that "all financial

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[52] See "Artsakh Fund Holds Fundraiser For Arajamugh Village", *Tufenkianfoundation.org*, 2 October 2015, <http://www. tufenkianfoundation.org/?laid=1&com=module&module=static&id=428>.

[53] *Ibid.*

[54] See "Programmed Solutions to the Problems", *Artsakhtert.com*, 24 October 2013, <http://artsakhtert.com/eng/indexphp? option=com_content&view=article&id=1247:-programmed-solutions-to-the-problems&catid=6:economy&Itemid=18>.

[55] Excerpts from the International Monetary Fund Country Report No. 09/50 (2009) "Republic of Armenia: Report on the Observance of Standards and Codes–Data Module, Response by the Authorities, and Detailed Assessment Using the Data Quality Assessment Framework (DQAF)", <http://www.imf.org/external/pubs/ft/scr/2009/cr0950.pdf>.

[56] See "Armenia-Karabakh: Two Armenian states discuss common programs for closer cooperation, *ArmeniaNow.com*, 1 April 2011, <http://www.armenianow.com/karabakh/28709/armenia_karabakh_bank_sector_programs>; "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.

[57] See "Doing Business in Karabakh", Guide prepared by "Grant Thornton Amyot CJSC" (2003).

[58] See "Armenia-Karabakh: Two Armenian states discuss common programs for closer cooperation", *ArmeniaNow.com*, 1 April 2011, <http://www.armenianow.com/karabakh/28709/armenia_karabakh_bank_sector_programs>.

[59] See "Central Bank of Armenia: No Money Laundering Case Recorded in Nagorno-Karabakh", *Arka.am*, 27 August 2008, <http://arka.am/en/news/economy/10838/>.

transactions are subject to laws and regulations common to both Armenia and NKR" and that "[t]his relationship implies that Armenia's macroeconomic stability is also reflected in the NKR".[60] According to the Armenian media, "the presence of a state bank of one country in another may mean a complete financial "miatsum" (unification)".[61]

73. The Government of Armenia encourages its commercial banks to open branches in the occupied territories. Eight Armenian banks, namely, "Artsakhbank", Converse Bank, Ardshininvestbank, Armbusinessbank, Armeconombank, Araratbank, Unibank and Ameriabank are operating there.[62] As of January 2012, Armenian banks operated 18 branches.[63] The biggest number of branches of Armenian banks in the occupied territories is opened by Ardshininvestbank and Armbusinessbank – six branches each.[64] Banks are generally active in money transfer services to/from the occupied territories directly (bank-to-bank) and indirectly through money transfer systems, or specialized Money Transfer Operators (MTO),[65] including Anelik CJSC (Russia),[66] Unistrim ASC KB (Russia),[67] Moneygram International Inc. (USA),[68] Quick Post CJSC, and Swift system.[69] There are reports that several foreign banks and entities, including Arexim bank-Gazprombank Group CJSC (Russia), Sberbank (Russia), Promsvyazbank OJSC (Russia), Deutche Bank Trust Company Americas (USA), Deutche Bank AG (Germany), Commerzbank AG (Germany), Forabank AKB (Russia), Citi Bank (USA), Raiffeisen Zentral Bank (Austria), Dresdner Bank (Germany), UBS Bank (Switzerland) and Mellat Bank (Iran) provide monetary transfers to the occupied territories via Armenian banks operating in those territories and having correspondent accounts with those foreign entities.[70] In 2005, CBA granted to Haypost CJSC – a national postal operator of Armenia – a license for the implementation of money transfers systems. Since then Haypost CJSC has been carrying out money transfers to/from the occupied territories.[71]

[60] See "10 Reasons to Invest in NKR", <http://www.nkrusa.org/business_economy/ten_ reasons.shtml>.

[61] See "Armenia-Karabakh: Two Armenian states discuss common programs for closer cooperation", *Armenianow.com*, 1 April 2011, <http://www.armenianow.com/karabakh/ 28709/armenia_karabakh_bank_sector_programs>.

[62] See "Central Bank of Armenia chair hails Karabakh's banking system", *PanARMENIAN.Net*, 9 September 2013, <http://www. panarmenian.net/eng/news/169761/>.

[63] See "Converse Bank opens its first branch in Stepanakert", *ArmInfo.am*, 28 February 2012, <http://armenia-business.ru/view-langeng-newsarticle-16589.html>.

[64] *Ibid*.

[65] See "Remittances in the Cis Countries: A Study Of Selected Corridors", World Bank Report, July 2007, <http://siteresources. worldbank.org/ ECAEXT/Resources/FINAL_ RemittancesStudy_July23.pdf>.

[66] See <http://www.artsakhbank.com/en/our-services/retail/anelik_individuals.html>.

[67] See <http://www.artsakhbank.com/en/our-services/retail/unistream_individuals>.

[68] See <http://www.artsakhbank.com/en/our-services/retail/money-gram_individuals>.

[69] See <http://www.artsakhbank.com/en/our-services/retail/swift_individuals>.

[70] See "Artsakhbank CJSC", <http://old.aec.am/-lg=en&page=company&id=78&cid= 11&scid=29.htm>; <http://www. stepanakert-church.org>.

[71] "Converse Transfer Express Money Transfers", <https://www.haypost.am/en/1418203317>.

74. "Artsakhbank CJSC", established in February 1996 with License No. 75 from CBA[72] with the head office in Yerevan (Armenia)[73], provides banking services to the structures of the separatist regime.[74] As of August 2015, the bank had 22 branches, 7 of which are located in Yerevan and 15 throughout the occupied territories. The bank is a shareholder in the Armenian Card CJSC, and a full member of Armenia's "ArCa" payment system. The bank is a member of SWIFT International (since 2003) and affiliate member of Europay/Mastercard International payment system (since 2005). The biggest shareholders of the bank are foreign individuals. The bank's shares are owned by Armenia registered Business Fund of Armenia CJSC (40.7 per cent)[75], a Swiss national Vartan Sirmakes (25.6 per cent) and Hrach Kaprielyan (USA) (23.2 per cent), who is the chairman of the bank's Executive Board. To note, Vartan Sirmakes is Business Fund of Armenia's 100 per cent shareholder and a board member, which means that he owns in total some 66.3 per cent of shares in "Artsakhbank".[76] Kaprielyan's deputy, Ashot Arshak Gomtsyan, and all members of the bank's Executive Board are citizens of Armenia.[77] In March 2015, "Artsakhbank's" authorized capital has increased by 4.5 billion drams to 11 billion drams due to acquisition of shares by the Business Fund of Armenia.[78]

75. Several insurance companies (Nairy Insurance LLC, Armenia Insurance LLC, Reso Insurance CJSC, Ingo Armenia Insurance CJSC, Rosgostrakh-Armenia Insurance CJSC) and appraisal companies (Akcern real estate agency, Oliver Group appraisal agency, Build Up LLC, Amintas Group LLC and Sasoun Trust LLC) are listed among the partners of "Artsakhbank".[79] Grant Thornton CJSC (member of Grant Thornton International LTD, incorporated in the UK) and KPMG Armenia CJSC (affiliated with a Swiss entity – KPMG International) provide auditing of "Artsakhbank's" activities.[80]

76. Total loan portfolio of branch offices of the Armenian commercial banks in the occupied territories stood over 89 million drams as of 1 September 2015.[81] The banks operating in the occupied territories have almost the same interest rates and payments as the banks in Armenia.[82]

[72] See <http://www.artsakhbank.com/en/about-us/view/our-history.html>.
[73] See <http://www.artsakhbank.com/en/about-us/view/hos_branches_atms.html>.
[74] See <http://www.artsakhbank.com/en/about-us.html>.
[75] See <http://www.artsakhbank.com/en/about-us/view/significant-shareholders.html>.
[76] *Ibid*.
[77] See <http://www.artsakhbank.com/en/about-us/view/bank-management.html>.
[78] See "Artsakh bank increases its authorized capital by 4.5 billion drams", *Armbanks.am*, 5 March 2015, <http://www.armbanks.am/en/2015/03/05/85159/>.
[79] See <http://www.artsakhbank.com/en/partners>.
[80] See <http://www.artsakhbank.com/images/pdf/Reports/Independent_Audit_Report_2014_eng.pdf>; <http://www.artsakhbank.com/images/pdf/Reports/Independent_Audit_Report_eng.pdf>.
[81] See "Total credit portfolio of Armenian banks' branches in Nagorno-Karabakh 17.3% higher from the year before", *Arka.am*, 25 September 2015, <http://arka.am/en/news/economy/total_credit_portfolio_of_armenian_banks_branches_in_nagorno _karabakh_17_3_higher_from_the_year_befo/>.
[82] See "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.

77. In 2011, with the direct role of CBA, "Bless" Armenian universal crediting organization opened its branch in the occupied territories.[83] In close cooperation with "Artsakh Investment Fund" and the "Fund to Support Agriculture", the branch offers mortgage, apartment repair, agricultural and car loans.[84] Financial Conciliator's Office of Armenia, which is mandated by CBA, is assigned to function as an arbitrary for resolving financial and property disputes between financial organizations and individual consumers in the occupied territories.[85]

5. Exploitation of Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies

78. Armenia illegally assigns its unique numbering code +374 to the occupied territories, exploits Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies. Furthermore, contrary to Recommendation E.212 of the International Telecommunication Union (ITU), which provides the authority to ITU to assign and reclaim MCC and MNC codes, "Karabakh Telecom CJSC" uses 283 (MCC) and 04 (MNC) codes for the occupied territories of Azerbaijan. In September 2013, "Karabakh Telecom CJSC" extended its network to the occupied Zangilan district.[86]

79. "Karabakh Telecom CJSC" was established in 2002 by Lebanese businessman Pierre Fattouche (sole shareholder) and is based on Lebanese capital.[87] In Armenia, Fattouche Group established "K-Telecom CJSC", which operates under the "Vivacell" brand. Although it is alleged that "Karabakh Telecom CJSC" and Armenia-based "K-Telecom" are "legally independent" from each other,[88] there is close integration between the two entities,[89] which is evidenced from the fact that they have a single general manager.[90] In fact, "Vivacell" is widely known among the Armenian public to be a subsidiary of "Karabakh Telecom".[91] In 2007, Russian Mobile Telesystems OJSC (MTS) acquired 80 per cent stake in International Cell

[83] See "Bless Armenian Crediting Organization Opens Branch in Stepanakert", *Armbanks.am*, 23 May 2011, <http://www.armbanks.am/en/2011/05/23/23455/>.

[84] *Ibid*.

[85] See "To Have Financially Educated and Protected Consumers at the Market", *Artsakhtert.com*, 6 July 2012, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=753:-to-have-financially-educated-and-protected-consumers-at-the-market&catid=6:economy&Itemid=18>.

[86] See "Karabakh Telecom" press release (26 September 2013): "The launch of Wireless Land Line (WLL) telephone and Internet servicein Kovsakan Town", <http://kt.am/en/news/news/the-launch-of-wireless-land-line-wll-telephone-and-internet-service-in-kovsakantown/22/#.VSq14YHXerU>.

[87] See <http://www.karabakhtelecom.com/en/our-chairman/29/#.VcsdFvnd_gY>.

[88] "VivaCell's Yerikian Discusses Karabakh Telecom, Expanding Market in Armenia", *Asbarez.com*, 12 December 2008, <http://asbarez.com/59742/vivacells-yerikian-discusses-karabakh-telecom-expanding-market-in-armenia/>.

[89] "Corporate Commitment: Vivacell Gm Is A Change Factor In Armenian Business World", *AGBU.org*, 1 November 2010, <http://agbu.org/news-item/corporate-commitment-vivacell-gm-is-a-change-factor-in-armenian-business-world/>; "K-Telecom expands mobile network from Stepanakert to Armenia, paper says", *TeleGeography.com*, 25 June 2015, <https://www.telegeography.com/products/commsupdate/articles/2015/06/25/k-telecom-expands-mobile-network-from-stepanakert-to-armenia-paper-says/>.

[90] *Ibid.*

[91] See "Who Robs Karabakh", 13 July 2010, <http://www.lragir.am/index/eng/0/country/view/18544>.

Holding Ltd., 100 per cent indirect owner of "K-Telecom CJSC".[92] Fattouche Investment Group has a call option on the remaining 20 per cent, which it has not exercised as of mid-2015.[93]

80. In January 2015, Director-General of "Karabakh Telecom CJSC", Karekin Odabashyan, informed about connection in 2014 of the occupied town of Shusha to fibre-optic network and presented it as a major achievement in IT sector. He is quoted to have said that "[w]e plan to organize a holistic mobile communication works to connect the second highway – Martakert-Vardenis road, which serves as a link between two armenian republics, to mobile communication".[94] In his words, "provision of a telecommunications network will contribute to the comprehensive development of areas adjacent to regions' roads, to ensure growth in the social, economic, cultural and other fields." Odabashyan further noted that:

> Undoubtedly, Armenia and Artsakh – is one homeland, but also – two independent states. In my opinion, the most important achievement in the modern history of the Armenian nation is the creation of the second independent Armenian state. And we are proud of this achievement. Since Armenia and Artsakh are individual states, according to the requirements of the International Association of Mobile Communication and conditions of permission, the subscribers who use the services of existing operators in the same area, continue to stay in touch on the other territories only through international roaming. These are stable rules in the international telecommunications. Therefore, currently roaming cannot be eradicated. However, we have been constantly working towards reducing roaming tariffs.[95]

81. K.Odabashyan also informed that in 2014 "Karabakh Telecom CJSC" assisted in the amount of one billion drams to various fields, including health, education, construction of churches, security forces, as well as the "national lottery of Artsakh" and other initiatives aimed at promoting the process of "settlement of Artsakh".[96] In

[92] See "MTS enters Armenia", 14 September 2007, <http://www.mtsgsm.com/news/2007-09-14-26533/>.

[93] See "K-Telecom expands mobile network from Stepanakert to Armenia, paper says", *TeleGeography.com*, 25 June 2015, <https://www.telegeography.com/products/commsupdate/articles/2015/06/25/k-telecom-expands-mobile-network-from-stepanak ert-toarmenia-paper-says/>.

[94] See "Karekin Odabashian: "Viable are those enterprises, which constantly improve themselves and form expectations of self-improvement", *Artsakhpress.am*, 28 January 2015, <http://artsakhpress.am/eng/news/11284/karekin-odabashian-viable-arethose-enterprises-which-constantly-improve-themselves-and-form-expectations-of-self-improvement.html>; "Karabakh Telecom subscribers to pay 45 drams per minute for calling in Armenia through ArmenTel as from January", *Arka.am*, 28 November 2014, <http://telecom.arka.am/en/news/telecom/karabakh_telecom_subscribers_to_pay_45_drams_per_minute_for_calling_in_armeni_through_armentel_as_f/>.

[95] *Ibid*.

[96] See "Karekin Odabashian: "Viable are those enterprises, which constantly improve themselves and form expectations of self-improvement", *Artsakhpress.am*, 28 January 2015, <http://artsakhpress.am/eng/news/11284/karekin-odabashian-viable-arethose-enterprises-which-constantly-improve-themselves-and-form-expectations-of-self-improvement.html>; "Karabakh Telecom subscribers to pay 45 drams per minute for calling in Armenia through ArmenTel as from January", *Arka.am*, 28 November 2014, <http://telecom.arka.am/en/news/telecom/karabakh_telecom_subscribers_to_pay_45_drams_per_minute_for_calling_in_armeni_through_armentel_as_f/>.

June 2015, "Karabakh Telecom CJSC" reportedly extended its mobile network from the occupied Khankandi to Armenia.[97]

82. Armenia's mobile operators, such as Armentel (a subsidiary of the Russian Vimpelcom under the "Beeline" brand), Viva Cell MTS, and Orange Armenia, a subsidiary of Orange Group of France,[98] provide roaming services with reduced rates to "Karabakh Telecom CJSC".[99] There are a number of other international IT service providers that have illegal roaming relations with or facilitate operations of "Karabakh Telecom CJSC". Among them are Movisar (Argentina),[100] Zain Bahrain (Bahrain),[101] Etisalat (UAE),[102] Netmechanica (USA),[103] Alcatel-Lucent (France-USA), Comfone (Switzerland), Mobile Telesystems OJSC (Russia) and some others.

6. Attempted inclusion of the occupied territories into Armenia's energy system

83. Armenia's natural gas supplier and distributor, Gazprom Armenia[104], includes the occupied territories into its gas distribution network.[105] Armenia's Minister of Energy and Natural Resources, Armen Movsisyan, said that "Nagorno-Karabakh has so far been viewed as a subscriber to ArmRusGasprom and will retain this status" and that "there can be no gas supply problem".[106] In 2011, the management of the two energy producing enterprises – "Artsakhgas" and "Artsakhenergo", set up in the occupied territories, were placed under the control of Armenia registered AEG

[97] See "K-Telecom expands mobile network from Stepanakert to Armenia, paper says", *TeleGeography.com*, 25 June 2015, <https://www.telegeography.com/products/commsupdate/articles/2015/06/25/k-telecom-expands-mobile-network-from-stepanakert-toarmenia-paper-says/>.

[98] See "From now on Orange customers will make and receive calls in Artsakh at only 45 dram/minrate", *Orange.am*, 4 March 2015, <http://www.orangearmenia.am/en/about-orange-armenia/news/nkr-45-amd-minute/>.

[99] See "Karekin Odabashian: "Viable are those enterprises, which constantly improve themselves and form expectations of self-improvement",*Artsakhpress.am*, 28 January 2015, <http://artsakhpress.am/eng/news/11284/karekin-odabashian-viable-arethose-enterprises-which-constantly-improve-themselves-and-form-expectations-of-self-improvement.html>; "Karabakh Telecom subscribers to pay 45 drams per minute for calling in Armenia through ArmenTel as from January", *Arka.am*, 28 November 2014, <http://telecom.arka.am/en/news/telecom/karabakh_telecom_subscribers_to_pay_45_drams_per_minute_for_calling_in_armenia_through_armentel_as_f/>.

[100] See <http://www.movistar.com.ar/cgibin/sac/roaming_gsm.pl?modo=brooperporpais&pais=Armenian&continente=Asia&oper ador=Vivacell+%28Karabakh+Telecom%29>.

[101] See <http://www.bh.zain.com/en/business/roaming/roaming-partners>.

[102] See <http://www.etisalat.ae/ar/roaminglist.pdf>.

[103] See <http://www.netmechanica.com/company/customers>.

[104] After acquisition of ArmRusgasprom CJSC's 100 per cent shares by Russia-based Gazprom in January 2014, this entity was renamed into Gazprom Armenia.

[105] See "Member of Parliament initiated collecting signatures to lower prices in Artsakh gas stations", *Hetq.am*, 13 February 2014, <http://hetq.am/rus/news/32527/deputat-iniciiroval-sbor-podpiseiy-s-celyu-snizheniyastoimosti-gaza-na-arcakhskikh-agzs. html>; "MP Criticizes Government for Non-Transparency on Russian Gas Treaty", *Hetq.am*, 20 December 2013, <http://hetq.am/eng/news/31515/mpcriticizes-government-for-non-transparency-on-russian-gas-treaty.html>.

[106] See "Nagorno-Karabakh not mentioned in agreement with Gazprom, minister admits", *Tert.am*, 20 December 2013, <http://www.tert.am/en/news/2013/12/20/gharabagh-gaz/955878>.

Company, which was tasked to integrate the energy supply system in those territories with that of Armenia.[107]

84. According to "ArtsakhHEK OJSC", a power generation company, operating in the occupied territories of Azerbaijan, "NKR electro energy system is connected with Armenia via 110 km electric wires connecting Shinuhayr, Armenia with Stepanakert, NKR". The company confirmed that "NKR electro energy system is a part of corresponding system of Armenia, taking into consideration the fact that daily volume of electricity production is regulated from Armenia".[108] The company also confirms that additional volumes of electricity are imported to Armenia and that "[t]he electricity distribution network is interconnected with that of the Republic of Armenia and constitutes a part of a whole, and on general, the volume of production, export and import is, to some extent, dependant to the demand and supply on electricity in Armenia."[109]

7. Close political links between Armenia and the subordinate separatist regime reach the highest level

85. There is a pattern of close political links at all levels between Armenia and its subordinate separatist regime in the occupied territories of Azerbaijan. In addition to the senior command posts in the armed forces, this also involves both the political and social strata. The existence of close and persistent political, social and other links is apparent from a series of events in the public domain.[110] The ministries and government bodies of Armenia hold joint sessions in the occupied territories with agents of the subordinate separatist regime. High-ranking officials of the Government of Armenia, including the ministers of finance, foreign affairs, emergency situations, education, culture, labour and social affairs, transport and communication, energy and natural resources, and territorial administration, as well as the chair of the State Water Management Committee, members of the Public Services Regulatory Commission and the State Commission on Defending Economic Competition, members and chairs of the Standing Committees of the National Assembly of Armenia the Attorney-General of the Republic of Armenia, rectors of Armenian universities, the Chairman of the National Commission on Television and Radio of the Republic of Armenia, the President of the Armenian National Academy of Sciences and heads of the law enforcement agencies, regularly visit the occupied territories and engage in joint planning, development of collaboration and coordination of activities in the relevant spheres.[111] Registration

[107] See "We'll not have to wait four years for the results Assures Director General of AEG Company Levon Mnatsakanian", *Artsakhtert.com*, 25 April 2011, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=161:well-not-have-to-waitfour-years-for-the-results-assures-director-general-of-aeg-company-levon-mnatsakanian>.

[108] See Initial Public Offering Prospectus of ArtsakhHEK OJSC, *Armswissbank.am*, 18 April 2009, p. 26, <http://www. armswissbank.am/upload/Azdagir_AHEK_eng.pdf>.

[109] *Ibid.*, pp. 27, 30.

[110] See "How Else Would They Raise a Hand Against Army?", *Lragir.am*, 7 August 2015, <http://www.lragir.am/index/eng/0/ comments/view/34497>.

[111] See "Karabakh president receives Armenia education minister", *News.am*, 23 March 2015, <http://news.am/eng/ news/258326.html>; "NKR Foreign Minister Received Delegates of the EU-Armenia Parliamentary Cooperation Committee of the RA National Assembly", *Artsakhtert.com*, 13 March 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1727:-nkr-foreignminister-received-delegates-of-the-eu-armenia-

of former so-called “foreign minister” of the subordinate regime Arman Melikyan as a candidate in the presidential elections in Armenia, held in 2013, is yet another evidence of attempts by Armenia to incorporate the occupied territories into its political system.[112] As is well-known, the former and incumbent Presidents of Armenia also came from within the ranks of the subordinate separatist regime.

86. As will be demonstrated below, close coordination and collaboration between the government bodies of Armenia and the structures of the subordinate separatist regime that Armenia established in the occupied territories, indicate full knowledge of Armenia’s authorities at all levels, including the President, Prime-Minister and government ministers, of the involvement of Armenian and foreign natural and legal persons in the unlawful activities in the occupied territories. Those activities are either tacitly or on many occasions openly supported and encouraged by Armenia.

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parliamentary-cooperation-committee-of-the-ra-nat ional-assembly&catid=11:official&Itemid=23>; “Karabakh President hosts Armenia’s Minister of labor and social affairs”, *Armenpress.am*, 12 March 2015, <http://armenpress.am/eng/news/797437/karabakh-president-hosts-armenias-minister-of-labor-and-social-affairs.html>; “On 28 February President Bako Sahakyan received attorney-general of the Republic of Armenia Gevorg Kostanyan and deputy attorney-general Emil Babayan”, *Artsakhtert.com*, 2 March 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1717:-on-28-february-president-bako-sahakyan-received-attorney-general-of-the-republic-of-armenia-gevorg-kostanyan-and-deputyattorney-general-emilbabayan&catid=11:offi cial&Itemid=23>; “On 24 February Artsakh Republic President Bako Sahakyan received RA minister of territorial administration and emergency situations Armen Yeritsyan”, *Artsakhtert.com*, 25 February 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1711:-on-24-february-artsakh-republic-presidentbako-sahakyan-received-ra-minister-of-territori al-administration-and-emergency-situations-armen-yeritsyan&catid=11:officiall&Itemid=23>; “Prime Minister received the RA Minister of Agriculture”, *Gov.nkr.am*, 7 November 2014, <http://gov.nkr.am/en/official-news/item/2014/11/07/sergo/>; “On 20 June Artsakh Republic President Bako Sahakyan received the delegation of the Republic of Armenia public prosecutor’s office, headed by the attorney general Gevorg Kostanyan”, *Artsakhtert.com*, 20 June 2014, <http://artsakhtert.com/eng/index.php?option =com_content&view=article&id=1485:-on-20-june-artsakh-republic-president-bakosahakyan-received-the-delegation-of-the-rep ublic-of-armenia-public-prosecutors-office-headed-by-the-attorney-general-gevorgkostanyan&catid=11:official&Itemid=23>; “On 18 March President of the Artsakh Republic Bako Sahakyan received minister of emergency situations of the Republic of Armenia Armen Yeritsyan”, *Artsakhtert.com*, 18 March 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view =article&id=1400:-on-18-march-president-of-the-artsakh -republic-bako-sahakyan-receivedminister-of-emergency-situations-of-the-republic-of-armenia-armen-yeritsyan&catid=11:official&Itemid=23>; “On 21 December Artsakh Republic President Bako Sahakyan received head of the Police of the Republic of Armenia Vladimir Gasparyan”, *Atrsakhtert.com*, 21 May 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1068:-on-21-december-artsakhrepublic-presidentb ako-sahakyan-received-head-of-the-police-of-the-republic-of-armenia-vladimir-gasparyan&catid=11:official&Itemid=23>.

[112] See “7 Candidates Registered to Run for RA President”, *Hetq.am*, 4 January 2013, <http://hetq.am/eng/news/22016/7-candidatesregistered-to-run-for-ra-president.html>.

D. Illegal economic and other activities in the occupied territories for Armenia's own economic gain

87. The Republic of Armenia, directly by its own means and indirectly through its subordinate separatist regime and with the assistance of Armenian diaspora,[113] continues and expands the illegal economic and other activities in the occupied territories of Azerbaijan, accompanied by interference with the public and private property rights. The Government of Armenia, Armenia registered private companies and entities, as well as foreign businesses, including those run by the Armenians or based on Armenian capital, play a decisive role in funding, enabling and facilitating permanent changes in economic, demographic and cultural character in the occupied territories. These illegal economic activities are used for financing the subordinate separatist regime and for the private gain of individuals in Armenia and elsewhere and serve for sustaining the occupation of these territories by Armenia and prolonging the armed conflict.

8. Implantation of settlers from Armenia and abroad in the occupied territories

88. Over the past years, the transfer of Armenian settlers from Armenia[114] and from elsewhere into the occupied territories, including the districts adjacent to the occupied Nagorno-Karabakh region of Azerbaijan, in particular the districts of Lachyn, Kalbajar, Gubadly, Zangilan and Jabrayil, has continued with accelerated pace.[115] Settlement activities are pursued against the background of pronouncements by the Armenian officials that no one is preparing to return any of the so-called "liberated territories."[116] Bako Sahakyan, presenting himself as "president" of the so-called "NKR" – an unlawful separatist entity established by Armenia in the occupied Nagorno-Karabakh region of Azerbaijan, openly asserts that "[w]e only yearn to eventually unite with Armenia" and that "[w]e live with that longing".[117] The so-called "spokesperson" of the subordinate separatist regime, David Babayan, is quoted to have said that "[...] the return of territories is impossible [...]".[118]

[113] See "Possibilities are Much More than the Used Resources", *Theanalyticon.com*, September 2011, <http://theanalyticon.com/?p=943&lang=en>.

[114] See "Repopulation is An Essential Question for All Armenians", *Hetq.am*, 25 June 2007, <http://hetq.am/eng/news/6744/repopulationis-an-essential-question-for-all-armenians.html>; "150 Families Move to Liberated Kashatagh in 2011: Will They Stay?", *Hetq.am*, 17 August 2011, <http://hetq.am/eng/news/3641/150-families-move-to-liberated-kashatagh-in-2011-will-they-stay.html>.

[115] See UN Docs. A/64/760-S/2010/211, 28 April 2010, and A/67/952-S/2013/478, 13 August 2013.

[116] See "Artskah Prime Minister: Kashatagh an Inseparable Part of the Country", *Hetq.am*, 7 November 2012, <http://hetq.am/eng/news/20310/artskah-prime-minister-kashatagh-an-inseparable-part-of-the-country.html>.

[117] See "Bako Sahakyan: We only yearn to eventually unite with Armenia", *Prensaarmenia.com.ar*, April 2015, <http://www.prensaarmenia.com.ar/2015/04/bako-sahakyan-we-only-yearn-to.html?m=1>.

[118] See "Return of Territories to Azerbaijan 'Impossible' Says Artsakh Spokesperson", *Asbarez.com*, 15 July 2015, <http://asbarez.com/137745/return-of-territories-to-azerbaijan-impossible-says-artsakh-spokesperson/>.

89. Settlement activities in the occupied territories are carried out in a pre-planned and organized manner with clearly defined objective and geographic focus.[119] According to so-called "deputy prime minister" of the subordinate separatist regime, Artur Agabekyan, "[s]ettlement programs is a priority for the NKR Government".[120] He confirmed that residents from Armenia are brought to settle in the occupied territories, calling this process not a "repopulation", "but just a settlement".[121] Armenia, in particular through its Ministry of Diaspora[122] and other State organs, political structures, charity organizations and the subordinate separatist regime in the occupied territories, is directly involved in the settlement activities. Armenia-controlled Hayastan All-Armenian Fund designed a special "Re-population of the villages of Artsakh" project.

90. A. Agabekyan alleged that limited resources prevent carrying out a wide-scale resettlement. According to him, there are villages with 50 residents, which are a heavy burden, and it is not economically feasible to carry out "social programs" there. On the contrary, he continued, there are many villages in "Kashatagh",[123] "Hadrut",[124] "Karvachar",[125] where the number of residents reaches 1,000 and resettlement in those villages is justified.[126] Settlement activities and building permanent social and economic infrastructure in support of illegal settlement enterprise is carried out in pre-identified village clusters comprising of several villages in the so-called "strategic areas", including those depopulated of their Azerbaijani inhabitants,[127] to facilitate their further repopulation with the ultimate goal of preventing the return of the Azerbaijani population to their homes, creating a new demographic situation on the ground and imposing a *fait-accompli.*

[119] See "Repopulation is An Essential Question for All Armenians", *Hetq.am*, 25 June 2007, <http://hetq.am/eng/news/6744/repopulationis-an-essential-question-for-all-armenians.html>; "Artsakh Prime Minister on Working Visit to Lebanon", *Hetq.am*, 2 March 2011, <http://hetq.am/eng/news/50637/artsakh-prime-minister-on-working-visit-to-lebanon.html>.

[120] See "The NKR Government to allocate 350 million Drams for settlement programs", *Artsakhpress.am*, 19 February 2015, <http://artsakhpress.am/rus/news/12713/pravitelstvo-nkr-predostavit-350-mln-dramov-na-programmiy-zaseleniya.html>.

[121] See "Deputy Prime Minister of Artsakh spoke about the resettlement of Artsakh", *Aravot.am*, 27 July 2013, <http://ru.aravot.am/2013/07/27/158401/>.

[122] See "About 30 organizations in Armenia expressed their readiness to accept Syrian Armenians for employment", *Caucasus Knot*, 30 August 2012, <http://eng.kavkaz-uzel.ru/articles/22055/>.

[123] The occupied Lachyn, Gubadly and Zangilan districts of Azerbaijan are unlawfully re-arranged by Armenia into the so-called "Kashatagh region".

[124] The occupied Jabrayil district and the occupied part of the Fuzuli district are unlawfully incorporated by Armenia into the so-called "Hadrut region".

[125] The occupied Kalbajar district is re-arranged by Armenia into the so-called "Shahumyan region". The town of Kalbajar is referred to by Armenia as "Karvachar".

[126] "Deputy Prime Minister of Artsakh spoke about the resettlement of Artsakh", *Aravot.am*, 27 July 2013, http://ru.aravot.am/2013/07/27/158401/ (in Russian language).

[127] See "Water Project, Urekan, Karotan & Vardabats Villages, NKR", *ONEArmenia.org*, September 2014, <http://www. onearmenia.org/wp-content/uploads/2014/09/Water-project.-budget-sheet.pdf>.

91. A scheme of subsidies and incentives has been put in place to encourage Armenian settlers to move to the occupied territories.[128] Various methods employed at different stages of the settlement process include the provision of subsidies that are mainly related to discounted or free utilities, free construction materials, low or no taxes, offers of employment opportunities, free provision of material support (a house/apartment, land and other assistance), and the promotion of private entrepreneurship, through one-time financial assistance per person and the provision of agricultural grants, credits, cattle etc.[129] Processing of agricultural products bought from agricultural producers in the occupied territories and their sale on the markets are free of the value added tax.[130]

92. In 2003, the "Menq Union For Farmers Mutual AID" was set up to support the so-called "Kashatagh" settlers in establishing households. Within its seven years of operation, the Union has supported the establishment of more than 50 households. Through livestock breeding projects, it has provided over 100 heads of cattle, 70 calves and bulls, and 50 pigs. The Union has also provided poultry and horses.[131] Livestock for such projects is generally provided from Armenia.[132]

93. According to the contracts signed with Armenian settlers, they are granted "legal ownership" of the donated properties at no cost, on condition that they live there for more than 10 years.[133] Over the past three years, some 3 billion Armenian drams were allocated to provide the settlers with construction materials. In 2015 alone, some 350 million drams were allocated for those purposes.[134] Investment in construction of new houses for the settlers is yet another proof of the hastily carried settlement policy.

94. If until 2005 potential settlers were receiving information about the so-called "target areas" from family members and friends who had previously settled in the occupied territories or had been recruited by the Yerevan-based body called

[128] See Chapter 4 "Repopulation in the Kashatagh and Shahumyan regions" in the "Depopulation Crisis In Armenia", report issued on 8 October 2013 and prepared by the Russian-Armenian (Slavonic) University Research Team. Research and Business Center of the Faculty of Economics of Yerevan State University. Research Group: Arshak Balayan, Armen Gakavian, Avetik Mejlumyan, Hrayr Maroukhian Foundatio. Funding provided by: Kololian Foundation. Presented at the UNFPA conference, 8.10.2013, Yerevan, Armenia, <http://www.academia.edu/4758893/Repopulation_in_Kashatagh_and_Shahumyan_Regions_of_ Nagorno-Karabakh_ Republic>.

[129] See "150 Families Move to Liberated Kashatagh in 2011: Will They Stay?", *Hetq.am*, 17 August 2011, <http://hetq.am/eng/news/3641/150-families-move-to-liberated-kashatagh-in-2011-will-they-stay.html>.

[130] See "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.

[131] See "Kashatakh, Armenia: Creating sustainable settlements in the "Kashatakh district", United Cities and Local Governments Committee, 4 February 2015, <http://www.uclg-cisdp.org/en/news/latest-news/kashatagh%E2%80%99s-region-azerbaijan-ruralcommunities-are-self-organized-through-union>.

[132] See "The cows taken on loan died in Mataghis", *Artsakhtoday.com*, 4 July 2012, <http://www.artsakhtoday.com/?p=20272& lang=en>.

[133] See "In Nagorno-Karabakh settlers will have an opportunity to privatize their apartments", *News.am*, 25 August 2010, <http://news.am/rus/news/28809.html>.

[134] See "The NKR Government to allocate 350 million Drams for settlement programs", *Artsakhpress.am*, 19 February 2015, <http:// artsakhpress.am/rus/news/12713/pravitelstvo-nkr-predostavit-350-mln-dramov-na-programmiy-zaseleniya.html>.

"Artsakh Committee", which provided consultation, orientation and selection of specialists needed in those "target areas", since 2010 recruitment of settlers from within Armenia and abroad became more organized and massive in scale, with TV channels in Armenia informing about privileges available and professions needed.[135] Selection of candidates for settlement based on profession, as well as the need to acquire permission to settle in the occupied territories also point to the organized and planned character of that activity.

95. Armenian own sources show that the number of settlers in the occupied territories has increased progressively. The population in those territories has increased due to both natural and mechanical growth.[136] In 2001, a 10-year strategic plan was adopted aimed at resettling a total of 36,000 settlers.[137] As a result of the implementation of various resettlement programs in 1994-2004, some 7263 families (18,500 people) were transferred into the occupied territories.[138] By 2011, some 25,000-30,000 people were reportedly settled in those territories.[139]

96. Resettlement in the so-called "Kashatagh" (the occupied Lachyn, Gubadly and Zangilan districts) and "Shahumyan"[140] "regions" (the occupied Kalbajar district) is of particular importance to Armenia due to their "strategic value"[141] and economic attractiveness, including water resources, minerals, energy potential and ample agricultural opportunities.[142] A special "Kashatagh resettlement department" has been established to that end. As a result of the settlement policy, the number of settlers in the occupied town of Kalbajar has increased by 40 per cent over seven years (2005-2012).[143] According to the so-called "governor" of the so-called "Kashatagh region", Souren Khachatryan, in 2010-2013 alone, the number of settlers in region increased from 8,000 to 10,000.[144] While confirming the existence of a resettlement policy, he also admitted that the lack of adequate housing conditions affects the number of settlers that they can accommodate. It clearly shows the intention to settle more Armenians in the occupied territories in much

[135] See Chapter 4 "Repopulation in the Kashatagh and Shahumyan regions" in the "Depopulation Crisis In Armenia", report issued on 8 October 2013 and prepared by the Russian-Armenian (Slavonic) University Research Team, *op. cit*.

[136] See "Considerable demographic increase in Artsakh instead of emigration", *Nkrgov.am*, 2 April 2014, <http://nkrgov.am/en/officialnews/item/2014/04/02/emigration/>.

[137] See "Repopulation is An Essential Question for All Armenians", *Hetq.am*, 25 June 2007, <http://hetq.am/eng/news/6744/repopulationis- an-essential-question-for-all-armenians.html>.

[138] See "How the liberated areas of Artsakh are being repopulated?", *Artsakhtoday.com*, 10 September 2012, <http://www.artsakhtoday.com/?p=24522&lang=en>.

[139] *Ibid*.

[140] See "Nagorno Karabakh authorities created a new Shaumyan district in Kalbajar, and are trying to repopulate it", *Regnum.ru*, 2 February 2011, <http://www.regnum.ru/news/1400627.html>.

[141] "Artsakh Prime Minister on Working Visit to Lebanon", *Hetq.am,* 2 March 2011, <http://hetq.am/eng/news/50637/artsakh-primeminister-on working-visit-to-lebanon.html>.

[142] See "New proposal for the restart of construction", *Artsakhtoday.com*, 14 September 2012, <http://www.artsakhtoday.com/?p=24843&lang=en>; "Water Project, Urekan, Karotan & Vardabats Villages, NKR", *ONEArmenia.org*, September 2014, <http://www.onearmenia.org/wp-content/uploads/2014/09/Water-project.-budget-sheet.pdf>.

[143] See Chapter 4 "Repopulation in the Kashatagh and Shahumyan regions" in the "Depopulation Crisis In Armenia", report issued on 8 October 2013 and prepared by the Russian-Armenian (Slavonic) University Research Team, *op. cit*.

[144] See "Kashatagh Governor: 29 Syrian-Armenian families live here now and another 40 are on a wait list", *Hetq.am*, 22 August 2013, <http://hetq.am/eng/print/28835/>.

shorter timeframe and that the lack of adequate accommodation facilities, including water shortage, apparently hinder the pace and the overall process of resettlement.[145]

97. According to the figures provided by the Armenian sources, as of 1 January 2010[146] and 1 January 2015,[147] the population in the so-called "Kashatagh", "Shushi",[148] "Shahumyan" and "Hadrut" "regions" increased from 7,800, 5,100, 3,000 and 12,400 to 9,300, 5,400, 3,100 and 13,600 respectively. The population increase in other occupied territories was also substantial. Thus, as per the same sources, the number of Armenians in the so-called "Martuni", "Martakert" and "Askeran" "regions" and in the town of "Stepanakert"[149] increased, between 2010 and 2015, from 23,500, 19,600, 17,700 and 52,300 to 24,300, 19,900, 18,100 and 55,200 respectively.[150] Within the same period, the number of Armenians in the towns of Shusha, Lachyn and Zangilan increased from 3,900, 1,700, and 400 to 4,200, 1,900, 500 respectively.

98. Thus said, according to the Armenian statistical data for 2010-2015, the largest population increase was registered in the so-called "Kashatagh", "Shushi", "Shahumyan"and "Hadrut" "regions", with 19.2, 6, 3.3 and 9.7 per cent growth respectively.[151] In 2014, the number of births in "Kashatagh region" was reportedly registered at 222, an increase in comparison with 2013 (186). In Khankandi the growth was 1076 (compare with 974 in 2013).[152] Special social programmes, mainly in the form of one-time financial assistance for the first, second and more children (a family reportedly receives around $234 for the first child, $484 for the second, $1,217 for the third and $1,732 for the fourth. Families with six children under the age of 18 are provided with a house), are designed to stimulate birth-rate among the settlers in the occupied territories and indicate the existence of policy-driven

[145] See "Water Project, Urekan, Karotan & Vardabats Villages, NKR", *ONEArmenia.org*, September 2014, <http://www.onearmenia.org/wp-content/uploads/2014/09/Water-project.-budget-sheet.pdf>.

[146] See "Nagorno Karabakh in Figures 2010", <http://stat-nkr.am/en/publications/68--2010>.

[147] See "Nagorno Karabakh in Figures 2015", <http://stat-nkr.am/files/publications/2015/LXH_tverov_2015.pdf>.

[148] The occupied Shusha district and the town of Shusha of Azerbaijan are unlawfully renamed by Armenia into "Shushi".

[149] In accordance with the Law of the Republic of Azerbaijan "On the Abolishment of the Nagorno-Karabakh Autonomous Oblast" (NKAO) of 26 November 1991, the former Mardakert district of NKAO was renamed into its original name Aghdara (later the territory of this district was re-arranged and included into the Tartar and Kalbajar districts of Azerbaijan), the Martuni district was re-arranged into the Khojavand district, while the Askaran and Hadrut districts were abolished. The Khojaly district was established with the administrative center in the town of Khojaly and the abolished Askaran district was incorporated into that district. The abolished Hadrut district was incorporated into the Khojavand district. The city of Stepanakert was given its historical name – Khankandi.

[150] See "Nagorno Karabakh in Figures 2015", <http://stat-nkr.am/files/publications/2015/LXH_tverov_2015.pdf>.

[151] See "Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013", <http://stat-nkr.am/index.php?option=com_content &view=article&id=431:-2007-2013&lang=en&Itemid=>; "Nagorno Karabakh in Figures 2010", <http://stat-nkr.am/en/ publications/68--2010>; "Nagorno Karabakh in Figures 2015", <http://statnkr.am/files/publications/2015/LXH_tverov_2015.pdf>.

[152] See "'Baby boom' continues in Artsakh", *Artsakhpress.am*, 28 January 2015, <http://artsakhpress.am/eng/news/11302/baby-boomcontinues-in-artsakh.html>.

repopulation efforts.[153] The birth rate rise, particularly in the occupied Lachyn, Gubadly and Zangilan districts, may also indirectly point to the increase in the number of settlers. According to the Armenian statistical data, only in 2014, some 946 settlers in total arrived to the occupied territories.[154] The declared target in resettlement is to increase the population of some villages in the so-called "Kashatagh", "Hadrut" and "Shahumyan" "regions" minimum to 1,000 each by 2017.[155]

99. One of the most vivid examples of transfer of the Armenian population into the occupied territories is the resettlement of Khanlyg village in the occupied Gubadly district, with the number of settlers currently estimated at 240 and the intention to increase it up to 1000.[156] The resettlement of this village is part of a larger programme to populate the Araz River Valley, especially the occupied Gubadly, Zangilan and Jabrayil districts.[157] For this purpose, a special settlement master plan, called "Araks Project", has been designed.[158] The so-called "deputy prime minister" of the separatist regime Arthur Aghabekyan is quoted to have said that "[t]he implementation of the repatriation program of the Araks River coast will open new working places" and "[t]he Government intends to prepare 10,000 hectares of land for farming". He further added that 400 hectares of land was exploited in 2013 and 1000 hectares would be allocated to the farmers in 2014.[159]

100. To finance resettlement projects, a "National Artsakh Lottery" programme was launched in 2013.[160] Some 300,000 tickets were put into circulation worldwide and mostly were sold to government agencies, employees of businesses and private individuals in Armenia and elsewhere.[161] The profit gained from the realization of lottery tickets (about AMD 300 million) was directed to the development of

[153] See "Anastasia Taylor-Lind's best photo: A wedding in Nagorno-Karabakh", *Theguardian.com*, 23 January 2014, <http://www.theguardian.com/artanddesign/2014/jan/23/anastasia-taylor-lind-best-photograph-wedding-nagorno-karabakh>.

[154] See "Baby boom" continues in Artsakh", *Artsakhpress.am*, 28 January 2015, <http://artsakhpress.am/eng/news/11302/baby-boomcontinues-in-artsakh.html>.

[155] See "Lottery to Assist Artsakh Resettlement", *Asbarez.com*, 29 July 2013, <http://asbarez.com/112177/lottery-to-assist-artsakhresettlement/>.

[156] See "So Different And So Alike – From Mataghis To Araxavan", *Artsakhtert.com*, 25 February 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1376:-so-different-and-so-alike-from-mataghis-toaraxavan&catid=6:economy&Itemid=18>.

[157] See "Repatriation and rebirth of Karabakh settlements get flesh and blood: Deputy PM", *Armenpress.com*, 30 January 2014, <http://armenpress.am/eng/news/748024/repatriation-and-rebirth-of-karabakh-settlements-get-flesh-and-blood-deputy-pm.html>; "So Different And So Alike – From Mataghis To Araxavan", *Artsakhtert.am*, 25 February 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1376:-so-different-and-so-alike-from-mataghis-to-araxavan&catid=6:economy&Itemid=18>.

[158] See "Lottery to Assist Artsakh Resettlement", *Asbarez.com*, 29 July 2013, <http://asbarez.com/112177/lottery-to-assist-artsakhresettlement/>.

[159] See "Repatriation and rebirth of Karabakh settlements get flesh and blood: Deputy PM", *Armenpress.am*, 30 January 2014, <http://armenpress.am/eng/news/748024/repatriation-and-rebirth-of-karabakh-settlements-get-flesh-and-blood-deputy-pm.html>.

[160] *Ibid*.

[161] *Ibid*. See also "Artsakh Lottery Winner Claims Car Prize", *Asbarez.com*, 18 March 2014, <http://asbarez.com/120737/ artsakh-lotterywinner-claims-car-prize/>.

infrastructure, repatriation and other projects, including construction of 37 dwelling houses in Khanlyg village in the occupied Gubadly district.[162]

101. Of grave concern is evidence of resettlement of Syrian Armenians in the occupied territories[163] and direct involvement in that process of the government agencies of Armenia, including its Ministry of Diaspora, as well as other political organizations of Armenia.[164] Many Armenians from Syria, particularly from Syrian towns of Qamishli and Aleppo, are resettled in the occupied Zangilan, Gubadly and Lachyn districts.[165] Most of them settle down in Zangilan[166] and Minjivan towns of

[162] See <http://www.nkrlottery.am>.

[163] See "Syria's Armenians look to ancient homeland for safety", *BBC News*, 10 September 2015, <http://www.bbc.com/news/worldeurope-34210854>; "Armenia: Syrian Refugees Resettling in Occupied Azerbaijani Territory", *EurasiaNet.com*, 28 January 2013, <http://www.eurasianet.org/node/66461>; UN Doc. A/67/952-S/2013/478, 13 August 2013; "Why Armenia is welcoming Syrian Armenians", BBC News Report, 23 April 2015, <http://www.bbc.com/news/world-middle-east-32438128>; "Karabakh Offers New Home to Syrian Armenians", Institute for War & Peace Reporting,14 January 2013, <https://iwpr.net/global-voices/karabakh-offers-new-home-syrianarmenians>; "Around 200 Syrian Armenians live in Karabakh", *News.am*, 3 October 2014, <http://news.am/eng/news/232270.html>; "Families Fleeing Syria Battle Raise Tension in Oil Region", *Bloomberg.com*, 16 October 2013, <http://www.bloomberg.com/news/articles/2013-10-15/families-fleeing-syria-battle-raise-tension-in-oil-region>; "Kashatagh Governor: 29 Syrian-Armenian families live here now and another 40 are on a wait list", *Hetq.am*, 22 August 2013, <http://hetq.am/eng/print/28835/>; "New flats are built for Syrian Armenians in Nagorno-Karabakh", *Armenpress.am*, 5 August 2013, <http://armenpress.am/eng/news/728230/new-flats-are-built-forsyrian-armenians-in-nagorno-karabakh.html>; "Syrian Armenians settling in Karabakh", *News.am*, 20 April 2013, <http://news.am/eng/news/149833.html>; "Garo and Mher: These Qamishli Armenians Plan to Stay in Kovsakan", *Hetq.am*, 19 March 2013, <http://hetq.am/eng/print/24611/>; "Relocation With a Reason: Some Syrian-Armenian families find advantages to resettle in Karabakh", *ArmeniaNow.com*, 13 March2013, <http://www.armenianow.com/society/features/44597/syrian_armenians_kashatagh_resettlement_in_karabakh>.

[164] See "Yerevan Expects Further Armenian Exodus From Syria", *Ecoi.net*, 2 September 2013, <http://www.ecoi.net/local_link/ 257384/369532_en.html>.

[165] See "28 Syrian-Armenian families live in Kashkatagh region of Karabakh", *News.am*, 1 November 2014, <http://news.am/eng/news/237169.html>; "Armenian Family Split: Some Remain in Berdzor, Some Return to Qamshli", *Hetq.am*, 9 January 2014, <http://hetq.am/eng/news/31882/armenian-family-split-some-remain-in-berdzor-some-return-to-qamshli.html>; "Witness to Gyumri Earthquake and Syrian War Speaks About Life in Artsakh", *Hetq.am*, 26 December 2013, <http://hetq.am/eng/news/31664/witnessto-gyumri-earthquake-and-syrian-war-speaks-about-life-in-artsakh.html/>; See "Kashatagh Governor: 29 Syrian-Armenian families live here now and another 40 are on a wait list", *Hetq.am*, 22 August 2013, <http://hetq.am/eng/print/28835/>; "New flats are built for Syrian Armenians in Nagorno-Karabakh", *Armenpress.am*, 5 August 2013, <http://armenpress.am/eng/news/728230/new-flats-are-built-forsyrian-armenians-in-nagorno-karabakh.html>; "Homeland, but not Home: Syrians finding it hard to settle in Karabakh", *Armenianow.com*, 30 July 2013, <https://www.armenianow.com/society/47851/syrian_armenians_kashatagh_nagorno_karabakh_resettlement>.

[166] "Agricultural Project Supports Syrian Armenians in Nagorno-Karabakh Republic", *AGBU*, 16 January 2014, <http://agbu.org/news-item/agricultural-project-supports-syrian-armenians-in-nagorno-karabakh-republic/>.

the Zangilan district and Khanlyg village of the Gubadly district, while others move to the occupied Khojaly district and other occupied areas.[167]

102. Syrian Armenians settled in Lachyn and elsewhere are reportedly provided with apartments free of charge and with an "ownership right".[168] To aid the construction and renovation of homes in the occupied Lachyn, Kalbajar and Zangilan districts, the Armenian Revolutionary Federation's Yerevan-headquartered "Help Your Brother" program provided more than $32,000 to the "Kashatagh Foundation".[169]

103. Syrian Armenians are among the beneficiaries of the programmes designed for the resettlement of the occupied territories.[170] Thus, in 2014, Tufenkian Foundation that implements several resettlement projects in the occupied territories organised fundraisings and provided the construction materials for finishing the renovation of the apartment buildings in the town of Zangilan and in Khanlyg village, specifically for Syrian Armenian settlers.[171] In fact, the first Armenian family from Syria arrived to the occupied territories of Azerbaijan much earlier, in 2008, before the crisis in Syria broke out, while the first Armenians from the Middle East, namely from Beirut, were resettled in Mashadiismailly village in the Zangilan district back in 1999.[172]

104. The Government of Armenia reportedly granted the Armenian citizenship to more than 90 per cent of immigrants of Armenian origin from Syria.[173] Armenian passports are being issued for Syrian Armenians in Syria and Lebanon, as well as upon their arrival in Yerevan.[174] Armenian parliament passed a special legislation allowing waiving State duty for the passports issued for Armenians arriving from the Middle East.[175] So, by the time they reach the occupied territories, most of them acquire the citizenship of Armenia. The data on the number of Syrian Armenians transferred thus far into the occupied territories varies from one Armenian source to another. According to press reports, some 38 Armenian families from Syria,

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[167] See "Stay or Leave? – Aleppo's Asmaryan Brothers Attempt Agricultural Venture in Artsakh", *Hetq.am*, 4 August 2015 <http://hetq.am/eng/news/61892/stay-or-leave---aleppos-asmaryan-brothers-attempt-agricultural-venture-in-artsakh.html>.

[168] See "Relocation With a Reason: Some Syrian-Armenian families find advantages to resettle in Karabakh", *ArmeniaNow.com*, 13 March2013, <http://www.armenianow.com/society/features/44597/syrian_armenians_kashatagh_resettlement_in_karabakh>.

[169] See "The Housing Conundrum: Syrian Armenians in Armenia", *ArmenianWeekly.com*, 14 January 2014, <http://armenianweekly.com/2014/01/14/the-housing-conundrum-syrian-armenians-in-armenia/>.

[170] *Ibid*.

[171] See "Housing for Syrian Armenians", *Tufenkian foundation.org*, 25 November 2014, <http://www.tufenkianfoundation.org/ ?laid=1&com=module&module=static&id=383>.

[172] See "Illusions and Reality: The Vision of Ditsmayri", *Hetq.am*, 4 September 2006, <http://hetq.am/eng/print/11131/>.

[173] See Calin-Stefan, Georgia, "The Integration of Syrian-Armenians in the Republic of Armenia: A Case Study", Romanian Journal of Political Science, Winter 2014.

[174] See "389 Syrian-Armenians receive Armenian passports", *Armenpress.am*, 18 November 2014, <http://armenpress.am/eng/news/784468/389-syrian-armenians-receive-armenian-passports.html>.

[175] See "Armenian government reimbursing Syrian-Armenians for state duty for Armenian passports", *Armenpress.am*, 24 February 2015, <http://armenpress.am/eng/news/795357/armenian-government-reimbursing-syrian-armenians-for-state-duty-for-armenian-passports.html>.

including from Kessab and Qamishli towns in Syria, were resettled in those territories, with more families expressing intention to follow the suit.[176] As of October 2012, Armenian sources reported of at least 800 settlers in total in the "southern part of Kashatagh region" (occupied Zangilan and Gubadly districts) alone, including also Armenians from Syria.[177] As per other sources, as of 2015, the number of Armenian families from Syria settled in the occupied territories reportedly reached several hundreds. Given that, according to the Republic of Armenia's Ministry of Diaspora, more than 16,000 Syrian Armenians have entered Armenia since March 2011, and at least 11,000 continue to reside in Armenia, the number of those settled in the occupied territories is likely to be much higher. They were allotted with either newly built homes or apartments in renovated buildings. Those families deciding to stay and adapt are promised the property ownership certificate. Regardless of how many Syrian Armenians currently reside in the occupied territories, their presence in those territories serves as an incentive for more their compatriots and relatives to move from Syria and from Armenia, given the continuing instability in Syria and dire economic conditions in Armenia.[178]

105. The interest in settlement of Syrian Armenians in particular in Lachyn, Gubadly and Zangilan districts and in other occupied territories is driven by their experience in agriculture development that, as Armenia hopes, will be a significant boost to the colonization of those territories. For example, Vrej and Hovig Asmaryan brothers moved from Syrian Aleppo to the occupied territories in 2012. They set up a commercial enterprise, "Asmaryan Greenland", and started a farm on 15 hectares of land in the fields of the newly established "Berkadzor" settlement in the occupied Khojaly district, where some 3,000 fruit trees of ten varieties and other vegetables are grown. They plan to import from Syria olive trees and plant them near the banks of the Araz River. Since moving from Syria, they have invested over $600,000 in farming. In 2015, they received a 40 million AMD contract to import mulberry saplings from Syria. 2,000 of them have already been ordered.[179] The Asmaryans informed that since they used to urban life, they have decided to stay in Khankandi, where they currently rent and buy property. They also admitted that "the government has suggested they move to the Kashatagh Province where they are promised housing".[180] This is yet another indication of the deliberate efforts to settle Armenians in the Lachyn district and other occupied territories, depopulated of their Azerbaijani residents.

106. Land, agricultural loans with zero interest rate and equipment (tractors, seeders, disks, fertilizer distributors and pesticide sprinklers) have been provided to

[176] See "New flats are built for Syrian Armenians in Nagorno-Karabakh", *Armeniansocietynetwork.com*, <http://www.armeniansocietynetwork.com/syrian-armenians/new-flats-are-built-for-syrian-armenians-in-nagorno-karabakh>.

[177] See "Prime Minister of Nagorno Karabakh Republic Ara Harutyunyan visited Kovsakan", *Artsakhtoday.com*, 10 October 2012, <http://www.artsakhtoday.com/?p=26411&lang=en>.

[178] See "Mayissian: Armenia's 'Silent' National Security Threat", *Armenianweekly.com,* 3 January 2013 <http://armenianweekly.com/2013/01/03/mayissian-armenias-silent-national-security-threat/>.

[179] See "Stay or Leave? - Aleppo's Asmaryan Brothers Attempt Agricultural Venture in Artsakh", *Hetq.am*, 4 August 2015, <http://hetq.am/eng/news/61892/stay-or-leave---aleppos-asmaryan-brothers-attempt-agricultural-venture-in-artsakh.html>.

[180] *Ibid*.

stimulate Syrian Armenians farmers to settle in the Zangilan district and elsewhere and become productive farmers.[181] According to so-called "governor" of the so-called "Kashatagh region" Souren Khachatryan, in 2013 around 20,000 hectares were cultivated. Most of the crop, wheat, barley and corn are transported across the occupied section of Azerbaijan-Armenia border to Armenia's Syunik district.[182]

107. Armenian diaspora actively participates in the resettlement of Syrian Armenians in the occupied territories.[183] Tufenkian Foundation, "The Assistance To Self-Determined Artsakh Charitable Foundation" and other organizations are channelling funds to support resettlement activities. Thus, the Armenian community of Boston (USA) raised $1.3 million for Syrian Armenians to settle in the occupied territories. The funds were transferred through "Artsakh Roots Investment" ("ARI") company and were allocated to buy cattle and invite tenders for construction of houses.[184]

108. The Government of Armenia also allocates preferential loans (up to 5 million drams at a 10 per cent reduced interest rate for up to five years) to Syrian Armenian small and medium-sized business owners to finance small production facilities.[185] Syrian Armenians settled in Lachyn, Zangilan and elsewhere in the occupied territories are eligible for those loans, since no distinction is made between the programmes for Syrian Armenians remaining in Armenia and those resettling in the occupied territories.[186]

109. There are reports that Syrian Armenians settled in the occupied territories are being recruited to serve in the armed forces of Armenia deployed in the occupied territories.[187] Armenia is using incentive tricks, like granting to new and existing settlements the geographic names with clear historical connotation (such as "New Cilicia", "Van" etc.), in an effort to draw historical parallels and encourage more Armenians to move to the occupied territories out of patriotic fillings or "historical grievances". For example, in May 2013, Archbishop Moushegh Mardirossian, Prelate, based in Los Angeles (USA), visited the occupied territories to attend the ceremony of opening of "New Cilicia" settlement sponsored by the Catholicosate of

[181] See "Agricultural Project Supports Syrian Armenians in Nagorno-Karabakh Republic", Armenian General Benevolent Union, 16 January 2014, <http://agbu.org/news-item/agricultural-project-supports-syrian-armenians-in-nagorno-karabakh-republic/>.

[182] See "Kashatagh Governor: '29 Syrian-Armenian families live here now and another 40 are on a wait list'", *Hetq.am*, 22 August 2013, <http://hetq.am/eng/print/28835/>.

[183] See "Organization Encourages Armenians from West to Move to Armenia, Artsakh", *Hetq.am*, 21 September 2011, <http://hetq.am/eng/news/4578/organization-encourages-armenians-from-west-to-move-to-armenia-artsakh.html>.

[184] See "Armenians of Boston raise $1.3 million for Syrian Armenians to settle in Karabak", *News.am*, 18 August 2013, <http://www.news.am/eng/news/167268.html>.

[185] See "Syrian-Armenian businessmen: Preferential loan limit should increase", *News.am*, 23 March 2015, <http://news.am/eng/news/258320.html>.

[186] See "Syrian-Armenian participants of Good Start course receive certificates and will be granted loans", Ministry of Diaspora of Armenia, 26 February 2013, <http://www.mindiaspora.am/>.

[187] See "Second group of volunteers from "Kashatagh" goes to frontline", *Panorama.am*, 8 August 2014, <http://www.panorama.am/en/popular/2014/08/08/r-matevosyan/?sw>; "New flats are built for Syrian Armenians in Nagorno-Karabakh", *Armenpress.am*, 5 August 2013, <http://armenpress.am/eng/news/728230/new-flats-are-built-for-syrian-armenians-in-nagorno-karabakh.html>.

Cilicia.[188] In March 2015, Bako Sahakyan inaugurated a park in the occupied town of Lachyn, dedicated to the so-called "100th anniversary of the Armenian genocide". He particularly emphasized that laying such a park was designed to keep the memory of the "genocide" victims bright and developing the native land, at the same time expressing hope that it would become a place of pilgrimage for the generations to come.[189]

9. Extensive social, economic and transport infrastructure changes

110. Armenia continues the development of permanent energy, agriculture, social, residential and transport infrastructure in the occupied territories, including construction of irrigation networks, water supply systems, roads, electrical transmission lines and other economic and social infrastructure. Armenia's direct involvement in building infrastructure in those territories, including the areas depopulated of their Azerbaijani population, is evident from provision of loans to the separatist regime[190] and supply of construction materials and heavy equipment.

111. In 2014 alone, more than 20 billion drams were allocated for the implementation of construction projects, including the construction of 53 houses, the purchase of 12 apartments for large families and construction of Jamiyyat-Khojavand highway ("Nngi-Martuni").[191] Like in the previous years, housing construction, including construction and capital repair of apartments, is declared a priority. Armenia-founded and controlled Hayastan All-Armenian Fund is a major donor that provides funding for infrastructure development projects, in particular through its annual telethons.[192] According to the Fund's website, to date it financed over $251 million-worth projects in Armenia and in the occupied territories of Azerbaijan. In 2015 alone, the Fund raised some $10,378,465 in pledges and donations for the construction of single-family houses in the occupied territories.

112. Building infrastructure in the occupied territories is linked directly to support of the maintenance and existence of settlements and to bring and keep more Armenian settlers in those territories. According to Ara Vardanyan, Executive Director of Armenia Fund Inc., the U.S. Western Region affiliate of the Hayastan

[188] See "Prelate Participates in Inauguration of New Cilicia Village in Artsakh", *Westernprelacy.org*, 15 May 2013, <http://westernprelacy.org/prelate-participates-in-inauguration-of-new-cilicia-village-in-artsakh/>.

[189] See "Artsakh Republic President Bako Sahakyan was present at the ceremony of laying out a park dedicated to the "100th anniversary of the Armenian Genocide" held in the town of Berdzor and organized at the initiative of the Yerevan State University", *Artsakhtert.com*, 30 March 2015, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1746:artsakh-republic-president-bakosahakyan-was-present-at-the-ceremony-of-laying-out-a-park-dedicated-to-the-100th-annive rsary-of-the-armenian-genocide-held-inthe-town-of-berdzor-and-organized-at-the-initiative-of-the-yerevan-state-university&catid=11:official&Itemid=23>.

[190] See "New proposal for the restart of construction", *Artsakhtoday.com*, 14 September 2012, <http://www.artsakhtoday.com/? p=24843&lang=en>.

[191] See "This year 20 billion AMD will be spent on construction in Artsakh", *Artsakhpress.am*, 28 January 2014, <http://artsakhpress.am/eng/news/127/.html>; "In the first quarter of the year 2.7 billion AMD of the budget will be allocated for construction projects", *Artsakhpress.am*, 14 January 2014, <http://artsakhpress.am/eng/news/40/in-the-first-quarter-of-the-year-27-billion-amd-of-thebudget-will-be-allocated-for-construction-projects.html>.

[192] See <http://www.himnadram.org/index.php?id=24350&lang=1>.

All-Armenian Fund, established in 1994 in Los Angeles, California, as a tax-exempt, non-governmental corporation, "community centres are of vital importance to the ongoing social and economic development of rural areas in […] Artsakh, and they […] ultimately provide residents with one more compelling reason to continue living and working in their hometowns".[193]

113. Transport infrastructure projects carried out in the occupied territories include in particular a network of roads designed exclusively for connecting Armenia and the occupied territories and Armenian settlements within the occupied territories. Among them are the Goris-Khankandi roads, passing through the occupied Lachyn district, linking Armenia and the occupied territories, the "North-South" highway, connecting the northern part of the occupied territories with the South and the 116 km-long Vardenis-Aghdara highway, passing from Armenia through the occupied Kalbajar district of Azerbaijan. A stretch of road linking Vardenis and Aghdara via Kalbajar reportedly already exists, but it is in poor condition and is not passable during the winter months.[194] That new highway is aimed at resolving the issue and providing a shorter alternative route connecting Armenia and the occupied territories.

114. The 2014 telethon of Hayastan All-Armenian Fund was directed to the special projects adopted by the benefactors and the final phase of the Vardenis-Aghdara highway construction, total cost of which is estimated to be around $30 million. Some $12.4 million were raised at the telethon.[195] Bako Sahakyan pointed to the strategic, political and socioeconomic significance of the road.[196] The road, which will be shorter by 150 kilometres than the road via the occupied Lachyn district and which will cut travel time from Yerevan (Armenia) to the occupied territories from 6 to about 3 hours,[197] will be reportedly used for movement of goods and minerals in and out of the occupied territories to the markets in Armenia and other countries and will improve geographic access for colonization of those territories.[198] Armenia's

[193] See "Community Center In Shushi Region's Mets Shen Will Be The Village's First", *Armenia Fund USA*, 14 April 2011, <http://www.armeniafundusa.org/news/20110414-mets-shen.htm>.

[194] See "New Roads, New Questions: Construction of New Armenia-Artsakh highway", *Civilnet.am*, 7 June 2013, <http://civilnet.am/2013/06/07/new-roads-new-questions-construction-of-new-armenia-artsakh-highway/#.VSLHg4HXerU>.

[195] See "$12.4 Million Raised at Armenia Fund Telethon", *Asbarez.com*, 1 December 2014, <http://asbarez.com/129374/12-4-millionraised-at-armenia-fund-telethon/>.

[196] See "On 26 May President Bako Sahakyan partook in a meeting of the Hayastan All-Armenian Fund Board of Trustees held in Yerevan", *Artsakhtert.com*, 27 May 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id= 1464:-on-26-maypresident-bako-sahakyan-partook-in-a-meeting-of-the-qhayastanq-all-armenian-fund-board-of-trustees-held-in-yerevan&catid=11:official&Itemid=23>; "Karvachar-Armenia road construction in progress", *Panarmenian.net*, 14 December 2011, <http://panarmenian.net/m/eng/news/86572>.

[197] See "Nagorno-Karabakh's second road and its consequences Mark Dietzen about the new project", *Araratonline.com*, August 2013, <http://www.araratonline.com/en/2013/08/nagorno-karabakhs-second-road-and-its-consequences-mark-dietzen-about-the-newproject/>.

[198] See "Security, Trade, and Jobs: An Update on the Vardenis-Martakert Highway", *Asbarez.com*, 21 November 2014, <http://asbarez.com/129130/armenia-fund-security-trade-and-jobs-an-update-on-the-vardenis-martakert-highway/>; "Armenia-Karabakh highway construction launches", *Artsakhpress.am*, 14 February 2014, <http://artsakhpress.am/eng/news/281/armenia-karabakh-highwayconstruction-launches.html>; "Nagorno-Karabakh's second road and its consequences Mark Dietzen about the new project", *Araratonline.com*, August 2013, <http://www.araratonline.com/en/2013/08/nagorno-karabakhs-second-road-and-its-consequencesmark-dietzen-about-the-new-project/>.

companies like the Vallex Group CJSC and its subsidiary Base Metals CJSC, involved in pillaging of natural resources in the occupied territories, are the primary beneficiaries of that road (see below).[199] According to Alexander Kananyan, who is one of those resettled in the occupied town of Kalbajar, "the road bypasses all main villages and district's main town Karvachar [Kalbajar] by about 18 km. That's why the new road is being built primarily for freighting, rather than for the locals."[200] As the so-called "minister of urban planning" of the separatist regime Karen Shakhramanyan noted, the road "has strategic and economic importance, as it is convenient for freighting and realization of perspective programs in the mining sphere – Drmbon [Heyvaly] gold mining factory and Maghavuz [Chardagly] coal factory, which are both located in the Martakert region of Nagorno Karabakh".[201] He confirmed that a 45 km long road from "Sotk" pass up to "Karvachar" [Kalbajar] intersection is being built with participation of the Ministry for Energy of Armenia.[202] Armenia's construction companies, including Dorozhnik LLC, are participating in this project.[203] Technical supervision of the construction works is also carried out by Armenia's relevant government agencies.[204] Construction of the Vardenis-Aghdara highway is expected to be completed by the end of 2016. The Government of Armenia provides funding for this project.[205]

115. In 2008, Armenia launched reconstruction of the airport near the occupied town of Khojaly of Azerbaijan and manifested its intention to operate flights, including military ones, into/ from the occupied territories.[206] Germany-based "Thales Air Systems GMBH" affiliate of the "Thales Group" (France) provided navigation equipment for this airport. A businessman from Argentina of Armenian origin, Eduardo Eurnekyan, purchased an aircraft to perform flights to the occupied territories.[207] Azerbaijan informed the international community that this airport, referred to by Armenia as "Stepanakert airport", is not an approved aerodrome under the legislation of Azerbaijan, nor is it a designated customs airport in accordance with the Convention on International Civil Aviation.[208] Consequently, all flights operated from and into that airport are unlawful and violate the said Convention and the fundamental principles and objectives of the International Civil

[199] See "New Roads, New Questions: Construction of New Armenia-Artsakh highway", *Civilnet.am*, 7 June 2013, <http://civilnet.am/2013/06/07/new-roads-new-questions-construction-of-new-armenia-artsakh-highway/#.VSLHg4HXerU>; "New route: Karabakh building second road to Armenia", *Armenianow.com*, 7 November 2011, <http://armenianow.com/karabakh/33013/karabakh_kelbajar_new_road_armenia>.

[200] See "Construction work on the Armenia-Karabakh road to finish by February 2013", *Caucasus knot*, 16 January 2012, <http://www.kavkazuzel.ru/articles/199305/>.

[201] *Ibid*.

[202] *Ibid.*

[203] See <http://www.dorozhnik.am/en/about>.

[204] *Ibid.*

[205] "Construction works of the Vardenis-Martakert highway are planned to be completed at the end of 2016", 11 November 2015, <http://nkr-news.com/arcakh/stroitelnye-raboty-avtotrassy-vardenis-martakert-planiruyutsya-zavershit-k-kontsu-2016-godu.html> (in Russian language).

[206] See "Air Artsakh: Stepanakert Airport certified to service flights, to be put into operation 'soon'", <http://www.acccc.org.uk/airartsakh-stepanakert-airport-sertified-to-service-flights-to-be-put-into-operation-soon>.

[207] See "Dmitry Atabashyan: Stepanakert Airport Performing General Flights", *Arminfo.info,* <http://www.arminfo.info/index.cfm?objectid=991E0010-141F-11ES-80630EB7C0D21663>.

[208] See UN Doc. A/67/507-S/2012/754, 11 October 2012.

Aviation Organization (ICAO). Since Azerbaijan, acting in the exercise of its sovereign right, has closed the airspace over the occupied territory for any aviation operations, no flight into or from this airport is authorized. ICAO, through its Secretary General confirmed the inadmissibility of unauthorized flights over the territory of Azerbaijan recognized by the United Nations.[209]

116. An extensive network of irrigation systems and water supply pipes is being built to service the settlements and illegal activities, especially in the agricultural sector, throughout the occupied territories (see below). The scale of construction/renovation of residential buildings and houses and other social facilities for the settlers moved to the occupied territories has considerably increased.[210] That is also revealed from the statistical data on the number of business entities registered in the occupied territories as of 2013. Thus, for example, while some 30 entities (27 legal persons, 3 individual entrepreneurs) were registered in the agricultural sector, 186 legal persons and 14 individual entrepreneurs were registered in the construction sector.[211] Furthermore, there were 334 entities (171 legal persons and 163 individual entrepreneurs) engaged in industry and 289 entities in total (53 and 236 respectively) engaged in transportation and communication development.

117. The construction in 2015 of the healthcare facility for around 150 settlers who moved from Armenia to villages of Gushchu, Ashaghi Farajan and Safiyan in the occupied Lachyn district[212] is directly linked to promoting resettlement of a new population in that area.[213] Like many other facilities, the clinic is built on the ruins of demolished buildings, confirming the earlier reports that empty houses of Azerbaijani displaced persons are being dismantled for the use as construction materials or that new houses are being built on their lands and properties. In 2013, construction of a kindergarten in the occupied town of Kalbajar and repair works in a hospital in the occupied town of Zangilan were launched.[214]

118. In an effort to create a new demographic situation on the ground and prevent the return of the Azerbaijani internally displaced persons to their homes, the

[209] See “38th Session of the ICAO Assembly”, 4 October 2013, <http://www.caa.gov.az/index.php?option=com_k2&view=item&id=273:38th-Session-of-the-ICAOassembly&Itemid=118&lang =en>.

[210] See “Community center being constructed in Khachmach with joint efforts”, *Artsakhpress.am*, 10 April 2015, <http://artsakhpress.am/eng/news/16220/community-center-being-consructed-in-khachmach-with-joint-efforts.html>; “State Order for Capital Construction Cut By Over Two Billion”, *Artsakhtert.com*, 16 February 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=935:-state-order-for-capital-construction-cut-by-over-two-billion&catid=6:economy &Itemid=18>.

[211] See “Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013”, *op. cit*.

[212] See “Bringing Hope and Healthcare to Armenian Villages in Artsakh”, *Asbarez.com*, 9 March 2015, <http://asbarez.com/132813/bringing-hopeand-healthcare-to-armenian-villages-in-artsakh/>.

[213] See “Construction of medical station of Karabakh’s Aghavnatun to promote resettlement”, *Armenpress.com*, 14 March 2015, <http://armenpress.am/eng/news/797643/construction-of-medical-station-of-karabakh%E2%80%99s-aghavnatun-to-promoteresettlement.html>.

[214] See “State Order for Capital Construction Cut By Over Two Billion”, *Artsakhtert.com*, 16 February 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=935:-state-order-for-capital-construction-cut-by-over-two-billion&catid=6:economy&Itemid=18>.

Armenian side gives particular importance to building social infrastructure in and resettlement of the occupied Shusha district and the town of Shusha – a historical and cultural centre of Azerbaijan in Nagorno-Karabakh, where the number of the Azerbaijanis constituted more than 95 per cent of the population.[215] As of 2014, over 30 different projects, ranging from renovation of streets to restoration/construction of social facilities have been implemented in Shusha.[216] Hayastan – All Armenian Fund recently completed building of a water supply network in the town. Since 2007, a US-registered Sutter Emergency Medical Associates (SEMA) urban development company has been involved in urban planning for the town of Shusha, in particular by designing a Master Plan for the so-called "Shushi Revival Fund".[217] In 2011, Armenia Fund USA financed building of a community centre in Boyuk Galadarasy village in the Shusha district.[218]

119. In 2013, a residential house for three families of Syrian Armenians was built in Lachyn.[219] The same year, more than 290 houses and 40 apartments were "privatized" in the town of Lachyn and construction materials were allocated to 30 families resettled there.[220] The US-registered "Project Agape", which is a joint venture of the Western and North Carolina Conferences of the United Methodist Church in cooperation with the Armenian Apostolic Church, is involved in housing construction and repair in the town of Lachyn.[221] In July 2013, a memorandum was signed between the separatist regime and "ARI" company to build a new settlement with 150 dwelling houses in the Lachyn district.[222] Speaking at the ceremony of signing of the memorandum, Executive Director of "ARI" Company, Benjamin Bjjakchyan, stressed that by signing the memorandum they indicated the serious intentions of the diaspora, in particular that from Lebanon, on the process of resettlement of "Artsakh".[223] Among the projects implemented by "ARI" was the construction of some 50 apartments in Zabukh village in the Lachyn district.[224] In 2013, two multi-apartment buildings were commissioned in the occupied town of Zangilan for the use of Syrian Armenians settled there.[225]

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[215] See "Shushi Revitalization Projects Going Strong", *Armenia Fund USA*, 21 June 2010, <http://www.armeniafundusa.org/news/20100621-shushi-revitalization.htm>.

[216] See "Shushi: Restoring the Crown Jewel of Armenian Civilization", *Massispost.com*, 12 May 2014, <http://massispost.com/2014/05/shushi-restoring-the-crown-jewel-of-armenian-civilization/>.

[217] See "Investment Passport", <http://www.shushi.org/factsheet/factsheet_eng.pdf>.

[218] See "Community Center In Shushi Region's Mets Shen Will Be The Village's First", *Armenia Fund USA*, 14 April 2011, <http://www.armeniafundusa.org/news/20110414-mets-shen.htm>.

[219] See <http://www.artsakh.tv/en/news/show/4635>.

[220] See "The process of free housing privatization in Berdzor continues", *Artsakhpress.am*, 28 February 2014, <http://artsakhpress.am/eng/news/430/the-process-of-free-housing-privatization-in-berdzor-continues.html>.

[221] See <http://mission.wnccumc.org/building-team-armenia-home-rebuild/>.

[222] See "New Settlement will be Founded in Berdzor", 15 July 2013, <http://gov.nkr.am/en/officialnews/item/2013/07/15/berdzorsettlement/>.

[223] See "The Future of Historical Berdzor Is More Than Promising", *Artsakhtert.com,* 22 July 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1111:-the-future-of-historical-berdzor-is-more-than-promising&catid=6:economy&Itemid=18>.

[224] See "Karabakh delegation had meetings in UAE and Kuwait", *Arka.am*, 3 March 2015, <http://arka.am/en/news/economy/karabakh_delegation_mad_meetings_in_uae_and_kuwait/>.

[225] See "New Apartments In Kovsakan", *Artsakhter.com*, 17 April 2014, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=1431:new-apartments-in-kovsakan>.

120. The US-registered "Patriot" charity organization, headed by Stepan Sargsyan, has long been involved in development projects in the occupied Kalbajar, Lachyn, Jabrayil and Zangilan districts.[226] The Switzerland-based Sedrik Marten Fund financed water supply and social infrastructure construction projects in Pirjamal village of the occupied Khojaly district and elsewhere.[227]

10. Providing products, investments, technology, heavy machinery and services facilitating the illegal economic activities

121. The evidence shows that Armenia exercises pervasive control of the entire economic and commercial system in the occupied territories, including over inbound and outbound trade flows and economic resources. Armenian companies and businesses registered in Armenia or their affiliates and entities established in the occupied territories with financial and other support of Armenia control the entire market and manage the export of settlement produce to Armenia and to international markets. Armenian private businesses play a major role in Armenia's colonial enterprise in the occupied territories. Many Armenian companies operate farms, orchards and production facilities in those territories. Raw materials and technology are provided to the occupied territories from Armenia and from other countries through Armenia.

122. The main business promoting structure in the occupied territories is the so-called "Artsakh Investment Fund" (AIF), which was established as successor of "Artsakh Development Agency" on 1 November 2007. It provides information about business establishment procedures, assists with setting up joint enterprises by means of leasing, franchising, licensing and placing bonds.[228] The "Fund" implements business support and mortgage programmes. Armenia's Ardshininvestbank CEO Mher Grigoryan is reported to have informed at the meeting with the so-called "prime minister" of the separatist regime Ara Harutyunyan, the bank acquired shares of "Artsakh Investment Fund" so as to be able to take part in its mortgage programme.[229]

123. Armenia supplies a variety of heavy engineering machinery, including tractors, combines and bulldozers and other equipment and materials to the occupied territories, thus facilitating the illegal activities there, including expansion of settlements and construction of the associated infrastructure. Chin-Van 40, 4 model tractors assembled at China's Chin-Van Company's plant in Vanadzor

[226] See "Restructuring programs of Karabakh's liberated regions continue by efforts of Diaspora", *Artsakhpress.am*, 18 March 2015, <http://artsakhpress.am/eng/news/14584/restructuring-programs-of-----karabakh%E2%80%99s-liberated-regions-continue-byefforts-of-diaspora.html>.

[227] See "Artsakh Vardadzor village gets new drinking water network", *Hetq.am*, 18 September 2015, <http://hetq.am/eng/news/62677/artsakh-vardadzor-village-gets-new-drinking-water-network.html>; "Rural and Infrastructure Development Projects in Armenia and Artsakh", Hayastan-All Armenian Fund, <http://www.himnadram.org/index.php?id= 23758>.

[228] See "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.

[229] See "Ardshininvestbank plans to buy shares of Artsakh Investment Fund", *Arminfo.am*, 15 August 2014, <http://arminfo.am/index.cfm?objectid=BF15F9A0-248B-11E4-B6610EB7C0D21663>.

(Armenia) are shipped to the occupied territories.[230] There are hundreds of various types of USA-manufactured Caterpillar heavy machines, provided by Germany's Zeppelin Baumaschinen GmbH subsidiary Zeppelin Armenia LLC,[231] and John Deere farm tractors and equipment,[232] German Deutz Fahr combines and tractors,[233] South Korean Hyundai trucks, Belarusian MT3-82,3 model tractors, as well as other heavy machinery that are supplied from Armenia and elsewhere and utilized in mining, agriculture and construction.[234] The agricultural equipment provided to the occupied territories by Armenia in 2014 was twice as more as in the previous year.[235] According to Karen Atayan, who presents himself as "head of production department" of the so-called "Artsakh Agriculture And Rural Development Fund", 60 wheeled tractors of Belarus MT3-82,3 were imported, four of which were given to the tractor stations in various districts and the rest – to individual users on conditions of a financial lease. In addition, 19 units of wheeled tractors' supplementary aggregates (trailers, hay-making machines, hay balers) were purchased and provided to farmers.[236] In 2014, Armenia's oligarch Gagik Tsaroukyan granted to "Araqs" agricultural organization, that operates in the occupied Lachyn and Zangilan districts, 10 units Chin-Van 40,4 wheeled tractors.[237]

124. In 2013, Germany's Deutz Fahr company provided some 30 combines and other agricultural machines to the entities operating in the occupied territories.[238] "The Small and Medium Entrepreneurship Development National Centre of Armenia Fund" (SME DNC of Armenia) provides Belarus-manufactured tractors to the enterprises engaged in agriculture in the occupied territories.[239] In 2013, some 20 farm tractors were provided to the occupied territories and stored in the "Support Fund of Village and Agriculture of the NKR"s equipment storing facility in the occupied town of Shusha.[240] In 2014, an agreement was reached to provide

[230] See "Gagik Tsaroukyan donated 10 units of wheeled tractors to Kashatagh region", *Artsakhpress.am*, 19 January 2015, <http://artsakhpress.am/eng/news/10701/gagik-tsaroukyan-donated-10-units-of-wheeled-tractors-to-kashatagh-region.html>.

[231] See, for example, "Mining Show in Kashen 2014", video footage of the "Caterpillar" tractors and "Hyundai" trucks in "Kashen" mine, <https://www.youtube.com/watch?v=JdPXZq2G-7o>; "The Works In Kashen Entering A Decisive Phase", *Artsakhtert.com*, 05August 2014, <http://artsakhtert.com/eng/component/content/article?id=1539:-the-works-in-kashen-entering-a-decisive-phase\>.

[232] See "Bako Sahakyan visited reserve premise of the Ministry of Agriculture", *Artsakhtv.am*, 14 February 2013, <http://artsakhtv.am/news/show/4495>.

[233] See "The imported foreign combines are in arable lands", *Agrofund.am*, 2013, <http://www.agrofund.am/index.php/en/2013-0508-09-35-09/370-2015-06-21-08-23-33>.

[234] See e.g. "Mining Show in Kashen 2014", video footage of the Caterpillar tractors and Hyundai trucks in "Kashen" mine, <https://www.youtube.com/watch?v=JdPXZq2G-7o>.

[235] See "Gagik Tsaroukyan donated 10 units of wheeled tractors to Kashatagh region", *Artsakhpress.am*, 19 January 2015, <http://artsakhpress.am/eng/news/10701/gagik-tsaroukyan-donated-10-units-of-wheeled-tractors-to-kashatagh-region.html>.

[236] *Ibid.*

[237] *Ibid.*

[238] See "The imported foreign combines are in arable lands", *Agrofund.am*, 2013, <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/370-2015-06-21-08-23-33>.

[239] "The Byelorussian tractors are already in Artsakh", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/296-2014-03-24-05-34-38>.

[240] "The process of importing the Byelorussian tractors is going on", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/318-2014-09-20-05-02-15>.

additional 40 tractors of the kind.[241] That equipment is distributed among settlers throughout the occupied territories according to the schedules.[242]

125. Settlement incentives also include financial assistance, diesel fuel for planting and ploughing, interest-free loan and fertilizers, agricultural equipment like disk harrows, seeders, fertilizers, distributors and pesticide sprinklers and other equipment, which is provided by Armenia. For example, Armenian General Benevolent Union (AGBU), through the donation from the Cherchian Family Foundation, in 2013 initiated a program for provision of agricultural equipment to Syrian Armenians settled in the occupied Zangilan district and involved in farming there.[243]

126. Since Armenia is fully deprived of the possibility of attracting the international financial and credit resources to finance illegal activities in the occupied territories,[244] and the businesses in Armenia lack sufficient financial resources themselves,[245] it relies on Armenian diaspora that make donations through charitable organizations or individual contributions.[246] Thus, in 2012, "Artsakhbank CJSC" realized its micro-credit program, worth of $320,000. The funding was provided by investors of Armenian origin from the USA and Canada. As of 2012, some 47 entities benefited from the programme. The bulk of the funding was directed at the implementation of agricultural programmes – veterinary medicine, sheep breeding, fish-breeding, non-perennial plants' growing. Part of it was allocated to stimulate trade. The maximum amount of each credit was $15,000 or its equivalent in Armenian drams.[247]

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[241] See "Belarusian Tractors to be Delivered to Artsakh Soon", *Artsakhtert.com*, 15 March 2014, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=1396:-belarusian-tractors-to-be-delivered-to-artsakhsoon&catid=6:economy&Itemid=18>; "Next group of Byelorussian tractors will be sent to Artsakh one of these days", *Agrofund.am*, March 2014, <http://agrofund.am/index.php/en/2013-05-08-09-35-09/293-2014-03-09-09-00-43>.

[242] "The imported agro technique is disposed to soil users", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/298-2014-04-01-07-41-08>.

[243] See "Syrian-Armenians in NKR Benefit from AGBU Agricultural Program", *AGBU*, 2013, <http://www.agbu.am/en/projectprograms-2/nkr-13-eng/kco-13-eng/kco-director/239-archive-2013/news-13/1853-tractorss-to-syrian-armenians>.

[244] See "Nagorno Karabakh Republic (Artsakh), State Building: Progress Toward Freedom, Democracy And Economic Development", "NKR Office in the USA", (2005), <http://www.nkrusa.org/nk_conflict/assets/nkr-state-building.pdf>; "Programmed Solutions To The Problems", 24 October 2013, *Artsakhtert.com*, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1247:-programmed-solutions-to-the-problems&catid=6:economy&Itemid=18>.

[245] See "Two Thirds Of Armenian Small And Medium Companies Badly In Need Of Financial Resources", 10 July 2015, <http://article.wn.com/view/2015/07/10/Two_Thirds_Of_Armenian_Small_And_Medium_Companies_Badly_In_N/>.

[246] See "Armenian businessmen from Lebanon visit north of Artsakh", *Hetq.am*, 18 September 2012, <http://hetq.am/rus/news/18630/armyanskie-predprinimateli-iz-livana-na-severe-arcakha.html>; "Nagorno Karabakh Investment Fund intends to attract foreign investors", *Caucasus knot*, 21 March 2010, <http://www.kavkaz-uzel.ru/articles/166830>.

[247] See "The Foreign Investments Have Found Their Addressees", *Artsakhtert.com*, 20 June 2012, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=736:-the-foreign-investments-have-found-their-addressees&catid=6:economy&Itemid=18>.

127. Together with Hayastan All-Armenian Fund's nineteen affiliates around the world, US-based Armenia Fund Inc. has implemented over $120 million-worth of infrastructure development assistance for Armenia and the occupied territories.[248]

128. In February 2015, the delegation headed by the so-called "prime minister" of the separatist regime, Arayik Harutiunyan, visited the United Arab Emirates and Kuwait. The delegation comprised of the so-called "minister of urban planning" of the subordinate separatist regime, Karen Shahramanyan, Executive Director of the "Karabakh Rural Support Fund" Ashot Bakhshiyan and representative of ARF Dashnaktsutiun Central Committee David Ishkhanyan. They had meetings with the Armenian communities in both countries. Artsakh Roots Investment company's programmes that promote agriculture and housing construction in the occupied Kalbajar, Lachyn, Gubadly and Zangilan districts were presented to some businessmen of Armenian origin in the UAE and Kuwait. A.Harutiunyan urged investors to contribute to the programmes through the so-called "Karabakh Rural Support Fund" and "Artsakh Investment Fund". Members of the delegation also had meetings with Armenian ambassadors to Kuwait and the UAE and with clerical leaders of the Armenian communities there to discuss the ways of deepening the cooperation.[249]

129. Many production facilities in the occupied territories process their materials at least partially in Armenia. For example, Sanderk LLC Textile Company (with the capacity of some 10 tons of cotton fabric of 5 types, produced per month) carries out dyeing process of its production in Gyumri (Armenia) and transports the material back to the occupied territories for further processing. Raw material for textile production is supplied from the Central Asia and elsewhere. Based on the agreements with several companies in Yerevan, a substantial part of the products is sold in Armenia. In order to enter foreign markets, the company tries to improve fabric dyeing process. For this purpose, two specialists of the company were sent to China to study the experience of enterprises engaged in textile production. As a result, a preliminary agreement with Chinese specialists was reportedly reached to purchase and install dyeing equipment in the factory. Two employees of the company are currently studying at the Moscow Textile Institute (Russia).[250]Armenia's National Agrarian University opened its branch in Khankandi and later relocated to Shusha,[251] where it trains specialists for agrarian sphere, including in agronomy, animal husbandry, hydro melioration, land management, foodstuff technologies, etc.[252] On 29 October2015, the Government of Armenia adopted a decree to establish a production-and-training facility of this university on the banks of the Araz River in the occupied territories and allocated 73.2 million drams for this purposes. As the Minister of Education and Science of Armenia,

[248] See <http://www.armeniafund.org/about_us/overview.php>.
[249] See "Karabakh delegation had meetings in UAE and Kuwait", *Arka.am*, 3 March 2015, <http://arka.am/en/news/economy/karabakh_delegation_mad_meetings_in_uae_and_kuwait/>.
[250] See "China's experience is being examined for the development of Artsakh textile production", *Artsakhpress.am*, 3 March 2015, <http://artsakhpress.am/eng/news/13579/.html>.
[251] See "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.
[252] See <http://anau.am/en/about-us/info>.

Armen Ashotyan, said, "it is for the first time that we launch construction of such a facility in Karabakh, which will help Armenian students to acquire knowledge."[253]

130. Armenia's government structures, affiliated entities and private bodies promote illegal activities by foreign companies in the occupied territories and are aware of their involvement in appropriation of land, water and natural resources in those territories. For example, former Prime Minister of Armenia Tigran Sargsyan actively promoted international and Armenian businessmen to invest into shares of "ArtsakhHEK OJSC".[254] The Forum of Armenian Associations of Europe and the Centre of Agro-Business and Rural Development of Armenia also promote businesses in the occupied territories.[255]According to the "Shushi's Investment Guide" of the Armenia-registered Regional Development Foundation, designed by Business Pareta LLC, "[i]n 2009, the authorities of the NKR and Republic of Armenia, as well as non-governmental organizations and private segments concentrated their attention on the city of Shushi. Shushi puts in a claim on becoming a cultural, educational, tourist centre including both big and small investments".[256]

131. The majority of foreign entities operating in the occupied territories are established and/or run by the Armenians. "ARI" company is registered in Cyprus,[257] operates on the Lebanon capital and consists of public figures and businessmen from Lebanon. Unlike other investment entities, "ARI" was designed specifically to fund resettlement, housing construction and agricultural projects in the occupied Kalbajar, Gubadly, Lachyn and Zangilan districts.[258] The company started its activities in 2010, comprising only 16 investors. As of 2013, they amount to over 150 from different countries, but mostly from Lebanon.[259] The company offers the settlers residing in these districts long term credits on low interest rate and with no taxation or deposits. "ARI"'s business model is based on attracting foreign shareholders to come to contractual relations with it and lend money for the fixed interest-rate. "ARI" gives those funds to local organizations accredited by the subordinate separatist regime at an increased rate. The organizations in their turn allocate financial resources to the borrowers, usually to the settlers, to fund their economic enterprises with subsidized interest-rate. The whole credit process of "ARI" is allegedly "guaranteed" by the subordinate separatist regime, to present the

[253] See "On the banks of Araks in Karabakh will be built production facility for students-agronomists", *News.am*, 29 October 2015 (in Russian language), <http://news.am/rus/news/293299.html>.

[254] See "Armenian PM urges to 'bravely' buy shares of Artsakh Hydropower Plant", *Mediamax.am*, 5 October 2011, <http://www.mediamax.am/en/news/business/2731/>.

[255] See "Public Radio of Armenia: European businessmen willing to invest €50 mln in Artsakh", *Armradio.am*, 9 April 2014, <http://www.armradio.am/en/2014/04/09/european-businessmen-willing-to-invest-e50-mln-in-artsakh/>.

[256] See "Shushi's Investment Guide", <http://ruralarmenia.org/content/investment-guide>.

[257] See "Delegation of Lebanese businessmen to visit Artsakh", *Mediamax.am*, 31 August 2012, <http://www.mediamax.am/en/ news/karabakh/5683/>; <https://i-cyprus.com/company/394434>.

[258] See "Artsakh President received 50 Lebanese businessmen", *Artsakh.tv*, 3 September 2012, <http://www.artsakh.tv/en/ news/show/3853>.

[259] See "The Future of Historical Berdzor Is More Than Promising", *Artsakhtert.com*, 22 July 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1111:-the-future-of-historical-berdzor-is-more-than-promising&catid=6:economy&Itemid=18>; <http://www.ariroots.com/?p=1141>.

investments as "risk-free".[260] According to the so-called "prime minister" of the subordinate separatist regime Ara Arutyunyan, thanks to "ARI", hundreds of families in the "Kashatakh" and "Shaumyan" "regions" used those credits and solved their social problems.[261] In 2011-2014, "ARI 2 Ltd." and "ARI 3 Ltd." entities, registered in Cyprus[262] were established to fund resettlement efforts in the so-called "Kashatagh region".[263]

132. Although the Executive Director of "ARI" Benjamin Bjjakchyan claims that "[o]ur goal is not to make a profit, but to populate the regions and to create normal living and working conditions for the people"[264], from "ARI"'s business model it is obvious that the company's shareholders are gaining profit from funding the illegal activities in the occupied territories by lending funds to "ARI" for the fixed interest-rate, which are then re-lended to borrowers at an increased rate.

133. There are a number of foreign entities that profit from the occupation by conducting routine commercial activities with Armenian companies operating in the occupied territories.[265] Many of them are run by the Armenians or based on Armenian capital.[266] Among them are "Karabakh Telecom CJSC" – telecommunication; "Ata-Vank-Les CO" (USA) – parquet tile production; "Sirkap Armenia CO" (Switzerland) – hotel business and construction material production; "Haik Watch And Jewellery CO" (Switzerland) – jewellery production; "Arvard CO" (USA) – dairy production; "Shishmanian Ltd." (Monaco) – food processing, pasta production; "Andranik Shpon CO" (Switzerland) – wood processing; "Mika Ltd." (U.K.) – wine making; "Australia Nairi Ltd." (Australia) – hotel business; "Yerkir Tour CO" (USA) – hotel business; "Sasun CO" (Iran) – polyethylene pipe production; "Minasian CO" (USA) – carpet production; "Artsakh Gorg Ltd." (USA) – carpet production.[267] According to 2002 reports, Slovakian, Czech and Austrian businesses, including Slovakian Abb Company,[268] invested in hydroelectric power plant with the capacity of 6 megawatts in the occupied territories.[269] Bulgarian

[260] See "Artsakh Roots Investment", <http://www.agrofund.am/index.php/en/2013-04-30-05-45-41>.
[261] See "Armenian businessmen from Lebanon visit north of Artsakh", *Hetq.am*, 18 September 2012, <http://hetq.am/rus/news/18630/armyanskie-predprinimateli-iz-livana-na-severe-arcakha.html>.
[262] See <https://i-cyprus.com/company/429142>.
[263] See <http://www.ariroots.com/?p=1141>.
[264] See "The Future of Historical Berdzor Is More Than Promising", *Artsakhtert.com*, 22 July 2013, http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1111:-the-future-of-historical-berdzor-is-more-than-promising&catid=6:economy&Itemid=18.
[265] As of January 2016, some 160 enterprises with foreign participation are reportedly operating in the occupied territories. See "Interview of the Minister of Economy of NKR: Economy of Artsakh has agrarian direction", *News.am*, 6 January 2016, <http://news.am/rus/news/302562.html>.
[266] See "Dispelling The Fears Of Diaspora Investors: Ameria Group Supports Investing In Armenia & Artsakh", *Asbarez.com*, 12 May 2012, <http://asbarez.com/102938/dispelling-the-fears-of-diaspora-investors-ameria-group-suppors-investing-in-armenia-artsakh/>.
[267] See "Major Investments in the NKR Economy (1999-2002)", "NKR Office in USA", <http://www.nkrusa.org/business_ economy/major_investments.shtml>.
[268] See "Investors from Slovakia, Czech Republic to implement projects in Armenia, Artsakh", *Panarmenian.net*, 4 February 2011, <http://www.panarmenian.net/eng/economy/news/60782/>.
[269] See "Slovak Official Says Karabakh is Democratic State", *Asbarez.com*, 14 February 2012, <http://asbarez.com/100999/slovakofficial-says-karabakh-is-democratic-state/>.

Rodina – Haskovo JSC provided wine-making equipment for the "Stepanakert Brandy Factory CJSC".[270] In May 2012, the US-based Synergy International Systems, operating in Armenia since 1999 and offering package of software and services for data processing, opened its branch in Khankandi.[271]

134. In 2009, Armenbrok OJSC, a specialized investment company on Armenia's capital market, placed 861,652 common registered equities of "ArtsakhHEK OJSC" for a total of 904.6 million drams, thus completing the initial public offering (IPO) for "ArtsakhHEK OJSC". 1,023 investors participated in the placement, including individuals and legal entities from Armenia, the USA, Switzerland, France, Slovakia, Australia, Russia, Iran, and the UAE.[272]

135. In July 2014, a group of Armenian businessmen from California (USA), led by the Chairman of the Armenian Revolutionary Federation's Western US Central Committee, Viken Hovsepyan, visited the occupied territories to explore investment opportunities there.[273]

136. Armenian and foreign private businesses provide investments in exchange for the shares in the sectors that they invest into. Thus, Vartan Sirmakes, a businessman from Switzerland and a founder, co-owner and CEO of Swiss Franck Muller Watchland company is a major shareholder of "ArtsakhHEK OJSC". He is also financing the construction of infrastructure, including fish growing plant, built by Golden Fish company for producing black caviar near Madagis village in the occupied part of the Tartar district.[274] As noted above, he is a holder of 66.3 per cent of shares of "Artsakhbank CJSC", operating in the occupied territories, and also a founder and owner of 80 per cent shares of Armenia's Armswissbank CJSC (the other shareholder owning 20 per cent of shares is The Netherlands registered Beleggingsmaatschappij Jongo B.V).[275] These are the entities through which Sirmakes is channelling the funds for the projects. Armswissbank CJSC is also responsible for emission of shares of "ArtsakhHEK OJSC"[276] and is directly involved in promoting foreign investments in that entity.[277]

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[270] See "Artsakh Brandy Company" promotion video at <www.youtube.com/watch?v=BJnGE_IX2_k>.

[271] See "Synergy International Systems opens branch in Nagorno-Karabakh", 17 October 2012, <https://telecom.arka.am/en/news/business/synergy_international_systems_opens_branch_in_nagorno_karabakh/>.

[272] See "Armenbrok Armenian company places 861,652 common registered equities of Artsakh hydro power plant for 904.6mln drams", *Arka.am*, 28 May 2009, <http://arka.am/en/news/economy/14984/>.

[273] See "Calif. Armenian Business Leaders Explore Investment Opportunities in Artsakh", *Asbarez.com*, 9 July 2014, <http://asbarez.com/124804/calif-armenian-business-leaders-explore-investment-opportunities-in-artsakh/>.

[274] See "Prime Minister got acquainted to the process of infrastructures' construction for producing black caviar", *News.am*, 26 October 2014, <http://news.am/eng/news/236159.html>. "Mataghis' Fish Breeding Enterprise Expected to Begin Exports within 3 Years", *Artsakhpress.am,* 13 June 2015, <http://artsakhpress.am/eng/news/20570/the-fish-breeding-enterprise-of-mataghis-will-exportfish-wholesale-in-3-years.html>.

[275] See <http://www.armswissbank.am/en/about/gov-bodies/>.

[276] See "Armenian PM urges to "bravely" buy shares of Artsakh Hydropower Plant", *Mediamax.am*, 5 October 2011, <http://www.mediamax.am/en/news/business/2731/>.

[277] See "Guidelines on Investments In "ArtsakhHEK" OJSC's Shares", <http://www.armswissbank.am/upload/Guideline_ENG.pdf>.

137. It should be noted that "ArtsakhHEK OJSC" had more than 1,200 shareholders in 2012. In 2012 figures, the company's share capital amounted to 10.6 billion AMD, only 47.9 per cent of which is allegedly owned by the subordinate separatist regime, the rest being controlled by shareholders. Among the major shareholders is Joseph Oughourlyan, CEO of Amber Capital Investment Management, New York-based hedge fund, who is also a board member of the Armenian General Benevolent Union.[278] He is one of the leading advocates of hydropower production in the occupied territories. His shares in the company's assets make 11.86 per cent.[279] Another major shareholder of "ArtsakhHEK OJSC" is Barsegh Beglaryan, former chairman, and currently the major shareholder of Armenia's Araratbank OJSC.[280] Among shareholders also are Armenia's M-Energo and Zangezur Copper Molybdenum Combine CJSC and Multicontinental (U.K.).[281] All shares issued by "ArtsakhHEK OJSC" are included in the list of stock exchange Nasdaq OMX Armenia.[282]

138. According to Ashot Grigoryan, President of the Forum of Armenian Associations of Europe (FAAE), in 2014, a number of Slovakian and Bulgarian businessmen intended to make investments in Armenia and "Artsakh". In his words, "[a]lthough no investment agreement has been signed between Armenia and Slovakia, European businessmen are ready to invest €50 million for the construction of a hydro power plant in Artsakh".[283]

139. In August 2014, a team of specialists of Genoservice Corp. Ltd. from the Czech Republic visited the occupied territories and concluded an agreement to build a large breeding livestock complex near Talysh village in the occupied part of the Tartar district. At the first phase of the project, a complex for 400 heads of cattle of Holstein tribe was supposed to be constructed. The next stage of the project would include expansion of the complex, as well as the construction of a milk processing plant.[284]

140. In April 2014, Vladimir Mikoyan, representative of the Chamber of Commerce and Industry of the Russian Federation, organized a visit of the so-called director of the "Support Fund of Village and Agriculture of the NKR", Ashot Bakhshyan, to the

[278] See "Building A Budget Base: Targeting Growth In Five Karabakh Industries", Armenian General Benevolent Union, 1 December 2012, <http://agbu.org/news-item/building-a-budget-base-targeting-growth-in-five-karabakh-industries/>.

[279] See "Reliable Income For Investors Provided", *Artsakhtert.com*, 5 May 2012, <http://artsakhtert.com/eng/index.php?option =com_content&view=article&id=656:-reliable-income-for-investors-provided&catid=6:economy&Itemid=18>.

[280] See <https://www.araratbank.am/upload/up_files/Majorshareholders2015eng.pdf>.

[281] See Victor Feshenko, "Made in Artsakh: How Businessmen Brought Up from the Knees Unrecognised Republic", *Secretmag.ru*, 14 October 2015, <http://secretmag.ru/longread/2015/10/14/artsakh-epic/> (in Russian language).

[282] See "Artsakh HPP OJSC to increase its production volume. This year it is expected to provide 65% of electricity consumption", *Artsakhpress.am*, 17 June 2014, <http://artsakhpress.am/eng/news/2497/.html>.

[283] See "European businessmen willing to invest €50 mln in Artsakh", *Public Radio of Armenia*, 9 April 2014, <http://www.armradio.am/en/2014/04/09/european-businessmen-willing-to-invest-e50-mln-in-artsakh/>.

[284] See "A modern livestock complex will be built in Artsakh by means of the European investment", *Artsakhpress.am*, 15 August 2014, <http://artsakhpress.am/eng/news/4095/a-modern-livestock-complex-will-be-built-in-artsakh-by-means-of-the-europeaninvestment.html>.

Czech Republic to attend the International Agriculture Exhibition in Brno, which showcases agricultural machinery, agricultural products, seeds and other agriculture-related products.[285] Within the framework of the visit, Bakhshiyan had business meetings with the representatives of major financial institutions and companies of the Czech Republic, as well as with a number of private entrepreneurs and representatives of the Armenian community to discuss the issues related to the development of agriculture in the occupied territories.[286]

11. Exporting and selling of goods unlawfully produced in the occupied territories

141. A number of businesses were established in the occupied territories to manufacture and export settlement produce, raw materials and natural resources from those territories. The subordinate separatist regime is highly dependent on their performance.[287] According to the Armenian own statistics, as of 2013, some 2566 entities in total were engaged in trade in the occupied territories.[288] Of them, 391 are registered as legal persons, whereas the majority – 2,175 – as individual entrepreneurs.[289] Among them are "Artsakhkat CJSC" (dairy production), "Artsakh Footwear-Sewing Manufacturing Union CJSC" (footwear and clothing Manufacturing), "Desa Trade CO Ltd." (furniture manufacturing), "Dvin Poultry Factory CO Ltd." (poultry production), "Energy Plus CO Ltd." (mining), "Gev Group CO Ltd., (manufacturing of textiles), "Gf Furniture Factory CO Ltd." (furniture manufacturing), "Kapavor CO Ltd." (concrete production, construction), "Metakskombinat CO Ltd." (textile products), "Mkrtumyan CO Ltd." (winemaking), "Rapeseed Vegetable Oil Plant" (Manufacture of vegetable oil), "Sanderk CO Ltd." (textile, clothing, garments manufacturing).[290]

142. Many of the enterprises are affiliates or wholly owned subsidiaries of Armenia-registered companies or operate on Armenian capital. Among them are Base Metals CJSC, a subsidiary of the Vallex Group CJSC (mining), "Artsakhcable CO" (cable production), "Nairi Ltd." (winemaking), "Lusakert Ltd." (poultry production), "Armtechnomashexport CO" (medicinal tea production), "Max Wood Ltd." (wood processing) and others.[291] To facilitate exports of products from the occupied territories to international markets a number of companies were set up by the Armenians from the diaspora. Among them is the "Artsakh-America Export Import LLC", established in the United States in 2010 by Armenian private

[285] See "Business meetings in Czech Republic and participation in international agricultural exhibition in Brno", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/304-2014-04-13-08-25-17>.

[286] See "The Director of the Support Fund of Village and Agriculture of the NKR Ashot Bakhshyan partook in the International Agriculture Exhibition in Brno", *Artsakhpress.am*, 14 April 2014, <http://artsakhpress.am/eng/news/902/the-director-of-the-support-fund-ofvillage-and-agriculture-of-the-nkr-ashot-bakhshyan-partook-in-the-international-agriculture-exhibition-in-brno. html>.

[287] See speech of Bako Sahakyan at the meeting with business representatives, 26 December 2012, <http://www.president.nkr. am/en/speeches/speeches/1926>.

[288] See "Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.

[289] *Ibid*.

[290] Information was retrieved from "Spyur" online business directory of Armenia at <http://www.spyur.am>.

[291] See "Major Investments in the NKR Economy (1999-2002)", "NKR Office in USA", <http://www.nkrusa.org/business_ economy/major_investments.shtml>.

entrepreneurs from California, which specializes in exports of alcoholic beverage produced in the occupied territories.[292]

143. "Artsakh Fruit CJSC" produces and exports 35 types of products, mainly canned fruits, jams, preserves and vegetable produce. In 2012 figures, annual sales amount to 450-500 million drams.[293] In 2014, "Artsakh Fruit CJSC" purchased about 750 tons of vegetables for processing.[294] Russia is the largest market for the goods produced by the company.[295] Around 90 per cent of goods is exported to Russia, France, Bulgaria, Ukraine, Hungary, Belgium, Germany, the Czech Republic, The Netherlands, and UAE and realized by the major retailers or through the online grocery stores in these countries.[296] According to the company's website, the partners of "Artsakh Fruit CJSC" in Russia are Crown JSC in Moscow, Yugdekor LLC in Krasnodar and others.[297] Some of the products are reported to be shipped to the Abkhazia region of Georgia.[298] The factory is also processing fruits and vegetables from Armenia and operates about 15 per cent of Armenia's agricultural products processing capacity, thus becoming a major contributor to Armenia's exports of agricultural products.[299]

144. The Government of Armenia is supporting and encouraging production and export of the products unlawfully produced in the occupied territories. In August 2014, President Serzh Sargsyan of Armenia visited Tagaverd village in the occupied Khojavand district and got acquainted there with the work of vegetable oil producing plant.[300] In January 2012, he visited the wood processing enterprise and a pellet producing unit in Chanagchy village of the occupied Khojaly district.[301]

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[292] See <http://abc.ca.gov/datport/LQSdata.asp?ID=62896214>.

[293] See "Artsakh fruit plans to expand output by 40 percent", *Arka.am*, 15 October 2012, <http://arka.am/en/news/business/ artsakh_fruit_plans_to_expand_output_by_40_percent/>

[294] See "The Prices for Flour Will Not Increase", *Artsakhtert.com*, 22 July 2014, <http://www.artsakhtert.com/eng/index.php? option=com_content&view=article&id= 1521:the-prices-for-flour-will-not-increase &catid=6:economy&Itemid=18>.

[295] See "Photo Story: Russia is Largest Market for Artsakh Fruit and Vegetables", *Hetq.am*, 27 August 2014, <http://hetq.am/eng/news/56225/photo-story-russia-is-largest-market-for-artsakh-fruit-and-vegetables.html>; "Demand for Armenian Canned Fruits and Vegetables Growing in Russia", *Armeniandiaspora.com*, 6 September 2010, <http://www.armenian diaspora.com/showthread.php?247924-Demand-For-Armenian-Canned-Fruits-And-Vegetables-Growing-In-Russia>.

[296] See "Photo Story: Russia is Largest Market for Artsakh Fruit and Vegetables", *op. cit.*; "Made in Artsakh Label Sometimes Hurts Exports", *Hetq.am*, 8 November 2011, <http://hetq.am/eng/news/6232/made-in-artsakh-label-sometimes-hurts-exportshtml/>; "Vegetables Canned in Karabakh Now Sold in Abkhaz Stores", *Epress.am*, 2 November 2011, <http://www.epress.am/en/2011/02/11/vegetables-canned-in-karabakh-now-sold-in-abkhaz-stores.html>.

[297] See "Products from Azerbaijan receive registration in Armenia", *Vestnikkavkaza.net*, 23 July 2014, <http://vestnikkavkaza. net/news/politics/58059.html>.

[298] See "Vegetables Canned in Karabakh Now Sold in Abkhaz Stores", *op. cit*.

[299] See "Artsakh fruit plans to expand output by 40 percent", *op. cit*.

[300] See "Artsakh and Armenian Presidents got acquainted with the work of Taghavard vegetable oil producing plant", *President.nkr.am*, 31 August 2014, <http://www.president.nkr.am/>.

[301] See "Artsakh Working Visit Of President Serzh Sargsyan To The Republic Of Nagorno Karabakh", *President.am*, 5 January 2012, <http://www.president.am/en/Artsakh-visits/item/ 2012/01/03/news-02/>.

145. The relevant State agencies of Armenia provide logistical support to Armenian and foreign enterprises operating in the occupied territories to export their products to international markets and organize trips for foreign businessmen to those territories to explore investment opportunities there. According to Armenia's trade representative in Russia, Karen Asoyan, the state agencies of Armenia stand ready to provide any logistical support to the so-called "NKR enterprises" to promote their products in Russia.[302] He organized the visit of the wine experts from Russia to the occupied territories in 2013 to assess the output level and quality of wines produced there.

146. Armenia actively promotes the companies operating in the occupied territories and their products. Thus, a separate pavilion was set up at the exhibition "Made in Armenia Expo- 2015", held in Armenia on 26-28 April 2015.[303]

147. The "Stepanakert Brandy Factory CJSC" operates wine factories in the occupied Khojavand district, Gyrmyzy Bazar village and the town of Khankandi. The factory produces fruit vodkas, mulberry and cornel, brandy and wine. To carry out the production process, the factory procures large amount of grape. Each year it increases the volume of procurement. The declared goal is to gradually increase brandy production to one million bottles annually. According to the company's own data, in 2007 over 5200 tons of grapes were procured, in 2008 – 5800 tons and in 2009 – over 6200 tons.[304] The company has 212 hectares of vineyard. In the occupied territories, the factory procures 70-80 per cent of grape harvest. The plant has the capacity to collect and process some 6,000-6,500 tons of grapes.[305] In 2014, the company collected 2,560 tons of grapes.[306] A considerable part of the procured grape harvest was directed to the production of wine.

148. The wine factories of "Stepanakert Brandy Factory CJSC" in Gyrmyzy Bazar village and Khojavand district mainly provide the realization of grape procurement, production and ageing brandy alcohol by the company, and the wine factory in Khankandi deals mainly with bottling. All the bottling paraphernalia comes from Armenia.[307] For that purpose, a European conveyor with productivity of 2,000 bottles per hour was installed in the factory. For the production of vodkas, the factory sources some of its fruits, in particular apricot and a bit of the cornel from Armenia.[308] The production of "Stepanakert Brandy Factory CJSC" is mainly exported to Russia, particularly to Moscow, as well as to Australia and Belgium. Cuba is said to be soon added to the list.[309] The factory actively cooperates with Yerevan Brandy Factory[310] and supplies it with young alcohol that they distil with

[302] See "Karabakh wines have prospects in Russian market", *Artsakhpress.am*, 28 August 2014, <http://artsakhpress.am/eng/ news/4457/karabakhwineshave-prospects-in-russian-market.html>.
[303] See "Artsakh at 'Made in Armenia Expo – 2015'", 29 April 2015, <http://karabakh.travel/en/ news/news-articles/artsakh-at-quotmadein-armenia-expo-2015quot/109/>.
[304] See <http://stepbrandy.com/en/>.
[305] See "Artsakh Brandy Headed for Havana after Winning CUBAEXPO 2014 Competition", *Hetq.am*, 10 December 2014, <http://hetq.am/eng/news/57734/artsakh-brandy-headed-for-havana-after-winning-cubaexpo-2014-competition.html/>.
[306] *Ibid*.
[307] *Ibid*.
[308] *Ibid*.
[309] *Ibid*.
[310] See <http://stepbrandy.com/en/>.

special equipment provided by the Yerevan Brandy Factory.[311] The main retailers of the company's products, listed on the company's webpage, are Dufry Ltd. Switzerland-registered global travel retailer, Russian supermarket chain Moskvichka, "Artsakh-Rus OJSC", A&D Food GMBH (Germany), Noy OU (Estonia), "Artsakh-Italy OJSC" (Italy), Yerevan-registered SAS online supermarket and Yerevan City supermarket chain of Armenia.

149. "Mkrtumian LLC" company, operating production facility near Khankandi, exports products under the "Artsakh Berry" brand. In 2014, the company is said to have processed some 80 tons of vegetables.[312] There are other producers of a smaller size, like the "Kataro" wine production facility in Tugh village in the occupied Khojavand district, which exports its products to Armenia and Russia.[313]

150. The Armenia-registered Lousakert Ltd. is operating the poultry factory in the Khojavand district. The factory monopolizes the poultry processing market in the occupied territories. Every month some 23,000 to 27,000 chicks reportedly raised in incubators in Georgia are brought there to be raised. The company has an annual turnover of $2 million. Poultry products are mostly sold in local markets and in Armenia's Syunik district.[314]

151. The Armenia-registered Masis Tobacco Ltd., which is part of the Grand Holding Inc., established a tobacco collection centre with capacity of 200 hectares of raw material in the occupied town of Khojaly. It collects tobacco from 75 hectares of tobacco plantations that are being cultivated in the occupied territories, including the occupied parts of the Aghdam district. In order to stimulate tobacco farming, Masis Tobacco Ltd. provides seedlings to the growers, assists with labor costs and diesel fuel expenses. Tobacco farming is water intense enterprise and, in order to help spur development of the tobacco farming sector, old artesian wells are reopened.[315] In June 2014, one of the owners of Grand Holding Inc. Karen Vardanyan said that "[w]e will continue developing Armenia's agriculture by enlarging areas for tobacco – both in Armenia's borderland and in Nagorno-

[311] See "Artsakh Brandy Headed for Havana after Winning CUBAEXPO 2014 Competition", *Hetq.am*, 10 December 2014, <http://hetq.am/eng/news/57734/artsakh-brandy-headed-for-havana-after-winning-cubaexpo-2014-competition.html/>.

[312] See "The Prices for Flour Will Not Increase", *Artsakhtert.com*, 22 July 2014, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=1521: the-prices-for-flour-will-not-increase &catid=6:economy&Itemid=18>.

[313] See "Made in Artsakh: Kataro Wine Breaks Into Armenian and Russian Markets", *Hetq.am*, 21 May 2014, <http://hetq.am/eng/news/54717/made-in-artsakh-kataro-wine-breaks-into-armenian-and-russian-markets.html>.

[314] See "Artsakh Poultry Factory Director: 'People are starting to prefer local produce'", *Hetq.am*, 12 November 2014, <http://hetq.am/eng/news/57290/artsakh-poultry-factory-director-people-are-starting-to-prefer-local-produce.html>.

[315] See "The Ups and Downs of Tobacco Farming in Artsakh; This Year's Drought Cut into Profits", *Hetq.am*, 25 November 2014, <http://hetq.am/eng/news/57487/the-ups-and-downs-of-tobacco-farming-in-artsakh-this-years-drought-cut-into-profits. html/>.

Karabakh."[316] In October 2015, Bako Sahakyan awarded another owner of Grand Holding Inc. Michael Vardanyan with Anania Shirakatsi Medal.[317]

152. Rugs produced by "Karabakh Carpet LLC" company in the occupied town of Khankandi are transported to Armenia and exported as Armenia's product. "Karabakh Carpet LLC" has production facilities in the occupied town of Shusha[318], Lachyn, Jabrayil districts and Ghuneychartar village in the Khojavand district.[319] The company employs settlers, who moved to the occupied territories from Syria, Armenia, Georgia and Russia. The carpets produced in the factory are transported to the United States for sale. The company also has sales contracts with the firms in Austria, Italy, Egypt and other countries.[320]

153. In September 2013, "Forest LLC" – a wool processing and wool fibre producing company started its operations in the occupied territories. It receives raw material from across the occupied territories, as well as from the Syunik district of Armenia and from Turkmenistan.[321] In 2013, the company received and processed 30 tons of wool. "Karabakh Carpet LLC" is sourcing its wool from this company. The company expands the sales market and has entered into agreements with companies in Armenia and the Russian Federation.[322]

154. In December 2013, "Gev Group LLC", producing textile products, launched its operations in the town of Khankandi. The main consumer of the textile products of the company is the military. Another main customer of the company is "Sanderk LLC", which sells part of the knitwear production in Armenia.[323] "Silk Plant CO Ltd." operates textile, sewing, carpet and wool workshops.[324]

155. In August 2011, an ostrich farm was set up in Kish village in the occupied Khojavand district by Ararat Baghryan and his partners from Yerevan, Armenia. A 25 million AMD loan was provided to this enterprise to sustain the farm to buy the birds from Kenya, transport them to the occupied territories and purchase feed.[325]

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[316] See "Grand Holding to continue developing – owner", *Tert.am*, 5 June 2014, <http://www.tert.am/en/news/2014/06/05/grandholding/1106786>.

[317] See "Karabakh president awards Anania Shirakatsi Medal to Michael Vardanyan", *News.am*, 12 October 2015, <news.am/eng/news/290433.html>.

[318] See "Artsakh President visits Shushi carpet weaving factory", *Panarmenian.ne*, 16 June 2013, <http://www.panarmenian.net/eng/news/162408/>.

[319] See "Colorful Threads and Clattering Looms: Artsakh Carpets Sold Round the World", *Hetq.am*, 28 March 2014, <http://hetq.am/eng/news/53688/colorful-threads-and-clattering-looms-artsakh-carpets-sold-round-the-world.html>.

[320] *Ibid*.

[321] See "This year Forest LLC plans to increase the wool processing volume to 150-200 tons in Artsakh", *Artsakhpress.am*, 23 April 2014, <http://artsakhpress.am/eng/news/1005/this-year-forest-llc-plans-to-increase-the-wool-processing-volume-to-150-200-tonsinartsakh.html>.

[322] *Ibid*.

[323] See "Artsakhian tricot will be exported", *Artsakhpress.am*, 7 August 2014, <http://artsakhpress.am/eng/news/3840/ artsakhiantricot-will-be-exported.html>.

[324] See "Nagorno-Karabakh president visits Silk Plant", *Tert.am*, 29 August 2013, <http://www.tert.am/en/news/2013/08/29/bakosahakyan-silk-factory/851476>.

[325] See "Ostrich Farming in Artsakh: Feasible or Folly?", *Hetq.am*, 31 August 2011, <http://hetq.am/eng/news/3946/ostrich-farming-inartsakh-feasible-or-folly.html/>.

156. The harvested grain collected throughout the occupied territories is processed at "Garny Group CJSC", "Mill CJSC" and "Air Mi Company" mills.[326] California (USA)-based "Hayrenik Miyutyun" (Friends of Armenia) Organisation provided flour mills installed in the occupied territories. It is difficult to determine the actual volume of exports from the occupied territories as the Armenian agricultural and liquors export companies, including "Stepanakert Brandy Factory CJSC" and "Artsakh Fruit CJSC", routinely mislabel the settlement produce wholly or partially produced or packaged in the occupied territories as originating from Armenia, thus misleading governments, international retailers and consumers.[327] For example, although "Stepanakert Brandy Factory CJSC" claims to be "registered" in "62 Tumanyan St., Stepanakert, NKR", almost all of its products, including "Artsakh Mulberry (Silver and Gold Aged)", "Artsakh Apricot", "Artsakh Cornelian", "Berdashen","Madatoff" vodkas, "Shushi Red", "Shushi Dry Pomegranate", "Gishi Rose" wine brand names are exported under the label "Product of Armenia".[328] Although many countries refuse to import such counterfeit products,[329] some of those products find their way to the markets of certain countries. Several Russian and European supermarkets have supply contracts with the Armenian companies or their wholly owned subsidiaries in the occupied territories. In fact, companies benefiting from that trade are complicit with Armenia's occupation of the territories, expansion of illegal settlements, colonization of the territories of Azerbaijan and exploitation of its resources.

12. Extensive exploitation of agricultural and water resources

157. Out of 4.1 million hectares of agricultural lands of Azerbaijan, some 1,226,674 hectares, including139,336 ha of irrigated land, 34,600 ha of vineyards and orchards, remained under the Armenian occupation. Some 1,200 sq. km of the irrigation system, 2,300 km of water pipelines was totally destroyed. 70 per cent of summer pastures of Azerbaijan remain in the occupied territories. Thousands of hectares have fallen in disuse and have been eroded. Before the occupation, these territories were widely known for grape, wheat and other crops cultivation, accounting for some 31.5 per cent of wine and 14.3 per cent of grain production in Azerbaijan. Flock of 244,000 sheep and 69,000 cattle was driven out of the occupied territories to Armenia.[330]

158. The evidence shows that farmlands in the occupied territories, specifically in Zangilan, Gubadly, Jabrayil, the occupied parts of the Fuzuli and Aghdam districts, abandoned by fleeing Azerbaijani population, have been illegally appropriated and

[326] See "The Prices for Flour Will Not Increase", *Artsakhtert.com,* 22 July 2014, <http://www.artsakhtert.com/eng/index.php? option=com_content&view=article&id= 1521:the-prices-for-flour-will-not-increase &catid=6:economy&Itemid=18>.

[327] See "Products from Azerbaijan receive registration in Armenia", *Vestnikkavkaza.net*, 23 July 2014, <http://vestnikkavkaza. net/news/politics/58059.html>; "Made in Artsakh Label Sometimes Hurts Exports", *Hetq.am*, 8 November 2011, <http://hetq.am/eng/news/6232/made-in-artsakh-label-sometimes-hurts-exportshtml/>.

[328] See e.g. Lebanese Arak Corporation, <http://lacproducts.com/wines_armenian.php>; "Made in Artsakh Label Sometimes Hurts Exports", *Hetq.am*, 8 November 2011, <http://hetq.am/eng/news/6232/made-in-artsakh-label-sometimes-hurts-exportshtml/>.

[329] See "Made in Artsakh Label Sometimes Hurts Exports", *Hetq.am*, 8 November 2011, <http://hetq.am/eng/news/6232/made -inartsakh-label-sometimes-hurts-exports.html/>.

[330] See UN Doc. A/58/594-S/2003/1090, 13 November 2003.

extensively exploited by Armenia, its companies and the subordinate separatist regime, which grant free concessions to the settlers to exploit those territories. Although it is difficult to find out the exact area of agricultural lands currently being harvested, given the data discrepancy provided by the Armenian own sources,[331] what is certain is that agricultural land used for sowing is expanding annually.[332]

159. The exploitation of the occupied Zangilan and Jabrayil districts along the Araz River is given a particular importance due to their agricultural potential, climate, water and other resources and is referred to by Armenian sources as "Armenia's second Ararat plain".[333] Armenian sources confirm that agricultural programmes for the "southern part of the Hadrut region" (i.e. the occupied Jabrayil and part of the Fuzuli districts) are much more comprehensive.[334]

160. In April 2011, Bako Sahakyan made an inspection visit to the construction sites of a new hospital being built in Lachyn and the "Syunik-2" hydropower station near Zabukh village. In Khanlyg village he acquainted with the work of the "Kashatagh" agro-technical station. Sahakyan also inspected the work of the greenhouse farming in Alibayli village, the production of briquettes in Minjivan town and the sheep farm in Chopdere village of the occupied Zangilan district. He noted the "importance of developing small and medium business in the southern section of the Kashatagh region from both economic and social viewpoints".[335]

161. A businessman of Armenian origin from an unidentified country has reportedly started growing cotton in the occupied territories (presumably the occupied Zangilan or Jabrayil districts) on the territory of 2,000 ha. A special pumping station has been built to pump water from the Araz River to these cotton fields. He is reported to be relocating a cotton processing plant, covering 5.5 ha, to these territories, and in the future, plans to build a factory to produce textile products.[336]

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[331] See e.g. "The Policy In The Agrarian Sphere Justifies Itself And Will Be Efficiently Continued In The Coming Years", *Artsakhtert.com*, 17 July 2012, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=762:-the-policy-in-theagrarian-sphere-justifies-itself-and-will-be-eeficiently-continued-in-the-comingyears&catid=6:economy&Itemid=18 > and data provided by "Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.

[332] See "Spring Sowing Implemented by 80 Percent", *Artsakhtert.com*, 20 May 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1066:-spring-sowing-implemented-by-80-percent &catid=6:economy&Itemid=18>.

[333] See "Restructuring programs of Karabakh's liberated regions continue by efforts of Diaspora", *Artsakhpress.am*, 18 March 2015, <http://artsakhpress.am/eng/news/14584/restructuring-programs-of-----karabakh%E2%80%99s-liberated-regions-continue-byefforts-of-diaspora.html>; "Karabakh president conducts working meeting in Hadrut", *Tert.am*, 19 January 2013, <http://www.tert.am/en/news/2013/01/19/bako-sahakyan/679408>.

[334] See "Ambitious Projects that Have Real Grounds", *Artsakhtert.com*, 6 April 2012, <http://www.artsakhtert.com/eng/index. php?option=com_content&view=article&id=621:-ambitious-projects-that-have-real-grounds&catid=6:economy&Itemid=18>.

[335] See Press release by the "Central Information Department of The Office Of The Artsakh Republic President", *Artsakhtoday.com*, 29 April 2011 <http://www.artsakhtoday.com/?p=3225&lang=en>.

[336] See "Cotton cultivation has started in the Nagorno-Karabakh", 6 November 2015, <http://nkr-news.com/arcakh/ vnagornomkarabahe-nachali-kultivirovat-hlopok.html> (in Russian language).

162. According to the Tufenkian Foundation, "[t]he liberated territories of Artsakh possess abundant, fertile land, ideal for cultivation of fruits and grains."[337] In 2000, six hectares of land have been devoted to pomegranate cultivation near the "Arajamugh" settlement in the occupied Jabrayil district of Azerbaijan, managed by the Tufenkian Foundation.[338]

163. In May 2013, Bako Sahakyan visited the "Araks branch" of the "Hadrut Agroeconomy CJSC" operating in the occupied Zangilan district. According to him, the existence of such an infrastructure in the Araz Valley would promote the development of the area that has a great agricultural potential, which in its turn would have a substantial impact on boosting the whole agro-industrial sector.[339]

164. Agricultural equipment and services in the occupied territories, including ploughing, cultivation, grain, maize, potato sowing, harvesting fertilizer dispersion, laying canals, bulldozer works etc., are generally provided by "Agriculture Number 1 CJSC", which has assembly point of its equipment in Pirlar village of the occupied Khojaly district and in Khanlyg village in the occupied Gubadly district,[340] "Machine And Tractor Station CJSC", which operates in the occupied town of Khojavand,[341] and "Martakert's Agricultural Services CJSC", operating in the town of Aghdara.[342] "Greenhouse Farming CJSC", located in Khankandi, provides greenhouse cultured plants and refrigerator services.[343] Those enterprises were established by the "Support Fund of Village and Agriculture of the NKR", operating since 2007, through the funding of Hayastan All-Armenian Fund.[344]

165. In 2013, Tufenkian Foundation initiated greenhouse cultivation near Alibayli village in the occupied Zangilan district of Azerbaijan. With the co-sponsorship of the Armenian Community Council (ACC) of Great Britain, two greenhouses with a total area of 480m2 were built. In 2014, some 1,873 kg of tomatoes were harvested.[345]

166. In March 2012, Bako Sahakyan held a working meeting in the "southern wing of the Hadrut region" to discuss issues of "ameliorating demographic situation", developing the spheres of agriculture and irrigation. He considered those three directions closely interrelated, adding that drawbacks in each would have a negative impact on the rest.[346]

167. In November 2012, the so-called "prime minister" of the separatist regime Ara Haroutyunyan said that "Kashatagh" is not for bargain and that the region is an

[337] See <http://www.tufenkianfoundation.org/?laid=1&com=module&module=menu&id=315>.
[338] *Ibid*.
[339] See "Artsakh leader visits Kashatagh region", *Panorama.am,* 16 May 2013, <http://www.panorama.am/en/region/2013/05/16/arcakh-president/?sw>.
[340] See <http://www.agrofund.am/index.php/en/2013-04-30-05-45-38/2013-04-30-05-45-39>.
[341] See <http://www.agrofund.am/index.php/en/2013-04-30-05-45-38/2013-04-30-05-45-42>.
[342] See <http://www.agrofund.am/index.php/en/2013-04-30-05-45-38/2013-04-30-05-45-41>.
[343] See <http://www.agrofund.am/index.php/en/2013-04-30-05-45-38/2013-04-30-05-45-43>.
[344] See <http://www.agrofund.am/index.php/en/about-us>.
[345] See <http://www.tufenkianfoundation.org/?laid=1&com=module&module=menu&id=310>.
[346] See "In the center of attention – the southern part of Hadrut region", *Artsakhtoday.com*, 26 March 2012, <http://www. artsakhtoday.com/?p=13728&lang+en>.

"inseparable part" of the "Republic of Artsakh".[347] Regarding the economic development of the region, Haroutyunyan singled out the mining sector and the relatively beneficial conditions that exist for growth in the agricultural sector. He also informed of the plans to build three more hydro-electric plants in addition for the two already in operation.[348]

168. According to the Armenian sources, in 2014, some 1,000 tons of vegetables and melons were produced in "Kashatagh region".[349] For comparison, in 2013, total output of vegetable production in all the occupied territories was said to be 8725 tons.[350]

169. According to the Armenian statistics for 2013, of total sown area of 63,319 hectares, around 93 per cent (58,687 ha) was sown with grain.[351] More than one third of that cultivated area is in the occupied Lachyn, Jabrayil and Zangilan districts. If in 2009 grain sowing was carried out on 10,673 hectares in the "Kashatagh region",[352] by 2013that figure doubled. According to the so-called "deputy head of Kashatagh administration", Artush Mkhitaryan, in 2013, there was 20,000 ha of wheat sown area in "Kashatagh", which constitutes around 34 per cent of total sown area in the occupied territories.[353] He also said that the wheat sown area in "Kashatagh" is very important in respect of food security of Armenia and "Artsakh".[354]

170. The development of agriculture in the occupied territories is used not only for economic, but also for demographic reasons.[355] The settlers in the occupied territories admit that if one lives there, they have two options – either to serve in the army or work in agriculture.[356] In fact, illegal settlements in the occupied territories rely primarily on agriculture development and are dependent on access to fertile lands and water resources. That is why Armenia and its diaspora organizations encourage the transfer of Armenian settlers, and more recently of Syrian Armenians, into the fertile lands in the Araz River Valley, in particular into the occupied Zangilan and Jabrayil districts, expecting that land cultivation, including crops and

[347] See "Artskah Prime Minister: Kashatagh an Inseparable Part of the Country", *Hetq.am*, 7 November 2012, <http://hetq.am/ eng/news/20310/artskah-prime-minister-kashatagh-an-inseparable-part-of-the-country.html>.

[348] *Ibid*.

[349] See "So Different And So Alike – From Mataghis To Araxavan", *Artsakhtert.com*, 25 February 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1376:-so-different-and-so-alike-from-mataghis-to-araxavan&catid=6:economy&Itemid=18>.

[350] See "Statistical Yearbook of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.

[351] *Ibid*.

[352] See "NKR: To Increase the Private Sector of Economy", *Armeniandiaspora.com*, 8 April 2010, <http://www.armeniandiaspora.com/>.

[353] See "Kashatagh is important in respect of food security of Armenia and Artsakh, says official", *Panorama.am*, 20 April 2013, <http://www.panorama.am/en/analytics/2013/04/20/qashatax/>.

[354] *Ibid*.

[355] See "New Approaches in the State Policy of Agricultural Support", *Artsakhtert.com*, 23 January 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=907:new-approaches-in-the-state-policy-of-agricultural-support&catid=6:economy&Itemid=18>.

[356] See "Artsakh Farmer: 'Here you can either serve in the army or work in agriculture'", *Hetq.am*, 5 December 2014, <http://hetqam/eng/news/57665/artsakh-farmer-here-you-can-either-serve-in-the-army-or-work-in-agriculture.html>.

other vegetable growing and agricultural exports, will generate sufficient revenue for the settlers to stay and expand their communities.[357]

171. In 2013 alone, the "Support Fund of Village and Agriculture of the NKR" prepared for cultivation some 1284 hectares of arable land in the "south of Hadrut region" (i.e. the occupied Jabrayil district). It was planned to make arable more than 2,000 hectares of lands and build 1,000 houses for settlers in Khanlyg village in the occupied Gubadly district.[358] Syrian Armenian settlers experienced in cultivation of olives, mandarins, oranges, kiwis and pistachios in Syria, also practice those fruits in the arid lands along the Araz River.[359] In 2013, Armenian General Benevolent Union designed a special programme and invested some $120,000 to provide Syrian Armenians settled in the occupied Lachyn and Zangilan districts with agricultural equipment.[360]

172. The state organs of Armenia are directly involved in the planning and execution of the joint programmes designed to increase the size of agricultural settlements in the occupied territories. In September 2013, Prime Minister of Armenia, Tigran Sargsyan, Minister of Agriculture of Armenia, Sergo Karapetyan, and the so-called "minister of agriculture" of the subordinate separatist regime Andranik Khachatryan visited the occupied territories to meet with the "Support Fund of Village and Agriculture of the NKR" and discuss developments in the agricultural sector.[361]

173. In November 2013, the President of Armenia S.Sargsyan visited the "southern part of the Hadrut region" (occupied Jabrayil district) and inspected the usage of farmlands in that section of the Araz Valley and the implementation of agricultural programmes there.[362] During his consultations with the agents of the subordinate separatist regime, S.Sargsyan reportedly stressed the importance of the proper

[357] See "Lottery to Assist Artsakh Resettlement", *Asbarez.com*, 29 July 2013, <http://asbarez.com/112177/lottery-to-assist-artsakhresettlement/>; "Agricultural Project Supports Syrian Armenians in Nagorno-Karabakh Republic", Armenian General Benevolent Union, 16 January 2014, <http://agbu.org/news-item/agricultural-project-supports-syrian-armenians-in-nagorno-karabakhrepublic/>; "AGBU Agricultural Program of $120,000 for the Benefit of Syrian-Armenians in NKR", The Armenian Observer, 4 December 2013, <http://www.thearmenianobserver.com/?p=2109>.

[358] "An official visit to Araqs valley", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/292-2014-02-19-07-03-33>.

[359] See "Syrian Olives in Artsakh", *Armenianweekly.com*, 2 September 2014, <http://armenianweekly.com/2014/09/02/syrian-olivesartsakh/>;"Syrian-Armenians' Exotic Business in Artsakh", *Repatarmenia.org*, 2012,<http://repatarmenia.org/eng/syrian-armeniansexotic-business-in-artsakh/>.

[360] See "AGBU Agricultural Program of $120,000 for the Benefit of Syrian-Armenians in NKR", *The Armenian Observer*, 4 December 2013, <http://www.thearmenianobserver.com/?p=2109>.

[361] See "The prime minister of RA Tigran Sargsyan visited the support fund of village and agriculture", <http://www.agrofund.am/index.php/en/2013-05-08-09-35-09/239-2013-09-03-12-35-07>.

[362] See "On 14 November Artsakh Republic President Bako Sahakyan together with President Serzh Sargsyan of the Republic of Armenia partook in a working consultation in the southern part of the Hadrout region dedicated to socioeconomic development of the region", *Artsakhtert.com*, 15 November 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1273:-on-14-november-artsakh-republic-president-bako-sahakyan-together-with-president-serzh-sargsyan-of-the-republic-of-armeniapartook-in-a-working-consultation-in-the-southern-part-of-the-hadrout-region-dedicated-to-socioeconomic-development-of-theregion&catid=11:official&Itemid=23>.

implementation of the planned activities, noting that it would substantially contribute to the development of agriculture there.[363]

174. In June 2014, Prime Minister Hovik Abrahamyan of Armenia noted that "[o]ur ministries of agriculture have developed numerous joint programs, and the Government of Armenia stands ready to assist the Government of the Nagorno-Karabakh Republic to make full use of farmland resources."[364] To strengthen ties in agriculture, Abrahamyan gave appropriate instructions to the Minister of Agriculture Sergo Karapetyan. Stressing that any agreement and programme should be consistent with the existing capacities, Abrahamyan assured that they would be implemented as shortly as possible. He continued that the new Government of Armenia would do everything to strengthen "Artsakh" in all spheres. "This should be a priority for us", Abrahamyan concluded.[365]

175. In July 2015, Aram Mkhoyan, a citizen of Armenia, was appointed as so-called "minister of agriculture" of the subordinate separatist regime.[366] He was previously the "adviser" to the so-called "prime minister" of the separatist regime on agrarian issues.[367]

176. In July 2013, a delegation headed by H.Abrahamyan, who was then the speaker of the National Assembly of Armenia, visited the occupied Zangilan district to get acquainted with the implementation of agricultural projects. At the meeting, Bako Sahakyan noted a particular significance of the region since it possessed serious potential for the development of different fields of industry and agriculture, adding that cooperation here would be "mutually beneficial".[368] Minister of agriculture of Armenia, S.Karapetyan, is a frequent visitor in the occupied territories. In July 2012, he visited the breeding station of Khanabad village in the Khojaly district to inspect selection works as well as a new building of the veterinary laboratory. He discussed with the agents of the subordinate separatist regime issues related to agricultural development, including harvest works, using new technologies in agriculture as well as issues concerning further cooperation.[369] In November 2014, the delegation headed by Karapetyan visited the occupied territories again. The purpose of the visit was to discuss joint activities in the spheres of cattle breeding and agricultural machines' maintenance.[370]

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[363] See "Presidents of Armenia and Artsakh participate in consultation on Hadrut region", *Armenpress.am*, 14 November 2013, <http://armenpress.am/eng/news/740127/>.

[364] See "Prime Minister: Armenia's New Government Will Do Everything To Strengthen Artsakh", Official website of the Government of Armenia, 25 June 2014, <http://www.gov.am/en/news/item/7399/>.

[365] *Ibid*.

[366] See "Nagorno-Karabakh PM introduces new agriculture minister", *Tert.am*, 6 July 2015, <http://www.tert.am/en/news/ 2015/07/06/aram-mkhoyan/1726825>.

[367] See <http://gov.nkr.am/en/staff-structure/other/95/>.

[368] See "Artsakh Republic President Bako Sahakyan met in the town of Kovsakan in the Kashatagh region official delegation of the Republic of Armenia", *Artsakhtert.com*, 9 July 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view= article&id=1093:artsakh-republic-president-bako-sahakyan-met-in-the-town-of-kovsakan-in-the-kashatagh-region-official-delegation-of-therepublic-of-armenia&catid=11:official&Itemid=23>.

[369] See "Armenian agricultural Minister is in Artsakh", *Artsakhtoday.com*, 6 July 2012, <http://www.artsakhtoday.com/?p= 20563&lang=en>.

[370] See "Prime Minister received the RA Minister of Agriculture", *Gov.nkr.am*, 7 November 2014, <http://gov.nkr.am/en/ official-news/item/2014/11/07/sergo/>.

177. Seeds of different crops are supplied from Armenia and foreign countries and are generally granted to the farmers at 50-per cent subsidized rates or for free.[371] The Centre of Agro-business and Rural Development of Armenia facilitates the implementation of agricultural development programmes in the occupied territories, including through supporting the activities of the so-called "Fund For Rural and Agricultural Support of the NKR", which facilitates supply of vegetable seeds and agricultural equipment from Armenia and abroad. In October 2013, Director of the Centre of Agro-business and Rural Development of Armenia, G.Sardaryan, and Chief of Staff of the Centre, T.Aroyan, accompanied by the so-called "minister of agriculture" of the separatist regime Andranik Khachatryan, and "director" of the "Fund for Rural and Agricultural Support of the NKR", Ashot Bakhshiyan, visited agricultural enterprises, modern dairy farms, small farms on cattle breeding and greenhouses in The Netherlands. During the visit arrangements on the supply of seeds to the occupied territories were allegedly reached with the Dutch Agrico and Enza Zaden seeds companies.[372]

178. The Armenian Technology Group Inc. (ATG), operating in Armenia, made its "Seed Multiplication Project" available to the settlement farming in the occupied territories. Some 24 settlements in the occupied territories benefited from ATG's seeds program.[373]

179. Given the highly subsidized nature of agriculture in the occupied territories,[374] intensive agricultural production in those territories is heavily dependent on financial assistance and the development of water, power and transport infrastructure. To service the settlements and farming, in particular those in the Araz Valley, with the support of Armenia, about 30 km of power lines were built, pumping stations were installed, artesian water wells and roads were constructed.[375]

180. Of particular concern is the exploitation of water resources. Armenia's occupation of the territories of Azerbaijan allowed it to capture and divert waters of the Araz River and other rivers and their headwaters, and construct artesian wells, pump-stations and irrigation canals for the settlements' use in the Araz Valley and elsewhere or to use their hydropower.[376] According to the Armenian statistics, as of 2013, of total 592.9 thousands hectares of agricultural lands, only 23.3 per cent

[371] See "The Policy In The Agrarian Sphere Justifies Itself And Will Be Efficiently Continued In The Coming Years", *Artsakhtert.com*, 17 July 2012, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=762:-the-policy-in-the-agrariansphere-justifies-itself-and-will-be-eeficiently-continued-in-the-coming-years&catid=6:economy&Itemid= 18>.

[372] See "The Value of Land is in its Rational Use", *Artsakhtert.com*, 19 November 2013, <http://artsakhtert.com/eng/index.php? option=com_content&view=article&id=1283:-the-value-of-land-is-in-its-rational-use&catid=6:economy&Itemid=18>.

[373] See "Putting Bread on the Armenian Table An Overview of the Seed Multiplication Project", *ATGUSA.org*, <http://www. atgusa.org/seed_project_review.html>.

[374] See "New Approaches in the State Policy of Agricultural Support", *Artsakhtert.com*, 23 January 2013, <http://artsakhtert. com/eng/index.php?option=com_content&view=article&id=907:new-approaches-in-the-state-policy-of-agricultural-support&cati d=6:economy&Itemid=18>.

[375] See "So Different And So Alike – From Mataghis To Araxavan", *Artsakhtert.com*, 25 February 2014, <http://artsakhtert. com/eng/index.php?option=com_content&view=article&id=1376:-so-different-and-so-alike-from-mataghis-to-araxavan&catid=6:economy&Itemid=18>.

[376] See "Discussion of agricultural work", *Artsakhpress.am*, 11 January 2014, <http://artsakhpress.am/eng/news/19/ obsuzhdeniekhodaselskokhozyaiystvenniykh-rabot.html>.

(138,41 thousands ha) were arable.[377] That makes access to and control of water resources, in particular in the occupied Kalbajar, Lachyn, Zangilan and Jabrayil districts, an important factor in the colonial enterprise of Armenia.[378] According to the so-called "spokesperson" of the separatist regime David Babayan, "[…] Nagorny Karabakh is in a position to almost entirely provide for its own environmental security and its water resources, and in this context the Karvachar region [Kalbajar] plays a key role… Therefore, if we lose this region the water security of Karabakh would be under serious threat."[379] In his recent interview, Babayan asserted that "imagine that the enemy again establishes control over Karvachar where our rivers head – rivers such as Arpa and Vorotan that flow into Lake Sevan making up 80 per cent of Armenia's water resources."[380] Faced with water deficiency of the recent years and associated decline in hydro-power generation capacities, [381] Armenia is particularly interested in exploiting water resources for power generation in the occupied territories, in particular in the Kalbajar and Lachyn districts of Azerbaijan, bordering Armenia, to meet its energy needs as well.

181. In April 2013, Bako Sahakyan emphasized the strategic importance of the "Shahumyan region" [Kalbajar], which, according to him, is among the crucial components ensuring military, social and water security of the "Artsakh people". He considered the development of that "region" a national goal of strategic importance.[382]

182. To maximize the use of water resources in the area, most of the Armenian settlements in Zangilan and Gubadly districts are generally established within 1-2 km of the Hakari River, which extends southward from the occupied Lachyn district toward the Araz River Valley.[383]

183. Armenia's ArmWaterProject Company Ltd. directly participates in appropriation of the water resources from the occupied territories and is involved in

[377] See "Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.

[378] See "Whose Hands on the Spigot? Water Security and the Nagorno Karabakh Conflict", *Streitcouncil.org*, November 2014, <streitcouncil.org/uploads/Whose Hands on the Spigot-Water Security and the Nagorno Karabakh Conflict.pdf>; "Karabakh Frontline Diary", *Hetq.am*, 24 April 2010, <http://hetq.am/eng/news/3880/karabakh-frontline-diary.html>.

[379] See "Water Complicates Karabakh Peace Talks", *IWPR.net*, 17 September 2010, <https://iwpr.net/global-voices/water-complicateskarabakh-peace-talks>.

[380] See "Return of Territories to Azerbaijan 'Impossible' Says Artsakh Spokesperson", *Asbarez.com*, 15 July 2015, <http://asbarez.com/137745/return-of-territories-to-azerbaijan-impossible-says-artsakh-spokesperson/>.

[381] See "Hovik Abrahamyan explains why it was necessary to increase electricity tariff", *Lurer.am*, 25 June 2015, <http://lurer.com/?p=190743&l=en>.

[382] See "On 5 April Artsakh Republic President Bako Sahakyan visited the Shahoumyan region and partook at a festive event dedicated to the 20th anniversary of Karvachar's liberation", *Artsakhtert.com*, 7 April 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1000:-on-5-april-artsakh-republic-president-bako-sahakyan-visited-the-shahoumyan region-and-partook-at-a-festive-event-dedicated-to-the-20th-anniversary-of-karvachars-liberation&catid=11:official&Itemid= 23>.

[383] See "Water Project, Urekan, Karotan & Vardabats Villages, NKR", *ONEArmenia.org,* September 2014, <http://www.onearmenia.org/wp-content/uploads/2014/09/Water-project.-budget-sheet.pdf>.

rehabilitation and construction of the irrigation system in those territories.[384] ArmWaterProject and Cornerstone companies completely re-built 30-km-long canal to bring water to the arable lands in the occupied Jabrayil district.[385] The canal has capacity to drive up to 8 cubic meters of water per second and is capable of providing gravity-flow irrigation for around 5 thousand hectares, which can reach 8-9 thousand hectares with installation of the pumping stations.[386] The canal is fed from the Araz River, which, unlike most of the rivers in the occupied territories, preserves a sufficient flow rate during the summer months.[387] In October 2012, the so-called "prime minister" of the separatist regime Ara Harutyunyan travelled to the occupied Zangilan district to discuss how to resolve the main problem of the region, among which is the lack of water for irrigation.[388] In Talysh village of the occupied part of the Tartar district, a high-capacity pump-station is being constructed to irrigate some 1000 hectare of arable land.[389]

184. In September 2014, director of the ArmWaterProject Company Ltd., Yuri Javadyan, travelled to the occupied territories to meet with A.Harutyunyan and to present a project of the Sarsang water reservoir's water usage for irrigation of some 18,000 hectares of agricultural lands.[390] To note, before the occupation, the water from that reservoir with the capacity of 560 thousand m3 was used to irrigate some 80, 1 thousands hectares in the downstream Tartar, Aghdam, Barda and Goranboy districts of Azerbaijan.

185. Hayastan All-Armenian Fund financed full reconstruction of the water supply system of the town of Lachyn. Within that project, new pumps were installed in each of the six wells, the pumping station was equipped with new and modern equipment and 1115m long water main pipeline was reconstructed. The project also included the rehabilitation of the daily regulation reservoirs and the construction of a nearly 27km long new internal distribution network. The project was completed in 2011. Within the Hayastan All-Armenian Fund's "Shushi" development initiative, the water supply system in the occupied town of Shusha was constructed. That included the rehabilitation of the water purification station, the daily regulation reservoirs, as well as the construction of a new reservoir and distribution network that covered all the districts of the town of Shusha. The project was completed in 2012.[391]

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[384] See "Project of Sarsang Water Reservoir's water usage for irrigation presented to Karabakh premier", *Arka.am*, 1 September 2014, <http://arka.am/en/news/economy/project_of_ sarsang_water_reservoir_s_water_usage_for_irrigation_presented_to_karabakh_premier>.

[385] See "Ambitious Projects that Have Real Grounds", *Artsakhtert.com*, 6 April 2012, <http://www.artsakhtert.com/ eng/index. php?option=com_content&view=article&id=621:-ambitious-projects-that-have-real-grounds&catid=6:economy&Itemid=18>.

[386] *Ibid*.

[387] *Ibid*.

[388] See "Prime Minister of Nagorno Karabakh Republic Ara Harutyunyan visited Kovsakan", *Artsakhtoday.com*, 10 October 2012, <http://www.artsakhtoday.com/?p=26411&lang=en>.

[389] See "The Prime Minister discussed prospects of Talish's development", *Artsakhpress.am,* 30 May 2014, <http://artsakhpress.am/eng/news/1799/the-prime-minister-discussed-prospects-of-talish%E2%80%99s-development.html>.

[390] *Ibid*.

[391] See <http://www.himnadram.org/index.php?id=24350&lang=1>.

186. In July 2015, CEO of the "M.Energo-L CJSC" Alexander Mamounts informed that, at the initiative and investment of a Swiss businessman Vartan Sirmakes, a new water reservoir is being built at the intersection of the Hakari and Zabukhchay rivers in the occupied Lachyn district. The reservoir's project was designed by the ArmWaterProject Company Ltd., which designed Armenia's all major irrigation systems.[392] It is expected to be the second largest reservoir in the occupied territories, after the Sarsang Reservoir, and will store some 12 million m3 of water. The project envisages the construction of one of the largest among the small hydro power plants built in the occupied territories with power generation capacity of 30 million kW/h.[393] Construction works are expected to be completed in two years. Exploitation of the reservoir is aimed at expanding the irrigation system in those territories. The reservoir will also be used for building fish breeding enterprise.[394] Water resources in the occupied territories are used not only for irrigation, but also for power generation. In 2010, Prime Minister of Armenia, Tigran Sargsyan, inaugurated the "Trghe-1" – the first in a series of hydro-power plants (HPP) of the Chardagly cascade.[395] Besides the "Sarsang HPP" with the capacity of 50 MW, run by "ArtsakhHEK OJSC", a series of smaller hydropower plants were built in the occupied territories. From 2010-2012, "Trghe-1" (3 MW), "Trghe-2" (5.9 MW), "Matagis-1" (4.8 MW) and "Matagis-2" (3 MW) HPPs were put in operation[396] and the total capacity of the "ArtsakhHEK OJSC", managing those facilities, increased by 33.3 per cent and amounted to 66,7 MW, and the annual production capacity increased by 63 per cent and amounted to 170 million kW-h.[397] "Syunik-1", "Syunik-2", "Syunik-3" and "Syunik-4" HPPs were constructed specifically to ensure power supply to the occupied territories of Lachyn, Gubadly and Zangilan districts.[398] The project was implemented by Armenia's ArmWater Project Institute, with the assistance of investors from Armenia and diaspora in the Middle East and Europe. In 2014, "Trghe-3" plant was put into operation with the capacity of 5 MW. In total, along with the "Sarsang HPP", which produces annually an average of 130 million kW/h of electricity, the new hydroelectric facilities in 2014 generated 166.4 million kW/h of electricity (to compare, in 2013 –142.6 million kW/h).[399] According to the Armenian sources, out of 13 hydro-power plants currently in operation, 6 are

[392] See <http://www.hjni.am/main.php?lng=eng&page=works>.

[393] See "Swiss-Armenian businessman will fund the construction of a large dam in Artsakh", *1tv.am,* 24 July 2015, <http://www.1tv.am/en/news/2015/07/24/Swiss-Armenian-businessman-will-fund-the-construction-of-a-large-dam-in-Artsakh/ 20594>.

[394] See "A new water reservoir being built in Kashatagh", *Artsakhpress.am*, 28 July 2015, <http://artsakhpress.am/eng/news/ 23163/anew-water-reservoir-being-built-in-kashatagh.html>; "Nagorno-Karabakh president visits Kashatagh region", *Tert.am*, 23 July 2015, <http://www.tert.am/en/news/2015/07/23/bako-sahakyan/1742653>.

[395] See "Armenian, Karabakh Governments Inaugurate Hydro-electric Station", *Asbarez.com*, 12 April 2010, <http://asbarez.com/79155/armenian-karabakh-governments-inaugurate-hydro-electric-station/>.

[396] See <http://www.artsakhhpp.com/en/>.

[397] See "Artsakh HPP OJSC to increase its production volume. This year it is expected to provide 65% of electricity consumption", *Artsakhpress.am*, 17 June 2014, <http://artsakhpress.am/eng/news/ 2497/.html>.

[398] See "A hydroelectric complex put into operation in Artsakh by foreign investments", *Yerkirmedia.am*, 19 May 2012, <http://www.yerkirmedia.am/mobile/?lan=en&page=news&id= 7227>.

[399] See <http://www.artsakhhpp.com/en/>.

functioning in the occupied Lachyn and Gubadly districts, 6 others in the occupied parts of the Tartar and in the occupied Khojavand districts and 1 in the occupied Kalbajar district.[400] In April 2008, China's Guangdong Dabu Water & Electricity Equipment Factory and Guangdzhou Karlson Trading Limited provided hydroelectric generators for "ArtsakhHEK OJSC" worth of $630,000.[401]

187. In July 2012, so-called "minister of agriculture" of the separatist regime, Andranik Khachatryan, confirmed that some 85 combines were delivered from Armenia specifically for the harvest in the "Kashatagh region". AGBU invested around $120,000 for its agriculture program designed to support the Syrian Armenian settlements in the occupied Zangilan district. The funding for the agricultural programmes were channelled in particular through the "Fund for Rural and Agricultural Support of the NKR", operating since 2008, and the "Artsakh Investment Fund". In 2010-2013, "ARI" implemented investment programmes aimed at the development of agriculture in the occupied Kalbajar, Lachyn, Gubadly and Zangilan districts. For three years, some $2 million have been allocated in the agricultural sphere. Wheat and barley were sowed on about 550 hectares of land, and the livestock increased by 1800.[402] The Cafesjian Family Foundation has been financing projects in the occupied territories, including the construction of the "North-South" highway.[403]

188. Tufenkian Foundation has also specifically focused on the resettlement and development of those districts. On 3 March 2015, it announced the completion of the project aimed at supplying water to a cluster of villages – Muganly, Mahruzlu and Khojik – in the occupied Gubadly district, where some 295 settlers reside.[404] The project included the construction and/or reconstruction of 18 water wells, fixing the water pumps near them and the construction of a pipes network to bring water from the basin to the nearby residences. The above-mentioned settlements were chosen specifically because their location in a "prime agricultural belt" that is hoped to become a "hub of resettlement activity".[405]

189. The "Fund for Rural and Agricultural Support" built a depot near the occupied town of Shusha for storage and distribution of farming equipment.[406] The "Hadrut Agroeconomy CJSC" opened its "Araks branch" to service the agricultural production in the occupied Gubadly, Zangilan and Jabrayil districts. Settlers willing

[400] See "Nagorno-Karabakh Republic could accomplish full energy self-sufficiency", *News.am*, 6 August 2015, <http://news.am/rus/news/280180.html> (in Russian language).

[401] See Initial Public Offering Prospectus, ArtsakhHEK OJSC, 18 April 2009, <http://www.armswissbank.am/upload/Azdagir_ AHEK_eng.pdf>.

[402] See "The Future of Historical Berdzor Is More Than Promising", *Artsakhtert.com*, 22 July 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1111:-the-future-of-historical-berdzor-is-more-than-promising&catid=6:economy&Itemid=18>.

[403] See "US based grant maker dedicated to Armenian-oriented philanthropy", <http://www.cafesjianfoundation.com/home.html>.

[404] See "Water Project, Urekan, Karotan & Vardabats Villages, NKR", *ONEArmenia.org*, September 2014, <http://www.onearmenia.org/wp-content/uploads/2014/09/Water-project.-budget-sheet.pdf>.

[405] *Ibid*.

[406] See "President of Artsakh gets acquainted with agriculture assistance fund's depot in Shushi", *Artsakhpress.am*, 24 March 2014, <http://artsakhpress.am/eng/news/681/president-of-artsakh-gets-acquainted-with-agriculture-assistance-fund%E2%80%99 sdepot-in-shushi.html>.

to cultivate crops benefit from access to subsidies, free or cheap land, water and loans with low or no interest rates. The "The Fund for Rural and Agricultural Support" rented 1,200 hectares of land in the Araz Valley for further sub-renting. As of February 2014, about 400 hectares were already distributed among the settlers.[407] In Khanlyg alone, some 10 thousand hectares of farmland were prepared for allocation to settlers.

190. Most of the crops, wheat, barley and corn harvested in the occupied territories are transported to Armenia for domestic consumption and possibly for re-export.[408] According to Arthur Aghabekyan, so-called "deputy prime minister" of the separatist regime, in 2012 alone, some 20,000 tons of grain were transported to Armenia.[409] He also informed that the Armenians from Khankandi "obtained" land in the occupied Aghdam district and were cultivating it. USAID-funded demining activities by Halo Trust[410] are carried out in the occupied territories, including those depopulated of their Azerbaijani inhabitants, in particular around Garikaya and Tezekend villages in the occupied Lachyn district,[411] to make those territories available for agricultural use.[412] According to the USAID/Armenia mission director Karen Hillard, 251 fields have been cleared of mines since 2000, making 27,000 hectares of land available for farming.[413] Many of those lands are provided for the use of Armenian settlers. Those demining activities are carried out amidst the reports that the armed forces of Armenia continue laying mines, specifically along the perimeter of the areas abandoned by fleeing Azerbaijani population, with the obvious purpose to prevent them from returning to their homes. The practice of continuing mine planting in the occupied territories by the armed forces of Armenia has been condemned at the international level.[414]

[407] See "So Different And So Alike – From Mataghis To Araxavan", *Artsakhtert.com*, 25 February 2014, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1376:-so-different-and-so-alike-from-mataghis-to-araxavan&catid=6:economy&Itemid=18>.

[408] See "Lottery to Assist Artsakh Resettlement", *Asbarez.com*, 29 July 2013, <http://asbarez.com/112177/lottery-to-assist-artsakhresettlement/>.

[409] *Ibid*.

[410] See "De-mining Needs Assessment in Nagorno-Karabakh (NK)", Final Report, USAID, 25 September 2013; "Completed and Current USAID Programs in Nagorno-Karabakh, 1998 to date: Nov. 15, 2010", <http://www.anca.org/assets/pdf/misc/ Alexander_Karabakh_aid.pdf>.

[411] See "HALO Trust Completes Karegah Minefield Clearance", *Massispost.com*, 23 February 2015, <http://massispost.com/2015/02/halo-trust-completes-karegah-minefield-clearance/>.

[412] See "Landmine Free "Artsakh" Clears "Karegah" Minefield: Two Fundraisers Planned for U.S.", *Hetq.am*, 20 February 2015, <http://hetq.am/eng/news/58639/landmine-free-artsakh-clears-karegah-minefield-two-fundraisers-planned-for-us.html>.

[413] See "USAID: Karabakh will be completely cleared of mines by 2016", *News.am*, 30 October 2014, <http://news.am/eng/ news/236739.html>.

[414] See "Spindelegger concerned by use of anti-personnel mines in Nagorno-Karabach", Press release by the Austrian Foreign Ministry, 25 September 2013, <http://www.bmeia.gv.at/en/the-ministry/press/announcements/2013/spindelegger-besorgt-ueber-einsatzvon-antipersonenminen-in-berg-karabach/>; "Sharp drop in landmine casualties; but international funding for remaining mine clearance declines", Press Release of Landmine Monitor 2014, 3 December 2014, <http://www.icbl.org/en-gb/news-and-events/news/2014/landmine-monitor-2014-launch.aspx>.

13. Systematic pillaging, exploitation of and illicit trade in assets, natural resources and other forms of wealth in the occupied territories

191. The occupied territories of Azerbaijan are rich in natural resources. There are around 155 deposits of precious stones, minerals and base metals, including deposits of non-ferrous metal ores, gold, mercury, copper, lead and zinc, pearlite and other natural resources.[415] Among them are gold-copper-pyrite deposits in Gyzylbulag, copper-gold, molybdenum deposits in Demirli, Janyatag-Gulyatag (occupied parts of the Tartar district); gold deposits in Soyudlu, Agduzdag, Tutkhum (Kalbajar); gold deposits in Vejnali (Zangilan); lead deposits in Mehmana, Shorbulag (Kalbajar); and mercury deposits in Sarybulag, Agyatag, Levchay, Shorbulag, Qamishli, Aggaya (Kalbajar, Lachyn), Chilgazchay, Narzanly (Lachyn).

192. The occupied territories are also rich in different types of building materials, including face stone, block stone, different types of construction stones, loam, sang-gravel chromite, lime, marble and agate. There are lime and clays deposits in Chobandag, Shahbulag, Boyahmedi (Aghdam); marble deposits in Harovdad and Shorbulag; tuff deposits in Kilseli (Kalbajar); pearlite deposits in Kechaldag (Kalbajar) etc.[416] Furthermore, there are more than 120 mineral water deposits. Among them are Yukhary (Upper) and Ashahy (Lower) Istisu, Bagyrsag and Keshdak in the Kalbajar district; Iligsu and Minkend in the Lachyn district; Turshsu and Sirlan in the Shusha district.

193. Pillage of the occupied territories, including destruction, dismantling of infrastructure, such as notorious stripping of scrap metals, pipes, bricks and other construction materials from the ruins of the Azerbaijani households and public buildings, abandoned by fleeing Azerbaijani population, has been widely reported in the past.[417] If such looting was previously conducted by the individual Armenian settlers and soldiers, this practice is currently replaced with more organized system of pillage, under the direction and control of Armenia, with the scope and the geographic area of that embezzlement dramatically expanded to include also depredatory exploitation and pillage of natural resources and other forms of wealth across the occupied territories.[418]

194. Back in February 1995, the National Academy of Sciences of Armenia opened a geology laboratory in the occupied territories, which worked closely with the Institute of Geological Sciences of Armenia. The laboratory was tasked to investigate and map the natural resources in those territories and put forward

[415] See the fact sheet of the Ministry of Ecology and Natural Resources of the Republic of Azerbaijan, available at <http://www.eco.gov.az/ekoloji-terror.php>; See also UN Doc. A/58/594-S/2003/1090, 13 November 2003; "Armenian Azerbaijan, Nagorny Karabakh Conflict", <http://files.preslib.az/projects/azerbaijan/eng/gl7.pdf>.

[416] See the report "Minerals of Azerbaijan", Ministry of Ecology and Natural Resources of the Republic of Azerbaijan, available at <http://www.eco.gov.az/en/faydaliqazintilar.php>.

[417] See e.g. "Tug-of-war for Nagorno-Karabakh", *BBC News*, 3 June 2000, <http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/775655.stm>; "Norashenik Village Project"<http://www.halotrust.org/case-studies/norashenik-village-project>.

[418] See "The regions of the Nagorno-Karabakh Republic in Figures, 2007-2013" (in Russian language), <http://stat-nkr.am/files/publications/2014/shrjanner_tverov_2014/1_georaf.pdf>; "Russia Seizes Subsoil of Armenia and Karabakh from Oligarchs", *Iragir.am*, 11 October 2013, <http://www.lragir.am/index/eng/0/country/view/31079>.

proposals for their exploitation.[419] Advisor to Bako Sahakyan on geology issues Grigorii Gabrielyants confirmed that in 1990's Armenia's Vallex Group CJSC was even conducting exploration of oil in the Nagorno-Karabakh region of Azerbaijan. The works were halted because the deposits were not commercially feasible.[420] Mining of the precious minerals and metals, as well as of base metals is one of the main enterprises in the occupied territories.[421]

195. According to the Armenian sources, there are 15 metallic and 51 non-metallic mines, particularly those of construction materials (sand, limestone etc.), in the occupied territories, out of which 48 have "licenses" for development, 13 are being explored and 2 are developed.[422]

196. According to the Armenian sources, exploration/exploitation works are carried out in coal deposits in Chardagly (Tartar district), Narynjlar and Kolatagh villages (Kalbajar district); copper and other non-ferrous metals, including gold deposits located near the villages of Heyvaly, Demirli, Vangli (Kalbajar), Qasapet (Tartar), Gazanchi (Aghdam), Turshsu (Susha), Zardanashen; pyrite deposits near Gyzylgaya, Vangli, Gulyatag, Qasapet. Iron deposits are exploited in Sor and Chardagly. There is a large deposit of rose marble in Harov village near Khankandi, which is also being exploited. Tuff deposits are developed near Vangli village.[423] There is lime pit near the occupied town of Zangilan.[424]

197. Base Metals CJSC, which is a wholly owned subsidiary of the Armenia's Vallex Group CJSC, registered in Liechtenstein,[425] since 2002 has been exploiting Gyzylbulag underground copper-gold mine near Heyvaly village in the occupied Kalbajar district of Azerbaijan (referred to by Armenia as "Drmbon" mine).[426] Predatory exploitation of that mine led to its almost complete depletion. In 2013,

[419] See "Karabagh's Natural Resources", 9 November 2001, <http://hyeforum.com/ index.php?showtopic=5521>.

[420] See "Chief geologist of Karabakh: We do not need oil rush", *News.am*, 10 August 2013, <http://news.am/rus/news/166367.html> (in Russian language).

[421] See "On 7 October Artsakh Republic President Bako Sahakyan convoked a working consultation on the activities carried out by the 'Base Metals' company in our republic's mining field", *Artsakhtert.com*, 8 October 2013, <http://artsakhtert.com/eng/index.php? option=com_content&view=article&id=1220:-on-7-october-artsakh-republic-president-bako-sahakyan-convoked-a-workingconsultation-on-the-activities-carried-out-by-the-base-metals-company-in-our-republics-mining-field&catid=11:official &Itemid=23>.

[422] See "Mining Industry: Serious Perspectives or Hard Heritage?", *Ecolur.org,* 30 September 2013, <http://www.ecolur.org/en/ news/mining/mining-industry-serious-perspectives-or-hard-heritage/5345/>.

[423] See "The regions of Nagorno-Karabakh Republic in Figures: 2007–2013" (in Russian language), <http://stat-nkr.am/files/publications/2014/shrjanner_tverov_2014/1_georaf.pdf>.

[424] See "Kovsakan Mayor Hopeful Water Issue Will be Resolved Soon", *Hetq.am*, 29 January 2014, <http://hetq.am/eng/news/ 32235/kovsakan-mayor-hopeful-water-issue-will-be-resolved-soon.html>

[425] See "Armenian Mining Giant To Expand Karabakh Operations", *Azatutyun.am*, 20 March 2012, <http://www.azatutyun.am/ content/article/24522183.html>.

[426] See "Base Metals Launches Second Mine in Artsakh; An Open-Pit Operation", *Hetq.am*, 3 July 2013, <http://hetq.am/eng/ news/27846/base-metals-launches-second-mine-in-artsakh-an-open-pit-operation.html>.

Valeri Mejlumyan, Chairman of the Vallex Group CJSC,[427] predicted that they "have three years left to exhaust Drmbon's remaining ore reserves".[428] The mine has reportedly been processing 350,000 tons of ore annually,[429] producing some 20,000 tons of ore concentrates per annum or 1,200 tons monthly.[430] According to Arthur Mkrtumyan, Director General of Base Metals CJSC and Vice-president of the Vallex Group, as of October 2013, out of 3,2 million tons of total reserves 3 million tons have been extracted.[431] Concentrate is transported to Armenia, where it is further processed by the Armenia-registered Armenian Copper Programme CJSC[432] into gold containing copper and exported to international markets, mainly in Europe.[433] Another Armenian source informs that the ore is refined only once and exported to Germany for further processing.[434] Mkrtumyan confirmed in 2013 that the mine had reserves for another two or two and a half years only.[435]

198. In March 2012, Base Metals CJSC unlawfully acquired "license" for 25 years for exploitation of Demirli open-pit copper and molybdenum mine (referred to by Armenia as "Kashen"), which is located some 15 kilometres east of Gyzylbulag mine and includes the area of Demirli, Gulyatagh and Janyatag villages in the occupied part of the Tartar district.[436] The mine contains around 55-56 million tons of proven ore reserves.[437] As of October 2013, some 1,700-2,000 tons of ore were transported to the plant near Heyvaly village for processing on a daily basis.[438] In order to process it in place,[439] a factory was built nearby to process ore with annual capacity of up to 1,8 million tons, and in the near future it is planned to be expanded

[427] See "Teghout: A Contentious Danish Investment in Armenia", *Civilnet.am*, 26 September 2014, <http://civilnet.am/2014/09/26/pension-denmark-teghout-armenia-investment/#.VcjYKPnd_gY>.
[428] See "Base Metals Launches Second Mine in Artsakh; An Open-Pit Operation", *op. cit*.
[429] See "Mining Industry: Serious Perspectives or Hard Heritage?", *op. cit*.
[430] See "Armenian Mining Giant To Expand Karabakh Operations", *op. cit*.
[431] See "These Mines Are The Most Important Achievements For The Economy Of Artsakh, For Our Company, And For The Region", *Artsakhtert.com*, 31 October 2013, <http://www.artsakhtert.com/eng/index.php?option=com_content&view=article&id=1255:these-mines-are-the-most-important-achievements-for-the-economy-of-artsakh-for-our-company-and-for-the-region& catid=-6:economy&Itemid=18>.
[432] See Base Metals CJSC Financial Statements for the year ended 31 December 2013, <http://bm-old.vallexgroup.am/images/ FS__Base_Metals_2013__eng.>
[433] See "12K Tons of Ore Monthly Extracted from Drmbon Copper-Gold Mine in NK", *Arminfo.am*, 23 April 2010, <http://www.armeniandiaspora.com/>.
[434] See Christian Garbis, "We Are Our Mountains", 7 August 2011, <http://noteshairenik.blogspot.com/2011/08/we-are-our-mountains.html>.
[435] See "Base Metals Launches Second Mine in Artsakh; An Open-Pit Operation", *op. cit*.
[436] See "Artsakh Official: "Base Metals to Operate Kashen Copper Mine for at Least 25 Years", *Hetq.am*, 2 July 2012, <http://hetq.am/eng/news/16173/artsakh-official-base-metals-to-operate-kashen-copper-mine-for-at-least-25-years.html/>.
[437] See "55 Million Tons, And It Is Not The Upper Limit", *Artsakhtert.com*, 2 July 2013, <http://artsakhtert.com/eng/ index.php?option=com_content&view=article&id=1087:-55-million-tons-and-it-is-not-the-upper-limit&catid=6:economy&Itemid=18>; "These Mines Are The Most Important Achievements For The Economy Of Artsakh, For Our Company, And For The Region", *op. cit*.
[438] See "These Mines Are The Most Important Achievements For The Economy Of Artsakh, For Our Company, And For The Region", *op. cit*.
[439] See "Over $70mln invested in Kashen cooper mine in Karabakh so far", *Arka.am*, 10 November 2014, <http://arka.am/en/ news/economy/over_70mln_invested_in_kashen_cooper_mine_in_karabakh_so_far/>.

to process some 3.5 million tons of ore.[440] Mining and Metallurgy Institute CJSC of Armenia with the cooperation of Strathcona Mineral Services Ltd. (Canada) was involved in drawing up the first stage of mine evaluation and exploitation plan in 2012, which envisages extraction of 1.1 million tons of ore by 2016.[441]

199. The Vallex Group CJSC has invested some $130 million in exploitation of the mine that became operational in 2015,[442] i.e. at a time of anticipated depletion of Gyzylbulag mine.[443] The company employs some 1,400 workers, including mining engineers from Armenia, Russia, Republic of South Africa and elsewhere.[444] At least one of the reported source of the investment for this project is VTB Bank (France) SA and VTB Bank (Armenia), which are part of Russia-based VTB Group. According to Base Metals CJSC Financial Statements for 2013, in 2011 a loan agreement for $25 million and in 2013, a loan agreement for $11 million was signed respectively with VTB Bank (France) SA and VTB Bank (Armenia).[445] According to the programme, about 17 million tons of ore will be processed in this mine during the coming 10 years.[446]Armenia supplies energy to the exploitation of the mine through "Sotk-Karvachar-Aterk" high-voltage power grid, which was built specifically for this purpose.[447] In March 2012, Bako Sahakyan held a meeting on issues related to the exploitation of that mine. He underlined the serious expectations from the exploitation of the ore deposit.[448]

200. Aurubis AG (Germany), Zeppelin Baumaschinen GmbH (Germany), through its affiliate Zeppelin Armenia LLC, Strathcona Mineral Services Ltd. (Canada), Atlas Copco (Sweden), Tamrock (Finland), MoAZ (Belarus) and other entities,

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[440] See "Base Metals Launches Second Mine in Artsakh; An Open-Pit Operation", *op. cit.*; "Mining Industry: Serious Perspectives or Hard Heritage?", *op. cit*; "These Mines Are The Most Important Achievements For The Economy Of Artsakh, For Our Company, And For The Region", *op. cit*.

[441] See Base Metals CJSC Financial Statements for the year ended 31 December 2013, <http://bm-old.vallexgroup.am/images/ FS__Base_Metals_2013__eng.>.

[442] See "Kashen enrichment plant opened in Martakert region", *Artsakhpress.am,* 26 December 2015, <http://artsakhpress.am/ eng/news/34694/kashen-enrichment-plant-opened-in-martakert-region-photos.html>. "A New Mining Program Is Starting", *Artsakhtert.com*, 19 March 2012, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=591:-a-new-mining-programis-starting&catid=11:official&Itemid=23>; "New Mining Complex Inaugurated In Karabakh", *Massispost.com*, 5 January 2016, <http://massispost.com/2016/01/new-mining-complex-inaugurated-in-karabakh/>.

[443] See "Armenian Mining Giant To Expand Karabakh Operations", *op. cit*.

[444] "New Mining Complex Inaugurated In Karabakh", *op. cit*.

[445] See "Teghout's Offshore Labyrinth and Valeri Mejlumyan's Business Empire", *Hetq.am*, 29 April 2014, <http://hetq.am/eng/news/54322/teghouts-offshore-labyrinth-and-valeri-mejlumyans-business-empire.html>.

[446] See "A New Mining Program Is Starting", *Artsakhtert.com*, 19 March 2012, <http://artsakhtert.com/eng/index.php? option=com_content&view=article&id=591:-a-new-mining-program-is-starting&catid=11:official&Itemid=23>.

[447] See "Over $70 mln. invested in Kashen cooper mine in Karabakh so far", *op. cit*.

[448] See "On 19 March Artsakh Republic President Bako Sahakyan convoked a working consultation on issues related to the exploitation of the Tsakhkashen deposit", *Artsakhtert.com*, 20 March 2012, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=590:-on-19-march-artsakh-republic-president-bako-sahakyan-convoked-a-working-consultation-onissues-related-to-the-exploitation-of-the-tsakhkashen-deposit&catid=11:official&Itemid=23>.

which are partners of the Vallex Group CJSC, are reportedly providing mining equipment and services for the exploitation of mineral deposits in the occupied territories.[449] Armenia's Armenian Copper Programme CJSC, Mining and Metallurgy Institute CJSC, Flesh Ltd. and Mika Cement CJSC are involved into these activities as well.[450]

201. In October 2014, Gold Star CJSC[451] started the exploitation of the gold mine (referred to by Armenia as "Tundurget") near Vejnali village in the occupied Zangilan district of Azerbaijan.[452] Russia-based Tigom CJSC and Mashzavod Trud OJSC supplied mining equipment for the exploitation of this mine.[453] According to the Armenian sources, a Swiss-Armenian businessman Vartan Sirmakes is funding the project.[454] In May 2013, Bako Sahakyan visited the occupied Zangilan district and inspected on site the implementation of several projects, including exploitation of Vejnali gold mine. He underlined the significance of the mining industry plant for the "Kashatagh region", adding that it would simultaneously solve a number of socioeconomic and demographic issues.[455]

202. In October 2007, GeoProMining Ltd. (formerly known as Stanton Equities Corporation), established by Russia-based Industrial Investors Group (IIG)[456] and registered in the British Virgin Islands,[457] acquired Ararat Gold Processing Plant and established GPM Gold,[458] a subsidiary of GeoProMining,[459] which since then has been extracting lean ore in Soyudlu gold mine (referred to by Armenia as "Zod") in the occupied Kalbajar district.[460] Gold reserves of Soyudlu deposit are estimated at 155 tons (this figure is unlawfully included into Armenia's total gold

[449] See <http://www.bm.am/en/Economic-Activity-Product>.
[450] See <http://www.bm.am/en/About-Us-Partners>.
[451] On 12 March 2012 and 29 June 2012, "Gold Star CJSC" unlawfully acquired "licenses" "IO 103" and "YEU 08" (for 3 and 18 years respectively) for exploration/exploitation of the mineral resources in the occupied Zangilan district of Azerbaijan, including the Vejnali Mining Property.
[452] See Hayk Gazaryan "Mining Industry: Serious Perspectives or Hard Heritage?" *Theanalyticon.com*, August 2013, <http://theanalyticon.com/?p=3666&lang=ru> (in Russian language).
[453] See "Cooperation with Armenia", *Zavodtrud.ru*, 14 June 2013, <http://zavodtrud.ru/2013/06/sotrudnichestvo-s-armeniej/> (in Russian language); "Equipment setup at the Gold Star CJSC, Republic of Armenia", *Tigom.ru*, 25 July 2014, <http://www.tigom.ru/news/6> (in Russian language).
[454] See "Karabakh President attends kindergarten opening", *News.am*, 28 October 2014, <http://news.am/eng/news/236376. html>.
[455] See "Artsakh leader visits Kashatagh region", *op. cit*.
[456] See <http://www.geopromining.com/en/>; <http://www.industrial-investors.com/about/>.
[457] See Nata Dzvelishvili and Tazo Kupreishvili, "Russian Capital in Georgian Business", *IDFI*, May 2015, <https://idfi.ge/public/upload/IDFI/Russian_Capital.pdf>.
[458] See <http://www.geopromining.com/en/our-business/operations/gpm-gold/>.
[459] See "GeoProMining Group gains ground as investment in Armenia grows", *Globalgoldcorp.com*, June 2011, <http://www.globalgoldcorp.com/docs/20110601_ArmeniaMiningJournal.pdf>.
[460] See "Sotq Gold Mine to Be Exhausted In 15 Years?", *Hetq.am*, 7 August 2012, <http://hetq.am/eng/news/17342/sotq-goldmine-to-be-exhausted-in-15-years.html>; "GPM Gold: Zod mine and the Ararat gold extraction plant", *GeoProMining*, <http://www.geopromining.com/en/our-business/operations/gpm-gold/>; "GeoProMining Group gains ground as investment in Armenia grows", *op. cit*.

reserves, which are estimated to be 270 tons[461]). Extracted unprocessed ore is transported for processing to Armenia by rail at a crushing and screening plant and then to Ararat Gold Processing Plant. The company exports 99 per cent of Armenia's total gold exports.[462] In 2013, the company was ranked as the number one taxpayer (7.261 billion AMD) in Armenia. Since 2007, GeoProMining has invested some $260 million into GPM Gold and Agarak Copper-Molybdenum Mine Complex.[463] The money was used to upgrade the extraction technology at the Ararat plant, which was not designed to process the sulphide ores remaining at the Soyudlu deposit. As of April 2014, GPM Gold has been operating a new Albion gold extraction technology from Xstrata Technology (Australia) and supported by Core Process Engineering (Australia)[464] at the Ararat facility, which was designed to significantly increase the extraction coefficient for sulphide-heavy ores from Soyudlu mine.[465] Armenia exported a record 3.6 tons of gold dust in 2014 with a customs value of $82 million. The exports are in the form of dore (a semi-pure alloy of gold and silver usually created at the site of a mine). The alloy contains more than 70 per cent gold. After further refinement, the gold is sold on the London stock exchange. Armenia's gold is exported to Canada. Eight kilograms of exports in 2014 went to Switzerland. To note, Canada first became interested in the region's gold deposits in 1997 when First Dynasty Mines, a Canadian company, purchased shares in the Ararat Gold Processing Plant. The plant was transformed into the Ararat Gold Recovery Company. Indian billionaire Anil Agarwal bought the company in 2002 and sold it to GPM Gold in 2007.[466] A 2012 estimate predicted that with such an extraction rate, the Soyudlu reserve will be exhausted in 15 years.[467]

203. In April 2012, Bako Sahakyan met the delegation of the Estet Jewellery House led by its head and the president of the Armenian Jewellers Association Gagik Gevorkyan. At the meeting, issues related to the development of jewellery industry in the occupied territories were discussed. After the meeting Sahakyan and the delegation attended the ceremony of opening of a jewellery school in Khankandi. Sahakyan called the opening of the school a symbol of successful cooperation with the Estet Jewellery House, which, in his words, "would have a substantial impact on the development of the jewellery industry in Artsakh and its entrance into the international level".[468]

204. A German company Freedom Resources is reportedly exploring ore field (precious metals, nonferrous metals and rare metals) in the occupied Kalbajar

[461] See "Armenia's Gold Exports on the Rise but Revenues Drop", *Hetq.am*, 31 March 2015, <http://hetq.am/eng/news/59358/ armeniasgold-exports-on-the-rise-but-revenues-drop.html/>.
[462] *Ibid*.
[463] See "GeoProMining Group gains ground as investment in Armenia grows", *op. cit*.
[464] *Ibid*.
[465] See "Sotq Gold Mine to Be Exhausted In 15 Years?", *op. cit.*; "GPM Gold: Zod mine and the Ararat gold extraction plant", *op. cit*.
[466] See "Armenia's Gold Exports on the Rise but Revenues Drop", *op. cit*.
[467] See "Sotq Gold Mine to Be Exhausted In 15 Years?", *op. cit*.
[468] See "On 22 April Artsakh Republic President Bako Sahakyan met delegation of the 'Estet' Jewelry House led by head of the organization, president of the Armenian Jewelers Association Gagik Gevorkyan", *Artsakhtert.com*, 22 April 2012, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=642:-on-22-april-artsakh-republic-president-bako-sahakyan-metdelegation-of-the-estet-jewelry-house-led-by-head-of-the-organization-president-of-the-armenian-jewelers-association-gagik-gevorkyan&catid=11:official&Itemid=23>.

district, while another German company, Freedom Metals, is conducting exploration of mercury mine near Zulfugarly village in the occupied Kalbajar district.[469]

205. Russian businessmen of Armenian origin Sergei and Nikolai Sarkisovs, owners of Reso-Insurance, which is one of largest insurance companies in Russia, are investing in copper mining near Zardanashen village in the Khojavand district and the gold mining areas in the uplands of the Tutkhum River in the occupied Kalbajar district.[470]According to the information provided by geologist Arman Vardanyan, East West Global Mining Inc. conducts exploration of the gold and molybdenum deposits in Tutkhum mine in the occupied Kalbajar district of Azerbaijan.[471]The mining area of Zardanashen is 3 square kilometres, and is rich in concentrations of copper, lead, cobalt, and nickel. Traces of gold, titanium, and vanadium were discovered too. And gold and silver concentrations were found in the mining areas of the Tutkhum River Valley. In June 2012, Bako Sahakyan visited ore manifestation site in the vicinities of Zardanashen village and got acquainted with the works there.[472]

206. There is a stone processing plant in Harov village near Khankandi, producing a variety of stone products, including blocks, tiles, rose and green marble, and border stones. On average, the plant produces 500 square meters of tiles per month. The products are sold in Armenia. The equipment for that plant was brought from China.[473]

207. The presented evidence shows that there is an illegal traffic in natural resources across the occupied section of the international border between Azerbaijan and Armenia, which is controlled by the armed forces of Armenia. Armenia is a transport base for movement of minerals and other wealth from the occupied territories to international markets. The construction of the Vardenis (Armenia) – Aghdara highway through the occupied Kalbajar district of Azerbaijan is directly linked to the exploitation and pillage of natural resources in the occupied territories and their exports out of those territories to Armenia and elsewhere.[474] The final destination of the road is mining areas in the occupied territories.[475] Minerals are currently being transported to Armenia via the existing road passing through the

[469] See “Mining Industry: Serious Perspectives or Hard Heritage?”, *op. cit*.
[470] See “Russian-Armenian billionaire brothers invest in Karabakh”, *News.am*, 27 July 2013, <http://news.am/eng/news/ 164437.html>.
[471] See <http://geoexpert.am/profile/arman-vardanyan/>.
[472] See “President of the Artsakh Republic Bako Sahakyan visited ore manifestation site in the vicinities of the Zardanashen village in the Martouni region and got acquainted with the activities carried out there”, *Artsakhtert.com*, 17 June 2012, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=731:president-of-the-artsakh-republic-bako-sahak yan-visited-ore-manifestationsite-in-the-vicinities-of-the-zardanashen-village-in-the-martouni-region-and-got-acquainted-with-the-activities-carried-out-there&catid=11:official&Itemid=23>.
[473] See “Stone Processing, Artsakh – TRDP Entrepreneur Pavlik Gasparyan”, <http://trdp.aua.am/2015/06/29/stone-processingartsakh-entrepreneur-successful-trdp-beneficiary-pavlik-gasparyan/>.
[474] See “Armenian Mining Giant To Expand Karabakh Operations”, *op. cit*.
[475] See “Armenia-Karabakh highway construction launches”, *Artsakhpress.am*, 14 February 2014, <http://artsakhpress.am/eng/ news/281/armenia-karabakh-highway-construction-launches.html>.

Kalbajar district, which is in poor condition,[476] or via 500 km-long road passing through the occupied Lachyn district,[477] which was reconstructed in 1997 with the financial assistance of Armenian diaspora, particularly that of U.S.-Armenian businessman Kirk Kerkoryan through his Lincy Foundation.[478] It is expected that once the highway is completed, millions of tons of ore will be transported via that much shorter road, with only 116 km from the mining areas to the Sotk train station near the town of Vardenis in Armenia.[479] From Vardenis the ore will be transported by train to the Alaverdi Copper Smelter, also in Armenia, for further processing to export to third countries.[480] The highway's ongoing construction is partially funded by the Vallex Group CJSC, the primary beneficiary of the mining activities in the occupied territories.

208. The new road will also be used to transport coal from the coal mine near Chardagly village in the occupied part of the Tartar district.[481] Since 2013 the coal extracted at that mine has been reportedly transported by Armenia-registered cargo company Hana-Trans LLC via alternative routes to the thermal power plant in Yerevan, which consumes 2,000 tons of coal daily.[482] The coal is brought by trucks to Vardenis (Armenia) railway station and from there to Yerevan by railway. Armenia-registered Energy Plus Ltd. company has been granted by the Government of Armenia a three-year VAT payment deferment to develop this mine.[483] The coal supplies enable operation of two units of the Yerevan power plant with 50 MW capacity each. The energy produced in the plant is for both domestic use in Armenia and for export. The close supervision of that coal mine development by the President of Armenia, who frequently visits the mine (he visited the area twice in 2012, in January and October), points to the importance that Armenia is giving to that enterprise.[484] Thus, in October 2012, the official press release from the office of the President of Armenia informed about the following:

> […] [t]he Presidents of Armenia and Karabakh visited also the Maghavuz coal mine in Martakert region which has already started to deliver black coal to the Republic of Armenia for the Yerevan Hydro-Power Station, Ltd., which produces electricity in the mixed water-coal regime (through the refurbishment and commissioning of the old power generating units). This investment

[476] See "New Roads, New Questions: Construction of New Armenia-Artsakh highway", *Civilnet.am*, 7 June 2013, <http://civilnet.am/2013/06/07/new-roads-new-questions-construction-of-new-armenia-artsakh-highway/#.VSLHg4HXerU>.

[477] See "New route: Karabakh building second road to Armenia", *Armenianow.com*, 7 November 2011, <http://armenianow. com/karabakh/33013/karabakh_kelbajar_new_road_armenia>.

[478] See "Armenian Mining Giant To Expand Karabakh Operations", *op. cit.*

[479] See "New route: Karabakh building second road to Armenia", *op. cit.*

[480] See "New Roads, New Questions: Construction of New Armenia-Artsakh highway", *op. cit.*

[481] See "Armenian Mining Giant To Expand Karabakh Operations", *op. cit*.

[482] See "Estimation of coal resources in Nagorno-Karabakh will be continued in the next years", *Ecolur.org*, 12 January 2012, <http://www.ecolur.org/en/news/mining/estimation-of-coal-resources-in-nagornokarabakh-will-be-continued-in-the-next-years/ 3404/>.

[483] See "Yerevan thermal power plant will start using coal to produce electricity", *Arka.am*, 26 September 2013, <http://arka.am/en/news/economy/yerevan_thermal_power_plant_ will_start_using_coal_to_produce_electricity_/>.

[484] See "Artsakh Working Visit Of President Serzh Sargsyan To The Republic Of Nagorno Karabakh", *President.am*, 5 January 2012, <http://www.president.am/en/Artsakh-visits/ item/2012/01/03/news-02/>.

> project, which is important for the energy and mining areas, along with fostering economy will also considerably enhance Armenia's energy security. The Presidents of Armenia and Nagorno Karabakh were informed that a coal-preparation plant will be constructed on the territory of the Maghavuz mine. After familiarizing with the ongoing works and prospective programs of the mine developing company, Presidents Sargsyan and Sahakian wished the company all the best in its future activities.[485]

209. Former Prime Minister of Armenia Tigran Sargsyan is quoted to have said that this programme has a serious national security component and that "[i]t essentially reinforces our energy security and increases flexibility of usage of energy resources". He further added that "[b]esides, a new road will be built tying us with Nagorno Karabakh through which the raw materials will be transported to Armenia". Referring to the above-mentioned investment programme, Sargsyan noted that with it an additional resource will appear in the energy system, which will reduce the cost price of electricity and "... promote the economic growth in 2012", he said.[486] In an interview to the Public TV Company of Armenia, Minister of Energy and Natural Resources of Armenia, Armen Movsisyan, said the following:

> We already know that Nagorno-Karabakh has enough coal for us to restart the old unit of the Yerevan Thermal Power Plant. Two years ago we launched a new unit and suspended the old inefficient one. But later the President instructed us to consider ways to restart the unit and to make it efficient. So, we decided to use the coal from Magavuz.[487]

210. According to the so-called "prime minister" of the separatist regime Ara Harutyunyan, this coal mine is a "big treasure, a resource that will ensure the energy independence of Nagorno-Karabakh and Armenia".[488]

211. President of Armenia is a frequent visitor also to other mines throughout the occupied territories. Thus, in November 2013, Serzh Sargsyan visited the Demirli mining deposit in the occupied part of the Tartar district, exploited by the Base Metals CJSC, and got acquainted with the works there.[489] Those and other facts confirm the existence of a government policy of Armenia directed at the exploitation and pillage of natural resources in the occupied territories of Azerbaijan.

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[485] See "Working visit of President Serzh Sargsyan to the Nagorno Karabakh", *President.am*, 25 October 2012, <http://www.president.am/en/Artsakh-visits/item/2012/10/22/President-Serzh-Sargsyan-Artsakh-working-visit/>.

[486] See "Yerevan thermal power plant to work with Karabakh's coal", *op. cit*.

[487] See "Estimation of coal resources in Nagorno-Karabakh will be continued in the next years", *op. cit.*

[488] *Ibid*.

[489] See "On 13 November "Artsakh Republic President" Bako Sahakyan and President of the Republic of Armenia Serzh Sargsyan attended military maneuvers conducted by the NKR Defense Army at the central part of the republic", *Artsakhtert.com*, 14 November 2013, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=1271:-on-13-november-artsakh-republicpresident-bako-sahakyan-and-president-of-the-republic-of-armenia-serzh-sargsyan-attended-military-maneuvers-conducted-bythe-nkr-defense-army-at-the-central-part-of-the-republic&catid=11:official&Itemid=23>.

14. Armenia is profiteering economically and financially from the armed conflict and the military occupation of the territories of Azerbaijan

212. Armenia is profiteering economically and financially from the armed conflict and the occupation of the territories of Azerbaijan, through incorporation of those territories into what is referred to by the Armenian sources as criminal oligarchic system and exploiting and pillaging the natural resources and other forms of wealth of Azerbaijan.[490] There is a clear correlation between the exploitation of resources, including in the occupied Kalbajar, Lachyn, Gubadly, Jabrayil and Zangilan districts, and the uncompromised position of Armenia, unwilling to withdraw its armed forces from the occupied territories of Azerbaijan.

213. The examined evidence reveals that the exploitation of mineral and other economic wealth in the occupied territories is turned into a lucrative business and is the major source of income for Armenia and its subordinate separatist regime in the occupied territories.[491] The most frequently used term by the Armenian observers to describe the system of exploitation of the wealth in the occupied territories, which serves the oligarchs-owned businesses and represents the fusion of political power and economics, is "Bakonomics", highlighting the role of Bako Sahakyan, who was left "in charge" by Serzh Sargsyan to manage the financial and economic flows out of occupied territories.[492]

214. Close connections of businesses operating in the occupied territories with the separatist regime and Armenian officials in Yerevan have been a matter of public repute in Armenia and elsewhere for a long time.[493] Incumbent President of Armenia Serzh Sargsyan and his predecessor Robert Kocharyan entered the politics in Armenia from within the ranks of the separatist regime and transferred their oligarchic networks established in the occupied territories with them to Yerevan.[494] All major business enterprises in the occupied territories are established financed and controlled by Armenian oligarchs with strong personal connections to Serzh Sargsyan and Robert Kocharyan, who reportedly control almost all of the most lucrative sectors and enterprises in Armenia.[495] It is apparent that no business can

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[490] See "Artsakh Is An Excuse For Armenian Criminal Oligarchy", *Lragir.am*, 12 October 2013, <http://www.lragir.am/index/ eng/0/comments/view/31086>; "'Bakonomics' Is Destructive for Artsakh", *Epress.am*, 13 March 2015, <http://www.epress.am/en/2015/.../"'bakonomics'-is-destructive-for-artsakh".html>.

[491] See "New War of Armenia", *Lragir.am*, 23 April 2013, <http://www.lragir.am/index/eng/0/society/26900/29701>.

[492] See "'Bakonomics' Is Destructive for Artsakh", *Epress.am*, 13 March 2015, *op. cit.*

[493] See "Armenia: Crisis Spotlights Karabakh Clan", *RFE/RL*, 5 March 2008, <http://www.rferl.mobi/a/1079586.html>.

[494] See "Breaking the Grip of the Oligarchs", Foreign Policy, 5 November 2012, <http://foreignpolicy.com/2012/11/05/ breaking-thegrip-of-the-oligarchs/>; "Armenia: Crisis Spotlights 'Karabakh Clan", *RFE/RL*, 5 March 2008, <http://www.rferl.mobi/a/1079586.html>.

[495] See "Former US Ambassador on Sargsyan's and Kocharian's Political/Economic Pyramids", *Epress.am*, 9 August 2011, <http://www.epress.am/en/2011/09/08/former-us-ambassador-to-armenia-on-sargsyans-and-kocharians-politicaleconomic-pyrami ds.html>; "Vahagn Hovnanyan: Oligarchs have full control of Armenian economy", *Arminfo.am*, 29 July 2014, <http://arminfo.am/index.cfm?objectid=F2F15DD0-1704-11E4-AA5A0EB7C0D21663>; "One Sargsyan, two Sargsyan, three Sargsyan", *Georgiatimes.info*, 24 January 2012, <http://www.georgiatimes.info/en/analysis/70992.html>.

operate in the occupied territories without close connections to the Government of Armenia, which controls those territories militarily, politically and economically.

215. Serzh Sargsyan and his brother Aleksandr Sargsyan are said to dominate gas and fuel market in Armenia and the exports of scrap metal.[496] Among the largest petroleum products importers in Armenia are Mika Goup Ltd. and Flash Ltd., which are closely connected to S.Sargsyan and other high-ranking officials and both run businesses in the occupied territories. One of S.Sargsyan's close friends and ally Michael Baghdasarov is owner of Mika Group Ltd., registered offshore in Jersey Island.[497] He established a wine factory "Hadrout Winnert CJSC" (Hadrut NARC) and a gold and silver jewellery production factory "Mika-Karabakh CJSC", operating in the occupied territories.[498] Barsegh Beglaryan, owner of Flash Ltd. and former chairman and currently major shareholder of Armenia's Araratbank OJSC,[499] is known to have been closely connected to S.Sargsyan and former prime minister of Armenia Tigran Sargsyan.[500] Beglaryan is the founder of "Karabakh Gold CJSC" (now "Stepanakert Brandy Factory"). He also was an initiator of the two wine factories opened in the occupied Khojavand and Gyrmyzy Bazar in 2002.[501] Beglaryanis also one of the major shareholders of the power generation company "ArtsakhHEK OJSC". A Swiss national Vartan Sirmakes, who, as described above, is involved in mining, energy and banking sectors in the occupied territories and is one of the major shareholders of "ArtsakhHEK OJSC", is a business partner of Armenia's Prime Minister Hovik Abrahamyan's son Argam Abrahamyan.[502] Former Prime Minister of Armenia, Tigran Sargsyan, is also one of the shareholders of "ArtsakhHEK OJSC".[503]

216. Ruben Hayrapetyan, President of the Football Federation of Armenia, former member of Armenian Parliament and close ally of Serzh Sargsyan, is reportedly building a new hotel complex in the occupied town of Shusha.[504] Armenian *Zhoghovurd* newspaper wrote in June 2014 that Hayrapetyan had football fields

[496] Simon Payaslian (ed.),The Political Economy Of Human Rights In Armenia: Authoritarism And Democracy In a Former Soviet Republic (New York: I.B. Tauris and Co. Ltd., 2011), p. 205; "One Sargsyan, two Sargsyan, three Sargsyan", *Georgiatimes.info*, *op. cit.*

[497] See "Grounded: National airline carrier's bankruptcy raises issues of ownership", *Armenianow.com*, 12 April 2013, <http://www.armenianow.com/economy/business/45299/armavia_airline_michael_baghdasarov_zvartnots_international_airport>.

[498] See "OJSC NC Rosneft acquires all oil assets of Mika Limited in Armenia", *Arminfo.am*, 9 January 2014, <http://www.arminfo.am/index.cfm?objectid=2607F590-792A-11E3-B02A0EB7C0D21663>; "Bagdasarov Mikhail" <http://www.edenhell.net/en/persons/detail/43913/>.

[499] See <https://www.araratbank.am/upload/up_files/Majorshareholders2015eng.pdf>.

[500] See "Prime Minister against 'Flash' Barsegh. 'doomsday' is coming", *Lurer.com*, 26 April 2013, <http://lurer.com/?p= 95572&l=en>.

[501] See "'Flash' opens wine factories in Karabagh", *Hyeforum.am*, 9 November 2002, <http://hyeforum.com/index.php?showtopic=5592>; <http://viparmenia.com/vb/268708-post61.html>.

[502] See "Armenian Prime Minister Declares 'War on Corruption', Then Visits Son's Business Partner", *Hetg.am*, 28 July 2015, <http://hetq.am/eng/news/61769/armenian-prime-minister-declares-war-on-corruption-then-visits-sons-business-partner.html>.

[503] See "Armenian PM urges to 'bravely' buy shares of Artsakh Hydropower Plant", *Mediamax.am*, 5 October 2011, <http://www.mediamax.am/en/news/business/2731/>.

[504] See "Armenia football federation boss starts new business in Karabakh – newspaper", *News.am*, 31 October 2014, <http://news.am/eng/news/236896.html>.

built in various villages throughout the occupied territories and a house near Shusha.[505]

217. The direct involvement of Armenia's officials in the illegal economic dealings is also evident from their frequent visits to these territories and contacts with Armenian and foreign businessmen engaged in such activities. At their meeting on 28 July 2015, Prime Minister H.Abrahamyan of Armenia and Vartan Sirmakes discussed a number of investment projects to be implemented in the occupied territories. Sirmakes promised to contribute to the development of both Armenia and "Nagorno-Karabakh" through various programmes, creating new jobs and ensuring economic activity. Abrahamyan stressed the importance of the projects implemented in "Nagorno-Karabakh".[506]

218. As mentioned above, Abrahamyan is particularly interested in agriculture development in the occupied territories and is generally believed to be personally engaged, including through his family and friends in agriculture business, as his income disclosures from the sale of agricultural goods indicate.[507]

219. According to the Armenian sources, in 2002, the "Karabakh Telecom CJSC"'s owner Pier Fattushe reportedly concluded a secret deal with the then so-called "president" of the subordinate separatist regime Arkadi Ghukasyan and the former so-called "prime minister" Anushavan Danielyan, in accord with which that company acquired monopoly rights on the IT market and the above-mentioned individuals – shares from company's profits. According to the same sources, those agents of the separatist regime are not the only ones getting profit from that company.[508] Ghukasyan also reportedly still owns businesses in Armenia.[509]

220. The parasitic system of exploitation of natural resources established in the occupied territories and modelled from the notorious mining practice in Armenia[510] is another example of collusion of the subordinate separatist regime and the private companies, which serves the interests of Armenian and foreign corporations and individuals holding senior positions in Armenia and in the subordinate separatist

[505] *Ibid.*

[506] See "Prime Minister Receives Swiss Businessman Vartan Sirmakes", 28 July 2015, <http://www.gov.am/en/news/item/ 8026/>.

[507] See "All In the Family: Armenian Prime Minister's Booming Business Empire", *Hetq.am*, 20 October 2014, <http://hetq.am/ eng/news/56953/all-in-the-family-armenian-prime-ministers-booming-business-empire.html/>.

[508] See "Who Robs Karabakh", 13 July 2010, <http://www.lragir.am/index/eng/0/country/view/18544>.

[509] See "Chorrord Inknishkhanutyun: Former President of Artsakh to sell shares of his companies in Armenia", *Panorama.am,* 29 May 2012, <http://www.panorama.am/en/society/2012/05/29/chi1/>.

[510] See e.g. "Time for Armenia to Choose: Mining for Development or Systematic Plunder?", *Hetq.am*, 30 March 2015, <http://hetq.am/eng/news/59340/time-for-armenia-to-choose-mining-for-development-or-systematic-plunder.html>; and the report "Environmental Crime in Armenia", *European Union Action to Fight Environmental Crime-EFFACE*, 2015, <http://www.ecologic.eu/sites/files/publication/2015/stefes-15-efface_environmental_crime_in_armenia.pdf>; "Why are Armenia's Natural Resources So Attractive?", *Massis Post*, 5 September 2014, <http://massispost.com/2014/09/why-are-armenias-natural-resources-so-attractive/>.

regime who illegally grant concessions for exploitation in return for private gain.[511] It is unknown to whom the "licenses" for the exploitation of natural resources have been granted in reality, or how much investment has been made. The true ownership of the mines and other production facilities in the occupied territories is generally unclear, as many companies are subsidiaries of larger conglomerates, oftentimes registered offshore.[512]

221. Even those foreign pro-Armenian organizations and funds, involved in supporting the illegal activities in the occupied territories, admit that transparent investment sources and mechanisms of issuing "licenses" do not exist in the mining sphere.[513]

222. The system of embezzlement established in the occupied territories allows Armenia and its subordinate separatist regime to control wealth generated from the exploitation of resources and share it only with a limited number of select political and military leaders and oligarchs.[514]

223. As a result, the offshore-registered companies gain unrestricted access to the mineral resources in the occupied territories under exclusive preferential conditions and the mining income flows into these offshore companies, as well as to officials in Armenia and the subordinate separatist regime that are reportedly hidden behind these offshore companies. The Vallex Group CJSC, with offshore ties to Cyprus and Liechtenstein,[515] has dubious financial schemes, described by the Armenian sources as "a financial labyrinth".[516] According to some reports from these sources, a gold mine in the occupied Kalbajar district "belongs" to Bako Sahakyan.[517]

224. Former Prime Minister of Armenia Hrant Bagratyan confirmed that Armenia has been pillaging the copper deposits in the occupied territories.[518] According to Bagratyan, Surik Khachatryan, Governor of the Syunik district of Armenia, and former President of Armenia, Robert Kocharyan, are involved in ruthless exploitation of the natural resources in the occupied territories and in Armenia. In his words, Kocharyan is behind a German company operating a mine there. Another

[511] See "Who Armenia's Natural Resources Belong to", *Lragir.am*, 26 March 2013, <http://m.lragir.am/index/eng/1/economy/68570/29416>; "Russia Seizes Subsoil of Armenia and Karabakh from Oligarchs", *Iragir.am*, 11 October 2013, <http://www.lragir.am/index/eng/0/country/view/31079>.

[512] See "Time for Armenia to Choose: Mining for Development or Systematic Plunder?", *op. cit.*

[513] See "Building A Budget Base: Targeting Growth In Five Karabakh Industries", *Armenian General Benevolent Union*, 1 December 2012, <http://agbu.org/news-item/building-a-budget-base-targeting-growth-in-five-karabakh-industries/>.

[514] *Ibid*.

[515] See "Teghout: A Contentious Danish Investment in Armenia", *op. cit*.

[516] See "Teghout's Offshore Labyrinth and Valeri Mejlumyan's Business Empire", *op. cit*.

[517] See "Armenian newspaper: Underground recourses of Nagorno Karabakh are exploited by leadership of separatist regime there", *APA News*, 14 August 2012, <http://en.apa.az/news/177101>.

[518] See "Former PM: With the current, predatory pace of copper deposits exploitation, its reserves in Armenia will be depleted in 10-15years", *Armingfo.am*, 22 December 2011, Retrieved from <http://www.arminfo.am/russian/economy/article/22-12-2011/07-18-00>.

Armenian report estimated that Kocharyan controls "half of the shadow Armenian economy".[519]

225. The system of uncontrolled exploitation of natural resources in the occupied territories explains why, despite the sharp decrease in world copper prices (by March 2014, it had dropped to the lowest level in the past four years) that reduced profitability of that trade,[520] copper mining in the occupied territories is continuing with more investments by the Vallex Group CJSC and its subsidiary Base Metals CJSC made into development of new mines. In fact, exports of copper from Armenia in 2014 increased by 12 tons in comparison with the previous year.[521] The Vallex Group CJSC was expecting to raise its mining output to 7 million tons in 2015.[522] As far as gold is concerned, Armenia exported a record 3.6 tons of gold in 2014,[523] the lions' share of which is extracted by the GPM Gold from Soyudlu gold mine in the occupied Kalbajar district. From 2004-2010, GPM Gold reportedly did not pay taxes. In its November 2010 report, the parliamentary Control Chamber of Armenia revealed numerous other violations of the license agreement with that company, amounting to about AMD 200 million. According to Manoogian "[i]t is common knowledge in Armenia that no company of such proportions could operate with such monstrous violations for such a long time without the knowledge and protection of the country's top leadership."[524]

226. According to the Armenian statistical data, exports of precious minerals and metals, as well as of base metals and articles of it out of the occupied territories are on the rise. If in 2010 $ 3,546,000 worth of precious minerals and metals were exported, in 2013 that figure rose to $ 6,488,000 (10.9 per cent of all exports in 2013).[525] The structure of exports from the occupied territories of base and precious metals by countries is almost identical with that of Armenia (Russia, Belgium, Bulgaria, UK, Germany, China etc.),[526] which confirms the information that the minerals extracted from the occupied territories are transported to Armenia and re-exported as Armenian product to conceal their unlawful origin.[527] The ore from the mines in the occupied territories is processed by Armenian Copper Program

[519] See "Whom Kocharyan's Property Attracts?", *Lragir.am*, 21 August 2012, <http://www.lragir.am/index/eng/0/comments/ view/27137>.

[520] See "Drop in World Copper Price Hurts Armenia's Economy", *Hetq.am*, 27 March 2015, <http://hetq.am/eng/news/59292/ drop-inworld-copper-price-hurts-armenias-economy.html>.

[521] *Ibid.*

[522] See "By 2015 Vallex Group to considerably increase ore mining and processing", *Arminfo.am*, 27 June 2012, <http://arminfo.am/index.cfm?objectid=8337E610-BFB5-11E1-871CF6327207157C>.

[523] See "Armenia's Gold Exports on the Rise But Revenues Drop", *op. cit*.

[524] See Ara K. Manoogian, "To Donate or Not to Donate: A White Paper on Hayastan All-Armenian Fund", *op. cit*.

[525] See "Exports, Imports of the Republic of Nagorno-Karabakh by Groups of Goods", "Statistical Yearbook of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.

[526] *Ibid*.

[527] See also "Nagorno Karabakh in Figures 2015", <http://stat-nkr.am/files/publications/2015/ LXH_tverov_2015.pdf>.

CJSC (ACP), which exports its entire output to Europe.[528] To note, Armswissbank CJSC of Varan Sirmakes is an organizer and lead manager of bonds of ACP.[529]

227. Mining is Armenia's main export-generating sector and more than half of the country's exports are natural resources.[530] Thus, in 2014, the lion's share of copper exports from Armenia went to China and Bulgaria. Bulgaria imported 64,000 tons, 40,000 less than 2013. Exports to China skyrocketed to 107,700 tons, up from 43,700 in 2013 and 8,900 in 2012. Serbia imported 12,500 tons in 2014, as opposed to 4,770 in 2013. Armenia also exported 9,800 tons of unrefined copper in 2014 – mostly to Germany (8,880 tons). The rest went to Belgium. The country exported 1,900 tons of scrap copper – 1,600 tons to Belize and the rest to Iran and the USA.[531]

228. More and more Armenians in Armenia and from the diaspora are protesting to mismanagement of funds collected through the Hayastan All-Armenian Fund and are calling for boycotting annual telethons.[532] In 1999, 2000 and 2001, Armenian press raised concerns over the fact that, among others, some of the important members of the Board of Trustees of the Fund, namely, Charles Aznavour, Vatche Manoukian, Hrayr Hovnanian, Louise Simone Manoogian, chose not to participate in the 8th, 9th and 10th sessions of the Fund's Board of Trustees. Withdrawal has been their preferred method of expressing disapproval to the Armenian authorities with regard to where and how the donated money was spent.[533] According to the Armenian sources, mismanagement of the funds include channelling by Armenian authorities of the donations for their personal benefit, eventual privatization of buildings constructed by means of the Fund, renovation/construction works on lands owned by State officials or people close to them and granting major construction contracts, including "North-South" highway and Goris-Kankandi road, to companies owned by officials or their cronies. Three main construction companies, Vrezh, Karavan and Chanshin, are owned by Karen Hakobyan, Hakob Hakobyan and Roles Aghajanyan, respectively, who are closely connected to the subordinate separatist regime.[534] The windsurfing centre built in 2007 in the area of a resort complex called Kaputak Sevan and financed through the Fund belongs to Robert Kocharyan.[535]

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[528] See "Copper Producer seeks 150 million Loan", *Neweurope.eu*, 27 October 2006, <http://www.neweurope.eu/article/ copperproducer-seeks-150-million-loan/>; "The Mineral Industry of Armenia", *US Geological Survey*, September 2014, <http://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-am.pdf>.

[529] See "Bonds of 'Armenian Copper Program' CJSC", *ArmSwissBank.am*, <http://www.armswissbank.am/en/issue/detail.php? ID=30>.

[530] See "Armenia Country Program Snapshot", *World Bank Report*, 1 April 2015, <http://www.worldbank.org/content/dam/Worldbank/document/Armenia-Snapshot.pdf>; "Teghout: A Contentious Danish Investment in Armenia", *op. cit*.

[531] See "Drop in World Copper Price Hurts Armenia's Economy", *op. cit*.

[532] See "American-Armenians Boycott Armenian Fund Claiming A Normal Government Is Needed Rather Than Donations", 27 November 2014, <http://www.thetruthmustbetold.com/boycott_ haaf_gala/>.

[533] See Ara K. Manoogian, "To Donate or Not to Donate: A White Paper on Hayastan All-Armenian Fund", *op. cit*.

[534] *Ibid*.

[535] *Ibid*.

229. One recent report revealed that in 2013, some $250 thousand were spent for upgrading vehicles of the separatist regime, following the Hayastan All-Armenian Funds telethon for the construction of Vardenis-Aghdara highway. According to the same sources, the money collected from the diaspora are being used to purchase expensive vehicles for Bako Sahakyan and his entourage and writing off certain people's debts to banks.[536]

230. The Republic of Armenia not only failed to take adequate measures to put an end to illegal exploitation of resources in the occupied territories by Armenian and foreign natural and legal persons, but also encouraged them to engage in such activities. It is obvious that Armenia is seeking to prolong the occupation in order to retain control over mineral, agricultural and water resources in those territories and expropriates the wealth in the occupied territories of Azerbaijan for its own economic benefit.

231. Agents of the subordinate separatist regime confirm that exploitation of natural resources is directly linked to solving the "demographic issues",[537] implying that part of the finances accumulated from the exploitation of resources is allocated to settlement programmes that ultimately serve the purpose of prolongation of the occupation and preventing Azerbaijani internally displaced persons from returning to their homes and properties in the occupied territories. Thus said, illegal economic activities in the occupied territories produce notorious "conflict diamonds" effect and contribute to sustaining of the *status-quo* and the continuation of the conflict.

15. Cutting of rare species of trees for timber and other damage to the environment

232. The illegal activities in the occupied territories also raise a number of environmental concerns. Total forest area under the occupation is 247,352 hectares.[538] Of particular importance are around 13,197 hectares of protected, rare species of forest, including platan (plane tree), nut-trees, oaks, and other valuable species of trees (there are 152 valuable species of trees, including box-tree evergreen, Eldar's pine-tree, persimmon (date-palm) that are under special protection) in the Bashitchay National Reserve in the occupied Zangilan district. These rare trees are subjected to felling and cutting for timber, which is exported out of the occupied territories for furniture, barrel and rifle production. Many species of trees for a long time are on the verge of disappearance.

233. In 1993 only, some 206,6 thousand cubic meters of valuable types of timber were taken to Armenia. In 1996, 55 ha of walnut trees of Leshkar forest area, planted in 1957-1958, were cut down.[539] The evidence confirms that cutting of walnut-trees, oak and other trees is continuing. Back in 2003, the Armenian sources reported that some 10,000 walnut trees were cut down in the occupied territories.[540]

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[536] See "Artsakh Government Buys Expensive Cars after Telethon", 11 December 2013, <http://www.thetruthmustbetold.com/artsakhgovernment-cars/>.

[537] "Artsakh leader visits Kashatagh region", *op. cit*.

[538] See the report on the "Occupied districts of Azerbaijan and the natural resources remained there" (in Azerbaijani language), Ministry of Ecology and Natural Resources of the Republic of Azerbaijan, <http://www.eco.gov.az/eco-terror/ekoloji-terror-rayonlar.doc>.

[539] See UN Doc. A/58/594-S/2003/1090, 13 November 2003.

[540] See "Walnut trees cut down in Karabakh", *Hetq.am*, 25 September 2003, <http://hetq.am/eng/news/7083/walnut-trees-cut-down-inkarabakh.html>.

It is difficult to find out how many hectares of forest have been cut to date in reality. However, even the Armenian own sources confirm that illegal cutting of trees in the occupied territories and timber cutting is on the rise.[541] Thus, some 45,359 m3 of timber was cut in 2010, while that volume increased to 96,237 in 2013.[542]

234. Among the companies engaged in cutting and illicit trade in timber from the occupied territories is Max Wood Ltd., Armenian-registered company established by Mher Bagratyan and Enrique Viver Camin from Spain.[543] In 2000, Camin established a wood-drying operation in Koghb village in Armenia's Tavush region, which caused serious damage to the regional environment by cutting down the valuable trees in the area. With outstanding debts to the Armenian forestry service and protests of the local population, Camin relocated his wood business into the occupied territories of Azerbaijan. Member of Armenian Parliament from the ruling Republican Party, Harutyun Pambukyan, confirmed that:

> … at a time when many were avoiding doing business with Nagorno Karabakh, yes, Max Wood Ltd., with the efforts and direct participation of myself and my friends, reached unprecedented agreements with several renowned European companies, such as Beretta and Browning, to send them wooden details for hunting rifles made from the roots of walnut trees…[544]

235. The Armenian sources indicate that Max Wood Ltd. continues to cut down walnut and other types of trees in the occupied territories.

236. The mining companies that acquire illegal "licenses" for exploitation of mineral resources in the occupied territories have poor environmental record in Armenia and continue the same practice in those territories, paying no regard whatsoever to the environment.[545] As a result, depredatory exploitation of the resources in the occupied territories severely damages the environment. Mining generally produces highly contaminated tailings that require special treatment. There are already millions of tons of tailings in tailing dumps, which are saturated with heavy metals and other dangerous substances.

237. There are three tailing dumps, located at the ore processing complex near Heyvaly village.[546] Tailing dumps are also expected to be set up both in Demirli and Vejnali mines.[547] For example, the Sarsang water reservoir is located directly next to the tailing dumps and reservoirs of Gyzylbulag mine, where toxic mining waste products are deposited.[548] In 2012, Armenian journalist Armine Narinyan reported about death of fish in the Sarsang reservoir as a result of a leak of cyanides from the ore processing plant near Heyvaly.[549] The area sits on an earthquake fault line, so as

[541] See "Statistical Yearbook Of Nagorno-Karabakh Republic, 2007-2013", *op. cit*.
[542] *Ibid*.
[543] *Ibid*.
[544] See "I Have No Association With Max Wood", *Hetq.am*, 24 September 2007, <http://hetq.am/eng/news/24013/i-have-no-associationwith-max-wood.html>.
[545] See "Teghut, Drembon, Alaverdi, and the Politics of Pollution", *Armeniatree.org*, 1 September 2007, <http://www.armeniatree.org/environews/enews_reporter090107.htm>.
[546] See "Mining Industry: Serious Perspectives or Hard Heritage?", *op. cit*.
[547] *Ibid*.
[548] See "Teghut, Drembon, Alaverdi, and the Politics of Pollution", *op. cit*.
[549] See "Karabagh: Catching Examples of Mining Armenia", *Aravot.am*, 9 January 2013, <http://en.aravot.am/2013/01/ 09/159345/>

a result of a potential earthquake or some other natural or manmade hazard toxic wastes from the structurally unsafe tailings at the dump could easily spill into the water reservoir, thus reaching Azerbaijan's lowlands, causing environmental catastrophe for thousands of people. The tailing dump for the gold mine near Vejnali village in the occupied Zangilan district is located close to the Beshitchay State Reserve.

238. The exploitation of the natural resources accompanied by associated ecological disasters, such as tailing dumps and water pollution, has reached such a fast and unobstructed pace that even Armenia-based environmental organizations, including the Pan-Armenian Environmental Front (PAEF), raised red flag.[550]

239. Over the eleven years of operation of Gyzylbulag mine and the ore processing plant near Heyvaly village, some four million tons of waste were collected in two tailing dumps. Some 20-30 hectares of forest was cut during the exploration of the mine. According to press reports, a new factory is being built nearby Heyvaly to siphon off a substantial number of gold particles that remain in the wastes collected in the two tailings dumps.[551]

240. The exploitation of Demirli mine is also associated with environmental damage. Some 3-4 hectares of forest were cut down to reach the mine.[552] To develop that mine, the population from the nearby villages was relocated.[553] As of 2015, approximately 460 mines in Armenia already have permission for exploitation, out of which 27 are metal mines, and additional 85 metal mines are currently in the study phase and waiting to be exploited.

241. As a result, there are already about eight hundred million tons of tailings in 23 pen and closed tailing dumps, saturated with heavy metals and other dangerous substances,[554] especially in the Syunik district of Armenia, bordering the occupied territories of Azerbaijan. The fate of those wastes is of serious concern, given earlier reports about frequent hazardous leaks through the protective dams and pipes leading to the tailing dumps and ponds,[555] and that some of the waste had been polluting the occupied territories. There are reports that point to the deliberate efforts to pollute the occupied territories of Azerbaijan. Almost all of the rivers that originate in Armenia enter the Kur and Araz Rivers of Azerbaijan. There is also trans-boundary pollution from the tailings in Armenia that pollute rivers that cross the international border of Azerbaijan and end up in the Azerbaijani farmlands and forests. There is a well-documented evidence that waters of the rivers in Armenia's

[550] See "Pan-Armenian Environmental Front: Unsustainable Mining in Armenia and Artsakh", <https://agravakar.wordpress.com/mining/>; "Sotq Gold Mine to Be Exhausted In 15 Years?", *Hetq.am*, 7 August 2012, <http://hetq.am/eng/news/17342/ sotq-goldmine-to-be-exhausted-in-15-years.html>; "Residents Worried about Kashen Open Mine", *Ecolur.org*, 19 April 2013, <http://www.ecolur.org/en/news/mining/residents-worried-about-kashen-open-mine/4802/>; "Teghut, "Drembon", Alaverdi, and the Politics of Pollution", *op. cit*.

[551] See "Base Metals Launches Second Mine in Artsakh; An Open-Pit Operation", *op. cit*.

[552] *Ibid*.

[553] See "Karabakh Mining Project May Lead To Village Relocation", *Azatutyun.am*, 17 May 2012, <http://www.azatutyun.mobi/a/24584516.html>.

[554] See "Time for Armenia to Choose: Mining for Development or Systematic Plunder?", *op. cit*.

[555] See "New Player To Enter Armenian Mining Sector", *Azatutyun.am*, 15 May 2015, <http://www.azatutyun.am/content/ article/27018952.html>.

Syunik district, polluted with wastes from the Kapan Ore Processing Plant and Zangezour Copper and Molybdenum Combine and "Artsvanik" tailing dump, flow into the trans-boundary Okhchuchay River,[556] which flows into the occupied Zangilan district and the Araz River, thus creating environmental risks for a number of downstream urban and rural communities in Azerbaijan.[557]

242. Relentless exploitation of farmlands in the occupied territories for many years has also led to their depletion.

16. Archaeological excavations, embezzlement of artefacts and altering of the cultural character of the occupied territories

243. The occupation of the territories of Azerbaijan has also had catastrophic consequences for the country's cultural heritage in the occupied territories.[558] Armenia continues to interfere in the cultural environment of the occupied territories by taking consistent measures aimed at altering their historical and cultural features.[559]

244. Architectural monuments of national importance in those territories include the sixth century Albanian Aghoghlan cloister and the fourteenth century Malik Ajdar tomb in Lachyn, the fourth century Albanian Amaras cloister and a considerable number of Albanian temples in Khojavand, the eighteenth century Asgaran castle, fourteenth century tombs and a number of Albanian temples dating back to the Middle Ages in Khojaly, the sixth century Albanian Saint Jacob and thirteenth century Albanian Khatiravang cloisters and the thirteenth-fourteenth centuries Lekh castle in Kalbajar, the Albanian cloister of the fifth to eighth centuries in Gazakh, the thirteenth-fourteenth centuries Mirali tomb and the seventeenth century caravanserai in Fuzuli, the fourteenth century tomb in Zangilan, the seventeenth century mosque complex in Jabrayil, the eighteenth-nineteenth centuries Yukhary and Ashaghy Govharagha and Saatly mosques, caravanserais and houses in Shusha, the nineteenth century mosque in Aghdam, and archaeological

[556] See "Ecologists Take Ministry to Court Over Polluted River", *Hetq.am*, 21 November 2012, <http://archive-am.com/am/h/hetq.am/2012-11-21_716561_44/Hetq_Online_raquo_Paper_Agrees_to_Print_Retraction_in_Kocharian_Family_Legal_Suit/>; See UN Doc. A/58/594-S/2003/1090, 13 November 2003.

[557] See "Kapan Town Residents Accuse Nature Protection Ministry of Inactions in Regard with Voghji River", *Ecolur.org*, 13 July 2011, <http://www.ecolur.org/en/news/water/kapan-town-residents-accuse-nature-protection-ministry-of-inactions-in-regard-withvoghji-river/2722/>; See also Lubomir I. Simeonov, Mihail V. Kochubovski, Biana G. Simeonova (eds.), "The Problem of Heavy Metal Pollution in the Republic of Armenia: Overview and Strategies of Balancing Socioeconomic and Ecological Development", in Environmental Heavy Metal Pollution and Effects on Child Mental Development (2011), p. 312.

[558] For detailed information, see "War against Azerbaijan: Targeting Cultural Heritage" (Baku, 2007), also available at <http://www.warculture.az>.

[559] See "Berdzor science museum to open in Karabakh by early 2011 – archeologist", *Newsarmenia.ru*, 22 October 2010, <http://newsarmenia.ru/culture/20101022/42329253.html>; "Progress is Fixed in the Excavation-Research Works in the Territory of Artsakh", *Artsakhtert.com*, 15 May 2012, <http://artsakhtert.com/eng/index.php?option=com_content&view=article&id=676:-progress-isfixed-in-the-excavation-research-works-in-the-territory-of-artsakh-&catid=1:all&Itemid=1>; "Archaeological excavations of the city of Tigranakert in Artsakh to get under way June 15", *Panorama.am*, 5 June 2010, <http://www.panorama.am/en/society/2010/06/05/tigranakert/>.

sites like Garakopaktapa, Khantapa, Gunashtapa, Uzuntapa, Meynatapa and Zargartapa, residential areas of the Neolithic and Bronze Ages in Fuzuli, the residential areas of Chyragtapa and Garaghajy, of the Bronze Age, and those of Gavurgala, of the Middle Ages, and Aghdam, Imangazantapa and Gyshlag mounds of the Bronze Age in Jabrayil, rock drawings of the Bronze Age in Kalbajar, the stone box necropolis of the Bronze and Iron Ages in Khojaly, the residential area and necropolis of the Bronze Age in Sadarak, mounds of the Bronze and Iron Ages in Lachyn, a cave of the Stone Age, a mound and stone box graves of the Bronze and Iron Ages in Shusha, and the Shahri-Sharifan residential area of the thirteenth-fourteenth centuries in Zangilan.

245. In the town of Shusha, the architectural monuments, such as the Yukhary and Ashaghy Govharagha mosques with their madrasahs, the mausoleum of Vagif, and the house of Natavan and caravanserais, have been destroyed, burnt and pillaged.

246. Alleged "reconstruction" and "development" projects in Shusha and other towns and settlements throughout the occupied territories and "archaeological excavations" are carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots and substantiating the policy of territorial expansionism. Since the occupation of Shusha in May 1992, over 30 construction projects have been funded by Armenia and Armenian diaspora. As of 2014, a total of $11.5 million worth of infrastructural projects have been implemented in Shusha.[560] "Reconstruction" works also include the replacement of the Azerbaijani-Muslim elements of the monuments with alien ones, such as the Armenian cross and writings, which have been engraved on the Arabic character of the nineteenth century Mamayi spring in Shusha town.

247. As for other districts, the "Imarat of Panah khan" complex, mosques in Aghdam town, Abdal and Gulably villages, the tomb of Ughurlu bay and the home museum of Gurban Pirimov in the Aghdam district, fourteenth century tombs in the Khojaly district, mosques in Bashlybel and Otagly villages, ancient cemeteries in Moz, Keshdak and Yukhary Ayrym villages and Kalbajartown in the Kalbajar district, mosques in the Zangilan, Gyrag Mushlan, Malatkeshin, Babayly and Ikinji Aghaly villages, medieval cemeteries in the Jahangirbayli, Babayly and Sharifan villages in the Zangilan district, ancient cemeteries in Gayaly and Mamar villages, the mosque in Mamar village in the Gubadly district, the mosque in Garygyshlag village and the ancient cemetery in Zabukh village in the Lachyn district, the mosque complex in Chalabilar village and the ancient cemetery in Khubyarly village in the Jabrayil district, mosques in Fuzuli town and the Gochahmadli, Merdmli and Garghabazar villages in the Fuzuli district, the cemeteries of the Khojavand, Akhullu, Kuropatkino, Dudukchu and Salakatin villages and the old cemetery of Tugh village in the Khojavand district, the ancient hammams in Umudlu village in the Tartar district and the cemetery of Karki village in the Sadarak district, have been destroyed, burnt down and pillaged.

248. Acts of barbarism are accompanied by different methods of defacing the Azerbaijani cultural image of the occupied territories. Among them are large-scale

[560] See "Shushi: Restoring the Crown Jewel of Armenian Civilization", *Massispost.com*, 12 May 2014, <http://massispost.com/ 2014/05/shushi-restoring-the-crown-jewel-of-armenian-civilization/>.

construction works therein, such as, for example, the building of an Armenian church in the town of Lachyn.

249. Excavations near Aghdam began in March 2005 and are currently ongoing under the direct supervision of Hamlet Petrosyan of the Armenia's Academy of Sciences Institute of Archaeology and Ethnography. Excavations in the Azykh cave of the Paleolithic Age in the occupied Khojavand district have been carried out since 2003.[561] Armenia attracts archaeologists from the UK, Spain, Ireland and The Netherlands for the work in the Azykh cave.[562]

250. The Museum of History in the Kalbajar district with its unique collection of ancient coins, gold and silverware, rare and precious stones, carpets and other handicraft wares, museums in Shusha, the Lachyn Museum of History, the Aghdam Museum of History and the Bread Museum and others have also been destroyed, pillaged, and their exhibits put on sale in different countries. A collection of ancient gold, silver and bronze artefacts discovered in the occupied Lachyn district, which date back to the 4th-1st centuries BC, was misappropriated by the History Museum of Armenia, a State-run museum.[563]

251. Analysis of the period of more than 20 years since the establishment of a ceasefire in 1994 demonstrates that armed hostilities have not destroyed Azerbaijani monuments to the extent to which this has been subsequently done by the Armenian side.

17. Promotion of the occupied territories as a "tourist destination" and encouraging/ organizing illegal visits to/from these territories

252. Armenia facilitates and organizes visits to foreign countries by the agents of the subordinate separatist regime by issuing them Armenian passports, including diplomatic ones, to circumvent stringent visa requirements and unlawfully benefit from the simplified procedures for obtaining visas or from visa free travelling. Under whatever farfetched purpose of travel, they pursue the obvious goal of misleading and deceiving the international community and distracting the attention from the continued unlawful occupation of the territories of Azerbaijan by Armenia, which was achieved by the use of force, mass atrocities, ethnic cleansing and other flagrant violations of international law.

253. Such visits only serve to propagate the unlawful separatist regime. The developments over the past years have shown that the lack of adequate reaction to

[561] See "Monument and Society: Tigranakert of Artsakh", *Asbarez.com*, 28 December 2012, <http://asbarez.com/107365/monumentand-society-tigranakert-of-artsakh/>; "Excavations will continue in the Antic District of Tigranakert in Artsakh", *Armenpress.am*, 4 May 2013, <http://armenpress.am/eng/news/717607/excavations-will-continue-in-the-antic-district-of-tigranakert-in-artsakh.html>;"Exhibition entitled Excavations in Azokh cave in Stepanakert", *Artsakhtoday.com*, 4 September 2012, <http://www.artsakhtoday.com/?p=24143&lang=en>; "Azokh cave exotic excerpts to be on disposal in Artsakh and Yerevan", *Armenpress.am*, 31 August 2012, <http://armenpress.am/eng/print/691736/azokh-cave-exotic-excerpts-to-be-on-disposal-in-artsakh-and-yerevan.html>.

[562] See "New Inhabitants of the Azokh Cave", *Hetq.am* , 16 October 2006, <http://hetq.am/eng/news/11442/new-inhabitants-of-theazokh-cave.html/>.

[563] See "Armenia, Nagorno Karabakh Debate Ownership of Ancient Treasure", *EurasiaNet.org*, 22 April 2011, <http://www.eurasianet.org/node/63353>.

provocative steps of the Armenian side only contributes to its growing sense of impunity and permissiveness, encourages Armenia to hold on to its uncompromising position in the peace process.

254. Armenia continues to exploit tourism as a tool for its annexationist policies. In particular, tourism is being abused by Armenia to propagate the illegal separatist entity and generate financial means to consolidate the results of the occupation.[564] On a number of occasions, international tourism fairs and other events were used to mislead the general public by promoting the occupied territories of Azerbaijan as a "tourist destination", in particular through creating booths and disseminating materials about the illegal separatist entity established by Armenia in those territories.[565] Under the influence of distorted information, some tourist companies include the Nagorno-Karabakh region into their travel itineraries, whereas this region is the internationally recognized territory of Azerbaijan. As a result, some foreign citizens unaware of the sensitive situation are purposefully deceived by such "promotion campaigns" ended up in the occupied territories and thus are dragged into this dangerous plot.

E. Obligations and responsibilities under international law arising from the continuing unlawful occupation by Armenia of the territories of Azerbaijan, and illegal activities in those territories

255. The fact that military force was used against Azerbaijan, that the armed forces of Armenia seized and continue to occupy the territories of Azerbaijan, including but not limited to the Nagorno-Karabakh area, has been well evidenced.[566] Since the beginning of the conflict at the end of 1980s and its escalation into the full-fledged war in the beginning of 1990s, Armenia has embarked on a policy of "creeping expropriation"[567] of the occupied territories, through the creation of settlements and other illegal activities in the occupied territories. The evidence presented in this report attests to the continuing efforts of Armenia towards that end. The use of force against Azerbaijan to occupy its territories and the said activities have been

[564] See "Artsakh was presented at the international tourism exhibition 'In Tour Expo – 2015'", *Karabakh.travel*, 13 April 2015, <http://karabakh.travel/en/news/news-articles/artsakh-was-presented-at-the-international-tourism-exhibition-quotin-tour-expo-2015quot/107/>.

[565] See "Armenia and Artsakh participate at TTG Incontri tourism exhibition", *Arka.am*, 10 October 2014, http://arka.am/en/news/tourism/armenia_and_artsakh_participate_at_ttg_incontri_tourism_exhibition/; "Artsakh presented at Paris international tourism expo in separate pavilion", *Armenpress.am*, 1 October 2014, <http://armenpress.am/eng/news/778416/artsakh-presented-at-paris-international-tourismexpo-in-separate-pavilion.html; "Armenia and Artsakh To Be Represented at World Travel Market 2013", *Hetq.am*, 4 November 2013, <http://hetq.am/eng/news/30454/armenia-and-artsakh-to-be-represented-at-world-travel-market-2013.html>.

[566] See e.g. UN Doc. S/1994/108, 2 February 1994; UN Doc. S/1994/147, 14 February 1994; The report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility, UN Doc. A/66/787-S/2012/289, 3 May 2012, paras. 15-27.

[567] The phrase "creeping expropriation" has been used by international lawyers to describe similar situations of occupation. See e.g. James Crawford, "Opinion on Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", <http://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>, para. 4.

regularly met with statements opposed to Armenia's conduct and with decisions of illegality emanating from the United Nations, other international organizations, the European Court of Human Rights and individual States.

18. Armenia's intervention and continuing occupation

256. International law specifies that territory cannot be acquired by the use of force.[568] The international community has consistently deplored the use of military force against Azerbaijan and the resulting occupation of its territories. In 1993, the UN Security Council adopted resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), condemning the use of force against Azerbaijan and occupation of its territories and reaffirming the sovereignty and territorial integrity of Azerbaijan and the inviolability of its internationally recognized borders. In those resolutions, the Security Council reaffirmed that the Nagorno-Karabakh region is part of Azerbaijan and demanded immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan. On 26 April 1995, the President of the UN Security Council made a statement, reaffirming "all its relevant resolutions, *inter alia*, on the principles of sovereignty and territorial integrity of all States in the region" and also "the inadmissibility of the use of force for the acquisition of territory".[569] The UN General Assembly adopted three resolutions on the conflict[570] and included the special item entitled "The situation in the occupied territories of Azerbaijan" in the agenda of its regular sessions. In its resolution 62/243 of 14 March 2008, the General Assembly reaffirmed continued respect and support for the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders, demanded the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of Azerbaijan, reaffirmed the inalienable right of the Azerbaijani population expelled from the occupied territories to return to their homes, and stressed the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict affected territories.

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[568] See the Charter of the United Nations (1945) (New York: United Nations Department of Public Information, 2001), Article 1, para.1; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 24 October 1970, UN General Assembly resolution 2625 (XXV). Resolutions adopted by the UN General Assembly at its twenty-fifth session. Official records of the General Assembly, 25th session, Supplement No. 28 (A/8028), p. 153; Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations of 18 November 1987, UN General Assembly resolution 42/22. Resolutions adopted by the UN General Assembly at its forty second session. Official Records of the General Assembly, 42nd session, Supplement No. 41 (A/42/41), p. 403; Declaration of Principles adopted by the Conference on Security and Cooperation in Europe in the Helsinki Final Act 1975, Principle IV; *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), *op. cit*., paras. 188 and 190; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion of the International Court of Justice of 9 July 2004, I.C.J. Reports 2004, para. 87; Vienna Convention on the Law of Treaties (1969). For text, see Ian Brownlie (ed.), Basic Documents in International Law (Oxford: Oxford University Press, 2002, 5th ed.), pp. 270-297, at p. 285.

[569] Statement by the President of the UN Security Council S/PRST/1995/21, 26 April 1995.

[570] UN General Assembly resolutions 48/114 of 20 December 1993, 60/285 of 7 September 2006 and 62/243 of 14 March 2008.

257. As noted above, in its judgment of 16 June 2015 on the case of *Chiragov and others v. Armenia*, the European Court of Human Rights concluded that "… the Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR", that the two entities are highly integrated in virtually all important matters and that this situation persists to this day" and that "the "NKR" and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories …"[571]

258. The documents of international organizations also make explicit reference to serious violations of international humanitarian and human rights law committed during the conflict. Thus, in its aforementioned resolutions, the UN Security Council condemned the attacks on civilians and bombardments of inhabited areas within Azerbaijan and expressed grave concern at the displacement of a large number of civilians in Azerbaijan. In its resolution 48/114 of 20 December 1993, the UN General Assembly noted with alarm "that the number of refugees and displaced persons in Azerbaijan has … exceeded one million". In its resolution 1416 (2005) of 25 January 2005, the Parliamentary Assembly of the Council of Europe noted particularly that large-scale ethnic expulsion of the Azerbaijani civilian population and the creation of mono-ethnic areas resemble the terrible concept of ethnic cleansing.[572]

19. Applicable legal rules and standards

259. The full range of international legal principles is applicable to the situation concerning the territories of Azerbaijan currently under the occupation of Armenia: that is, Nagorno-Karabakh and the surrounding territories seized during the armed conflict.

260. That situation particularly brings into operation the law of occupation which 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").

261. In its aforementioned resolutions, adopted in response to Armenian attacks on and the occupation of Azerbaijani territories, the UN Security Council, *inter alia*, reaffirmed that the parties are bound to comply with the principles and rules of international humanitarian law[573] and called on them to refrain from all violations of international humanitarian law.[574] The application of the international law of belligerent occupation/international humanitarian law to the situation concerning the

[571] *Chiragov and others v. Armenia, op. cit.*, paras. 180, 186.
[572] See PACE Resolution 1416 (2005), "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", 25 January 2005, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17289&lang=en>.
[573] Resolution 822 (1993) of 30 April 1993, operative para. 3; Resolution 853 (1993) of 29 July 1993, operative para. 11.
[574] Resolution 874 (1993) of 14 October 1993, operative para. 9.

territories of Azerbaijan currently under the occupation by Armenia was also confirmed by the European Court of Human Rights in its judgment of 16 June 2015.[575]

262. In addition, international human rights law is generally accepted to be applicable to occupation situations. Consequently, 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; the Convention against Torture; and the European Convention of Human Rights apply in regard to the occupied territories of Azerbaijan. Furthermore, all States and natural and legal persons, entities and bodies, regardless of their size, sector, location, ownership and structure, should follow the UN Guiding Principles on Business and Human Rights[576] and to exercise due diligence to ensure that they do not contribute, directly or indirectly, to human rights violations and breaches of international law related to the occupation of the territories of Azerbaijan.

263. Other important instruments applicable in relation to the occupied territories of Azerbaijan are the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1954 and 1999 protocols thereto.

264. It should also be taken into account that attempts to cover up the illegal activities in the occupied territories of Azerbaijan under the disguise of "humanitarian assistance" are fundamentally flawed. It is well-established and generally accepted that humanitarian relief actions by States, international organizations and other entities and bodies should be exclusively humanitarian in nature and should be carried out in conformity with the principles of neutrality, impartiality and consent of the affected country, while fully respecting the sovereignty, territorial integrity and national unity of States in accordance with the Charter of the United Nations, as reaffirmed in the Guiding Principles on humanitarian assistance adopted by the UN General Assembly through its resolution 46/182 on "Strengthening of the coordination of humanitarian emergency assistance of the United Nations" of 19 December 1991.

20. Armenia's duties as an occupier of Azerbaijani territory

General

265. According to the principles of occupation set out in the aforementioned international instruments, any military occupation is considered temporary in nature, an occupant does not acquire sovereignty over an occupied territory and the legal status of the territory in question remains unaffected by the occupation of that territory. International law prohibits actions which are based solely on the military strength of the occupying Power and not on a sovereign decision by the occupied State.[577]

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[575] *Chiragov and others v. Armenia, op. cit.*, paras. 96-97.

[576] See "UN Guiding Principles on Business and Human Rights", Office of the UN High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/GuidingPrincilesBusinessHR_EN.pdf>.

[577] Jean Pictet (gen. ed.), Commentary on the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva: ICRC, 1958), p. 273.

266. The occupation of a territory *jus in bello* does not entail the right to annex that territory, since *jus contra bellum* forbids any seizure of territory based on the use of force.[578] It is clear that the occupying power does not have a free hand to alter the legal, social and economic structure in the territory in question and that any form of annexation is forbidden. According to Roberts, "Annexation has often been seen, quite naturally, as linked to aggression. Many international lawyers have propounded the principle that unilateral acts inconsistent with fundamental rules of international law should be viewed as null and void, and no prescriptive rights should accrue in favour of the aggressor. Thus, annexation resulting from aggression should not be recognized."[579]

267. 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.[580]

268. Accordingly, no action taken by Armenia or by its subordinate local regime within the occupied territories can affect the pre-existing legal status of these territories, which thus remain Azerbaijani in international law. As an occupying power, Armenia is subject to a series of duties under international law. 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. 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.

Protection of the existing local legal system

269. International humanitarian law provides for the keeping in place of the local legal system during 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 in force "unless absolutely prevented". 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 rulings as well as administrative regulations and executive orders.[581] The

[578] Eric David, Principes de droit des conflits armes (Principles of the Law of Armed Conflicts) (Moscow: ICRC, 2000), pp. 376-378; Jean Pictet (gen. ed.), *op. cit.,* pp. 273 and 275.

[579] Adam Roberts, "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 *American Journal of International Law* (2006), p. 584.

[580] See e.g. "Current challenges to the law of occupation", speech delivered by Professor Daniel Thurer, Member, International Committee of the Red Cross, 6th Bruges Colloquium, 20-21 October 2005, available at <http://www.icrc.org/eng/resources/documents/statement/occupation-statement-211105.htm>.

[581] See Marco Sassoli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law* (2005), pp. 668-669.

presumption in favour of the maintenance of the existing legal order is particularly high and is supplemented by provisions in Geneva Convention IV.[582]

270. The Civil Code, the Law on State Registration of Legal Entities and State Registry, the Law on Protection of Foreign Investment, the Law on Investment Activity, the Tax Code as well as other laws, decrees and normative acts of the Republic of Azerbaijan provide the legal framework and outline requirements for any foreign natural and legal person, including those relating to compulsory registration with the relevant authorities of Azerbaijan prior to starting operations on its territory. According to Presidential Decree No. 782 "On the Improvement of Regulations for Granting Special Permissions (Licenses) for Certain Types of Activities", dated 2 September 2002, a special license to conduct business is required for any foreign natural and legal person willing to operate in regulated industries.

271. Thus said, any foreign natural and legal person, willing to operate on the territory of Azerbaijan must strictly comply with the laws and regulations of Azerbaijan and must refrain from actions that infringe upon the sovereignty and territorial integrity of Azerbaijan.

Prohibition of settlements in occupied territories

272. 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 in any way by this power, directly or indirectly, to settle in these territories with the intention, expressed or otherwise, of changing the demographic balance. In its advisory opinion on the *Construction of a Wall*, 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 organize or encourage transfers or parts of its own population into the occupied territory.[583]

273. The authoritative ICRC commentary states that: "[Article 49(6)] is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons, or in order, as they claimed, to colonize those territories."[584] No exception or provision for derogation applies. The transfer of populations constitutes a "grave breach" pursuant to article 85(4)(a) of Additional Protocol I, 1977,[585] and is also designated a war crime under Article 8(2)(b)(8) of the Rome

[582] See Articles 54, 56 and 64.
[583] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, op. cit*., para. 120.
[584] See Jean Pictet (gen. ed.), *op. cit.*, p. 283.
[585] Article 85 (4) (a) defines 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".

Statute of the International Criminal Court. Article 49(6) of Geneva Convention IV is undoubtedly an obligation *erga omnes*, owed to the community of States as a whole, and as such any State is entitled to invoke the responsibility of the perpetrator for its breach. Furthermore, in accordance with the doctrine of State responsibility, the remedy in the case of breach of the prohibition on settlements in occupied territories, is reversion to the *status quo ante*, providing that the occupying power must repatriate settlers.[586]

274. The evidence shows clearly that Armenia has violated this prohibition by conducting a policy and developing practices to establish settlements in the occupied territories, in breach of international law. Over the period since the beginning of the conflict, significant numbers of Armenian settlers have been encouraged to move to the occupied areas depopulated of their Azerbaijani inhabitants.[587] Plainly, settlements established in the occupied territories of Azerbaijan are illegal, for they are designed to expand the economic and political penetration of Armenia in those territories, prevent the expelled Azerbaijani population from returning to their homes and thus impose the results of the unlawful use of force.

Protection of property rights

275. In situations of military occupation private and public property situated in occupied territories is particularly protected and relevant rules apply both to the physical integrity and to the ownership of such property. International humanitarian law prohibits pillage, plundering and exploitation of natural resources as well as destruction or unlawful appropriation of public and private property in an occupied territory.[588]

276. 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.[589] Limitations imposed on an occupant are derived from the temporary nature of the occupation and the lack of sovereignty of the occupying power.

277. The usufructuary principle forbids wasteful or negligent destruction of the capital value, whether by excessive mining or other abusive exploitation.[590] In the Flick case before the US Military Tribunal at Nuremberg in 1947, the accused, the principal proprietor of a large group of German industrial enterprises, was charged with war crimes, *inter alia*, for offences against property in the countries and territories occupied by Germany, and ultimately found guilty on this count. The Tribunal noted that:

> …wherever the occupying power acts or holds itself out as owner of the public property owned by the occupied country, Article 55 [of the 1907 Hague

[586] See Yael Ronen, "Status of Settlers Implanted by Illegal Territorial Regimes", 79 *British Yearbook of International Law* 194 (2008), pp. 194-263, at p. 231.
[587] For more information, see Chapter "D" VIII of this report.
[588] See The Hague Regulations, Articles 46, 47, 52, 55, 56; Geneva Convention IV, Articles 33, 53.
[589] See The Hague Regulations, Article 55.
[590] *Ibid.,* see also Yoram Dinstein, The International Law of Belligerent Occupation (Cambridge: Cambridge University Press, 2009), p. 214.

> Regulations] is violated. The same applies if the occupying power or its agents, who took possession of public buildings or factories or plants, assert ownership, remove equipment of machinery, and ship it to their own country, or make any other use of the property which is incompatible with usufruct.[591]

278. Plainly, the occupier may not use land belonging to the occupied State and the resources of the occupied territory, as well as exploit the economy of the territory for its own domestic purposes, in particular in order to benefit its own economy, territory or population. This approach applies also to water resources (rivers, wells, and other natural springs) that constitute either public or private assets and that cannot be utilized by an occupant to promote its own economy, to pump it into its country or to sustain settlements.[592]

279. Moreover, the character of occupation as a temporary situation indicates that an occupier lacks the authority to make permanent changes to the occupied territory, including in particular infrastructural changes and the construction related to settlements, such as roads and settlement buildings.[593] It is a grave breach of Geneva Convention IV to engage in extensive destruction not so justified.[594] Such destruction and appropriation of property are also criminal offenses in the statutes of international courts and in the domestic criminal law of most countries.

280. As Loucaides has noted:

> On the basis of the current international law, expropriation of private land by the occupying power during an armed conflict or otherwise either directly or through a subordinate administration is illegal and invalid, whether that expropriation is accompanied by compensation or not. It is the more so if the purpose of such expropriation is the violation of peremptory norms of general international law or the commission of crimes against humanity, such as the implementation of a plan of ethnic cleansing or persecution, or prevention of the exercise of the right to return of displaced persons to their homes and properties from which they were forcibly expelled by the occupying army, or a breach of the rule against racial discrimination. Indeed, to hold otherwise would be tantamount to accepting that a wrongdoing State may be allowed, by the payment of compensation, to purchase the benefits of breaches of rules of international law having a status of *jus cogens* within the ultimate result of endorsing the original wrong and entrenching its character and its consequences.[595]

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[591] United States, Military Tribunal at Nuremberg, Flick case, Judgment of 22 December 1947, cited in Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), ICRC Customary International Humanitarian Law Volume II: Practice (Cambridge: Cambridge University Press, 2005), p. 1041.

[592] Antonio Cassese, "Powers and Duties of an Occupant in Relation to Land and Natural Resources", in Emma Playfair (ed.), International Law and Administration of Occupied Territories (Oxford: Clarendon Press, 1992), pp. 419-442, at p. 431.

[593] See James Crawford, "Opinion on Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", *op. cit.*, p. 25; Antonio Cassese, "Powers and Duties of an Occupant in Relation to Land and Natural Resources", *op. cit.*, pp. 419-442, at p. 422.

[594] Article 147.

[595] Loukis G. Loucaides, "The Protection of the Right to Property in Occupied Territories", 53(3) International and Comparative Law Quarterly (2004), pp. 677-690, at p. 685.

281. Since the beginning of the occupation of the territories of Azerbaijan, serious and systematic interferences with the property rights by Armenia, including extensive destruction and appropriation of public and private property, exploitation of resources and development of permanent infrastructure in the occupied territories, have been registered.[596]

282. The European Court of Human Rights in the case *Chiragov and others v. Armenia* ruled in favour of Azerbaijani nationals who were forcibly displaced from the occupied Lachyn district of Azerbaijan, recognizing continuing violations by Armenia of a number of their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, namely, those relating to the protection of property (Article 1 of Protocol No. 1), the right to respect for private and family life (Article 8 of the Convention) and the right to an effective remedy (Article 13 of the Convention). The Court confirmed in particular that the proprietary rights of the Azerbaijani displaced persons are still valid.[597] Consequently, the Court's ruling highlights the unlawfulness of any purported transfer of property. Furthermore, rejecting the Government of Armenia's claims that the land possessed by the applicants was allocated to other individuals "in accordance with the laws of the "NKR"", the Court held that "the "NKR" is not recognized as a State under international law by any countries or international organisations" and, "[a]gainst this background, the invoked laws cannot be considered legally valid for the purposes of the Convention and the applicants cannot be deemed to have lost their alleged rights to the land in question by virtue of these laws...".[598]

Protection of cultural property

283. Cultural property is among the most obvious civilian objects and is entitled to special protection.[599] The Hague Regulations provide carefully tailored rules against the destruction of cultural property[600] and confer a wide degree of protection on cultural and religious institutions in occupied territories.[601] Geneva Convention IV did not provide much guidance on the protection of cultural property during armed conflicts.[602]

284. The 1954 Hague Convention or Convention for the Protection of Cultural Property in the Event of Armed Conflict became the first international treaty exclusively devoted to the protection of cultural property during war. Unlike prior treaties, attackers have an obligation not only to respect and preserve cultural property, but also to take affirmative steps to prevent the theft of property in occupied territories. States parties agreed to "prohibit, prevent, and if necessary, put a stop to any form of theft, pillage, or misappropriation of, and any acts of

[596] For more information, see Chapter "D" of this report.
[597] *Chiragov and others v. Armenia, op. cit.,* para. 149.
[598] *Ibid*., para. 148.
[599] Yoram Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (Cambridge: Cambridge University Press, 2004), p. 152.
[600] Articles 25, 27, 56.
[601] Yoram Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict, *op. cit,* p. 153.
[602] The Convention forbids "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" (Article 147), but these protections are no broader than those afforded in the 1907 Hague Regulations.

vandalism directed against, cultural property."[603] Occupiers are also required "to take measures to preserve cultural property" and even work closely with national authorities to meet this objective.[604]

285. The Second Protocol to the 1954 Hague Convention, adopted in 1999, expanded the scope of cultural property protection during armed conflicts. In particular, and most relevant to the Armenian occupation of the territories of Azerbaijan, Article 9 of the Protocol provides that a Party in occupation "shall prohibit and prevent in relation to the occupied territory" any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation or any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

286. According to Article 32 of the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations, an occupying power should refrain from carrying out archaeological excavations in the occupied territory, as well as take all possible measures to protect archaeological finds and hand them over to the competent authorities of the territory previously occupied, together with all documentation relating thereto.[605]

287. In addition to the aforementioned instruments, a number of other treaties provide an important framework for the protection of cultural property.[606] Thus, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property also defines the export and ownership of cultural property under compulsion from an occupied territory as illicit.[607] Rule 41 of the ICRC study on customary international humanitarian law on the obligation of the occupying power reconfirms its obligation to prevent the illicit export of cultural property from occupied territory as well as to return illicitly exported property to the competent authorities of the occupied territory.[608]

288. Acts against cultural property and cultural heritage in times of armed conflict constitute a war crime under international criminal law.[609] In addition, the human dimension of cultural heritage should not be underestimated, providing that humanitarian and human rights considerations underlying the protection of cultural

[603] Article 4, para. 3.
[604] Article 5, para. 2. See also Matthew D. Thurlow, "Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law", 8 *Yale Human Rights & Development L.J.* (2005), p. 160.
[605] See para. 32 of the Recommendation.
[606] International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 1970; Convention for the Protection of the World Cultural and Natural Heritage, 1972.
[607] See Article 11 of the Convention.
[608] Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *op. cit.*, pp. 135-138.
[609] See Second Protocol to the Hague Convention of the 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Article 15; Rome Statute of the International Criminal Court, Article 8(2)(b)(ix).

property may be better advanced though other international criminal law provisions, in particular through the category of crimes against humanity.[610]

289. The UN Security Council in its practice has a long track record of condemning attempts to alter the demographic composition of an occupied territory,[611] pillage, looting and destruction of houses and other property[612], plundering of natural resources and other forms of wealth[613] and attacks against cultural property.[614]

290. Despite that, by destructing and appropriating historical and cultural heritage, implementing so-called "reconstruction" and "development" projects and carrying out "archaeological excavations" in the occupied territories of Azerbaijan, Armenia has undertaken consistent measures with a view to altering the historical and cultural features of these territories and removing any signs of their Azerbaijani cultural and historical roots. As a result, no single Azerbaijani historic and cultural monument left undamaged and no sacred site escaped desecration in the occupied territories.[615]

21. Responsibility and obligations under international law

State responsibility, including the obligation of non-recognition

291. The key provisions of international responsibility are laid down in the Articles on State Responsibility adopted by the United Nations International Law Commission ("ILC") on 9 August 2001[616] and commended to States by the UN General Assembly on 12 December 2001.[617] According to Article 1 of the Articles, "[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 (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State".[618] This principle has been affirmed in the case-law.[619]

292. Article 4 (1) addresses the question of the attribution of conduct to a State. This provision declares that:

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[610] See Micaela Frulli, "The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency", 22 *European Journal of International Law* 1 (2011), pp. 203-217, at pp. 216-217.
[611] See e.g. UN Security Council resolutions 446 (1979), 452 (1979) and 476 (1980).
[612] See e.g. UN Security Council resolution 1034 (1995)
[613] See e.g. UN Security Council resolutions 1457 (2003) and 1499 (2003).
[614] See e.g. UN Security Council resolution 1265 (1999).
[615] For more information, see UN Doc. A/62/691-S/2008/95, 13 February 2008, and Chapter "D" XVI of this report.
[616] See UN Doc. 56/10, 2001. See also James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries (Cambridge: Cambridge University Press, 2002); James Crawford, Alain Pellet, Simon Olleson (eds.), The Law of International Responsibility (Oxford: Oxford University Press, 2010).
[617] See UN General Assembly resolution 56/83.
[618] See James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op.cit*., p. 61.
[619] See e.g. *Chorzów Factory case,* PCIJ, Series A, No. 9, p. 21; and the *Rainbow Warrior case,* 82 *International Law Reports*, p. 499.

> The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.

293. This principle, which is one of long standing in international law,[620] was underlined by the International Court in the *LaGrand* case declaring that: "the international responsibility of a state is engaged by the action of the competent organ and authorities of the state, whatever they may be"[621] and reiterated in the *Genocide Convention* case, where it was noted that it was:

294. "One of the cornerstones of the law of state responsibility, that the conduct of any state organ is to be considered an act of the state under international law, and therefore gives rise to the responsibility of the state if it constitutes a breach of an obligation of the state".[622]

295. The ILC commentary to the Articles on State Responsibility underlined the broad nature of this principle and emphasized that the reference to State organs in this provision:

> Is not limited to the organs of central government, to officials at high level or to persons with responsibility for the external relations of the state. It extends to organs of government of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level.[623]

296. Similarly, Article 5 provides that the conduct of a person or entity which is not an organ of the State under Article 4, but which is empowered by the law of the State to exercise elements of governmental authority shall be considered as an act of the State under international law, provided that the person or entity in question was acting in that capacity in the instance in question. Accordingly, activities by armed units of the State, including those empowered so to act, will engage the responsibility of the State. Thus, Armenia is responsible internationally for actions (and omissions) of its armed forces in their activities in Azerbaijan.[624]

297. A key element of State responsibility, and one particularly significant for present purposes, is the rule enshrined in Article 8 that:

> 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

[620] See e.g. *Moses case*, John B. Moore, International Arbitration, vol. III, pp. 3127, 3129 (1871).
[621] See Provisional Measures, I.C.J. Reports 1999, pp. 9, 16.
[622] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of the international Court of Justice of 26 February 2007, I.C.J. Reports 2007, para. 385. It was held that this principle constituted a rule of customary international law, *ibid*. See also Immunity from Legal Process of a Special Rapporteur, I.C.J. Reports 1999, pp. 62, 87.
[623] See James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op.cit*., p. 95.
[624] See the Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility, *op. cit*., para. 36.

> on the instructions of, or under the direction or control of, that state in carrying out the conduct.

298. This provision essentially covers two situations: first, where persons act directly under the instructions of State authorities and, secondly, where persons are acting under the "direction or control". The latter point is critical. It means that States cannot avoid responsibility for the acts of secessionist entities where in reality it is the State which is controlling the activities of such entities. The difference between the two situations enumerated in Article 8 is the level of control exercised. In the former case, the persons concerned are in effect part of the apparatus of the State insofar the particular situation is concerned. In the latter case, the power of the State is rather more diffuse.[625]

299. The International Court addressed the matter in the *Nicaragua* case, where it was noted that in order for the State to be responsible for the activities, it would need to be demonstrated that the State "had effective control of the military or paramilitary operation in the course of which the alleged violations were committed".[626] This approach was reaffirmed in the *Genocide Convention* case.[627]

300. Geneva Convention IV provides 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.

301. 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".[628] It is clear, 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:

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[625] *Ibid.*, para. 38.

[626] See *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*)*, op. cit*., para. 115.

[627] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of the International Court of Justice of 26 February 2007, I.C.J. Reports 2007, paras. 385, 398 and following.

[628] See Adam Roberts, *op. cit.,* pp. 580, 586.

> 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.[629]

302. Some of the internationally wrongful acts attributed to States should be seen as a serious breach of obligations under peremptory norms (*jus cogens*) of general international law. The obligations under such norms arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values.[630] Among these prohibitions, it is generally agreed that the prohibitions of aggression, the establishment or maintenance by force of colonial domination, genocide, slavery, racial discrimination, crimes against humanity and torture are to be regarded as peremptory.[631] There can be no doubt that a number of such prohibitions have been violated during Armenian aggression against Azerbaijan.

303. Not only was Armenia's role as the aggressor clear but the level of its continuing control over Nagorno-Karabakh and other occupied territories of Azerbaijan is significant, and these actions entail State responsibility under international law. As noted above, in its judgment of 16 June2015, the European Court of Human Rights concluded that:

> "[T]he Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR", that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the "NKR" and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories …[632]

304. Accordingly, the conclusion must be that due to its initial and continuing aggression against Azerbaijan and persisting occupation of this State's territory accomplished both directly through its own organs, agents and officials and indirectly through the subordinate separatist regime in the occupied Nagorno-Karabakh region over which it exercises effective control as it is understood under international law, Armenia bears full international responsibility for the breaches of international law.

305. Armenia's international responsibility, which is incurred by its internationally wrongful acts, involves legal consequences manifested in the obligation to cease these acts, to offer appropriate assurances and guarantees that they will not recur and to provide full reparation for injury in the form of restitution, compensation and satisfaction, either singly or in combination.[633]

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[629] See UK Ministry of Defence, The Manual of the Law of Armed Conflict (Oxford, 2004), p. 282.
[630] See James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op.cit*., commentary to Article 40, pp. 245-246, para. 3.
[631] *Ibid.,* commentary to Article 26, p. 188, para. 5, and commentary to Article 40, pp. 245-248, paras. 1-9.
[632] See *Chiragov and others v. Armenia, op. cit.*, para. 186.
[633] See James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op.cit.*, pp. 66-68.

306. Serious breaches of obligations under peremptory norms of general international law give rise to additional consequences affecting not only the State bearing the responsibility, but also all other States. As stated in the ILC commentary to the Articles on State Responsibility, "[e]very State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations."[634] A significant role in securing recognition of this principle was played by the International Court of Justice in the *Barcelona Traction* case, in which the Court identified the existence of a special category of obligations – obligations towards the international community as a whole. According to the Court, "By their very nature the former [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes".[635] In its later proceedings the International Court has reaffirmed this idea.[636]

307. Inasmuch as all States have a legal interest, particular consequences of a serious breach of an obligation under peremptory norms of general international law include, *inter alia*, duties of States to cooperate in order to bring to an end such breaches by lawful means and not to recognize as lawful a situation created by a serious breach, nor render aid or assistance in maintaining that situation.[637] The *maxim ex injuria ius non oritur* provides the basis for the obligation of non-recognition; that is, a legal right cannot stem from an unlawful act. As territory cannot be acquired by the unlawful use of force, and States are obliged to not give legal credence – recognition of authority over the territory – to the unlawful acquisition.[638] It is, at a minimum, intended to prevent "the validation of an unlawful situation by seeking to ensure that a *fait accompli* resulting from serious illegalities do not consolidate and crystallize over time into situations recognized by the international legal order."[639]

308. The doctrine of the obligation of non-recognition of illegal territorial acquisitions and claims to sovereignty can be traced back to the early practice of

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[634] *Ibid.,* commentary to Article 1, p. 79, para. 4.

[635] See *Barcelona Traction, Light and Power Company, Limited* (*Belgium v. Spain*), Judgment of the International Court of Justice of 5 February 1970, I.C.J. Reports, para. 33.

[636] See *East Timor* (*Portugal v. Australia*), Judgment of the International Court of Justice of 30 June 1995, I.C.J. Reports, para. 29; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of the International Court of Justice of 8 July 1996, I.C.J. Reports, paras. 31-32; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of the International Court of Justice of 11 July 1996, (Preliminary Objections), I.C.J. Reports, paras. 31-32, See also James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op. cit*., commentary to Article 1, p. 79, para. 4.

[637] See James Crawford, The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries, *op. cit.,* p. 69, and commentary to Article 41, pp. 249-253, paras. 1-14. See also UN General Assembly resolution 62/243 of 14 March 2008, entitled "The situation in the occupied territories of Azerbaijan", operative para. 5.

[638] See James Crawford, "Opinion on Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", *op. cit.*, p. 18.

[639] See Martin Dawidowicz, "The Obligation of Non-Recognition of an Unlawful Situation", in James Crawford, Alain Pellet & Simon Olleson (eds.), The Law of International Responsibility, *op. cit.*, p. 678.

States in the beginning of twentieth century.[640] The principle of non-recognition was reaffirmed by the International Court in its Advisory Opinion on *Legal Consequences for States of the Continued Presence of South African Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.[641] There the Court held that the presence of South Africa in the mandated territory of Namibia, following the revocation of the mandate, was illegal.[642] Accordingly, it held that States are under an obligation not to recognize that unlawful situation and must refrain from "lending any support or any form of assistance to South Africa with reference to its occupation of Namibia".[643]

309. The Court set out the scope of the doctrine of non-recognition at paragraphs 122-124 of the *Namibia* Opinion. In the first place, States may not enter into treaty relations with an unlawful regime with regard to the territory in question. In addition, States may not invoke or apply v*is-à-vis* the unlawful regime of the territory existing treaties applicable to the territory. The Court also indicated (in accordance with Security Council Resolution 283 (1970)) that States must refrain from any diplomatic or consular relations with the unlawful regime which imply recognition of the authority of the regime over the territory. Finally, the Court set out the requirement of States to "abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory."[644] At the same time, the Court stated that:

> In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international Cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.[645]

310. Commenting on this opinion of the Court, Crawford noted that:

> the obligation [of non-recognition] has an inherent flexibility that will permit (or, at least, not expressly prohibit) the acceptance of acts which do not purport to secure or enhance territorial claims, but which as a result of their commercial, minor administrative or 'routine' character, or which are of

[640] See James Wilford Garner, "Non-Recognition of Illegal Territorial Annexations and Claims to Sovereignty", 30 *The American Journal of International Law* 4 (1936); David Turns, "The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law", 2 *The Chinese Journal of International Law* 1 (2003).

[641] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion of the International Court of Justice, I.C.J. Reports 1971.

[642] See James Crawford, The Creation of States in International Law (Oxford: Oxford University Press, 2006, 2nd ed.), p. 163; James Crawford, "Opinion on Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", *op. cit*.

[643] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), op. cit.*, para. 119.

[644] *Ibid*., para. 124.

[645] *Ibid.,* para. 125.

immediate benefit to the population, should be regarded as 'untainted by the illegality of the administration'.[646]

311. According to Stewart:

attempts by the then South African government to grant title in Namibian natural resources were 'illegal and invalid,' since the expropriation of natural resources could hardly be reconciled with the humanitarian exceptions to the general rule – expropriating natural resources is not analogous with registering births, deaths, and marriages.[647]

312. One of the judges on the case explicitly confirmed this interpretation in a separate opinion by stating that "other States should not regard as valid any acts and transactions of the authorities in Namibia relating to public property, concessions, etc".[648]

313. The principle of collective non-recognition has been applied to the unlawful acts of Armenia, and the illegality of the separatist entity and its structures, established by Armenia in the occupied territory of Azerbaijan, has been repeatedly stated at the international level.[649] The attempt to unilaterally effect the secession of a part of the internationally recognized territory of Azerbaijan is directly connected with the unlawful use of force and other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*). Among a number of international political and judicial institutions, this fact has been affirmed in the aforementioned resolutions of the UN Security Council adopted in response to the occupation of the territories of Azerbaijan.

314. It is notable that those resolutions, recognizing that Nagorno-Karabakh constitutes part of Azerbaijan and reaffirming the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory, were adopted after the so-called "independence" of Nagorno-Karabakh was unilaterally declared. Consequently, the UN Security Council made it clear that the unilateral declaration of independence in a given situation had produced no legal effect whatsoever.

315. In its resolution 62/243 of 14 March 2008, entitled "The situation in the occupied territories of Azerbaijan", the UN General Assembly specifically 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".

316. Obviously, if the effective situation has been achieved in violation of a fundamental international legal order, such a violation prevents the international

[646] See James Crawford, The Creation of States in International Law, *op. cit.,* p. 167; James Crawford, "Opinion on Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories", *op. cit*., p. 22.

[647] See James G. Stewart, Corporate War Crimes. Prosecuting the Pillage of Natural Resources (New York: Open Society Foundation, 2011), p. 48, para. 69.

[648] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), op. cit.*, Separate Opinion of Judge De Castro, pp. 218-219; see also Steward, *op. cit.*

[649] See e.g. UN Docs. A/64/851-S/2010/345, 29 June 2010; A/66/890-S/2012/661, 23 August 2012; A/69/914-S/2015/384, 27 May 2015.

community from recognizing this situation as legal and bars the acquisition of statehood by a claimant entity.[650] Indeed, precisely for this reason, in more than 20 years since the adoption of the unilateral "declaration of independence" of the so-called "Nagorno-Karabakh republic", no State in the international community has recognized this self-proclaimed entity, which survives by virtue of Armenia's political, military, economic and other support.[651]

317. As noted above, the European Court of Human Rights in the case of *Chiragov and others v. Armenia* reiterated its conclusion from the admissibility decision, according to which "the "NKR" is not recognized as a State under international law by any countries or international organizations".[652]

318. This policy of non-recognition is reflected in the documents, decisions and statements adopted by a number of international organizations as well as States both individually and collectively. For example, the European Community through the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", which provided a common policy on recognition with regard to the states emerging from former USSR, adopted by the European Council, particularly emphasized that "[t]he Community and its Member States will not recognize entities which are the result of aggression."[653] In line with this policy, in its statement on the Nagorno-Karabakh conflict of May 1992, the European Union condemned "in particular as contrary to these [OSCE] principles and commitments any actions against territorial integrity or designed to achieve political goals by force, including the driving out of civilian populations."[654] In its statement of November 1993, the European Union called upon the Armenian forces to withdraw from the occupied territories of Azerbaijan and underlined that "[t]he European Union reiterates the importance it attaches to the territorial integrity and sovereignty of the Republic of Azerbaijan, in accordance with the principles of the CSCE."[655]

319. The Russian Federation, the French Republic and the United States of America individually as well as in their capacity as the co-chairmen of the OSCE Minsk Group have repeatedly stated that they support the territorial integrity of Azerbaijan and do not recognize Nagorno-Karabakh as an independent and sovereign state.[656]

320. The Organization of Islamic Cooperation (OIC), consisting of 57 Member States, in its resolution10/42-POL "On the aggression of the Republic of Armenia

[650] David Raič, Statehood and the Law of Self-Determination (The Hague: Kluwer Law International, 2002), p. 38.

[651] For more information, see UN Docs. A/64/851-S/2010/345, 29 June 2010; A/66/890-S/2012/661, 23 August 2012; A/69/914-S/2015/384, 27 May 2015.

[652] *Chiragov and others v. Armenia, op. cit.,* paras.148 and 182.

[653] See EC Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", 16 December 1991, 4 *European Journal of International Law* (1993).

[654] See "Statement on Nagorno-Karabakh", European Political Cooperation (EPC) Press Release, Brussels, 22 May 1992, *European Political Cooperation Documentation Bulletin* (1992), vol. 8, Doc. 92/201, p. 260, <http://aei.pitt.edu/36872/1/A2881.pdf>.

[655] See "Statement on Nagorno-Karabakh", European Political Cooperation (EPC) Press Release, Brussels, 9 November 1993, *European Political Cooperation Documentation Bulletin* (1993), vol. 9, Doc. 93/448, p. 532, <http://aei.pitt.edu/36868/1/A2877.pdf>.

[656] See e.g. "OSCE Minsk Group Co-Chairs issue statement on Nagorno-Karabakh", 19 March 2008, <http://www.osce.org/mg/49570>; "Press release by the Minsk Group Co-Chairs", 30 April 2015, <http://www.osce.org/mg/154721>.

against the Republic of Azerbaijan", adopted at the 42nd Session of the OIC Council of Foreign Ministers held on 27-28 June 2015 in Kuwait, and in its previous resolutions on this subject, has condemned the aggression of Armenia against Azerbaijan, reaffirmed the commitment by all OIC Member States to respect the sovereignty and territorial integrity of Azerbaijan and demanded the unconditional withdrawal of the Armenian occupying forces from all the occupied territories of Azerbaijan.[657] OIC urged all States not to recognize as lawful the situation resulting from the occupation of the territories of Azerbaijan, nor render aid or assistance in maintaining that situation emerged as a result of serious breaches of international law and, to this end, encouraged all States to cooperate with a view to ending aggression against Azerbaijan and occupation of its territories.

321. In the context of the conflict between Armenia and Azerbaijan, the Non-Aligned Movement, consisting of 120 Member States, "reaffirmed the importance of the principle of non-use of force enshrined in the Charter of the United Nations, and encouraged the parties to continue to seek a negotiated settlement of the conflict within the territorial integrity, sovereignty and the internationally recognized borders of the Republic of Azerbaijan".[658]

Individual and corporate criminal responsibility

322. As noted above, the ongoing illegal activities in the occupied territories of Azerbaijan, such as the transfer of populations and any efforts necessary for the maintenance and continuation of settlements, as well as destruction and appropriation of property, are designed as war crimes under international criminal law, entailing individual criminal responsibility. In order for an individual to be held criminally responsible for a war crime, it is necessary that he or she seriously infringed international humanitarian law and that the violation be criminalized by international law. In other words, it is necessary for the law to attach to breaches of international humanitarian law the consequence that – in addition to the international responsibility of the State – the criminal liability of the individual (be s/he a State agent or a private individual) perpetrating that breach also arises.[659]

323. The relevant provisions enshrined in the 1949 Geneva Conventions and Additional Protocol I concerning the "grave breaches" expressly indicate the violations of the rules that, in addition to the international responsibility of the State party to the conflict, also entail criminal responsibility of the individual for war crimes. The essential feature of "grave breaches" is that, under the system envisaged by the 1949 Geneva Conventions and Additional Protocol I, they are subject to universal jurisdiction. Any States party to the Conventions and the Protocol is authorized as well as obliged to search for and bring to trial – or, alternatively,

[657] See Resolutions on Political Affairs Adopted by the 42nd Session of the Council of Foreign Ministers Session of the Joint Vision to Strengthen Tolerance and Reject Terrorism, OIC/CFM-42/2015/POL/RES/FINAL, 27-28 June 2015, <http://www.oic-oci.org/oicv2/subweb/cfm42/en/42cfn_res_pol_r2_en.pdf>.

[658] See Final Document, 16th Summit of Heads of State or Government of the Non-Aligned Movement, Tehran, Islamic Republic of Iran, 26-31 August 2012, NAM 2012/Doc.1/Rev.2, <http://www.namiran.org/Files/16thSummit/FinalDocument (NAM2012-Doc.1-Rev.2).pdf>.

[659] Antonio Cassese and Paola Gaeta, Cassese's International Criminal Law (Oxford: Oxford University Press, 2013, 3rd ed.), p. 67.

extradite to a requesting State – any person suspected or accused of a grave breach (whatever his or her nationality and the territory where the grave breach has allegedly been perpetrated) who happens to be on its territory.[660]

324. Furthermore, the involvement of Armenian and foreign companies in the occupied territories of Azerbaijan is well-evidenced. They play an important role in funding, facilitating and supporting the violations of international law by Armenia.

325. Under most legal systems, corporate representatives are also liable for war crimes.[661] The traditional means of prosecuting corporate criminality involves indicting representatives of a company in an individual capacity for crimes perpetrated during the course of business, and national legal systems are perfectly capable of prosecuting business representatives for unlawful commercial activities in a conflict zone. The individual liability of corporate representatives for war crimes is premised on the idea that civilians can be prosecuted for violations of the international laws applicable during war. A number of courts, both historical and contemporary, have convicted individual businessmen for various war crimes.[662] A large number of domestic criminal courts also have jurisdiction over war crimes perpetrated by companies. Indeed, corporate criminal liability and the individual criminal liability of business representatives should function in tandem.[663]

326. The first and most compelling basis for prosecuting commercial actors for illegal activities in war zones involves State prosecutors bringing charges against their own companies or business representatives. The so-called "nationality" or "active personality" principle entitles States to assert criminal jurisdiction over offenses perpetrated by their nationals overseas.[664] The concept extends to companies registered within a State's jurisdiction as well as individual citizens operating abroad.[665]

327. As noted above, universal jurisdiction provides another basis upon which States can investigate and prosecute corporations or their representatives for violations of international humanitarian law. The notion of universal jurisdiction is based on the idea that certain offenses are sufficiently grave that all States can assert criminal jurisdiction over the perpetrators regardless of where the offenses took place or the nationality of the respective participants. War crimes clearly meet the requisite degree of gravity.[666]

328. There is no current international criminal court or tribunal with relevant jurisdiction with regard to the violations of international humanitarian law perpetrated in the occupied territories of Azerbaijan. Therefore, pursuit of individuals and corporations may be undertaken through the domestic courts of involved or third party States.

[660] *Ibid*., pp. 67 and 72.
[661] The Unsettling Business of Settlement Business (Diakonia International Humanitarian Law Resource Centre, May 2015), pp. 75-79.
[662] *Ibid.*
[663] See e.g. Antonio Cassese and Paola Gaeta, *op. cit.*, pp. 67 and 72.
[664] See The Unsettling Business of Settlement Business*, op. cit.*
[665] *Ibid*., pp. 79-83.
[666] See e.g. Antonio Cassese and Paola Gaeta, *op. cit.*, p. 276.

22. Obligations of foreign nationals, including tourists and tourism stakeholders, to comply with the norms and principles of international law and the legislation of the Republic of Azerbaijan

329. The Republic of Azerbaijan warned all nationals of foreign countries that, due to the continuing occupation of the Nagorno-Karabakh region and surrounding districts of Azerbaijan by the armed forces of the Republic of Armenia, any visits to those territories without prior permission of Azerbaijan are considered a breach of the national legislation of Azerbaijan. Those who travelled to the occupied territories without permission of Azerbaijan are denied the entry into Azerbaijan and face the relevant legal and administrative measures.[667]

330. The Republic of Azerbaijan called upon all States to take effective measures to prevent tourism companies, travel agencies, tour operators and their umbrella organizations, operating on their territories, from organizing tourist visits to and the promotion of tourism in the occupied territories of Azerbaijan, propagating the illegal separatist regime at international tourism fairs and other tourism events.

331. The Republic of Azerbaijan brought to the attention of the Executive Council of the World Tourism Organization (UNWTO) at its 99th Session, held in October 2014 in Samarkand, Republic of Uzbekistan,[668] the issue of abuse of tourism for political purposes, such as the promotion of hazardous destinations, including conflict zones and territories under unlawful military occupation, as tourist destinations, which violates international law, contravenes the fundamental aims of tourism set forth in the Statute of the UNWTO and the principles of the Global Code of Ethics for Tourism approved by the UNWTO and endorsed by the UN General Assembly.

332. The UNWTO Executive Council at its 100th Session, held in May 2015 in Rovinj, Republic of Croatia, having considered recommendations of the World Committee on Tourism Ethics entitled "Prevention of Promotion of Conflict Zones as Tourism Destinations and Using Tourism for Illegal Purposes", made on the proposal of the Government of Azerbaijan, unanimously adopted a decision urging "governments, as well as public and private stakeholders in the tourism sector, to observe and respect the Global Code of Ethics for Tourism as well as all ethical principles embodied in the United Nations General Assembly and Security Council resolutions, in all circumstances, including during armed conflicts." The Executive Council also called on Member States, as well as public and private stakeholders in the tourism sector, to conduct all tourism related activities accordingly.[669]

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[667] See "Warning for the Foreign Nationals Wishing to Travel to the Occupied Territories of the Republic of Azerbaijan", Ministry of Foreign Affairs of the Republic of Azerbaijan, <http://www.mfa.gov.az/en/content/587>.

[668] See UNWTO Executive Council decision CE/DEC/1(XCIX) (2014), <dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/ce99 _decisions_en.pdf>.

[669] See UNWTO Executive Council decision "Recommendations of the World Committee on Tourism Ethics on the proposal of the Government of the Republic of Azerbaijan: "Prevention of Promotion of Conflict Zones as Tourism Destinations and Using Tourism for Illegal Purposes" (EC decision 1(XCIX)) and the proposed draft resolution of the Government of Azerbaijan, CE/100/DEC (2015), Doc. CE/100/11, <dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/ce100_decisions_en_0.pdf>.

333. The Code unequivocally stresses the requirement for tourists and all tourist stakeholders to act in full respect of laws of the visiting countries and to refrain from committing any criminal act or any act considered criminal by the laws of the country visited. The Code underlines that tourists and visitors should benefit from the liberty to move within their countries and from one State to another in strict compliance with international law and the legislation of the States. The Code contains provisions that obligate governments and tour operators to inform the tourists of the dangers they may encounter during their travel to a particular destination, especially when there is a crisis.[670]

F. Urgent measures to cease and reverse immediately unlawful economic and other activities in the occupied territories of Azerbaijan

334. Armenia's policy of attempted annexation of the occupied territories of Azerbaijan has no chance of succeeding. The only way to achieve a durable and lasting conflict settlement is to ensure the unconditional and complete withdrawal of the Armenian armed forces from the Nagorno-Karabakh region and other occupied territories of Azerbaijan, as the UN Security Council demands in its above-mentioned resolutions, and the exercise by the forcibly displaced Azerbaijani population of their inalienable right to return to their homes and properties in the Nagorno-Karabakh region of Azerbaijan and the adjacent districts.

335. The conflict can only be resolved on the basis of the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders. No peace settlement of the conflict can be reached which violates the Constitution of the Republic of Azerbaijan and which is inconsistent with international law. No acquisition of territory by force shall ever be recognized by the international community as lawful. Never Azerbaijan shall reconcile with the seizure of its territories. The military occupation of the territory of Azerbaijan does not represent a solution and shall never produce a political outcome desired by Armenia.

336. Armenia must drop its futile attempts to mislead its own people and the wider international community, cease its policy of annexation and ethnic cleansing and comply scrupulously with its international obligations. To this end, Armenia must cease and reverse immediately the transfer of settlers of both Armenian and foreign nationality into the occupied territories, cease immediately and refrain in the future from any economic and commercial activity in the occupied territories of Azerbaijan; stop purposeful destruction and looting of the cultural heritage and sacred sites in the occupied territories of Azerbaijan, including the archaeological, cultural and religious monuments, which constitute a grave breach of international humanitarian law and has a detrimental impact on the process of political settlement of the conflict.

337. The Republic of Azerbaijan has stated on numerous occasions and finds it expedient to remind that it will not tolerate the violation of its sovereignty and

[670] See Global Code of Ethics for Tourism, <ethics.unwto.org/en/content/global-code-ethics-tourism>.

territorial integrity, including in particular through engaging in and/or facilitating in any way illegal activities in the occupied territories.

338. The fundamental international legal requirement applicable in this context is that no State shall recognize as lawful the situation resulting from the occupation of the territories of Azerbaijan and nor render aid or assistance in maintaining it. It is critical that all States cooperate with a view to ending such situation that emerged as a result of serious breaches of international law.

339. In that regard, the Republic of Azerbaijan calls upon the international community to condemn ongoing efforts by Armenia towards consolidating the occupation of the territories of Azerbaijan, undertaken in particular by implanting settlers of both Armenian and foreign nationality into the occupied territories and by pursuing illegal economic and other activities in those territories.

340. The Republic of Azerbaijan also calls upon all members of the international community, in line with their obligations under international law, to take effective measures, including through their national legislation, that would prevent any activities on their respective territories by any natural and legal persons against the sovereignty and territorial integrity of Azerbaijan, including the participation in or facilitation any unlawful activity in the Nagorno-Karabakh region and other occupied territories of Azerbaijan, and in particular to:

(a) prohibit the establishment of enterprises and joint ventures or conduct of any other business in or with entities operating in the occupied territories of Azerbaijan;

(b) prohibit any sort of advertising and marketing activities of products or services produced unlawfully in the occupied territories of Azerbaijan or the products, which were produced through utilization of resources from those territories;

(c) prohibit assistance, sponsoring or providing financial, material or technological support for, or goods or services in support of, any economic activity there;

(d) prohibit the importation, directly or indirectly, of any goods and services that were wholly obtained in the occupied territories or underwent last substantial transformation there;

(e) prohibit the exportation, re-exportation, sale, or supply, directly or indirectly, of any goods, services, or technology to the occupied territories;

(f) prohibit the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the imports and exports of goods and services to/from the occupied territories;

(g) prohibit any investment activity in relation to the occupied territories by any natural and legal person, wherever located;

(h) prohibit making funds, financial loans, loan guarantees, credits and other economic resources, directly or indirectly, available for the benefit of natural or legal persons of Armenia or any other State operating in the occupied territories or for any investment activity in those territories;

(i) prohibit the provision, directly or indirectly, of technical assistance, brokering services related to any investment activity in the occupied territories;

(j) prohibit sale, supply, transfer, exportation, directly or indirectly, of key equipment and technology to any natural or legal person, entity or body in Armenia or any other State operating in the occupied territories;

(k) prohibit the provision of services directly related to tourism activities in the occupied territories, in particular prevent tourism companies, travel agencies, tour operators and their umbrella organizations, operating in the territory of a State, from organizing tourist visits to and the promotion of tourism in the occupied territories of Azerbaijan, propagating the illegal separatist regime at international tourism fairs and other tourism events;

(l) refrain from providing any supplies of arms and military equipment to Armenia and not allow transit of such supplies through their territories, in order to deprive Armenia of any means to continue the occupation of the territories of Azerbaijan;

(m) prohibit the involvement, knowingly and intentionally, in any other activities the object or effect of which is to circumvent the prohibitions laid down in the sections above.

341. The responsibility for the consequences of any action, including pursuit of individuals and corporations through the national legal system of Azerbaijan and domestic courts of involved or third party States, which the Republic of Azerbaijan may be obliged to undertake in connection with the unlawful activities in the occupied territories of Azerbaijan in order to protect its sovereignty and territorial integrity within its internationally recognized borders, as well as the rights and legitimate interests of its citizens, will lie entirely with the Republic of Armenia and the engaged natural and legal persons, entities and bodies.

Enclosure I

Original designations of towns and villages of the Republic of Azerbaijan now under occupation, referred to in this report, which were unlawfully altered by Armenia

“Aghavnatun” — Gushchu village, Lachyn district

“Aghavno” — Zabukh village, Lachyn district

“Avetaranots” — Chanagchi village, Khojaly district

“Harutyunagomer” — Gyzylgaya village, Kalbajar district

“Aknaghbyur” — Agbulag village, Khojavand district

“Berdzor” — town of Lachyn

“Chankatagh” — Janyatag village, Tartar district

“Chartar” — Guneychartar village, Khojavand district

“Ditsmayri” — Mashadiismailly village, Zangilan district

“Drakhtik” — Zoghalbulag village, Khojavand district

“Drmbon” — Heyvaly village, Kalbajar district

“Vardadzor” — Gulyatag village, Tartar district

“Gishi” — Kish village, Khojavand district

“Harar” — Ashaghi Farajan village, Lachyn district

“Harav” — Harov village, Khojaly district

“Ishkhanadzor” — Khanlyg village, Gubadly district

“Ivanyan” — Khojaly town, Khojaly district

“Karegah” — Garikaha village, Lachyn district

“Ghazanchi” — Gazanchi village, Aghdam district

“Khachgetik” — Safiyan village, Lachyn district

“Khantsk” — Khanyeri village, Khojaly district

“Khnapat” — Khanabad village, Khojaly district

“Khramort” — Pirlar village, Khojaly district

“Karmir Shouka” — Ghyrmyzy Bazar village, Khojavand district

“Karotan” — Kavdadyg village, Gubadly district

“Karvachar” — Kalbajar town, Kalbajar district

“Kolatak” — Kolatagh village, Kalbajar district

“Kusapat” — Gasapet village, Tartar district

“Lisagor” — Turshsu village, Susha district

“Maghavuz” — Chardagly village, Tartar district

“Mataghis” — Madaqiz village, Tartar district

“Martakert” — Aghdara town, Tartar district

“Mets Shen” — Boyuk Galadarasy village, Shusha district

“Midjnavan” — Minjivan town, Zangilan district

“Nareshtar” — Narynjlar village, Kalbajar district

“Nngi” — Jamiyyat town, Khojavand district

“Norashenik” — Tezekend village, Lachyn district

“Nor Maragha” — Gizil Kengerli village, Aghdam district

“Shushi” — town of Shusha

“Shosh” — Shushikend village, Khojaly district

“Stepanakert” — town of Khankandi

“Tsakhkashen” — Demirli village, Tartar district

“Togh” — Tugh village, Khojavand district

“Tsobadzor” — Chopdere village, Zangilan district

“Tsor” — Sor, Khojavand district

“Urekan” — Ishygly village, Gubadly district

“Vardabats” — Ulashly village, Gubadly district

“Vardadzor” — Pirjamal village, Khojaly district

“Vank” — Vangli village, Kalbajar district

“Voghchi river” — Okhchuchay river, Zangilan district

“Yeritsvank” — Birinci Alibayli, Zangilan district

“Zuar” — Zulfugarly village, Kalbajar district

Enclosure II

Enclosure III

United Nations A/71/880–S/2017/316*

General Assembly
Security Council

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

The situation in the occupied territories of Azerbaijan

Responsibility of States for internationally wrongful acts

Security Council
Seventy-second year

Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

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Upon instructions from my Government, I have the honour to submit to you a legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan (see annex).[1]

The opinion was prepared at the request of the Government of the Republic of Azerbaijan by the eminent international lawyer, Allain Pellet, who is also a professor emeritus at University Paris Ouest Nanterre La Dyfense and a former member (1990-2011) and Chair (1997) of the International Law Commission.

As is known, international law in general and its relevant norms and principles in particular, together with the decisions and documents adopted by the international organizations within this framework, including, in the first place, Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), constitute the basis for the settlement of the conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan and the removal of its consequences.

Against the background of the uninterrupted attempts of Armenia to cover up its unlawful actions and depart from its commitments and obligations by means of misinterpretation of the international legal norms and principles and the

* Second reissue for technical reasons (9 June 2017).

[1] The annex is being circulated in the language of submission only, without formal editing.

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aforementioned Security Council resolutions, Azerbaijan has consistently promoted the critical importance of upholding international law and of its faithful application with a view to achieving a long-awaited breakthrough in resolving the conflict and ending the occupation of the territories of Azerbaijan and the suffering of the peoples affected by the Armenian aggression.

Over the years since the beginning of the conflict, Azerbaijan has actively encouraged discussions on the legal aspects of the conflict, including within the United Nations, and has brought to the attention of the international community numerous legal reports. In particular, the Republic of Azerbaijan submitted to the Secretary-General the reports on the legal consequences of the armed aggression of the Republic of Armenia against the Republic of Azerbaijan (A/63/662-S/2008/812), prepared by Yoram Dinstein, on the 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), on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory (A/63/692-S/2009/51) and on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility (A/66/787-S/2012/289), all three of which were prepared by Malcolm N. Shaw.

Furthermore, the Republic of Azerbaijan submitted to the Secretary-General a comprehensive report of the Ministry of Foreign Affairs on illegal economic and other activities in the occupied territories of Azerbaijan (A/70/1016-S/2016/711), which demonstrated, through facts, figures and statistical data, that Armenia's policy and practices in the occupied territories of Azerbaijan were in breach of international law, undermined the prospects of achieving a political settlement of the conflict and posed an imminent threat to peace, security and stability in the region. The report also recalled the responsibility of the international community to ensure the strict compliance by Armenia with its international obligations.

The legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan provides an authoritative neutral view, which contributes to a better understanding of the existing legal commitments and requirements for addressing the resolution of the conflict and related issues and offers concrete measures that might be taken in that regard.

According to the main findings of the legal opinion, Armenia and its affiliates in the occupied territories of Azerbaijan are responsible for internationally wrongful acts, several of which constitute serious breaches of obligations arising from peremptory norms of general international law (*jus cogens*).

These include, most notably: (a) the use of force in order to impose the de facto secession of the Nagorno-Karabakh region and the other districts of Azerbaijan occupied by Armenia in violation of the Charter of the United Nations; (b) the ensuing violation of the sovereignty and territorial integrity of Azerbaijan; (c) the ethnic cleansing of the occupied territories of Azerbaijan, including the establishment of settlements and the transfer of populations resulting in the change of the demographic composition of those territories; (d) the gross violations of the law of belligerent occupation, in particular of article 43 of the Regulations respecting the Laws and Customs of War on Land of 1907 and article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949; (e) the exploitation of the natural resources of the occupied territories without consideration for the primacy of the interests of the population (as it existed before the ethnic cleansing of the region); and (f) the alteration of the cultural heritage of the region.

The legal opinion makes it clear that the aforementioned serious breaches call for the application of the special consequences resulting from aggravated responsibility, namely: (a) the non-recognition of the situation created by such breaches; (b) the prohibition of aid or assistance in maintaining that situation; and (c) the exclusion of any immunities for the authors of these breaches. Another consequence of this aggravated responsibility is that all States are required to invoke the responsibility of Armenia and to take measures against it, including by means of sanctions, as well as criminal prosecutions and civil proceedings.

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 32, 37 and 74, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

Annex to the letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

LEGAL OPINION ON THIRD PARTY OBLIGATIONS WITH RESPECT TO ILLEGAL ECONOMIC AND OTHER ACTIVITIES IN THE OCCUPIED TERRITORIES OF AZERBAIJAN

1. The present Report was prepared on the request of the Government of the Republic of Azerbaijan.[1] It provides a legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan and offer concrete measures that might be taken in that regard. The Report is framed around the following questions and provides comprehensive answers to them:

   1) Legal consequences of the involvement, directly or indirectly/by action or inaction, of third States, as well as natural and legal persons within their jurisdiction in the following economic and other activities in the occupied territories of Azerbaijan, arising from general international law, international humanitarian law, the European Union legislation, the European Convention on Human Rights and other applicable legal norms:

- Establishment of settlements/encouraging transfer of Armenian population into the occupied territories;
- Looting, exploitation of and trade in assets, natural resources and other forms of wealth in the occupied territories;
- Exploitation of water and agricultural resources;
- Providing products, investments, technology, heavy machinery and services facilitating economic activities;
- Establishing enterprises, creating joint ventures or conducting any other business in or with entities in the occupied territories;
- Providing assistance, sponsoring or providing financial, material or technological support for, or goods or services in support of, any economic activity in the occupied territories;
- Import and selling of any goods, including settlement produce, services or technology originating in the occupied territories or which underwent last substantial transformation there;
- Exportation, re-exportation, sale, or supply, directly or indirectly, from States or by their natural and legal persons, wherever located, of any goods, services, or technology to the occupied territories or to Armenia and its natural and legal persons, which is transferred to and used in the occupied territories;
- Provision, directly or indirectly, of banking services, including financing or financial assistance, as well as insurance and reinsurance related to the imports and exports of goods and services to/from the occupied territories;
- Making funds, financial loans, credits and other economic resources, directly or indirectly, available for the benefit of the natural or legal persons operating in the occupied territories or available for any investment activity there by natural and legal persons or by any other foreign entity, international organization and financial institution;
- Permanent economic, social and transport infrastructure changes;
- Exploitation of Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies in the occupied territories;
- Cutting of rare species of trees, timber exporting and other damage to the environment;
- Archaeological excavations, embezzlement of artefacts, altering of cultural character of the occupied territories;
- Promoting the occupied territories as 'tourist destination' and encouraging/organizing illegal visits to/from these territories;
- Other activities.

[1] The current text is the short version of the Report. Only the arguments and conclusions presented in the original version of the Report submitted on 5 May 2016 are in full accordance with the author's position formulated on the basis of the information available to him.

2) Obligations of States regarding the activities listed above in their territories, including measures that might be taken to ensure the compliance with those obligations.

3) Measures that might be taken to institute legal proceedings against natural and legal persons in the States of their jurisdiction for involving in and profiteering from illegal activities in the occupied territories of Azerbaijan.

4) Measures which should be taken by States concerning the entry in their territories of the leaders and other agents of the separatist regime established by Armenia in the occupied territories of Azerbaijan.

2. The present Report will answer each of these four questions after having first discussed the general legal context.

I. GENERAL LEGAL CONTEXT

3. The four questions I am asked to answer concern the region of Daghlyg Qarabagh or Nagorno-Karabakh ("Nagorny Karabakh" in Russian,[2] meaning "mountainous" Karabakh) and other surrounding districts referred to by Azerbaijan and in various circles of the international community as "occupied territory" and called by Armenia the "Nagorno-Karabakh Republic" (hereinafter "NKR"). All four questions largely depend on the analysis of the legal situation prevailing in this region. It is therefore appropriate to precisely define the situation from the perspective of international law and its consequences generally speaking before coming to the individual questions.

A. Summary of the Historical Background

4. Armenia and Azerbaijan were both part of the former Union of Soviet Socialist Republics as the Soviet Socialist Republic of Armenia and the Soviet Socialist Republic of Azerbaijan. They became independent respectively on 21 September 1991 and on 18 October 1991.[3]

5. Taken over by the Bolsheviks in 1920 together with the rest of Azerbaijan, Nagorno-Karabakh was established within the Azerbaijan SSR on 7 July 1923 as an autonomous oblast.

6. Nevertheless, the Armenian SSR has always shown interest in Nagorno-Karabakh,[4] which was populated by a majority of ethnic Armenians[5] as a result of the artificial drawing of the limits of the oblast by the Soviets. However, this was not the case on the other parts of Azerbaijan's territories now occupied by Armenia: with the exception of some towns in the occupied territories, ethnic Armenians were not in majority: as pointed out by the International Crisis Group, basing itself on the 1989 census of the population of the USSR, before the war, the inhabitants of the occupied districts "were almost exclusively Azeris".[6] After 1987 armed clashes opposed citizens of both countries and Azerbaijanis were the subject of attacks both in the territory of the Armenian SSR and in the autonomous region of Nagorno-Karabakh.[7] And soon before the independence, on 1st December 1989, the Armenian Parliament adopted a resolution on the unification of Armenia and Nagorno-Karabakh.[8]

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[2] Except when I quote, I refer to the region of Daghlyq Qarabagh as Nagorno-Karabakh in the following developments.

[3] Azerbaijan declared independence from the Soviet Union on 30 August 1991. This was subsequently formalised by means of the adoption of the Constitutional Act on the State Independence of 18 October 1991 then confirmed by a nationwide referendum on 29 December 1991.

[4] See H.Krğger, *The Nagorno-Karabakh Conflict: A Legal Analysis*, Springer, Berlin, Heidelberg, 2010, pp. 17-18.

[5] As noted by the European Court of Human Rights (ECHR): "According to the USSR census of 1989, the NKAO had a population of 189,000, consisting of 77% ethnic Armenians and 22% ethnic Azeris, with Russian and Kurdish minorities" (ECHR, Grand Chamber, Judgment, 16 June 2015, *Chiragov and Others v. Armenia*, Application no. 13216/05, para. 13).

[6] International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict from the Ground", *Crisis Group Europe*, Report N° 166, 14 September 2005, p. 7. (https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-azerbaijan/nagorno-karabakh-viewing-conflict-ground).

[7] See A/67/875-S/2013/313, *Annex to the letter dated 23 May 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General*, *Non-compliance by the Republic of Armenia with Security Council Resolutions 822(1993), 853(1993, 874(1993) and 884(1993)*, 24 May 2013, para. 1. See also S.E.Cornell, *The Nagorno-Karabakh Conflict*, Department of East European Studies, Uppsala University, Report no. 46, 1999, pp. 13-15. (https://is.muni.cz/el/1423/podzim2012/MVZ208/um/35586974/Cornell_The_Nagorno-Karabakh_Conflict.pdf).

[8] H.Krğger, prec. note 4, pp. 20-21. See also S.E.Cornell, *ibid.*, pp. 23-24.

7. After the declarations of independence of Armenia and Azerbaijan, there was an intensification of the Armenian offensives, highlighted by the fall of the Azerbaijani city of Khojaly.[9] That Armenia's action turned the situation into an international armed conflict because two independent States were involved from this point on. Other Azerbaijani cities have been occupied after the fall of Khojaly, such as Shusha, Lachin and Kelbajar.[10] Neutral sources have described massacres of Azerbaijani civilians and disarmed soldiers by Armenian forces – particularly after the fall of the cities of Khojaly and Kelbajar.[11] In the words of the European Court of Human Rights:

> "On 2 September the Soviet of the NKAO announced the establishment of the Nagorno-Karabakh Republic (hereinafter the 'NKR'), consisting of the territory of the NKAO and the Shaumyan district of Azerbaijan, and declared that it was no longer under Azerbaijani jurisdiction. On 26 November the Azerbaijani parliament abolished the autonomy previously enjoyed by Nagorno-Karabakh. In a referendum organised in Nagorno-Karabakh on 10 December, 99.9% of those participating voted in favour of secession. However, the Azeri population boycotted the referendum. In the same month, the Soviet Union was dissolved and Soviet troops began to withdraw from the region. Military control of Nagorno-Karabakh was rapidly passing to the Karabakh Armenians. On 6 January 1992 the 'NKR', having regard to the results of the referendum, reaffirmed its independence from Azerbaijan.
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> 18. In early 1992 the conflict gradually escalated into full-scale war. The ethnic Armenians conquered several Azeri villages, leading to at least several hundred deaths and the departure of the population."[12]

8. In 1993, the United Nations Security Council adopted a series of four resolutions on that matter. In the first resolution of 30 April, Resolution 822 (1993), the Security Council demanded "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".[13]

9. In its second resolution on that matter, Resolution 853 (1993) of 29 July 1993, the Security Council condemned the seizure of new districts and areas in Azerbaijan and "attacks on civilians and bombardments of inhabited areas"[14]. It further called on "the parties concerned to reach and maintain durable cease-fire arrangements".[15]

10. These resolutions were reiterated a few months later,[16] but despite the Security Council's position, the attacks kept going and other Azerbaijani cities were occupied. This was immediately noted by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorno-Karabakh who stated that this was "in flat contradiction with past Nagorny Karabakh Armenian assurances that they remained committed to a peaceful settlement of the conflict".[17]

11. In a Report dated 14 April 1993, the Secretary-General of the United Nations stated that the use of "heavy weaponry" seemed "to indicate the involvement of more than local ethnic forces" despite the fact that the

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[9] A brief factual account of the fall of Khojaly can be found in a Judgment of the European Court of Human Rights (ECHR): "It appears that the reports available from independent sources indicate that at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town, who were reportedly assisted by the 366th Motorised Rifle Regiment" (ECHR, Judgment, 22 April 2010, *Fatullayev v. Azerbaijan*, Application no. 40984/07, para. 87).

[10] See e.g.: Human Rights Watch, Reports, *Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno-Karabakh*, Human Rights Watch, 1992, fn 8 and p. 7.

[11] See e.g.: Human Rights Watch, Reports, *ibid.*, 84 p. and *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*. New York: Human Rights Watch, 1995, p. 195 or Thomas De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, NYU Press, 2004, p. 337.

[12] ECHR, *Chiragov and Others v. Armenia*, prec. note 5.

[13] S/RES/822(1993), *Armenia-Azerbaijan*, 30 April 1993, para. 1.

[14] S/RES/853(1993), *Armenia-Azerbaijan*, 29 July 1993, para. 2.

[15] *Ibid.*, para. 3.

[16] See S/RES/874(1993), *Armenia-Azerbaijan*, 14 October 1993.

[17] S/26184, *Annex to the Letter dated 28 July 1993 from the Permanent Representative of Italy to the United Nations Addressed to the President of the Security Council, Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated 27 July 1993*, 28 July 1993, para. 12.

observations of the United Nations Representatives in the area "have not made it possible to confirm this involvement".[18]

12. Finally, the Security Council, in its last resolution on that matter, Resolution 884 (1993) of 12 November 1993, 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 its previous resolutions.[19]

13. A ceasefire was then signed on 9 May 1994 (the Bishkek Protocol) and took effect on 12 May 1994. At that time, the Armenian occupation already concerned 20% percent of Azerbaijan's territory.[20]

14. The situation did not evolve since then and that portion of the Azerbaijani territory is still occupied. Furthermore, the ceasefire was followed by sporadic episodes of violence that led the Security Council's President to reiterate the Council's concerns "at recent violent incidents", and to reaffirm all the Council's "relevant resolutions, *inter alia*, on the principles of sovereignty and territorial integrity of all States in the region",[21] more than a year after the signature of the ceasefire agreement.[22]

15. Attempts for mediation have been made, mostly through the OSCE Minsk Process:

> "29. Several proposals for a peaceful solution of the conflict have failed. Negotiations have been carried out under the auspices of the OSCE (Organization for Security and Co-operation in Europe) and its so-called Minsk Group. In Madrid in November 2007 the Group's three Co-Chairs – France, Russia and the United States – presented to Armenia and Azerbaijan a set of Basic Principles for a settlement [which have since been updated]. Following intensive shuttle diplomacy by Minsk Group diplomats and a number of meetings between the presidents of the two countries in 2009, the process lost momentum in 2010. So far the parties to the conflict have not signed a formal agreement on the Basic Principles."[23]

B. Legal Characterization of the Situation

16. Resulting from an unlawful use of force (2.), the "secession" of Nagorno-Karabakh cannot be justified on the basis of the right of peoples to self-determination (1.). As a result, the situation prevailing in Nagorno-Karabakh is that of a belligerent occupation by Armenia (3).

1. The Relevance and Scope of the Right of Peoples to Self-Determination

17. Both Armenia and the self-proclaimed "NKR" have insistently put forward the principle of the right of peoples to self-determination in order to justify the proclamation of the "NKR".[24]

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[18] S/25600, *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*, 14 April 1993, para. 10.

[19] S/RES/884(1993), *Armenia-Azerbaijan*, 12 November 1993, para. 2.

[20] According to L.Beehner, "Armenian forces had [already] occupied nearly 20 percent of the Azerbaijani territory surrounding Nagorno-Karabakh" ("Nagorno-Karabakh: The Crisis in the Caucasus", *Council For Foreign Relations*, 2005 (http://www.cfr.org/armenia/nagorno-karabakh-crisis-caucasus/p9148); this is not accurate: this percentage includes Nagorno-Karabakh *and* the seven surrounding districts occupied by Armenia.

[21] S/PRST/1995/21, *Statement by the President of the Security Council*, 26 April 1995.

[22] To my knowledge, official declarations in relation with the recent military incidents have been limited to deploring casualties and deaths and calling to stop the fights and avoid escalation (see e.g.: Statement by the High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the European Commission Federica Mogherini, 2 April 2016, available at: http://eeas.europa.eu/statements-eeas/2016/160402_03_en.htm; Statement by the Secretary-General of the United Nations Ban Ki-moon, 2 April 2016, available at: http://www.un.org/apps/news/story.asp?NewsID=53601#.VyteUYSLTIU; Press Release by the Co-Chairs of the OSCE Minsk Group, 2 April 2016, available at: http://www.osce.org/mg/231216; Statement by the NATO Secretary General, 5 April 2016, available at: http://www.nato.int/cps/en/natohq/news_129719.htm).

[23] ECHR, Grand Chamber, Judgment, 16 June 2015, *Sargsyan v. Azerbaijan*, Application no. 40167/06, para. 26.

[24] See e.g.: CCPR/C/92/Add.2, *Initial Report of the Republic of Armenia to the Human Rights Committee*, 14 July 1997, paras. 30-33; A/67/924-S/2013/396, *Letter dated 1 July 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General*, 5 July 2013, p. 1.

18. It would be beyond the scope of the present Report to determine whether the population of Nagorno-Karabakh can be considered as a "people" within the meaning of the word in the framework of the principle of the right of peoples to self-determination – an issue all the more difficult that two preliminary questions should be answered: (i) Should one speak of "the people of Nagorno-Karabakh" as a whole or of "the Armenian people of Nagorno-Karabakh"? and (ii) at what time must this assessment be made: that of the so-called "secession" or today? I will simply assume that there exists a "people of Nagorno-Karabakh" not trying to further define it and with the understanding that this is a most controversial issue. But this is indeed not the end of the question since it remains to answer another question: admitting this population constitutes a people, what is – or would be – the consequence of its existence?

19. According to the Republic of Armenia, the right of peoples to self-determination justifies the secession.[25] Even if one considers that the Armenian population of the former autonomous oblast of Nagorno-Karabakh, this is not so. Such reasoning mixes two different issues: the right to self-determination on the one hand and the right to secession on the other hand. The short answer is as follows: all peoples have a right to self-determination; it can result in a right to get independence; but this is not the case in the present situation. I will examine very briefly these three propositions.

20. As proclaimed in Article 1(2) of the Charter of the United Nations, one of the purposes of the United Nations is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".[26] This right is reaffirmed in the Declaration on the granting of independence to colonial countries and peoples of the General Assembly in which it was expressly stated that "[a]ll 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".[27] And, in another important resolution, the General Assembly considered that:

> "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples 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".[28]

Finally, the first common article to the 1966 International Covenants provides that:

> "1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
>
> 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

21. The references to self-determination in the case law have been summarized by the International Court of Justice in its Advisory Opinion concerning the *Wall*:

[25] CCPR/C/92/Add.2, *Initial Report of the Republic of Armenia to the Human Rights Committee*, *ibid.*, paras. 30-33.
[26] See also Article 55 mentioning the "conditions of stability which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".
[27] A/RES/1514(XV), *Declaration on the granting of independence to colonial countries and peoples*, 17 October 1960, para. 2. It can be sustained that, since, by any means, the "people of Nagorno-Karabakh" – if it exists and whatever its definition – cannot be considered as a colonial people, resolution 1514 (XV) does not apply. According to the present writer, this position overlooks the mention of "all peoples" in this founding text.
[28] A/RES/2625(XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations*, 24 October 1970, Principle V.

> "The Court would recall that in 1971 it emphasized that current development 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 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*, *ICJ 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*, *ICJ 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 (Portugal v. Australia)*, *Judgment*, *ICJ Reports 1995*, p. 102, para. 29)."[29]

22. The right to self-determination applies to all peoples, *but* it includes the right to independence only in specific situations and entities. Resolutions 1514 (XV) and 2625 (XXV) of the General Assembly expressly mention peoples subject "to alien subjugation, domination and exploitation"[30]. In all other cases, as explained by the Supreme Court of Canada, this right "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".[31]

23. Armenia alleged that the Armenians of Nagorno-Karabakh exercised their right to self-determination[32] of which they had been deprived by Azerbaijan since, on 26 November 1991, the Azerbaijani Parliament had abolished the autonomy previously enjoyed by Nagorno-Karabakh.[33] The argument is misconceived in that it ignores the chronology and eventually backfires on its author: it shows that up to the armed conflict Nagorno-Karabakh and its inhabitants enjoyed a status of autonomy, which seems, without much doubt,[34] largely correspond to the generally admitted standard of self-determination. Therefore, the deprivation of autonomy – which had no concrete consequence in view of the loss of control of the territory of Nagorno-Karabakh by the Azerbaijani Government –[35] is the consequence of the armed conflict, not its cause. There is no question, in the present case of the Armenians of Nagorno-Karabakh being "totally frustrated" from exercising its right to self-determination internally to use the characterization made by the Supreme Court of Canada to describe what it considers as being a possible third ground justifying a right to unilateral secession, besides that granted to colonial or occupied peoples.[36]

24. Furthermore, I note that the 1996 OSCE Lisbon Summit recalled the "three principles which should form part of the settlement of the Nagorno-Karabakh conflict" recommended by the Co-Chairmen of the Minsk Group and supported by all member States of the Minsk Group:

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[29] ICJ, Advisory Opinion, 9 July 2004, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *ICJ Reports* 2004, p. 172, para. 88.

[30] See A/RES/1514(XV), *Declaration on the granting of independence to colonial countries and peoples*, 17 October 1960 and A/RES/2625(XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations*, 24 October 1970.

[31] Supreme Court of Canada, 20 August 1998, *Reference re Secession of Quebec*, Case no. 25506, Report 51998°2 SCR 217, para. 126.

[32] See CCPR/C/92/Add.2, *Initial Report of the Republic of Armenia to the Human Rights Committee*, prec. note 24, paras. 30-33; *Letter dated 1 July 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General*, prec. note 24, p. 1.

[33] Resolution No. 279-XII adopted on 23 November 1991 and signed by the President on 26 November 1991; see Thomas De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, prec. note 11, p. 162. As for the status of Nagorno-Karabakh during the Soviet period, see the Decree creating the autonomous oblast of Nagorno-Karabakh adopted on 7 July 1923 by the Central Executive Committee of the Azerbaijan SSR, Collection of Statutes and Decrees of the Labor and Peasant Government of the USSR in the year of 1923. Baku, 1925, pp. 384-385. For a description of this status, see A/64/475-S/2009/508, *Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General*, *The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences*, 6 October 2009, paras. 74-77.

[34] Here again, I cannot, in the framework of this paper, discuss these historical facts from a legal perspective in any details.

[35] See above, para. 7.

[36] *Reference re Secession of Quebec*, prec. note 31, para. 135. The Court notes that "[a] number of commentators have further asserted that the right to self-determination may ground a right to unilateral secession in a third circumstance" (at para. 134), but it does not expressly accept the proposition.

"They are:

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

This statement – the only one within the OSCE which identified the scope of the application of the principle of self-determination in this particular situation – confirms that the population of Nagorno-Karabakh can be conferred "the highest degree of self-rule within Azerbaijan" but is not entitled to independence.

2. A Situation Resulting from an Unlawful Use of Force

25. It does not result from the above that, even absent any circumstance justifying a right to secession, secession is forbidden by international law. It is not. And when an entity succeeds in meeting the conditions for statehood during a certain period of time it could certainly be considered as a State within the perspective of international law. As recalled by the Arbitration Commission for Yugoslavia (Badinter Commission), "the existence or disappearance of the State is a question of fact."[37] And, in this regard, the recognition – or non-recognition – by third States is not conclusive[38] although the fact that the "NKR" has been recognized by *no* other State (including Armenia) is quite revealing. It shows that the international community of States is conscious that the proclamation of independence of this entity was unlawful.

26. As noted by the International Court of Justice in its Advisory Opinion on *Kosovo*, "no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council", but such declarations are not lawful when "connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character *(jus cogens)*."[39] This is so *par excellence* of the norm prohibiting the "use of force against the territorial integrity or political independence of any State".[40]

27. In the present case, the *de facto* secession of the "NKR" encounters two series of decisive (interrelated) objections:

- it results from an unlawful use of force (a); and
- it infringes the fundamental principle of territorial integrity of States (b).

(a) Armenia's Unlawful Use of Force

28. There seems to be little doubt that the situation prevailing in Nagorno-Karabakh is the result of the use of military force by Armenia. In spite of Armenia's weak and unpersuasive denials,[41] this military involvement was in fact acknowledged by the highest Armenian authorities[42] and is attested from numerous various independent sources.

29. In a very detailed and well-documented report dated December 1994, Human Rights Watch gathered evidence establishing "the involvement of the Armenian army as part of its assigned duties in the conflict"[43] and made the conclusion that "[a]s a matter of law, Armenian army troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict".[44]

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[37] Conference on Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991, *International Law Reports,* vol. 92, pp. 164-165, para. 1 (a); see also: Opinion No. 8, *International Law Reports,* vol. 92, p. 201, para. 2.

[38] "[T]he recognition of a State by other States has only declarative value" (First Opinion, *ibid.*, para. 2). See also 20 August 1998, *Reference re Secession of Quebec*, prec. note 31, para. 142.

[39] ICJ, Advisory Opinion, 22 July 2010, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *ICJ Reports* 2010, pp. 437-438, para. 81.

[40] Charter of the United Nations, Article 2(4).

[41] See e.g. ECHR, *Chiragov and Others v. Armenia*, prec. note 5, paras. 159-161.

[42] See *ibid.*, paras. 62, 66 or 68; see also paras. 72 and recapitulating paras. 178-179.

[43] Human Rights Watch/Helsinki, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*, prec. note 11, p. 113.

[44] *Ibid*., p. 127.

30. This has also been the position of several Human Rights bodies.[45] Thus, in April 2001, the United Nations Committee on the Elimination of Racial Discrimination stated that after its independence, Azerbaijan "was soon engaged in war with Armenia"[46]. Years later, the United Nations Committee on Economic, Social and Cultural Rights also referred to the "conflict with Armenia".[47]

31. It cannot be denied that given the involvement of the Armenian military forces in the conflict, the situation is an international armed conflict.

32. I note that, while the armed intervention of Armenia in the process leading to the *de facto* secession of the "NKR" is averred and was decisive for establishing and consolidating this situation, the Security Council abstained from calling it an "aggression". This (non-)position, clearly dictated by political considerations,[48] does not imply that Armenian actions do not amount to an aggression.

33. The definition of aggression given in General Assembly Resolution 3314 (XXIX) of 14 December 1974 (and taken up in Article 8bis inserted in the Statute of the International Criminal Court by the Kampala Conference in 2010)[49] reads as follows:

> "Article 1
>
> 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.
>
> *Explanatory note*: In this Definition the term 'State':
>
> (a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;
> (b) Includes the concept of 'group of States' where appropriate.
>
> Article 2
>
> The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity."

Article 3 of the Definition provides with examples that "are not exhaustive".[50] However, it includes:

> "(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.

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[45] For a more detailed review, see A/63/692-S/2009/51, *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*, 27 January 2009, paras. 19-21.

[46] See CERD/C/304/Add.75, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, 12 April 2001, para. 3.

[47] See E/C.12/1/Add.104, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, 14 December 2004, para. 11.

[48] Generally speaking, the Security Council avoids to clearly qualify a use of force as an armed attack (see e.g.: J.A.Frowein and N.Krisch, "Article 39" in B.Simma *et alii* (eds), Oxford UP, 2nd ed. 2002, p. 722, para. 13; P.d'Argent, J.Daspremont, F.Dopagne et R.van Steenberghe, "Article 39" in J.-P.Cot and A.Pellet (eds.), *La Charte des Nations Unies: Commentaire article par article*, 3rd ed., Economica, Paris, 2005, pp. 1149-1150; or P.Daillier, M.Forteau and A.Pellet, *Droit international public*, 8th ed., L.G.D.J., 2009, pp. 1099-1100.

[49] See RC/RES.6 Adopted by the Review Conference, *The Crime of aggression*, *Annex 1, Amendments to the Rome Statute of the International Criminal Court on the Crime of aggression*, 11 June 2010, para. 2.

[50] A/RES/3314(XXIX), 14 December 1974, *Definition of Aggression*, Article 4.

(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.

[…]

(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."

34. Although the present paper can only remain at a high level of generality, my *prima facie* opinion is that the whole action of Armenia in the establishment of the "NKR" amounts to an aggression. And indeed some of the particular actions perpetrated by Armenian troops or with their complicity qualify as acts of aggression. This is in particular the case of the events which have led to the fall and destruction of Khojaly in 1992, which can reasonably be considered, along with the "[d]irect artillery bombardment of the Azerbaijani town of Lachin – mounted from within the territory of the Republic of Armenia" as falling under Article 3 (a) of the Definition,[51] notwithstanding the fact that it might have been accompanied by acts amounting to genocide.[52]

35. This being said, even if the Armenian use of force during the events preceding the secession of the "NKR" were not recognized as being an armed attack or constituting acts of aggression, they still would be unlawful and incompatible with the prohibition of the use of armed force in international relations in contradiction with the Charter of the United Nations and its purposes.[53] Thus, in its 1986 Judgment in the case of the *Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice underlined that, "[a]longside certain descriptions which may refer to aggression," 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)), referred to above[54]

"includes others which refer only to less grave forms of the use of force. In particular, according to this resolution:

'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.

States have a duty to refrain from acts of reprisa1 involving the use of force.
Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of that right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force'.

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[51] See A/63/662-S/2008/812, *Annex to the Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General*, 24 December 2008, paras. 16-18.

[52] I note that accusations of genocide are made by both sides. However there can be no doubt that the result of the Nagorno-Karabakh war is that the region was cleaned from its Azerbaijani population, which before the war constituted around 25% of its population of the region (See *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*, prec. note 11, p. xx; H.Krğger, *The Nagorno-Karabakh Conflict: A Legal Analysis*, prec. note 4, p. 17). The same is also true and even more flagrant concerning the occupied surrounding territories in which the inhabitants were almost exclusively Azerbaijanis and are now composed of an important majority of ethnic Armenians (International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict from the Ground", prec. note 6, p. 7).

[53] It would indeed be incongruous for Armenia to invoke the right of self-defence provided for by Article 51 of the Charter.

[54] See paras. 21 *et seq*. above.

192. Moreover, in the part of this same resolution devoted to the principle of non-intervention in matters within the national jurisdiction of States, a very similar rule is found:

> 'Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the rygime of another State, or interfere in civil strife in another State'."[55]

36. Similarly, the Security Council condemned "the invasion of the Kelbajar district of the Republic of Azerbaijan",[56] "the seizure of the district of Agdam in the Azerbaijani Republic",[57] and "the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic"[58] and "bombardments of the territory of the Azerbaijani Republic".[59] This cannot leave the slightest doubt on the fact that those acts were, at the very least, uses of armed force incompatible with the Charter of the United Nations. And, it seems more than probable that Armenia sent abundant disguised forces on the territory of Azerbaijan to carry acts of armed force. For instance, the International Crisis Group noted that: "many conscripts and contracted soldiers from Armenia continue to serve in NK" and that "[f]ormer 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."[60]

37. The prohibition of the use of force contrary to the Charter of the United Nations – and not only that of aggression – is a peremptory rule of international law, recognized as such by the international community of States as a whole.[61] It is listed among the norms of *ius cogens* in the lists established by the International Law Commission of the United Nations (ILC) whether during its works on the Law of treaties[62] or on the Responsibility of States for internationally wrongful acts.[63]

(b) Violation of Azerbaijani's sovereignty and territorial integrity

38. "[T]he same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force",[64] that is in respect to the result of the use of force by Armenia (and its support to the secessionists inside Azerbaijan): the *de facto* secession of Nagorno-Karabakh constitutes an obvious violation of the sovereignty and territorial integrity of Azerbaijan and, consequently, of Article 2(4) of the UN Charter.[65]

39. As explained by Arbitrator Max Huber in a celebrated *dictum* in its Award in the *Island of Palmas case*:

> "Sovereignty in the relations between States signifies independence. Independence in regard 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

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[55] ICJ, Judgment, 27 June 1986, *Military and Paramilitary Activities in and against Nicaragua*, *ICJ Reports* 1986, pp. 101-102, paras 191-192.
[56] S/RES/822(1993), prec. note 13, para. 3.
[57] S/RES/853(1993), prec. note 14, preamble, para. 5.
[58] S/RES/884(1993), prec. note 19, preamble, para. 5.
[59] *Ibid*., para. 2.
[60] International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict from the Ground", prec. note 6, p. 9.
[61] See Article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969.
[62] The first example of a treaty violating a norm of *ius cogens* given in the commentary to draft article 50 which became Article 53 of the 1969 Vienna Convention, is "a treaty contemplating an unlawful use of force contrary to the principles of the Charter" (*ILC Yearbook* 1966, vol. II, p. 248, para. (3) of the commentary).
[63] Article 19 of the ILC first draft (1996) mentioned "among the "international crimes" of the States "a serious breach of an international obligation of an essential importance for the maintenance of international peace and security, such as that prohibiting aggression" (*ILC Yearbook*, 1966, vol. II, part 2, p. 75).
[64] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, p. 171, para. 87.
[65] See above para. 25.

> 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."[66]

40. The control by Armenia through the Puppet State[67] it has established on approximately twenty per cent of the territory of Azerbaijan is clearly in breach of this basic norm of contemporary international law. Territory is an indispensable element for the existence of a State and is consubstantial to the concept of sovereignty. The rule imposing the respect of territorial integrity embodied in Article 2, paragraph 4, of the Charter of the United Nations is recalled in a variety of universal and regional instruments[68] and has been reaffirmed in a series of well-known judicial or arbitral decisions.[69]

41. Whatever its legal characterization, the *de facto* secession of the "NKR" with the decisive military support of Armenia violates Azerbaijan's sovereignty and territorial integrity. And indeed, the right to self-determination of the Armenians of Nagorno-Karabakh could not constitute a justification or a circumstance precluding wrongfulness of such a breach. As shown above, the right to self-determination does not imply a right to unilateral secession as far as the territory of sovereign independent States is concerned, but also, it must be conciliated with an equally legally binding principle, that of territorial integrity.

42. As recalled by the second Opinion of the Arbitration Commission for Yugoslavia, "it is well established 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".[70] And the Supreme Court of Canada also stressed that:

> "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."[71]

43. This is the case of Resolution 1514 (XV), paragraph 6 of which provides that "[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country[72] is incompatible with the purposes and principles of the Charter of the United Nations" while paragraph 7 call upon all States to "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." Similarly, the 1975 Declaration on Friendly Relations reaffirms the principle of equal rights and self-determination of peoples and stresses that such rights are not to

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66 P.C.A., Award of the Tribunal, 4 April 1928, *Island of Palmas case (Netherlands, USA)*, Report of International Arbitral Awards, Volume II, p. 838.

67 On the meaning of that expression, see below, para. 74.

68 See e.g.: Helsinki Final Act of 1 August 1975, Principles I-IV, *I.L.M.* 1975 (n° 14), p. 1292 (available at: http://www.osce.org/mc/39501?download=true); A/RES/37/10, *Manila Declaration on the Peaceful Settlement of International Disputes*, 15 November 1982, point 4; Convention on the Law of the Sea, 10 December 1982, Article 301; A/RES/41/128, *Declaration on the Right to Development*, 4 December 1986, para. 3; European Charter for Regional or Minority Languages of 5 November 1992, Article 5.

69 See e.g.: P.C.A., *Island of Palmas case*, prec. note 66, p. 838; ICJ, Judgment, 15 June 1962, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits*, *ICJ Reports* 1962, p. 34; or ICJ, Judgment, 19 December 1978, *Aegean Sea Continental Shelf*, *ICJ Reports* 1978, p. 36, para. 85; ICJ, *Military and Paramilitary Activities in and against Nicaragua*, prec. note 55, p. 99, para. 188; ICJ, Judgment, 19 December 2005, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *ICJ Reports* 2005, p. 223, para. 148.

70 Conference on Yugoslavia, Arbitration Commission, Opinion No. 2, 11 January 1992, *International Law Reports,* vol. 92, p. 168, para. 2.

71 Supreme Court of Canada, prec. note 31, para. 127.

72 The word "country" targets independent States as colonies or other non-self-governing territories, but the latter have, "under the Charter, a status separate and distinct from the territory of the State administering it" (A/RES/25/2625, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24 October 1970, Principle V) with the consequence that accession to independence of such territories does infringe the principle of territorial integrity of the Administering Powers.

> "be construed as authorizing or encouraging any action that 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 and thus possessed of a Government representing the whole people belonging to the territory without distinction."

And it adds: "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."[73] And, just to take another example, the Final Act of the Conference on Security and Co-operation in Europe of 1975 (Helsinki Final Act), states:

> "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."[74]

44. As a matter of principle, except in exceptional circumstances[75] – not realized in the present case –,[76] "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.[77]

3. A Belligerent Occupation and/or a "Puppet State"?

45. The situation prevailing on the ground might seem difficult to define from a legal point of view: in spite of domestic pressures, Armenia has taken great care not to formally annex the territory of Nagorno-Karabakh and the surrounding areas, nor has it recognized the so-called "NKR". These abstentions, by themselves are telling: in spite of the historical evidence it invokes, Armenia seems to be conscious that the situation resulting from its acts is legally dubious. And it certainly is. Although I consider that it is better characterized as being a belligerent occupation laying obligations on Armenia, the "NKR" could also be defined as a Puppet State in a sense that it was established by Armenia in the occupied territories and is under pervasive political, military, economic and other support, direction and control from Armenia. In any case, such a characterization would not exonerate Armenia from its responsibility.

(a) A Belligerent Occupation

46. As shown above,[78] since the independence of both States in 1991, there can be no doubt about the involvement of Armenia in the conflict making it an international armed conflict. As a result, the law of war (*ius in bello*) applies, including the rules applicable to belligerent occupation.

(i) Involvement of Armenia in the Armed Conflict and its Aftermath

47. The question of belligerent occupation as a matter of international law is dealt with in a few instruments of international humanitarian law and has often been the subject of jurisdictional decisions.

48. Explaining the consequences resulting from the prohibition of the "use of force against the territorial integrity or political independence of any State" in Article 2(4) of the Charter, the General Assembly of the United Nations stressed in its 1975 Declaration on Friendly Relations 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."[79]

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[73] *Ibid*.
[74] Helsinki Final Act, prec. note 68.
[75] Although I consider that a full denial by force can justify self-determination in the form of unilateral secession, I admit that this is controversial, and is only supported by undecisive practice.
[76] See above, para. 22.
[77] Supreme Court of Canada, 20 August 1998, *Reference re Secession of Quebec*, prec. note 31, para. 122.
[78] See paras. 6, 28, 29 and 30.
[79] A/RES/25/2625, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24 October 1970, Principle IV. See also the Helsinki Final Act, prec. note 68, Principle IV.

49. Now, in spite of this general prohibition, belligerent occupation is a question of fact – defined by the law. Its traditional definition – which reflects customary law –[80] is given in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907:

> "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."

50. For its part, common Article 2, paragraph 2, of the 1949 Geneva Conventions (ICRC Conventions), to which both Azerbaijan and Armenia are parties,[81] provides that they 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."

51. These general prohibitions having been recalled, the question is whether Armenia can be considered as the occupying power of a part of the Azerbaijani territory. In order to make such a determination, guidelines can be found in the case-law of the International Court of Justice. In particular, in *DRC v. Uganda*, the Court stated:

> "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."[82]

And, in the *Wall* Advisory Opinion the International Court of Justice noted:

> "that, according to the first paragraph of Article 2 of the Fourth Geneva Convention, that Convention is applicable when two conditions are fulfilled: that there exists an armed conflict (whether or not a state of war has been recognized); and that the conflict has arisen between two contracting parties. If 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."[83]

52. I have shown above – inasmuch as the format of this Opinion allows – that Armenian armed forces played a decisive role in the actions that led to the secession *de facto*[84] and this can leave no doubt on the international character of the conflict. Moreover, both Azerbaijan and Armenia are Parties to the 1949 Fourth Geneva Convention.[85] However, it must also be examined "whether there is sufficient evidence to demonstrate that the [occupying] authority [is] in fact established and exercised by the intervening State in the areas in question."[86] To that end, I can only refer to authoritative findings made by neutral observers.

53. This includes the Security Council which

- demanded the "immediate withdrawal of all occupying forces from [the…] occupied areas in Azerbaijan";[87]
- condemned "the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijan Republic" and reiterated its demand for "the immediate, complete and unconditional withdrawal of the occupying forces involved" from these areas;[88]
- called again for "the withdrawal of forces from recently occupied territories…";[89] and

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[80] See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, p. 172, para. 89; or ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, p. 229, para. 172.

[81] For the Fourth Geneva Convention, which is the most relevant for this Report, see: https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380.

[82] ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, p. 230, para. 172.

[83] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, pp. 174-175, para. 95.

[84] See above paras. 34 *et seq*.

[85] See note 81 above.

[86] See note 82 above.

[87] S/RES/822 (1993), prec. note 13, para. 1.

[88] S/RES/853 (1993), prec. note 14, paras. 1 and 3.

[89] S/RES/874 (1993), prec. note 16, para. 5.

– "noted with alarm" and condemned the occupation of new areas in the Azerbaijani Republic and demanded again "the unilateral withdrawal of occupying forces from" these areas 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."[90]

Although Armenia is not expressly mentioned as the occupying power, it is clear that it is targeted by these calls and demands: it could not have been requested from Azerbaijan to withdraw from its own territory.

54. As rightly noted in 2004 by the Rapporteur of the Parliamentary Assembly of the Council of Europe on "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", these calls "applied in particular to Armenia. Regrettably, major parts of these Resolutions have not yet been implemented."[91] The involvement of Armenian forces has not stopped with the cease-fire reached on 12 May 1994. The role of Armenia in the occupation was confirmed in a General Assembly Resolution of 2008 demanding "the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan".[92] The Parliamentary Assembly of the Council of Europe adopted a similar position: in its Resolution 1416 of 25 January 2005 it noted that "[c]onsiderable parts of the territory of Azerbaijan are still occupied by Armenian forces, and separatist forces are still in control of the Nagorno-Karabakh region";[93] it also 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".[94] And in its Resolution of 20 May 2010 on the need for an EU strategy for the South Caucasus the European Parliament "demands (…) the withdrawal of Armenian forces from all occupied territories of Azerbaijan."[95] And even more strongly, in April 2012 the European Parliament recalled that "the occupation of territories belonging to a third country is a violation of international law and is contrary to the founding principles of the European Neighbourhood Policy, thereby jeopardising the whole Eastern Partnership project[96] and noted that "deeply concerning reports exist of illegal activities exercised by Armenian troops on the occupied Azerbaijani territories, namely regular military manoeuvres, renewal of military hardware and personnel and the deepening of defensive echelons."[97]. In this same resolution the European Parliament recommended that negotiations on the EU-Armenia Association Agreements be linked to commitments regarding "the withdrawal of Armenian forces from occupied territories surrounding Nagorno-Karabakh and their return to Azerbaijani control" and called "on Armenia to stop sending regular army conscripts to serve in Nagorno-Karabakh."[98]

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[90] S/RES/884 (1993), prec. note 19, para. 5, and para. 4.

[91] Explanatory memorandum by the Rapporteur (Mr. D.Atkinson), Doc. 10364, 29 November 2004, para. 19 (available at: http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10733&lang=en).

[92] A/RES/62/243, *The situation in the occupied territories of Azerbaijan*, 14 March 2008, para. 2 – to be noted however: the resolution was passed by a vote of 39 to 7, with 100 abstentions. See also General Assembly consensus resolution A/RES/60/285, with the same title, 7 September 2006.

[93] Para. 1.

[94] *Ibid.*, para. 2; see also para. 1. On November 4, 2015, the Political Affairs Committee Parliamentary Assembly of the Council of Europe (PACE) adopted a draft resolution proposing that the Assembly call for "the withdrawal of Armenian armed forces and other irregular armed forces from Nagorno-Karabakh and the other occupied territories of Azerbaijan, and the establishment of full sovereignty of Azerbaijan in these territories." This proposal was not adopted by the Parliamentary Assembly in January 2016 (see http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5993&lang=2&cat=8), in contrast to resolution 2085 (2016) of 26 January 2016, entitled "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water", in which the Parliamentary Assembly of the Council of Europe called for "the immediate withdrawal of Armenian armed forces from the region concerned" (see http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5992&lang=2&cat=8).

[95] Resolution 2009/2216(INI), para. 8.

[96] The Eastern Partnership is an initiative involving the EU, its member States and 6 Eastern European States (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine, based on a commitment to international law principles and fundamental values such as democracy and human rights).

[97] European Parliament resolution of 18 April 2012 containing the European Parliament's recommendations to the Council, the Commission and the European External Action Service on the negotiations of the EU-Armenia Association Agreement, preamble paras. G and H.

[98] *Ibid.*, paras. 1(b) and (r).

55. As noted by the European Court of Human Rights,

> "[t]he annual report of the International Institute for Strategic Studies (IISS), 'The Military Balance', for the years 2002, 2003 and 2004 assessed that, of the 18,000 troops in Nagorno-Karabakh, 8,000 were personnel from Armenia. The 2013 report by the same institute expressed, *inter alia*, that 'since 1994, Armenia has controlled most of Nagorno-Karabakh, and also seven adjacent regions of Azerbaijan, often called the 'occupied territories'' ('The Military Balance' 2002, p. 66; 2003, p. 66; 2004, p. 82; and 2013, p. 218)."[99]

56. In 2005, in a Report on the Nagorno-Karabakh conflict, the International Crisis Group considered that there was a "high degree of integration" between the forces of Armenia and Nagorno-Karabakh.[100]

57. Earlier that year, the Parliamentary Assembly of the Council of Europe, recalling the Security Council's resolutions of 1993, stated that "[c]onsiderable parts of the territory of Azerbaijan are still occupied by Armenian forces" and considered that "the occupation of a foreign territory by a member State constitutes a grave violation of that State's obligations as a member of the Council of Europe".[101]

58. It results from the elements above that Armenia can be defined as the occupying power of the occupied territories of Azerbaijan.

(ii) Summary of Armenia's Obligations as Belligerent Occupant

59. As the occupying power, Armenia is due to respect strict obligations under international law. Provisions dealing with occupation are to be found in the Regulations concerning the Laws and Customs of War on Land, annexed to The Hague Convention IV respecting the Laws and Customs of War on Land of 18 October 1907, which are considered as reflecting customary international law,[102] and in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, to which both Armenia and Azerbaijan are parties.[103]

60. There is no need here to detail the obligations of the occupying power – this will be done as necessary in the Second Part of this Opinion – but it is in order to mention the belligerent occupant's general obligations since they apply to the whole range of activities carried out by Armenia in Nagorno-Karabakh and has consequences in respect to the relations between this area and third parties.

61. One of the paramount applicable rules is expressed in Article 43 of the 1907 Hague Regulations. It reads as follows:

> "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, while respecting, unless absolutely prevented, the laws in force in the country".

62. The International Court of Justice interpreted this provision as comprising "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".[104]

63. For its part, Article 49 of the 1949 Fourth Geneva Convention provides that:

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

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99 ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 63.

100 International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict from the Ground", prec. note 6, p. 10.

101 See Resolution 1416(2005), Parliamentary Assembly, *The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference*, 25 January 2005.

102 See: ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, p. 172, para. 89.

103 See above note 81.

104 ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, p. 231, para. 178.

> Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.
>
> The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
>
> The Protecting Power[105] shall be informed of any transfers and evacuations as soon as they have taken place.
>
> The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.
>
> The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

64. Besides these general (binding) guidelines, the Fourth Geneva Convention contains a number of specific rules concerning e.g. the protection of workers (Art. 52), of private property (Art. 53), of public health (Art. 56), penal legislation and procedure (Arts. 64 to 78).

65. Moreover, as the International Court of Justice stressed in several occasions, occupation does not absolve the occupying power from respecting international rules protecting human rights in the occupied territory even if some limitations may result from the state of war.

66. In its 2005 Judgment in *DRC v. Uganda*, the Court, recalling its Advisory Opinion on the *Wall* of the previous year, stated:

> "216. The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In this Advisory Opinion the Court found that '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 to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.' (*ICJ Reports 2004*, p. 178, para. 106.) It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded 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 (*ibid*., pp. 178-181, paras. 107-113)."[106]

This clearly reflects the actual state of the law.

67. I stress again that, occupation being a pure question of fact,[107] the rules cursorily introduced above apply whether the initial use of force resulting in the military occupation was lawful or not. Thus :

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[105] Given Armenia's denying that it occupies Nagorno-Karabakh, no Protecting Power has been designated – however, more generally, the institution might be considered as having become obsolete.

[106] ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, pp. 242-243, para. 216. See also e.g.: ICJ, Advisory Opinion, 8 July 1996, *Legality of the Threat of Use of Nuclear Weapons*, *ICJ Reports* 1996, p. 240, para. 25.

[107] See above, para. 50.

> "At the outset, we desire to point out that International Law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory. There is no reciprocal connection between the manner of the military occupation of territory and the rights and duties of the occupant and population to each other after the relationship has in fact been established. Whether the invasion was lawful or criminal is not an important factor in the consideration of this subject."[108]

(b) A "Puppet State" or a de facto *annexation?*

68. While there are strong reasons to consider that Armenia is a belligerent occupier, other possible designations can be envisaged. Thus, the Parliamentary Assembly of the Council of Europe considers that the Nagorno-Karabakh region has been annexed *de facto* by Armenia:

> "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."[109]

69. This also confirms that (belligerent) occupation is not exclusive from other characterizations, and the applicable legal rules complement without excluding one another. However, while "belligerent occupation" describes a factual situation, "*de facto* annexation" highlights the wrongful character of that same situation.

70. The wrongfulness of the annexation of parts of the territory of another State is a consequence of the first principle identified in Declaration 2625 (XXV) of the United Nations General Assembly according to which "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 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 by 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."

71. This is the most probable reason why Armenia has not formally recognized the "NKR" as a State.

72. Indeed, there are good reasons to consider that the "NKR" is not a "State" within the real meaning of the word. It is unanimously accepted that "the State is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a State is characterized by sovereignty."[110] And there can be but very little doubt that this last character is missing in the present case.

73. The present Opinion is not a proper place to discuss in detail the definition of sovereignty, which has given way to endless discussions between lawyers. Suffice it to note that the "NKR" lacks at least two attributes usually linked with sovereignty: effectivity and "immediacy". As for the effectivity, the facts justifying the categorisation of the situation as a belligerent occupation speaks for themselves.

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[108] US Military Tribunal, Nuremberg, 8 July 1947 to 19 February 1948, *The Hostage Trial*, *Law Reports of Trials of War Criminals*, Vol. VIII, Case no. 47, p. 59.

[109] Resolution 1416(2005), Parliamentary Assembly, *The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference*, 25 January 2005, para. 2.

[110] Yugoslavia Arbitration Commission, Opinion N° 1, prec. note 37, para. 1(b); see also Montevideo Convention on Rights and Duties of States of 26 December 1933, article 1.

74. Immediacy is different. As noted by the International Court of Justice, States are "political entities" that are "direct subjects of international law."[111] Concerning the "NKR", this condition is not met. The question is not that it is not recognised by other States since the "recognition of a State by other States has only declarative value."[112], although the fact that the "NKR" was not recognised by *any* State is indeed telling. But what matters is the ensuing result of this unanimous non-recognition: as far as I understand, this entity has no contact with other states or international organisations except through the channel of Armenia; it does not conclude international treaties nor is it represented in any way in international organisations. The only notable reason for doubt in this regard is that the Security Council has included "the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic" among the "parties concerned" by the conflict.[113] However, this designation precisely shows that the Council rejects the idea that the "NKR" qualifies as a State. The same holds true when considering the various appellations given by the European Court of Human Rights to so-called "NKR": "separatist regime"[114] or "subordinate local administration".[115]

75. Although the notion of "Puppet State" has never been fully theorised and can cover a variety of situations; they all have in common that, as authoritatively explained by Professor Krystyna Marek, "[a] puppet State is not a State at all according to international law".[116] Moreover, it is admitted that the responsibility for their actions must be imputed to the State which pulls the strings –[117] in the present case, Armenia.

76. There can be no doubt that the "NKR" can be said to be such an entity. In this respect, it compares with a great number of precedents, such as Manchukuo, Transkei and other South-African "bantustans are" (like Transkei or Venda). In all those cases, the Security Council and the General Assembly of the United Nations have adopted resolutions condemning – more or less vigorously – the situation thus created for the entity claiming statehood.[118]

77. The European Court of Human Rights case-law is replete with judgments dealing with the question.[119]

78. It must be noted that the International Court of Justice for its part refused, in its 2007 Judgment on the first *Genocide* case (*Bosnia and Herzegovina v. Serbia*) to accept that the Republika Srpska was under the *de facto* control of Serbia.[120]

79. However, in the present case, I have no hesitation to consider that Armenia, by contrast with what was the case for Serbia over the Republika Srpska, exercises a *de facto* control on the "NKR" or, to borrow the European Court of Human Rights' terminology,[121] that the latter is under the extraterritorial control of the former. This was expressly decided by the Grand Chamber of the Strasbourg Court in its Judgment of 16 June 2015 in the case concerning *Chiragov and Others v. Armenia*, following an impeccable reasoning, which I find helpful to quote at some length.

80. In that case, the Government of Armenia had argued that "the 'NKR' was a sovereign, independent state possessing all the characteristics of an independent state under international law. It exercised control and jurisdiction over

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111 ICJ, Advisory Opinion, 11 April 1949, *Reparation for Injuries Suffered in the Service of the United Nations*, *ICJ Reports* 1949, p. 178.

112 Yugoslavia Arbitration Commission, Opinion N° 8, prec. note 37, para. 2.

113 See S/RES/853(1993), prec. note 14, para. 9 and S/RES/884(1993), prec. note 19, para. 2.

114 See e.g. ECHR, *Sargsyan v. Azerbaijan*, prec. note 23, paras. 130 and 333.

115 ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 106.

116 K.Marek, *Identity and Continuity of States in Public International Law*, Librairie Droz, Geneva, 1968, p. 113. Marek (who also refers to P.Gugghenheim, *Lehrbuch des Völkerrechts, Band I, Unter Berücksichtigung der internationalen und schweizerischen Praxis*, Unbekannter Einband, 1948, p. 170) also argues that the very creation of such an entity is illegal (*ibid.*, p. 120).

117 See: *ibid.*, pp. 189-190 or J.Crawford, *The Creation of States in International Law*, Oxford UP, 2nd ed. 2007, pp. 78-83.

118 Just to give some examples see e.g.: A/RES/31/6 A, *Policies of apartheid of the Government of South Africa*, *The so-called Independent Transkei and Other Bantustans*, 26 October 1976; S/RES/541(1983), 18 November 1983; S/RES/550(1984), 11 May 1984. See also: Assembly of the League of Nations, Resolution adopted on March 11 1932, Miscellaneous No. 5 (1932), No. 10, p. 13.

119 ECHR, Judgment, 18 December 1996, *Loizidou v. Turkey*, Application no. 15318/89, para. 44. ECHR, Grand Chamber, Judgment, 8 July 2004, *Ilaşcu and Others v. Moldova and Russia*, Application no. 48787/99, para. 330.

120 See ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *ICJ Reports* 2007, pp. 166-167, para. 394.

121 Which reflects that of Article 1 of the European Convention on Human Rights: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

Nagorno-Karabakh and the territories surrounding it."[122] These views were strongly and convincingly dismissed by the Court which first set out the "General principles on extra-territorial jurisdiction":

> "168. The Court has recognised the exercise of extra-territorial jurisdiction by a Contracting State when this State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government. The principles have been set out in several cases, including *Ilaşcu and Others*[123]. The relevant passages of [*Catan and Others*] are cited here:
>
> > '103. The Court has established a number of clear principles in its case-law under Article 1. Thus, as provided by this Article, the engagement undertaken by a Contracting State is confined to 'securing' ('*reconnaître*' in the French text) the listed rights and freedoms to persons within its own 'jurisdiction'.[124] 'Jurisdiction' under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.[125]
> >
> > 104. A State's jurisdictional competence under Article 1 is primarily territorial.[126] Jurisdiction is presumed to be exercised normally throughout the State's territory.[127] Conversely, acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases[128].
> >
> > 105. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extra-territorially must be determined with reference to the particular facts[129].
> >
> > 106. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State's own armed forces, or through a subordinate local administration[130]. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the

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122 ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 163.

123 ECHR, *Ilaşcu and Others v. Moldova and Russia*, prec. note 119, paras. 311-319. See also several other judgments also cited by the Court in this passage: ECHR, Grand Chamber, Judgment, 7 July 2011, *Al-Skeini and Others v. the United Kingdom*, Application no. 55721/07, paras. 130-139; and ECHR, Grand Chamber, Judgment, 19 October 2012, *Catan and Others v. Moldova and Russia*, Applications nos. 43370/04, 8252/05 and 18454/06, paras. 130-139.

124 See ECHR, *Soering v. the United Kingdom*, 7 July 1989, para. 86, Series A no. 161; *Banković and Others v. Belgium* [GC] (dec.), no. 52207/99, para. 66, ECHR 2001-XII.

125 See ECHR, *Ilaşcu and Others v. Moldova and Russia*, prec. note 119, para. 311, ECHR 2004-VII; *Al-Skeini and Others v. the United Kingdom*, prec. note 123, para. 130, 7 July 2011.

126 See ECHR, *Soering v. the United Kingdom*, prec. note 124, para 86; *Banković and Others v. Belgium*, prec. note 124, paras 61 and 67; *Ilaşcu and Others v. Moldova and Russia*, prec. note 119, para. 312; *Al-Skeini and Others v. the United Kingdom*, *ibid*., para. 131.

127 ECHR, *Ilaşcu and Others v. Moldova and Russia*, *ibid.*; *Assanidze v. Georgia* [GC], Application no. 71503/01, para. 139, ECHR 2004-II.

128 ECHR, *Banković and Others v. Belgium*, prec. note 124, para. 67; *Al-Skeini and Others v. the United Kingdom*, prec. note 123, para. 131.

129 ECHR, *Al-Skeini and Others v. the United Kingdom*, *ibid*., para. 132.

130 ECHR, *Loizidou v. Turkey (preliminary objections)*, 23 March 1995, para. 62, Series A no. 310; *Cyprus v. Turkey* [GC], Application no. 25781/94, para. 76, ECHR 2001-IV; *Banković and Others v. Belgium*, prec. note 124, para. 70; *Ilaşcu and Others v. Moldova and Russia*, prec. note 119, paras. 314-316; *Loizidou (merits)*, prec. note 119, para. 52; *Al-Skeini and Others v. the United Kingdom*, prec. note 123, para. 138.

responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights.[131]

107. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area[132]. Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region.[133]

...

115. ... As the summary of the Court's case-law set out above demonstrates, the test for establishing the existence of 'jurisdiction' under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law.'

169. The Court first considers that the situation pertaining in Nagorno-Karabakh and the surrounding territories is not one of Armenian State agents exercising authority and control over individuals abroad, as alternatively argued by the applicants. Instead, the issue to be determined on the facts of the case is whether the Republic of Armenia exercised and continues to exercise effective control over the mentioned territories and as a result may be held responsible for the alleged violations. As noted by the Court in *Catan and Others*[134], this assessment will primarily depend on military involvement, but other indicators, such as economic and political support, may also be of relevance."[135]

81. Based on this reasoning, the European Court of Human Rights then examines the relevant facts. Among the most salient, the following ones can be noted:

- "in the Court's view, it is hardly conceivable that Nagorno-Karabakh – an entity with a population of less than 150,000 ethnic Armenians – was able, without the substantial military support of Armenia, to set up a defence force in early 1992 that, against the country of Azerbaijan with approximately seven million people, not only established control of the former NKAO but also, before the end of 1993, conquered the whole or major parts of seven surrounding Azerbaijani districts.";[136]

- "82. The Armenian Government have claimed that the 'NKR' has its own legislation and its own independent political and judicial bodies. However, its political dependence on Armenia is evident not only from the mentioned interchange of prominent politicians, but also from the fact that its residents acquire Armenian passports for travel abroad as the 'NKR' is not recognised by any State or international organisation …"[137]

- "the financial support given to the 'NKR' from or via Armenia is substantial."[138]

To these elements some others could be added. Thus, as pointed out by the Permanent Representative of Azerbaijan to the United Nations, "the movement of personnel in leadership echelons between the supposedly separate entities has happened on the highest possible level", and "the present *de jure* top organs of Armenia were its *de facto* organs even while hoisting the banner of the so-called 'Nagorno-Karabakh Republic'".[139] In particular, as has been

131 ECHR, *Cyprus v. Turkey*, prec. note 130, paras. 76-77; *Al-Skeini and Others v. the United Kingdom*, *ibid*., para. 138.
132 See ECHR, *Loizidou v. Turkey (merits)*, prec. note 119, paras. 16 and 56; *Ilaşcu and Others v. Moldova and Russia*, prec. note 119, para. 387.
133 See ECHR, *Ilaşcu and Others v. Moldova and Russia*, *ibid*., paras. 388-394; *Al-Skeini and Others v. the United Kingdom*, cited above note 123, para. 139.
134 ECHR, *Catan and Others v. Moldova and Russia*, prec. note 123, para. 107.
135 ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 169.
136 *Ibid.*, para. 174.
137 *Ibid*., para. 182.
138 *Ibid*., para. 183.
139 A/67/875-S/2013/313, *Annex to the Letter dated 23 May 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General*, *Non-compliance of the Republic of Armenia with Security Council resolutions 822(1993), 853(1993), 874(1993) and 884(1993)*, 24 May 2013, para. 27. See also A/67/753-S/2013/106, *Annex to the Letter dated 21 February 2013 from the Permanent Representative of Azerbaijan to the United Nations*

noted, "[t]he extent of the semi-union between Karabakh and Armenia was highlighted in March 1997 when Ter-Petrossian appointed Robert Kocharian, Karabakh's president, to be Armenia's new prime minister. Despite his appointment, Kocharian retained his Karabakh "citizenship" and returned to the republic in September to vote in elections for his successor."[140]

82. All these factors reinforce the conclusion of the European Court of Human Rights which considered:

> "186. All of the above reveals that the Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the 'NKR', that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the 'NKR' and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin."[141]

83. In the light of the information available to me, I fully concur with this conclusion, of which consequences must be drawn concerning the responsibility incurred by Armenia both for its own acts in relation with the belligerent occupation of Nagorno-Karabakh and the neighbouring parts of Azerbaijan and for the acts of the "NKR".

C. Armenia's Responsibility for Its Internationally Wrongful Acts

84. A careful distinction must be made between two possible grounds for Armenia's responsibility. On the one hand, the very fact of occupation does not, by itself, entail Armenia's responsibility, but it is responsible for the breaches of the law of occupation, including the rules protecting human rights maintained in force in such a situation. On the other hand, there is no doubt that by having promoted, encouraged, assisted in the creation and the maintenance of the secessionist region of Nagorno-Karabakh, both by using its own military force and by aiding and assisting the Armenian secessionist forces in the region, Armenia has entailed and is still entailing its international responsibility. Moreover and as a consequence, Armenia is, in principle, responsible for the internationally wrongful acts committed by the "NKR", an entity which it controls – including those amounting to serious breaches of obligations resulting from peremptory norms.

(a) The system of international responsibility

85. In all these aspects of the case discussed, the applicable law is that of the law of State responsibility as it is codified in the 2001 ILC Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter "the ILC Articles").[142] The basic principle exposed in Article 1 is that "[e]very internationally wrongful act of a State entails the international responsibility of that State."; and Article 2 describes as follows the "Elements of an internationally wrongful act of a State":

> "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) Is attributable to the State under international law; and (b) Constitutes a breach of an international obligation of the State."

86. Chapter V concludes Part I of the Articles (on "The internationally wrongful act of a State") by describing the "Circumstances precluding wrongfulness" and Part II draws the consequences of the internationally wrongful act of a State which are the followings:

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addressed to the Secretary-General, *The Crime in Khojaly: perpetrators, qualification and responsibility under international law*, 22 February 2013, para. 35. This is confirmed by ECHR, *Chiragov and Others v. Armenia*, prec. note 5, paras. 78 and 181.

140 E.Walker, "No Peace, No War in the Caucasus: Secessionist Conflicts in Chechnya, Abkhazia and Nagorno-Karabakh", *Belfer Center for Science and International Affairs*, *Occasional Paper*, February 1998 (http://belfercenter.ksg.harvard.edu/files/no_peace_no_war_csia_occasional_paper_1998.pdf).

141 ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 186.

142 ILC Articles on Responsibility of States for internationally wrongful acts, annexed to A/RES/56/83 of 12 December 2001 (for the text of the Draft articles with commentaries, see A/56/10, General Assembly Official Records, Fifty-sixth Session, Supplement No. 10, *Report of the International Law Commission*, *Fifty-third Session* (23 April-1 June and 2 July-10 August 2001), pp. 59-365)

"Article 29 *Continued duty of performance*

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

Article 30 *Cessation and non-repetition*

The State responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing;
(b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31 *Reparation*

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."

The more precise rules concerning "Reparation for injury" are detailed in Articles 34 to 39.

87. All these rules apply to all categories of violations which are attributable[143] to Armenia. However, some of these breaches go for aggravated reactions. In effect, the occupation of certain Azerbaijani territories and the related acts might constitute a case of serious breaches of obligations arising under peremptory norms of general international law.

(b) An aggravated responsibility

(i) The notion of serious breach of an obligation arising under a peremptory norm of general international law

88. The ILC Articles, in addition to the "classic" consequences of an internationally wrongful act contained in the first chapter of Part I, deals with an aggravated form of responsibility in the third Chapter of the same Part.[144] This chapter purports "to reflect that there are certain *consequences* flowing from the basic concepts of peremptory norms of general international law and obligations to the international community as a whole within the field of State Responsibility".[145]

89. The first article of the Chapter, Article 40, deals with the scope of application of this specific form of responsibility and reads as follow:

"1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation".

90. It results from the commentary that said obligations "arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values".[146]

91. The commentary provides with examples of such norms:

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[143] On this issue, see below, paras. 108-114.
[144] ILC Articles, Chapter III, *Serious breaches of under peremptory norms of general international law*.
[145] *Ibid*., commentary, para. (7).
[146] *Ibid*., Article 40, *Application of this chapter*, commentary, para. (3).

> "(5) Although not specifically listed in the Commission's commentary to article 53 of the Vienna Convention, the peremptory character of certain other norms seems also to be generally accepted. This applies to the prohibition against torture as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.[147] The peremptory character of this prohibition has been confirmed by decisions of international and national bodies.[148] In the light of the International Court's description of the basic rules of international humanitarian law applicable in armed conflict as 'intransgressible' in character, it would also seem justified to treat these as peremptory.[149]".[150]

92. The Commission considers that this also applies "to the prohibition against torture" and that the examples it provided "may not be exhaustive".[151]

93. Paragraph 2 of Article 40 requires the violation of such a norm to be serious, that is to say in the Commission's words, "a gross or systematic failure by the responsible State to fulfil the obligation". To be considered as systematic, "a violation would have to be carried out in an organized and deliberate way", whereas a gross violation "denotes violations of flagrant nature".[152]

(ii) Armenia's "serious breaches"

94. In view of the above, the situation of the Azerbaijani occupied territories can be argued to fall, at least for part of it, under the scope of Article 40 of the ILC Articles. In effect, the Armenian aggression and the following occupation of Nagorno-Karabakh and other regions obviously constitute such a breach. The prohibition of aggression being part of the peremptory norms and the violation appearing as serious, since it is flagrant, organized and deliberated, this can reasonably be seen as falling under the scope of Article 40. Furthermore, some specific acts such as the attacks on Khojaly and Kelbajar[153] also constitute serious breaches of obligations arising under peremptory norms of general international law.

95. As far as genocide is concerned the situation is in some respect "symmetrical". While it is difficult to assert with certainty that genocidal acts have been committed,[154] I consider that it would be difficult to deny that, at the global level, a "successful" ethnic cleansing has been committed in all the Azerbaijani territories now controlled by Armenia. There does not exist any generally accepted legal definition of "ethnic cleansing", but authoritative doctrinal definition has been proposed and the expression has been used in numerous resolutions of the General Assembly and the Security Council of the United Nations and in the framework of other international organisations.

96. In the first resolution of the Security Council mentioning ethnic cleansing, Resolution 771 (1992) of 13 August 1992, the Council defined ethnic cleansing as a "violation of international humanitarian law".[155] In Resolution 819 (1993) of 16 April 1993, the Council, more precisely

> "5. *Reaffirms* that any taking or acquisition of territory by threat or use of force, including through the practice of 'ethnic cleansing', is unlawful and unacceptable;
>
> 6. *Condemns and rejects* the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of the Republic of Bosnia and Herzegovina as part of its overall abhorrent campaign of 'ethnic cleansing';

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147 Fn 682 in the original: "*United Nations*, *Treaty Series*, vol. 1465, p. 112."
148 Fn 683 in the original: "Cf. the U.S. Court of Appeals, 2nd Circuit, in *Siderman de Blake v. Argentina,* (1992) *I.L.R.,* vol. 103, p. 455, at p. 471; the United Kingdom Court of Appeal in *Al Adsani v. Government of Kuwait,* (1996) *I.L.R.,* vol. 107, p. 536 at pp. 540-541; the United Kingdom House of Lords in *R. v. Bow Street Metropolitan Magistrate, ex parte Pinochet Ugarte (No. 3),* [1999] 2 W.L.R. 827, at pp. 841, 881. Cf. the U.S. Court of Appeals, 2nd Circuit in *Filartiga v. Pena-Irala,* (1980), 630 F.2d 876, *I.L.R.*, vol. 77, p. 169, at pp. 177-179."
149 Fn 684 in the original: "*Legality of the Threat or Use of Nuclear Weapons, ICJ Reports 1996,* p. 226, at p. 257, para. 79."
150 ILC Articles, Article 40, *Application of this chapter*, commentary, para. (5).
151 *Ibid*., commentary, paras. (5)-(6).
152 *Ibid*., commentary, para. (8).
153 See above, para. 7.
154 See above, note 52.
155 S/RES/771(1992), *Former Yugoslavia*, 13 August 1992, paras. 2 and 3.

7. *Reaffirms* its condemnation of all violations of international humanitarian law, in particular the practice of 'ethnic cleansing' and *reaffirms* that those who commit or order the commission of such acts shall be held individually responsible in respect of such acts".[156]

97. Similarly, in its Resolution 46/242 of 25 August 1992, the General Assembly

"6. *Condemns* the violation of the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina as well as the massive violations of human rights and international humanitarian law, in particular the abhorrent practice of 'ethnic cleansing', and demands that this practice be brought to an end immediately and that further steps be taken, on an urgent basis, to stop the massive and forcible displacement of population from and within the Republic of Bosnia and Herzegovina, as well as all other forms of violation of human rights in the former Yugoslavia;
…
8. *Calls upon* all States and international organizations not to recognize the consequences of the acquisition of territory by force and of the abhorrent practice of 'ethnic cleansing.'[157]

98. Though culminating in genocidal effect, such crimes could, in this case, still be classified as ethnic cleansing if the goal behind the destruction was not the extermination of the group but rather their forcible removal from the given territory. Under such circumstances, ethnic cleansing and genocide come close to bleeding together; it nonetheless remains that ethnic cleansing cannot be classified as genocide if the intent behind the removal of the population is not total destruction. Such a conclusion was drawn by the International Court of Justice in its 2007 Judgment concerning *Application of the Convention on the Prevention and Prosecution of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*:

"Neither the intent, as a matter of policy, to render an area 'ethnically homogeneous', nor the operations that may be carried out to implement such policy, can as such be designated as genocide: the intent that characterizes genocide is to destroy, in whole or in part a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement. […] As the ICTY has observed, while there are obvious similarities between a genocidal policy and the policy commonly known as 'ethnic cleansing' (*Krstić*, IT-98-33-T, Trial Chamber Judgment, 2 August 2001, para. 562), yet [a] clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide. (*Stakić*, IT-97-24-T, Trial Chamber Judgment, 31 July 2003, para. 519.) […] In fact, in the context of the Convention, the term 'ethnic cleansing' has no legal significance of its own…".[158]

99. It remains that "ethnic cleansing" both by its method (use of force, intimidation of civil populations)[159] and its result (change in the ethnic composition of the population living on the territory) is incompatible with peremptory norms

156 S/RES/819(1993), *Bosnia and Herzegovina*, 16 April 1993.
157 A/RES/46/242, *The situation in Bosnia and Herzegovina*, 25 August 1992.
158 ICJ, *Application of the Convention on the Prevention and Prosecution of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, prec. note 120, p. 123, para. 190. See also, quoting this passage: ECHR, Judgment, 12 July 2007, *Jorgic v. Germany*, Application no. 74613/01, para. 45.
159 "As a practice, ethnic cleansing could mean a set of different actions, directly or indirectly related to military operations, committed by one group against members of other ethnic groups living in the same territory." (D.Petrović, "Ethnic Cleansing – An Attempt at Methodology", *EJIL*, Vol. 5 (1994), p. 344, referring to the Special Rapporteur on the situation of human rights in the territory of former Yugoslavia: A/47/666-S/24809, Human Rights Situations and Reports of the Special Rapporteurs and Representatives, Situation of human rights in the territory of former Yugoslavia, Annex, *Report on the situation of human rights in the territory of the former Yugoslavia prepared by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 15 of the Commission resolution 1992/S-1/1 and Economic and Social Council decision 1992/305*, 17 November 1992, p. 6, paras. 9-10; and E/CN.4/1993/50, Commission on Human Rights, Forty-ninth session, Agenda, Item 27, *Report on the situation of human rights in the territory of the former Yugoslavia prepared by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 15 of the Commission resolution 1992/S-1/1 and Economic and Social Council decision 1992/305*, 10 February 1993 of the Commission for Human Rights, Tadeusz Mazowiecki, third and fourth Reports on See also: S/1994/674, *Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780(992)*, 27 May 1994, p. 33, para. 130.

of public international law whether one considers that "[t]hose practices constitute crimes against humanity and can be assimilated to specific war crimes [or] could also fall within the meaning of the Genocide Convention."[160] Whether it is assimilated to genocide – a position which I personally do not share – or to a crime against humanity, or seen as an autonomous crime, I would think that the prohibition of ethnic cleansing is a peremptory of general international law.

100. In spite of the non-existence of a generally accepted definition, I deem it quite clear that the Azerbaijanis in Nagorno-Karabakh and the surrounding districts were victims of an ethnic cleansing:

- while the Azerbaijani population constituted around 25 per cent of the population of the Nagorno-Karabakh area before the war,[161] and constituted the almost exclusive population of the surrounding territories,[162] the Armenian population is now usually estimated around 95 per cent of the total population of this area;[163]
- the situation is indisputably the result of Armenian or Armenia's controlled forces; and
- there seems to be wide evidence of brutalities which were the origin of the situation.[164]

101. I am conscious that for their parts, the Armenians and their supporters[165] allege that the cleansing of the region under Armenian control of virtually all its Azerbaijani population is an answer to acts of the same nature committed by the Azerbaijani Party during the war in Nagorno-Karabakh. I do not take any position on the existence and qualification of such acts: in any case, an act of ethnic cleansing can be no excuse for committing an act of the same nature by way of reprisal or retaliation. As the International Court of Justice very clearly noted: "…in no case could one breach of the [Genocide] Convention serve as an excuse for another"[166]. Moreover, as Article 26 of the 2011 ILC Articles on the Responsibility of States firmly establishes that no circumstance can preclude "the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law", and, as I have just noted, if there were only one norm of this kind, it would undoubtedly be the prohibition of genocide.

(iii) Consequences of Armenia's serious breaches

102. When the criterions of Article 40 are met, this entails specific consequences that are dealt with in Article 41 of the ILC Articles, *Particular consequences of a serious breach of an obligation under this chapter*, which provides that:

> "1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
>
> 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
>
> 3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law."

103. It is said in the commentary that that paragraph does not precise "what form this cooperation should take", nor "what measures States should take in order to bring an end to serious breaches".[167]

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[160] *Ibid*., para. 129.
[161] See above, note 52.
[162] International Crisis Group, "Nagorno-Karabakh: Viewing the Conflict from the Ground", prec. note 6, p. 7.
[163] Estimation available at: http://www.nkrusa.org/country_profile/overview.shtml. See also ECHR, *Chiragov and Others v. Armenia*, prec. note 5, para. 27 and *Sargsyan v. Azerbaijan*, prec. note 23, para. 25.
[164] See above, para.7.
[165] See the clearly one-sided study by Caroline Cox and John Eibner, "Ethnic Cleansing in Progress: War in Nagorno-Karabakh", *Sumgait.info* (available at: http://sumgait.info/caroline-cox/ethnic-cleansing-in-progress/post-soviet-conflict.htm).
[166] ICJ, Order, 17 December 1997, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, *Counter-claims*, *ICJ Reports* 1997, p. 258, para. 35.
[167] ILC Articles, Article 41, *Particular consequences of a serious breach of an obligation under this chapter*, commentary, paras. (2)-(3).

104. An example of situation to which the obligation of collective non-recognition of Article 41, paragraph 2, applies is the "territorial acquisitions brought about by the use of force".[168] The ILC recalls the fact that this principle is affirmed in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations.[169]

105. The second obligation under paragraph 2 is the prohibition to render aid or assistance in maintaining the situation, which "deals with the conduct 'after the fact' which assists the responsible State in maintaining a situation 'opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law'[170]".[171]

106. Finally, paragraph 3 means that a serious breach "entails the legal consequences stipulated for all breaches"[172] and "allow for such further consequences of a serious breach as may be provided by for by international law".[173]

107. The characterization of serious breaches in relation with the occupation would entail these consequences for all the States, along with the "classic" consequences of any internationally wrongful act.[174]

(c) Attribution to Armenia

108. As provided for by Article 2(b) of the ILC Articles a breach of international law entails the responsibility of a State when it "is attributable to the State under international law".[175] Chapter II of the first part of the Articles deals with the complex issue of attribution of a conduct to a State and provides with different hypotheses of attribution. Of course, there is no – or little – problem when the breach – whether an act or an omission – is constituted by the conduct of an organ of the State concerned or persons or entities exercising elements of governmental authority.[176] This first hypothesis does not call for long developments: it is obvious that Armenia's responsibility is entailed when its own organs – in particular Armenian military – are the author of a violation of international law,[177] including of the law of belligerent occupation.

109. The question of Armenia's responsibility for the conduct of other entities is far more complex. The main relevant provision in the ILC Articles in this respect is Article 8 on "Conduct directed or controlled by a State":

> "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."

The central question in this respect in the present case is whether the conduct of the Armenians of Nagorno-Karabakh and the surrounding districts can be attributed to Armenia and entail its responsibility.

110. The rule contained in Article 8 has been the subject of abundant case-law and doctrinal propositions.

111. As is well known, the International Court of Justice interpreted this rule as implying an "effective control of the State concerned" in the *Military and Paramilitary* case.

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168 *Ibid*., commentary, para. (6).
169 *Ibid*.
170 Fn 698 in the original: "*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971*, p. 16, at p. 56, para. 126."
171 ILC Articles, Article 41, *Particular consequences of a serious breach of an obligation under this chapter*, commentary, para. (11).
172 *Ibid*., para. (13).
173 *Ibid*., para. (14).
174 See above para. 86.
175 See above, para. 85.
176 See Articles 4 ("Conduct of organs of a State") and 5 ("Conduct of persons or entities exercising elements of governmental authority").
177 See ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, p. 242, para. 213.

> "115. The Court has taken the view (…) that United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself (…) for the purpose of attributing to the United States the acts committed by the contras in the course of their military or paramilitary operations in Nicaragua. All the forms of United States participation mentioned above, and even the general control by the respondent State over a force with a high degree of dependency on it, would not in themselves mean, without further evidence, that the United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State. (…) For this conduct to give rise to legal responsibility of the United States, 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."[178]

112. Such an interpretation has been confirmed by the International Court of Justice in the *Bosnian Genocide* case[179] in which the Court firmly maintained its position against that, less rigid, adopted by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) which contented itself with an "overall control".[180]

113. The undersigned faces a problem in this respect: I have always considered the "*Nicaragua* test" too rigid –[181] and particularly so when applied to serious breaches of obligations arising under peremptory norms where, in any case, an overall control should suffice. If this is so, there is no doubt that the conditions of that test ("the *Tadić* test") are met.[182] If the *Nicaragua* test applies, I am not in a position to assess its relevance in the various unlawful operations performed by the "NKR" and the Armenians of Nagorno-Karabakh and an inquiry to that end would be far beyond the reach of the present Legal Opinion.

114. This being said, two further remarks are in order:

- First, as aptly noted by late Sir Ian Brownlie, "[a] State cannot avoid legal responsibility for its illegal acts of invasion, of military occupation, and for subsequent developments, by setting up, or permitting the creation of, forms of local administration, however these are designated".[183]; and,
- Second, although there are uncertainties as to the conditions for applying the concept of complicity in international law, I have but little doubt that it could apply in the present circumstances.[184]

(d) The implementation of Armenia's responsibility

115. Part III of the ILC Articles is devoted to "The implementation of the international responsibility of a State". It starts with a Chapter concerning "Invocation of the responsibility of a State".[185] Besides, various provisions relating to the notice of claims, which would be of relevance if Azerbaijan would be prepared to introduce law suits directly against Armenia – which is in any case not the subject-matter of the present Legal Opinion, Article 48 must be signalled in that it admits that the responsibility of a State may in certain circumstances be invoked by a State other than an injured State.

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178 ICJ, *Military and Paramilitary Activities in and Against Nicaragua*, prec. note 55, pp. 64-65, para. 115.

179 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, prec. note 120, p. 209, para. 403.

180 Case IT-94-1, *Prosecutor v. Tadić*, (1999) *I.L.M.,* vol. 38, p. 1546, para. 145.

181 See e.g. CR 2006/8 (translation), Public sitting, 3 March 2006, Case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, (A.Pellet), pp. 26-27, paras. 66-67.

182 See above, para. 112.

183 I.Brownlie, *State Responsibility: The Problem of Delegation*, in *Völkerrecht zwischen normativen Anspruch und politischer Realität.- Festschrift Zemanek*, Berlin, 1994, p. 301.

184 See e.g.: Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in Colombia, 26 February 1999 (OAS/Ser.L/V/II.102, doc. 9, Rev. 1, 26 Feb. 1999, paras. 258-262). In the literature, see e.g.: J.Quigley, "Complicity in International Law: A New Direction in the Law of State Responsibility", *B.Yb.I.L.*, vol. 57 (1986), p. 77; J.E.Noyes & B.D.Smith, "State Responsibility and the Principle of Joint and Several Liability", *Yale Journal of International Law*, vol. 13 (1988), p. 225; B.Graefrath, "Complicity in the Law of International Responsibility", *Revue belge de droit international*, vol. 29 (1996), p. 370.

185 Articles 42 to 48.

116. This is so in particular if "the obligation breached is owed to the international community as a whole."[186] In such a case,

> "Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
>
> (a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
> (b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached."[187]

If related to Article 41,[188] this provision can be of interest in that Azerbaijan could base itself on this provision to request the cooperation of other States required under Article 41.

Chapter II of Part III bears upon "Countermeasures".[189] The core principle is posed by Article 49 (1) according to which:

> "1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two."

Article 50 for its part lists the "Obligations not affected by countermeasures" and can be summarized as excluding any measures affecting obligations arising from peremptory norms, in particular those prohibiting the use of force or protecting fundamental human rights.

117. In principle, counter-measures are reserved to the injured State – in other terms: within the limits provided for by the ILC Articles, they can be used by Azerbaijan in its relations with Armenia and they are of no direct relevance for the present Opinion. However, attention can be drawn on the rather enigmatic Article 54 on "Measures taken by States other than an injured State":

> "This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached."

118. From my point of view, this Part of the present Opinion offers a general description of the common legal and factual background which must be kept in mind when answering the four questions which have been asked to me and to which I now turn.

II. LEGAL CONSEQUENCES OF THE INVOLVEMENT OF STATES AND NATURAL AND LEGAL PERSONS

119. The first question concerns the legal consequences arising from the direct or indirect involvement of third States, as well as natural and legal persons within their jurisdiction in the activities listed at paragraph 1 of the present Report.

120. First and foremost, I have to recall here that States are under an obligation not to recognize a situation of unlawful occupation, and not to aid or assist the responsible State in maintaining that situation inasmuch as serious breaches of obligations arising under peremptory norms of general international law are concerned.[190] Consequently, any activity considered as contributing to the maintenance of a situation constituting a serious violation of such a norm would entail the responsibility of the State either as the wrongdoer or for aiding or assisting the author of the wrongful act[191] with the consequences and obligations flowing from any internationally wrongful act as developed in Part I of this Report.

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[186] Article 48(1)(b).
[187] Article 48 (2); see also Article 54 ("Measures taken by a State other than the injured State"), below, para. 117.
[188] See above, para. 102.
[189] Articles 49 to 54.
[190] See above, Part I, paras. 88-93.
[191] See above, e.g., Part I, paras. 102-107.

121. The present Part is divided into two sections. Section 1 describes the legal framework applying to the various categories of activities listed at paragraph 1 of the present Report and the specific conditions in which States and private persons, whether natural or legal persons, can entail their responsibility. Section 2 focuses on the means offered to the Republic of Azerbaijan to ensure the implementation of the responsibility of the concerned actors.

Section 1. Legal Framework Governing the Activities Carried out in the Occupied Territories of Azerbaijan

122. The activities listed by the Government of the Republic of Azerbaijan can be classified into six distinct categories:

- Establishment of settlements (A.)
- Activities concerning the exploitation and trade of Azerbaijani natural resources (B.)
- Other economic and financial activities (C.)
- Changes in the infrastructures and exploitation of the telecommunication network (D.)
- Alteration of the cultural character and heritage of the occupied territories (E.)
- Promotion of the occupied territories as a touristic destination, organisation of illegal visits and other activities (F.)

123. For each of these categories, I will first draw the legal framework in light of both general and, where appropriate, specific rules of international law and then wonder whether and to what extent breaches are attributable to Armenia.

124. Concerning the facts and evidences of involvement of States, natural and legal persons in these activities, I will essentially rely on the Report of March 2016 prepared by the Ministry of Foreign Affairs of the Republic of Azerbaijan on Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan" (hereinafter "the MFA Report").[192]

A. Establishment of Settlements

1. Applicable law

125. As mentioned in the first Part of the present Report,[193] situations of military occupation, which is the case for Nagorno-Karabakh and the other surrounding districts, are dealt with especially in The Hague Regulations of 1907, the Fourth Geneva Convention of 1949 and the First Additional Protocol of 1977.

126. Article 49 of the Fourth Geneva Convention – the text of which is reproduced in full in paragraph 63 above – firmly prohibits the establishment of settlements and transfers of population.

127. Furthermore, it results from Article 85(4)(a) of the first 1977 Protocol that "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" shall be considered as a grave breach of that Protocol "when committed wilfully and in violation of the Conventions or the Protocol".[194]

128. The rule prohibiting the transfer of population is of customary nature according to the ICRC Study on customary international humanitarian law. Rule 129 of this authoritative document provides that:

> "A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.

[192] Report by the Ministry of Foreign Affairs of the Republic of Azerbaijan, "Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", March 2016, available at: http://www.mfa.gov.az/files/file/MFA_Report_on_the_occupied_territories_March_2016_1.pdf. See also A/70/1016–S/2016/711, *Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General*, 16 August 2016.

[193] See paras. 47-50.

[194] Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 85 para. 4 (a).

> B Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of civilians involved or imperative military reasons demand".[195]

129. Rule 130 of the same study provides that: "States may not deport or transfer parts of their own civilian population into a territory they occupy". It can already be noted that these customary rules impose obligations binding only States, not private persons.[196]

130. In its *Wall* Advisory Opinion, the International Court of Justice considered the establishment of settlements by Israel in the Occupied Palestinian Territory and mentioned in Article 49, paragraph 6, of the Fourth Geneva Convention, and stated that that provision "prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory".[197] The Court concluded that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law".[198]

131. The Israeli's establishment of settlements in the occupied territories had previously been condemned by the Security Council in relation with the prolonged occupation of the West Bank by Israel. In its first significant resolution on Israeli settlements, concerning "Territories occupied by Israel" (of 1979), the Council

> "1. *Determines* that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."[199]

132. This first resolution was followed by many others.[200] After having determined that the establishment of settlement had no legal validity, the Security Council called upon "the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem".[201] In another resolution on the territories occupied by Israel, the Security Council reaffirmed "that the acquisition of territory by force is inadmissible".[202]

133. Similarly, the General Assembly recalled "relevant United Nations resolutions affirming that Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, are illegal and an obstacle to peace and to economic and social development as well as those demanding the complete cessation of settlement activities".[203]

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[195] J.-M.Henckaerts and L.Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules, ICRC, Cambridge, Reprinted with corrections in 2009, p. 457, Rule 129. This study is a compilation of unwritten rules governing the conduct of the parties to an armed conflict that are part of customary international law.

[196] For more developments on this, see *infra*, paras. 202-203.

[197] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, p. 183, para. 120.

[198] *Ibid*., p. 184, para. 120.

[199] S/RES/446(1979), *Territories occupied by Israel*, 22 March 1979, para. 1.

[200] See e.g.: S/RES/465(1980), *Territories occupied by Israel*, 1 March 1980; S/RES/476(1980), *Territories occupied by Israel*, 30 June 1980; S/RES/478(1980), *Territories occupied by Israel*, 20 August 1980; S/RES/497(1981), *Israel-Syrian Arab Republic*, 17 December 1981; S/RES/904(1994), *Measures to guarantee the safety and protection of the Palestinian civilians in the territories occupied by Israel*, 18 March 1994; S/RES/1397(2002), *The Middle East, including the Palestinian question*, 12 March 2002; S/RES/1515(2003), *Middle East, including the Palestinian question*, 19 November 2003.

[201] S/RES/452(1979), *Territories occupied by Israel*, 20 July 1979, para. 2.

[202] S/RES/476(1980), *Territories occupied by Israel*, 20 June 1980, preamble, para. 2.

[203] A/RES/ES-10/7, *Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory*, 11 November 2000, para. 6. See also, e.g.: A/RES/ES-10/14, *Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory*, 12 December 2003, para. 13; A/RES/58/292, *Status of the Occupied Palestinian Territory, including East Jerusalem*, 17 May 2004; A/RES/60/41, *Jerusalem*, 10 February 2006; A/RES/ES-10/16, *Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory*, 4 April 2007; A/RES/70/89, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, 15 December 2015, para. 1.

134. In its *Wall* Advisory Opinion of 2004, the International Court of Justice noted that there was a risk related to "the departure of Palestinian populations from certain areas"[204] and considered that the construction of the wall, "coupled with the establishment of the Israeli settlements mentioned in paragraph 120 above, is tending to alter the demographic composition of the Occupied Palestinian Territory".[205]

135. The establishment of settlements is, in itself, clearly in beach of peremptory norms of international law, in particular the principles of territorial integrity of States and of non-acquisition of territories by force.[206] This is also true for the measures tending to alter the demographic composition of occupied territories. After its first resolutions on the Israeli settlements, the Security Council became more specific about the reasons for their wrongfulness. In 1980, it determined

> "that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East".[207]

It also considered

> "that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council."[208]

136. It clearly results from the 2004 International Court of Justice Advisory Opinion, as well as from the resolutions mentioned above that the changes in the demographic composition of occupied territories are contrary to international law and condemned as such by the international community.

2. Breaches attributable to Armenia

137. Various sources show that the Azerbaijani population of the occupied territories started to flee or was expelled from the areas concerned after the beginning of the war.[209] As noted by the European Court of Human Rights in *Chiragov*,

> "According to the USSR census of 1989, the NKAO had a population of around 189,000 consisting of 77% ethnic Armenians and 22% ethnic Azeris, with Russian and Kurdish minorities."[210],

while

> "[e]stimates of today's population of Nagorno-Karabakh vary between 120,000 and 145,000 people, 95% being of Armenian ethnicity. Virtually no Azerbaijanis remain."[211]

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[204] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, prec. note 29, p. 184, para. 122.
[205] *Ibid*., p. 191, para. 133.
[206] See Part I, para. 25.
[207] S/RES/465(1980), *Territories occupied by Israel*, 1 March 1980, para. 5. See also, e.g.: S/RES/476(1980), *Territories occupied by Israel*, 30 June 1980; S/RES/478(1980), *Territories occupied by Israel*, 20 August 1980; S/RES/904(1994), *Measures to guarantee the safety and protection of the Palestinian civilians in the territories occupied by Israel*, 18 March 1994; S/RES/1397(2002), *The Middle East, including the Palestinian question*, 12 March 2002; S/RES/1515(2003), *Territories occupied by Israel*, 19 November 2003; S/RES/1544(2004), *Middle East, including the Palestinian question*, 19 May 2004.
[208] S/RES/476(1980), *Territories occupied by Israel*, 30 June 1980, para. 5.
[209] Human Rights Watch, *Seven Years of Conflict in Nagorno-Karabakh*, prec. note 11, p. xii: also quoted in ECHR, *Chiragov and Others*, prec. note 5, paras. 22-25; "The Azeri Civilian Population Was Expelled from All Areas Captured by Karabakh Armenian Forces"; T. De Waal, *op. cit.*, pp. 216, 218.
[210] ECHR, *Chiragov and Others v. Armenia*, *ibid*., para. 13; or *Sargsyan v. Azerbaijan*, prec. note 23, para. 15.
[211] *Ibid.*, respectively para. 27 and para. 24.

138. The forced departure of the Azerbaijani population was clearly a consequence of the actions of the Armenian forces or their affiliates in the territory of the Republic of Azerbaijan.

139. In all the resolutions it adopted on the Nagorno-Karabakh conflict, the Security Council expressed its concern about the civilians displaced in different other areas of the Azerbaijani territory. In the first resolution, the Security Council expressed "grave concern at the displacement of a large number of civilians and the humanitarian emergency in the region, in particular in the Kelbajar district".[212] It then expressed concern about "the displacement of a large number of civilians in the Azerbaijani Republic"[213] and finally deplored "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".[214]

140. In its resolution 48/114 of 23 March 1994, entitled "Emergency international assistance to refugees and displaced persons in Azerbaijan", the Assembly expressed grave concern about the continuing deterioration of the humanitarian situation in Azerbaijan owing to the displacement of large numbers of civilians and noted with alarm "that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million".[215]

141. The link between the displacement of civilians and the hostilities has been clearly established by the Representative of the Secretary-General, Mr. Francis M. Deng, who stated that "[i]nternal displacement in Azerbaijan is a direct consequence of the conflict over the territory of Nagorno-Karabakh".[216]

142. In its Report on the Nagorno-Karabakh conflict, the International Crisis Group stressed that in the occupied territories, "[b]efore the war, 424,900 inhabitants of those districts were almost exclusively Azeris,[217] none of whom remain. Towns like Agdam (28,200), Kelbajar (8,100), Jebrail (6,200) and Fizuli (23,000)[218] have been systematically levelled so that only foundations remain."[219] Thus, the armed forces of the "NKR", along with Armenia, are at least partly, liable for the diminution of the ethnic Azerbaijani population in the occupied territories of Azerbaijan. All the documents cited above show that the displacement of Azerbaijani civilians did not only happen in Nagorno-Karabakh but rather concerns all of the occupied territories of the Republic of Azerbaijan.

143. In a Report of 2005, the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh "found three categories of Armenians from Armenia in [these] territories"[220] and "observed disparate settlement incentives traceable to the authorities within and between the various territories".[221] According to its mandate, the mission had to "visit the occupied territories surrounding Nagorno-Karabakh (the 'territories') and determine whether settlements exist in the area".[222] The FFM visited six districts and estimated "approximately 1,500 settlers in the areas visited, based on interviews and direct observation".[223]

144. It results from the above that the establishment of settlements is clearly a breach of international law and that the actions purporting to change the demographic composition of the occupied territories of the Republic of Azerbaijan are contrary to the treaty provisions in force between Armenia and Azerbaijan and to customary rules of

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212 S/RES/822(1993), prec. note 13, preamble, para. 6.
213 See S/RES/853(1993), prec. note 14, preamble, para. 6 and S/RES/874(1993), prec. note 167, preamble, para. 7.
214 S/RES/884(1993), prec. note 19, preamble, para. 8.
215 A/RES/48/114, operative para. 2.
216 E/CN.4/1999/79/Add.1, Commission on Human Rights, Fifty-fifth Session *Report of the Representative of the Representative of Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human resolution 1998/50*, Addendum, Profiles in displacement: Azerbaijan, 25 January 1999, paras. 20, 30.
217 Fn 74 in the original: "According to the 1989 census, Azeris were 96 per cent in Kelbajar, 89.9 per cent in Lachin, 99.6 per cent in Jebrail, 99.4 per cent in Kubatly, 99.2 per cent in Fizuli and 99.5 per cent in Agdam. Armenians were registered in Zangelan (0.4 per cent), and in Kubatly, Fizuli and Agdam (all 0.1 per cent). *Ethnic Composition of the Population of Azerbaijani SSR*, *op. cit*., pp. 7-8."
218 Fn 75 in the original: "'The Population of Azerbaijani Republic, 1989', Statistical Collection, Baku, 1991, pp. 11-13."
219 International Crisis Group, "Nagorno-Karabakh: Viewing the conflict from the ground", prec. note 6, p. 7.
220 A/59/747–S/2005/187, *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 (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK)*, 21 March 2005, p. 34.
221 *Ibid*., p. 35.
222 *Ibid*., p. 8.
223 *Ibid*., p. 11.

international law applied in the resolutions and decisions mentioned above. This is an absolute prohibition which does not tolerate any exception. The involvement, directly or indirectly of States, natural and legal persons in such activities in the occupied territories of Azerbaijan entails the legal consequences explained in section 2 below.

B. Activities Concerning the Exploitation and Trade of Azerbaijani Natural Resources

1. Applicable Law

145. The activities involving the natural resources of the occupied territories of Azerbaijan under the control of Armenia (exploitation and trade of natural resources and other forms of wealth, cutting of rare species of trees, timber exporting, exploitation of water etc.) fall under the scope of the legal principle of permanent sovereignty over natural resources, especially in relation with occupation.

146. The principle of permanent sovereignty over natural resources finds its source in several resolutions adopted by the United Nations General Assembly.[224] In its Resolution 1803 (XVII) of 14 December 1962, entitled "Permanent Sovereignty over Natural Resources", the General Assembly declared that:

> "1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
>
> 2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes should be in conformity with the rules and conditions which peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities".

The principle was then included in Article 1, paragraph 2, of the Covenants of 1966, which provides that:

> "2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

147. It results from the General Assembly resolutions that the principle of permanent sovereignty over natural resources was intended to apply to situations in which peoples are either former colonial territories or under other forms of foreign occupation, which are deemed to be similar and call for the application of the same rules.[225]

148. On this basis, the General Assembly adopted a number of resolutions on the permanent sovereignty over national resources in the occupied Arab territories. This is the case of Resolution 3336 (XXIX) of 17 December 1974 on the Permanent sovereignty over national resources in the occupied Arab territories which

> "1. *Reaffirms* the right of the Arab States and peoples whose territories are under Israeli occupation to full and effective permanent sovereignty over all their resources and wealth;
>
> 2. *Also reaffirms* that all measures undertaken by Israel to exploit the human, natural and all other resources and wealth of the occupied Arab territories are illegal, and calls upon Israel immediately to rescind all such measures;
>
> 3. *Further reaffirms* the right of the Arab States, territories and peoples subjected to Israeli aggression and occupation to the restitution of and full compensation for the exploitation, depletion and loss of, and damages to, the natural and all other resources and wealth of those States, territories and peoples;

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[224] See, e.g: A/RES/626(VII), *Right to Exploit Freely Natural Wealth and Resources*, 12 December 1952; A/RES/1803(XVII), *Permanent Sovereignty over Natural Resources*, 14 December 1962; A/RES/3016(XXVII), *Permanent Sovereignty over Natural Resources of Developing Countries*, 18 December 1972.

[225] See P.Daillier, M.Forteau and A.Pellet, *Droit international public*, *op. cit.* note 48, p. 1157.

4. *Declares* that the above principles apply to all States, territories and peoples under foreign occupation, colonial rule, alien domination and *apartheid*, or subjected to foreign aggression".[226]

149. The situation in the occupied territories in Azerbaijan can be compared in several respects to that prevailing in Namibia during the 1970s concerning which the United Nations Council for Namibia adopted the famous Decree No. 1 for the Protection of the Natural Resources of Namibia[227] in which it decreed that:

1. No person or entity, whether a body corporate or unincorporated, may search for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export, or distribute any natural resource, whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or such consent;

2. Any permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the "Administration of South Africa" or their predecessors, is null, void and of no force or effect;

3. No animal resource, mineral, or other natural resource produced in or emanating from the Territory of Namibia may be taken from the said Territory by any means whatsoever to any place, whatsoever outside the territorial limits of Namibia by any person or body, whether corporate or unincorporated, without the consent and permission of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council;

4. Any animal mineral or other natural resource produced in or emanating from the Territory of Namibia which shall be taken from the said Territory without the consent and written authority of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council may be seized and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

5. Any vehicle, ship or container found to be carrying animal, mineral or other natural resources produced in or emanating from the Territory of Namibia shall also be subject to seizure and forfeiture by or on behalf of the United Nations Council for Namibia or of any person authorized to act on behalf of the said Council and shall be forfeited to the benefit of the said Council and held in trust by them for the benefit of the people of Namibia;

6. Any person, entity or corporation which contravenes the present decree in respect of Namibia may be held liable in damages by the future Government; of an independent Namibia;

7. For the purposes of the preceding paragraphs 1, 2, 3, 4 and 5 and in order to give effect to this decree, the United Nations Council for Namibia hereby authorizes the United Nations Commissioner for Namibia, in accordance with resolution: 2248 (S-V), to take the necessary steps after consultations with the President.

This indeed only applies to Namibia. It can nevertheless give some sense of measures which can be taken by the United Nations in such circumstances.

150. There can be but little doubt that the principle of permanent sovereignty over natural resources applies in the situations of military occupation. As long as the exploitation and trade of resources and wealth are not done in the benefit of the concerned populations, it is contrary to the principle of permanent sovereignty over natural resources.

[226] Several similar resolutions have been adopted by the General Assembly. See, e.g.: A/RES/3516(XXX), *Permanent sovereignty over national resources in the occupied Arab territories*, 15 December 1975; A/RES/38/144, *Permanent sovereignty over national resources in the occupied Arab territories*, 19 December 1983.

[227] General Assembly, Official Records: Thirty-fifth session, Supplement No. 24 (A/35/24), *Report of the United Nations Council for Namibia*, Vol. I, Annex II, p. 153.

2. Breaches by Armenia

151. It is said, in the MFA Report, which is "based on the collection and analysis of information from various public sources, predominantly Armenian ones",[228] that "farmlands in the occupied territories […] have been illegally appropriated and extensively exploited by Armenia, its companies and the subordinate separatist regime, which grant free concessions to the settlers to exploit those territories"[229] and that "[t]he development of agriculture in the occupied territories is used not only for economic, but also for demographic reasons".[230] The Report also indicates that some products harvested in the occupied territories "are transported to Armenia for domestic consumption and possibly for re-export."[231]

152. The MFA Report also indicates that there is a systematic pillage of the occupied territories multiple resources and stresses that "[i]f such looting was previously conducted by the individual Armenian settlers and soldiers, this practice is currently replaced with more organized system of pillage, under the direction and control of Armenia".[232]

153. Armenia's behaviour towards the natural resources of the occupied territories constitutes a breach of international law, especially of Azerbaijan's permanent sovereignty over its national resources.

C. Economic and Financial Activities

154. In addition to the previous mentioned activities, linked to the exploitation of Azerbaijani natural resources, many activities listed by the Government of the Republic of Azerbaijan concern the economic and financial fields, like the establishment of enterprises, the conduct or businesses in or with entities in the occupied territories, the provision of banking services etc. I deem it unfeasible to discuss them one by one and have grouped them under a single category concerning "Economic and financial activities".

1. Applicable law

155. Absent express mentions of an obligation for States to refrain from economic activities in occupied territories in treaty law,[233] such an obligation is rooted in customary international law. It can be inferred from the principle according to which every State "has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources *and economic activities*".[234]

156. The obligation to refrain from such activities in occupied territories arguably flows from the general duty of non-recognition of armed conquest, highlighted by the International Court of Justice in its *Namibia* Advisory Opinion:

> "124. The restraints which are implicit in the non-recognition of South Africa's presence in Namibia and the explicit provisions of paragraph 5 of resolution 276 (1970) impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory".[235]

157. However, this obligation is not absolute and must not be implemented blindly:

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[228] MFA Report, p. 7.
[229] *Ibid.*, p. 55.
[230] *Ibid.*, p. 58.
[231] *Ibid.*, p. 67.
[232] *Ibid.*, p. 68.
[233] See E.Kontorovich, "Economic Dealings with Occupied Territories", *Columbia Journal of Transnational Law*, Vol. 53, No. 3, 2015, p. 591.
[234] See A/RES/3281(XXIX), *Charter of Economic Rights and Duties of States*, 12 December 1974, Annex, Chapter II, Art. 2 – italics added.
[235] ICJ, Advisory Opinion, 21 June 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *ICJ Reports* 1971, pp. 55-56, para. 54.

> "In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international Co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."[236]

158. As noted by James Crawford in a Legal Opinion prepared for the Trade Unions Congress on 24 January 2012,

> "[n]otably, the occupier does not administer the occupied territory as a trustee for the population. International law seeks to strike a balance between the interests of the occupying power and the interests of the occupied population. However, an occupant may not exploit the economy of the territory in order to benefit its own economy. '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.'[237] It could be argued that the settlements are *per se* in breach of this principle, given that the assets of the West Bank in the settlement areas are being utilized entirely for the benefit of Israel. Moreover, the character of occupation as a temporary measure indicates that an occupier lacks the authority to make permanent changes to the occupied territory. It seems likely that this includes the construction of infrastructure related to the settlements (such as roads or light rail systems, not to mention settlement buildings) that would outlast any change in the status of the territory."[238]

159. This is consistent with the conclusion that Articles 40 and 41 of the ILC Articles apply to the situation of the occupied territories of the Republic of Azerbaijan.[239]

2. Breaches by Armenia

160. The MFA Report gives Armenian statistics on the number of entities involved in the trade of goods unlawfully produced in the occupied territories and also on the top destinations for export. More importantly, it is stated in the Report that the Government of Armenia "is supporting and encouraging production and export of the products unlawfully produced in the occupied territories"[240] and that "[t]he relevant State agencies of Armenia provide logistical support to Armenian and foreign enterprises operating in the occupied territories to export their products to international markets and organize trips for foreign businessmen to those territories to explore investment opportunities there".[241]

161. The MFA Report also indicates that Armenia is economically and financially taking advantage from the armed occupation, highlighting the fact that "[t]he examined evidence reveals that the exploitation of mineral and other economic wealth in the occupied territories is turned into a lucrative business and is the major sources of income for Armenia and its subordinate separatist regime".[242]

162. As indicated above, economic activities are closely linked to the principle of permanent sovereignty over natural resources. In that way, Armenia's involvement in the way detailed in the MFA Report is, at the very least, a breach of Azerbaijan's sovereignty over its resources.

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[236] *Ibid.*, p. 56, para. 125. See also, in the same line: S/2002/161, *Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council*, 12 February 2002; ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, prec. note 69, p. 253, para. 250.

[237] Fn 108 in the original: "Antonio Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in E.Playfair, (ed.) *International Law and the Administration of Occupied Territories – Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Clarendon Press: Oxford, 1992), 420-1."

[238] J.Crawford SC, Opinion for the Trades Union Congress, *Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories*, 2012 (https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf), para. 61.

[239] See above, Part I, paras. 85-90.

[240] MFA Report, p. 51.

[241] *Ibid.*

[242] *Ibid.*, p. 77.

D. Changes in Infrastructures and Exploitation of the Telecommunication Network

1. Applicable law

163. The law applicable to "permanent economic, social and transport infrastructure changes" largely overlaps with the rules to be applied to economic and financial activities.[243] In a nutshell: the occupying power cannot modify or suppress the existing infrastructure but no rule prohibits, in case of prolonged occupation, that it performs works of maintenance or construction of infrastructure (roads, telecommunications) in the interest of the population of the occupied territory.

164. This is but an illustration of the general rule laid down in Article 43 of The Hague Regulations (THR):

> "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, while respecting, unless absolutely prevented, the laws in force in the country".

165. As explained in Part I above,[244] it results from this Article that the occupying power does not have a general or broad authority to exercise government powers, but rather has limited competences that can be exercised only in order to "restore, and ensure, as far as possible, public order and safety".[245]

166. Based on these principles, the project of a canal linking the Mediterranean Sea to the Dead Sea was condemned by the General Assembly, which especially considered that:

> "the canal linking the Mediterranean Sea with the Dead Sea, if constructed, is a violation of the rules and principles of international law, especially those relating to the fundamental rights and duties of States and to belligerent occupation of land".[246]

The General Assembly also called upon

> "all States, specialized agencies and governmental and non-governmental organizations not to assist, directly or indirectly, in the preparation and execution of this project, and strongly urge[d] national, international and multinational corporations to do likewise".[247]

167. The same considerations hold true concerning the exploitation of Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies in the occupied territories being noted that Article 64, paragraph 4, of the Fourth Geneva Convention expressly provides that:

> "The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill 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*."[248]

168. Concerning these activities, the documents of the International Telecommunication Union (hereinafter "ITU"), of which both Armenia and Azerbaijan are members since 30 June 1992 and 10 April 1992 respectively[249], are also of

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243 See paras. 155-159, above.
244 Paras. 59-60 above.
245 See also para. 157 and note 236 and ICRC, Expert Meeting, "Occupation and Other Forms of Administration of Foreign territory", Report prepared and edited by Tristan Ferraro, March 2012, available at https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf.
246 A/RES/39/101, *Israel's decision to build a canal linking the Mediterranean Sea to the Dead Sea*, 14 December 1984, para. 2.
247 *Ibid*., para. 4.
248 Italics added.
249 Information available at: https://www.itu.int/online/mm/scripts/mm.list?_search=ITUstates&_languageid=1.

interest. First, the Preamble of the Constitution of the ITU fully recognizes "the sovereign right of each State to regulate its telecommunication".[250] Second, Article 33 of the Convention provides that:

> "Members recognize the right of the public to correspond by means of the international service of public correspondence. The services, the charges and the safeguards shall be the same for all users in each category of correspondence without any priority or preference".[251]

and Article 39 provides that:

> "In order to facilitate the application of the provisions of Article 6 of this Constitution, Members undertake to inform one another of infringements of the provisions of this Constitution, the Convention and of the Administrative Regulations".

169. An illustration of the limits to the powers of the occupants stemming from these provisions is furnished by a resolution of the Assembly of the Plenipotentiary Conference of the ITU, held in Nicaragua in 1989, condemning various practices of Israel in the Occupied Arab Territories.[252] In this resolution, the Plenipotentiary Conference declared itself concerned

> "by the fact that the Israeli occupation authorities deliberately and repeatedly interrupt the means of telecommunication within the Palestinian and other occupied Arab territories, in breach of the principles of Articles 18 and 25 of the International Telecommunication Convention (Nairobi, 1982)",[253]

these Articles corresponding to the Articles cited above. The Conference irrevocably condemned "the deliberate isolation by Israel of the occupied Palestinian and other Arab territories from the outside world and the restriction of free transmission of information".[254]

170. In 1997, the World Radio-communication Conference adopted a resolution in which it resolved "that, unless specifically stipulated otherwise by special arrangements communicated to the Union by administrations, any notification of a frequency assignment to a station shall be made by the administration of the country on whose territory the station is located".[255] It then belongs to the Azerbaijani authorities to change frequency assignments and to notify these changes to the ITU. However, no ITU resolution condemns the mere exploitation of frequencies by an occupying power – which indeed would be to the detriment of the population.

171. But it results from the above that an exploitation that would benefit only to a certain population of the occupied territories would not be in conformity with the rules of the ITU. In that case only, the exploiting States would entail its responsibility under general international law and for the violation of these provisions. In the special circumstances of the present case, I deem it obvious that it is likely that the exploitation of resources and changes being made by Armenia in the occupied territories can serve to the benefit of the Armenians residing in those territories. However, such measures are not rendered legal since they violate the sovereignty of Azerbaijan and are detrimental to the rights of the Azerbaijani population expelled from those territories as a result of Armenian aggression.

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[250] Constitution and Convention of the International Telecommunication Union, 22 December 1992 Published in Final Acts of the Additional Plenipotentiary Conference of Geneva, 1992, Preamble.

[251] *Ibid*., Article 33, *The Right of the Public to Use the International Telecommunication Service*.

[252] Plenipotentiary Conference, Resolution No. 64, *Condemnation of the Practices of Israel in the Occupied Arab Territories*, 1989, Published in Final Acts of the Plenipotentiary Conference of Nice, 1989, p. 338.

[253] *Ibid*., p. 339. Articles 18 and 25 corresponded, at the time to Articles 33 and 39 cited above at para. 168. The ITU Constitution and Convention were modified in 1992 at the Additional Plenipotentiary Conference of the ITU held in Geneva.

[254] *Ibid*., p. 340.

[255] World Radiocommunication Conference, *Notification of frequency assignments*, 1997, published in Final Acts of the World Radiocommunication Conference of Geneva, 1997, p. 405.

2. Breaches by Armenia

172. Concerning the infrastructure changes, the MFA Report provides with multiple examples, especially "permanent energy, agriculture, social, residential and transport infrastructure in the occupied territories".[256] It is stated that "[b]uilding infrastructure in the occupied territories is linked directly to support of the maintenance and existence of settlements and to bring and keep more Armenian settlers in those territories."[257] This statement is corroborated with facts, especially since evidence showed that "[t]ransport infrastructure projects carried out in the occupied territories include in particular a network of roads designed exclusively for connecting Armenia and the occupied territories and Armenian settlements within the occupied territories."[258]

173. As for the exploitation of Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies, the MFA Report indicates that Armenia "assigns its unique numbering code +374 to the occupied territories, exploits Azerbaijan's fixed and cellular radio-telecommunication networks and radio frequencies."[259]

E. Alteration of the Cultural Character and Heritage of the Occupied Territories

174. The activities in the occupied territories listed at paragraph 1 of the present Report include archaeological excavations, embezzlement of artefacts and altering of cultural character of the occupied territories. Given the situation of military occupation and the subsequent application of international humanitarian law, the rules governing the protection of the cultural heritage must be mainly searched in the law concerning military occupation.

1. Applicable law

175. The Hague Regulations of 1907 contain provisions on cultural property. In the Section 2 (on hostilities), article 27, paragraph 1, provides that:

> "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes."

176. Provisions concerning cultural property can also be found in the section dedicated to military authority over the territory of hostile State. Article 47 provides that pillage "is formally forbidden", which indeed applies to cultural heritage. Article 56 of The Hague Regulations provides with more specific rules in this respect and reads as follows:

> "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.
>
> 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."

177. These activities are also dealt with in the 1977 Protocol Additional I to the Geneva Conventions of 12 August 1949, of which Article 53 provides that:

> "Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:
>
> (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
> (b) to use such objects in support of the military effort;
> (c) to make such objects the object of reprisals."

[256] MFA Report, p. 37.
[257] *Ibid.*, p. 38.
[258] *Ibid.*
[259] *Ibid.*, p. 24.

178. Finally, the protection of cultural heritage during armed conflict is the object of a specific convention adopted under the auspices of the UNESCO: the Convention for the Protection of Cultural Property in the Event of Armed Conflict adopted on 14 May 1954, to which the Republic of Azerbaijan and the Republic of Armenia are parties.[260]

179. The definition of cultural property in the Convention is wide, since its first article defines it as, irrespective of origin or ownership,

> "(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
>
> (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
>
> (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'."

180. The provisions of Article 5 specifically apply to the situations of military occupation:

> "1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.
>
> 2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.
>
> 3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property."

181. The Convention was opened to signature together with an additional Protocol, to which both Armenia and Azerbaijan are parties.[261] The Parties to the Protocol especially undertake "to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954".[262]

182. The Convention was completed by a second Protocol, adopted on 26 March 1999, to which both Armenia and Azerbaijan are also parties.[263] Chapter 4 of this Protocol deals with criminal responsibility and jurisdiction. It provides with a wide range of obligations for States to make sure that the authors of criminal acts against cultural property do not remain unpunished.

183. The prohibition of the illicit export of cultural property from occupied territory is considered to be a customary rule. Rule 41 of the ICRC Study on customary international humanitarian law provides that the occupying power "must

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[260] The list of the State Parties to the Convention is available at: http://www.unesco.org/eri/la/convention.asp?KO=13637&language=E&order=alpha.

[261] The list of the State Parties to the first Protocol is available at: http://www.unesco.org/eri/la/convention.asp?KO=15391&language=E&order=alpha.

[262] Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, Section I, para. 1.

[263] The list of the States Parties to the second Protocol is available at: http://www.unesco.org/eri/la/convention.asp?KO=15207&language=E&order=alpha.

prevent the illicit export of cultural property from occupied territory and must return illicitly exporter property to the competent authorities of the occupied territory".[264]

184. Furthermore, the UNESCO adopted a resolution on archaeological excavations in which it is stated that:

> "32. In the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory. In the event of chance finds being made, particularly during military works, the occupying Power should take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto."[265]

185. In 1981, the General Assembly of the United Nations adopted a resolution concerning archaeological excavations in eastern Jerusalem in which it determined that "the excavations and transformations of the landscape and of the historical, cultural and religious sites of Jerusalem constitute a flagrant violation of the principles of international law and the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949".[266]

186. The activities concerning the cultural property and heritage in the occupied territories of Azerbaijan are governed by all the above-mentioned rules.

2. Armenia's breaches

187. The MFA Report indicates that "Armenia continues to interfere in the cultural environment of the occupied territories by taking measures aimed at altering their historical and cultural features."[267] Evidence showed that cultural and religious monuments, sometimes many centuries old "have been destroyed, burnt and pillaged"[268] and that under alleged reconstruction and development reasons, archaeological excavations in the occupied territories "are carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots and substantiating the policy of territorial expansionism."[269]

188. The MFA Report also indicates that "[a]nalysis of the period of more than 20 years since the establishment of a ceasefire in 1994 demonstrates that armed hostilities have not destroyed Azerbaijani monuments to the extent to which this has been subsequently done by the Armenian side."[270] This shows that these activities are deliberately conducted and that the many destructions to be deplored are not a direct consequence of any military necessity, which undoubtedly makes them illicit.

F. Promotion of the Occupied Territories as a Touristic Destination, Organisation of Illegal Visits and Other Activities

189. Armenia and Azerbaijan are both members of the World Tourism Organization (hereinafter "the UNWTO"),[271] respectively since 1997 and 2001.[272] Article 3, paragraph 1, of the UNWTO Statutes provides that:

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[264] J.-M.Henckaerts and L.Doswald-Beck (eds), *Customary International Humanitarian Law,* Volume I: Rules, ICRC, Cambridge, 2005, p. 135, Rule 41.

[265] Recommendation on International Principles Applicable to Archaeological Excavations, 5 December 1956, Records of the General Conference, Ninth Session, p. 44, para. 32.

[266] A/RES/36/15, *Recent developments in connection with excavations in eastern Jerusalem*, 28 October 1981, para. 1. See also, e.g.: UNESCO, World Heritage Committee, 38th Session, 15-25 June 2014 (Doha, Qatar), Decision 38 COM 7A.4, paras. 4 and 17.

[267] MFA Report, p. 85.

[268] *Ibid*., para. 86.

[269] *Ibid*.

[270] *Ibid*., p. 88.

[271] When drafting this Opinion, the undersigned was the (external) Legal Adviser of the UNWTO; by no means can what he writes in this Section be interpreted as representing the views of the Organisation.

[272] Information available at: http://www2.unwto.org/fr/members/states.

> "The fundamental aim of the Organization shall be the promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The Organization shall take all appropriate action to attain this objective."

190. In October 1999, the UNWTO members adopted a Global Code of Ethics for Tourism as a non-legally binding instrument.[273] Article 6 of this Code deals with the "Obligations of stakeholders in tourism development". Its first paragraph provides that

> "1. Tourism professionals have an obligation to provide tourists with objective and honest information on their places of destination and on the conditions of travel, hospitality and stays; they should ensure that the contractual clauses proposed to their customers are readily understandable as to the nature, price and quality of the services they commit themselves to providing and the financial compensation payable by them in the event of a unilateral breach of contract on their part".

Article 6, paragraph 5, for its part, provides that

> "5. Governments have the right – and the duty – especially in a crisis, to inform their nationals of the difficult circumstances, or even the dangers they may encounter during their travels abroad; it is their responsibility however to issue such information without prejudicing in an unjustified or exaggerated manner the tourism industry of the host countries and the interests of their own operators; the contents of travel advisories should therefore be discussed beforehand with the authorities of the host countries and the professionals concerned; recommendations formulated should be strictly proportionate to the gravity of the situations encountered and confined to the geographical areas where the insecurity has arisen; such advisories should be qualified or cancelled as soon as a return to normality permits."

191. In May 2015, the Executive Council of the UNWTO adopted a decision based on a proposal made by the Government of Azerbaijan. In this decision, the Organization urged

> "governments, as well as public and private stakeholders in the tourism sector, to observe and respect the Global Code of Ethics for Tourism as well as all ethical principles embodied in the United Nations General Assembly and Security Council resolutions, in all circumstances, including during armed conflicts".[274]

This also is a non-binding recommendation.

2. Armenia's breaches

192. The MFA Report indicates that "Armenia facilitates and organises visits to foreign countries by the agents of the subordinate regime by issuing them Armenian passports, including diplomatic ones"[275] and that these visits "only serve to propagate the unlawful separatist regime."[276] It is also stated that "Armenia continues to exploit tourism as a tool for its annexation policies. In particular, tourism is being abused by Armenia to propagate the illegal separatist entity and generate financial means to consolidate the results of the occupation."[277]

Section 2. Implementation of the Responsibility for the Activities in the Occupied Territories

193. This Report is not directly concerned with the responsibility of Armenia itself for its breaches of its international obligations as an occupying power or for the conduct of its controlled affiliate in Nagorno-Karabakh. Anyway, the

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[273] See A/RES/406(XIII), 13th WTO General Assembly, Santiago, Chile, 27 September - 1 October 1999.
[274] CE/DEC/22(C), *Recommendations of the World Committee on Tourism Ethics on the proposal of the Government of the Republic of Azerbaijan: "Prevention of Promotion of Conflict Zones as Tourism Destinations and Using Tourism for Illegal Purposes"*, EC decision 1 (XCIX) and the proposed draft resolution of the Government of Azerbaijan, Agenda item 11 (document CE/100/11), 27-29 May 2015, para. 2.
[275] MFA Report, p. 88.
[276] *Ibid.*
[277] *Ibid.*

general mechanism of State responsibility as described in Section C of Part I of the present Report applies both to the responsibility of Armenia on the one hand and of third States which are involved, directly or indirectly, by action or inaction, in the illegal activities of Armenia in the occupied territories of Azerbaijan (A.). Clear cut answers are more difficult in respect to the legal consequences of the involvement of natural and legal persons in those same activities (B.).

A. Responsibility of Third States Involved in the Illegal Activities of Armenia in the Occupied Territories

194. The legal consequences arising for third States involved in the illegal activities of Armenia in the occupied Azerbaijani occupied territories may derive from two different sources:

- the general law of international responsibility of States as described in the 2001 ILC Articles; and
- sanctions taken by the United Nations or other international organisations (mainly – if not exclusively – the EU) or by individual States.

1. The general rules of international responsibility

195. I have described in Part I of the present Opinion the system of State responsibility.[278] It results from these rules that Armenia is responsible for its own internationally wrongful acts as well as for those of its lieges in the occupied parts of Azerbaijan. I have also explained that third States had particular responsibilities inasmuch as the violations of its obligations by Armenia could be considered as serious breaches of obligations arising under peremptory norms of international law.[279]

196. It is appropriate to make two supplementary remarks in this respect:

(1) Only such breaches impose specific duties to third States. For other kinds of breaches, the system of international responsibility remains a State-to-State mechanism exclusively concerning the wrongdoer and the State victim of the wrongful act. This being said, as I have shown, several conducts attributable to Armenia qualify as "serious breaches".
(2) One of the main characters of public international law is that even its binding rules, including peremptory rules, are mandatory but not enforceable. This trait entails very important consequences concerning the courses of action open to Azerbaijan as well against Armenia itself as against third States for the violations of their "derivative obligations".[280]

197. In international law, judges are available – notably the International Court of Justice which has a general competence for all legal disputes arising between States – but on the strict basis of mutual consent of the States concerned.[281] Since Azerbaijan has not made the optional declaration accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute, it could seize the Court as well against Armenia itself[282] as against third

[278] Paras. 85-93 above.
[279] Paras. 88 *et seq*. above.
[280] See above, Part I, paras 99-102.
[281] There are many instances in which the ICJ decided that it could not go further because of the non-acceptance of its jurisdiction by the opposing party: ICJ, Order, 12 July 1954, *Case of the treatment in Hungary of aircraft of United States of America (United States of America v. Union of Soviet Socialist Republics)*, *ICJ Reports* 1954, p. 103; ICJ, Order, 14 March 1956, *Aerial incident of March 10th 1953 (United States of America v. Czechoslovakia)*, *ICJ Reports* 1956, p. 6; ICJ, Order, 16 March 1986, *Antarctica case (United Kingdom v. Argentina)*, *ICJ Reports* 1956, p. 12; ICJ, Order, 14 March 1956, *Aerial incident of October 7th 1952 (United States of America v. Union of Soviet Socialist Republics)*, *ICJ Reports* 1956, p. 9; ICJ, Order, 9 December 1958, *Case concerning the Aerial Incident of September 4th 1954 (United States of America v. Union of Soviet Socialist Republics)*, *ICJ Reports* 1958, p. 158; ICJ, Order, 7 October 1959, *Case concerning the Aerial Incident of 7 November 1954 (United States of America v. Union of Soviet Socialist Republics)*, *ICJ Reports* 1959, p. 276. The consent to the jurisdiction is needed even when the alleged violations concern *erga omnes* or peremptory norms of general international law: ICJ, Judgment, 30 June 1995, *East Timor (Portugal v. Australia)*, *ICJ Reports* 1995, p. 102, para. 29; ICJ, Judgment, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility*, *ICJ Reports* 2006, p. 52, para. 125.
[282] Armenia for its part has not made the optional declaration under Article 36(2).

States only on the basis of either a Special Agreement (*Compromis*) or the compromissory clause of a more general treaty.

2. Possible sanctions and consequences for third States

198. At the margin of the law of responsibility, sanctions, whether emanating from international organisations or from individual States, are a means which can be used in order to limit the consequences of gross violations of international law.

199. In the commentary of the first draft of its Articles on State Responsibility, the ILC endorsed the limited definition of sanctions as being institutional and made allowance

> "for the trend in modern international law to reserve the term 'sanction' for reactive measures applied by virtue of a decision taken by an international organization following a breach of an international obligation having serious consequences for the international community as a whole, and in particular for certain measures which the United Nations is empowered to adopt, under the system established by the Charter, with a view to the maintenance of international peace and security."[283]

200. Since some Armenia's wrongful acts are serious breaches of obligations deriving from peremptory norms of general international law, all States are concerned and may "take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached" as (ambiguously) recognized by Article 54 of the 2001 ILC Articles.[284]

B. Responsibility of Natural and Legal Persons Involved

201. Illegal activities within or in relation with the occupied territories of Azerbaijan may also give rise to civil or criminal responsibility of private persons, although it highly depends on the applicable domestic law of the State concerned.

1. Civil responsibility of private persons

202. Most of the general rules of international law are binding on States only and do not directly create obligations for natural or legal persons, the consequence being that, as a matter of principle, States bear the responsibility for the violations of international norms resulting from the conduct of private persons. However, this does not mean that international provisions or decisions can in no way be binding for natural and legal persons.

203. As the Permanent Court of International Justice put it, "it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption of some definite rules creating individual rights and obligations and enforceable by national courts".[285] The same applies to some customary rules.

204. However, while international norms can have a direct or vertical effect and directly address natural and/or legal persons, the general rule is that they effectively only apply through the States concerned (most usually the territorial State). In other words, it belongs to States to enforce rules of international law and to ensure that they are respected by private persons.

205. This essential characteristic of public international law has two main consequences:

– *First*, regardless of the capacity of individuals to be bound by international legal norms, it is undisputed that States have a duty of vigilance which obliges them to ensure that their nationals do not transgress rules of

[283] *ILC Yearbook* 1979, vol II, Part 2, p. 121 – commentary of draft article 30, para. 21.
[284] See Part I, para. 115 above.
[285] P.C.I.J. Advisory Opinion, 3 March 1928, *Jurisdiction of the Courts of Danzig (Pecuniary claims of Danzig railway officials who have passed into the Polish service, against the Polish Railway Administration)*, Collection of Advisory Opinions, Series B., No. 15, pp. 17-18.

international law,[286] and *a fortiori* peremptory norms; if they do not discharge this obligation, they entail their international responsibility; we are then brought back to the hypothesis discussed in Sub-Section A above;

– *Second*, if private persons do not comply with their obligations under international law, generally speaking, only domestic courts and tribunals, which are the ordinary bodies capable of sanctioning breaches of international law, could be competent.

206. However, the effectiveness of their intervention depends on the national rules of the States concerned, and also on the one hand on the intention of the authors of the norm, and on their degree of clarity on the other hand.[287] These criteria may be appreciated differently according to the country where judicial proceedings can be instituted.

207. Even if States have the primary responsibility to ensure the respect of international law, private persons can be liable for their behaviours under international law. First, soft law instruments state general principles directly addressed to them; second, their responsibility is entailed when they breach lawful sanctions decided either by a State or an international organisation.

208. In the first place, I recall the existence of various instruments providing for the application of international rules to natural and legal persons. Thus, according to the Norms on the responsibilities of transnational corporations adopted in 2003 by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, these entities and other business enterprises, their officers and persons working for them are "obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments such as (…) the International Covenant on Civil and Political Rights; (…) the four Geneva Conventions of 12 August 1949 and two Additional Protocols thereto for the protection of victims of war (…) and other instruments."[288] These norms are neither the first nor an isolated attempt of the international community to make transnational corporations and business enterprises aware of their responsibilities.[289]

209. Such documents are not legally binding: they are mere recommendations formulated by international organisations, the respect of which depends on the will of the corporations and enterprises concerned. However, despite the absence of legally binding effects, they do reflect a widespread *opinio juris* and like similar instruments, can contribute to the elaboration of legally binding norms and be used, in the meantime as additional argument in support of a case based on "harder law".[290]

210. This is the case when a State or an international organisation adopts sanctions against a State responsible for serious breaches of obligations deriving from peremptory norms of general international law, which imposes direct obligations on individuals or other private persons. In such cases, national courts are less reluctant to examine the alleged responsibility of the natural or legal person involved than when they are asked to base themselves on the general law of international responsibility.

2. The implausible hypothesis: international criminal responsibilities

211. Article 8 of the Rome Statute contains a rule similar to the one contained in Article 49 of the Fourth Geneva Convention. In effect, Article 8, paragraph 2 (b) (viii), provides that "[t]he transfer, directly or indirectly, by the

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[286] See e.g. ICJ, Judgment, 24 May 1980, *United States Diplomatic and Consular Staff in Tehran*, *ICJ Reports* 1980, p. 32, paras. 66-67.

[287] I do not have in mind here the general evolution of international law which tends to increasingly recognize an international legal personality to private persons particularly in the fields of human rights and the law of investment (see K.Parlett, *The Individual in the International Legal System*, Cambridge UP, 2011, 462 p.; R.Jennings and A.Watts eds., *Oppenheim's International Law*, 9th ed., Vol. 1, *Peace*, Longman, Londres, 1992, pp. 846-849; P.Daillier, M.Forteau and A.Pellet, *Droit international public*, *op. cit.* note 48, pp. 768-773). I focus on more directly applicable rules or principles which could be of interest in view to reacting to Armenia's breaches of international law.

[288] E/CN.4/Sub.2/2003/12/Rev.2, Economic, social and cultural rights, *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, 24 August 2003, Preamble, para. 4.

[289] See, for example, OECD, *Guidelines for Multinational Enterprises*, DAFFE/IME/WPG(2000)15/FINAL, 31 October 2001 (http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=daffe/ime/wpg(2000)15/final). See, in general: P.Daillier, M.Forteau and A.Pellet, *Droit international public*, *op. cit.* note 48, pp. 425-427.

[290] See *ibid*. For the Norms adopted by the Sub-Commission of Human Rights, see I.Bantekas, "Corporate Social Responsibility in International Law", *Boston University International Law Journal*, vol. 22, 2005, pp. 309-347.

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" constitutes a war crime over which the International Criminal Court (hereinafter "the ICC") has jurisdiction.

212. However, Armenia and Azerbaijan are not Parties to this instrument and there are very few chances that the ICC gets to work on the Nagorno-Karabakh conflict. In effect, Article 12 of the Rome Statute reads as follows:

> "1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
>
> 2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
>
> (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
> (b) The State of which the person accused of the crime is a national.
>
> 3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9."

213. Article 13, for its part, provides that:

> "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:
>
> (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
> (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
> (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15."

214. If the authors of the establishment of settlements in the occupied territories of the Republic of Azerbaijan are not nationals of a Member State of the ICC, the only way the Court could have jurisdiction would be the referring of the situation to its Prosecutor, by the Security Council.

III. MEASURES THAT MIGHT BE TAKEN BY STATES

215. This section deals with questions 3 and 4, which relate to measures that might be taken by States towards natural and legal persons, whether they are under their jurisdiction (A) or they intend to enter their territories (B).

A. Measures that might be taken by States against natural and legal persons within their jurisdiction

216. I am asked to describe concrete measures that might be taken by foreign States to institute legal proceedings against natural and legal persons within their jurisdiction which are involved in or profiteering from the economic and other illicit activities in the occupied territories of Azerbaijan.

217. As noted in the MFA Report, several States are involved in or profiteering from the activities dealt with in the previous section.[291] It would be beyond the scope of this Legal Opinion to focus on specific activities, companies or

[291] See e.g.: MFA Report, p. 25.

individuals; the present Part will then suggest measures in a general way. However, all the measures described hereinafter could apply indistinctively to any State involved.

218. The institution of legal proceedings against natural and legal persons within the jurisdiction of a State is essentially a matter of domestic law which can nonetheless be, in specific contexts, rendered compulsory or, at least, be highly influenced by international law at least as far as criminal prosecutions are concerned. Domestic law applies more exclusively in civil law matters.

1. Possible criminal proceedings

219. In the present case, absent specific sanctions adopted by the States concerned, they could – and should – nevertheless take penal action against the wrongdoers on two different grounds: the 1949 Red Cross Geneva Conventions on the one hand and the 1954 Hague Convention on the protection of cultural property during armed conflicts.

(a) Institution of legal proceedings on the basis of the Geneva Conventions

220. The 1949 Geneva Conventions contain provisions concerning the penal sanctions that the States Parties must take against the persons who are responsible of certain breaches of the Conventions. The Fourth Convention relating to the Protection of Civilian Persons in Time of War on which a good part of the present Report is based includes a part on penal sanctions.

221. Article 146 of this Convention provides for the obligations of the State Parties concerning the taking of penal sanctions. It reads as follows:

> "The High Contracting Parties undertake to enact any legislation necessary to provide effective sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.
>
> Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case.
>
> Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.
>
> In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949."

222. For its part, Article 147 of the Fourth Geneva Convention defines grave breaches as follows:

> "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

223. If some of the acts listed in Article 147 of the Fourth Geneva Convention are committed against protected persons or property protected by the Convention, the States Parties shall be under an obligation to search for the alleged authors of such acts and to bring them before their courts regardless of their nationality.

224. Some of the activities occurring in the occupied territories fall under the scope of the grave breaches listed in Article 147.

225. First of all, the activities concerning the establishment and development of settlements in the occupied territories of the Republic of Azerbaijan are grave breaches of the Convention. The contrariety of such activities to international law, in particular to Article 49 of the Fourth Geneva Convention and customary international law, has been detailed in the previous Part of the Report.[292] Article 147 provides that the "unlawful deportation or transfer or unlawful confinement of a protected person" is a grave breach of the Convention. The term "deportation" refers to Article 49, which is entitled "Deportations, transfers, evacuations" and is the only Article of the Convention containing the word "deportation" in its title. The first paragraph of this Article prohibits "[i]ndividual or mass forcible transfers" carried out by the occupying power, and gives the "deportations of protected persons from occupied territory to the territory of the Occupying Power or that of any other country, occupied or not" as an example of such forcible transfers.

226. Therefore, the States Parties to the Geneva Conventions on the territory of which natural and legal persons who are alleged authors of unlawful deportation or transfer of civilians can be found are under an obligation to bring such persons before their jurisdiction or to hand them over to another Contracting Party which has made out a *prima facie* case against them.

227. The same reasoning can also be made with respect to some of the activities related to the cultural property of the occupied territories of the Republic of Azerbaijan. In effect, the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is also a grave breach of the Fourth Geneva Convention according to Article 147. No distinction seems to be made between private and public property and the very important appropriation and destructions, in particular of cultural property in the occupied territories of Azerbaijan are well-documented.[293]

228. The ICRC commentary of the Fourth Geneva Convention discusses Article 147 in the following terms:

> "(a) Destruction. – The Fourth Convention forbids the destruction of civilian hospitals and their property or damage to ambulances or medical aircraft. Furthermore, the Occupying Power may not destroy in occupied territory (Article 53) real or personal property except where such destruction is rendered absolutely necessary by military operations. On the other hand, the destruction of property on enemy territory is not covered by the provision. In other words, if an air force bombs factories in an enemy country, such destruction is not covered either by Article 53 or by Article 147. On the other hand, if the enemy Power occupies the territory where the factories are situated, it may not destroy them unless military operations make it absolutely necessary."[294]
>
> "(b) Appropriation. – To appropriate property, the enemy country must have it in its power by being in occupation of the territory where it is situated. It will be recalled, in this connection, that the requisitioning of civilian hospitals and their material and the requisitioning of foodstuffs is subject in occupied territory to a series of restrictive conditions. To constitute a grave breach, such destruction and appropriation must be extensive: an isolated incident would not be enough l. Most national penal codes punish the unlawful destruction and appropriation of property. In the same way, most military penal codes punish pillage. However, it will be noted that the destruction and appropriation mentioned here are dependent on the necessities of war. Therefore, even if in the national codes there are definitions of what constitutes such necessities, it seems difficult to apply this idea without adaptation to an army or even to a State. It seems, therefore, that the appropriation and destruction mentioned in this Convention must be treated as a special offence."[295]

229. In addition to these provisions, Article 85 of the First Additional Protocol to the Geneva Conventions completes the list of grave breaches:

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[292] See paras. 125 *et seq.* above.
[293] See e.g.: paras. 187 *et seq.* above.
[294] J.S.Pictet (ed.), *The Geneva Conventions of 12 August 1949*, *Commentary*, vol. IV, *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross, 1956, p. 601.
[295] *Ibid.*

> "4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:
>
> > (a) 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;
> > […]
> > (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
>
> 5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes."

230. This Article underlines the importance of the prohibitions of unlawful deportations and appropriation and destruction of property.

231. According to the ILC's Final Report on the obligation to extradite or prosecute (hereinafter "the ILC Final Report"),[296] basing itself on the typology addressed in the opinion of Judge Yusuf in the *Belgium v. Senegal* case,[297] the Geneva Conventions, as well as other instruments not relevant for the present case, are part of a category of Conventions containing "clauses which impose an obligation to submit to prosecution, with extradition becoming an obligation if the State fails to do so".[298]

232. Another possible ground could be the European Convention on Extradition of 13 December 1957 concluded between the Member States of the Council of Europe, which includes all the EU Members as well as Armenia and Azerbaijan.[299] Article 1 of the Convention provides that:

> "The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for carrying out a sentence or detention order."

Article 2 deals with the extraditable offences and its first paragraph provides that:

> "Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months."

233. Recourse to the European Convention is however of limited interest since:

- Article 4 excludes the extradition of military offences from the application of the Convention, which, in the present case, excludes – or, at least, considerably limits – the relevance of this ground. But the ground offered by the Fourth Geneva Convention is solid and self-sufficient; and

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296 Final Report of the International Law Commission, *The obligation to extradite or prosecute (*aut dedere aut judicare*)*, A/69/10, *Report on the wok of the sixty-sixth session (2014)*, Chapter VI, pp. 139-165.

297 ICJ, Judgment, 20 July 2012, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *ICJ Reports* 2012, p. 422, Separate Opinion of Judge Yusuf, pp. 567-568, paras. 19-22.

298 ILC, Final Report, p. 6.

299 Both Armenia and Azerbaijan are States Parties to that instrument. The Convention entered into force for Armenia on 25 April 2002 and for Azerbaijan on 26 September 2002 (http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/024/signatures?p_auth=xxD7IICX).

– Article 6, paragraph 1 (a), provides that: "A Contracting Party shall have the right to refuse extradition of its nationals."

234. The ILC Final Report provides with a complete and persuasive analysis of the scope of the obligation to extradite or prosecute. Concerning the implementation of this obligation, it results from the Final Report that the obligation "applies only to facts having occurred after the entry into force of said treaty for the State concerned."[300] When a State has become a party to a treaty providing with such an obligation, it is entitled "to request another State party's compliance with the obligation to extradite or prosecute."[301] Therefore, in the present case, all States which have become Parties to the Fourth Geneva Convention must search for persons involved in or profiteering from the economic and other illicit activities in the occupied territories of Azerbaijan and bring them before their Tribunals or extradite them to another High Party concerned.

235. This, however, is not without some legal difficulties. The most serious one practically speaking, concerns the determination of the "High Parties concerned". In theory it can be sustained that all State Parties are concerned since the breaches bear upon obligations of fundamental importance for the international community of States as a whole. However, in practice, it is most unlikely that States other than Azerbaijan would take the initiative of making a *prima facie* case as required by Article 146 of the Convention.[302] Consequently, a realist approach is that only Azerbaijan could claim the extradition of the private persons concerned – which it can do for the events subsequent to its accession to the Convention on 1st June 1993.[303]

236. As for the consequences of non-compliance with the obligation to extradite or prosecute, in the *Belgium v. Senegal* case, the International Court of Justice decided that it is "a wrongful act engaging the responsibility of the State".[304] The Court also found that the obligation "required Senegal to take all necessary measures for its implementation as soon as possible" and that "[h]aving failed to do so, Senegal has breached and remains in breach of its obligation".[305] Although made with respect to Article 7, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, this statement concerns the obligation to extradite or prosecute in general, as recognized by the ILC Final Report's part on the implementation of this obligation.[306]

237. It remains that given that the studies of the ILC do not give any concrete examples, one can think that States have shown reluctance to applying Articles 146 and 147 of the Fourth Geneva Convention.

(b) Institution of legal proceedings on the basis of the 1954 Hague Convention

238. As noted in the previous part of the present Report, The Hague Convention of 1954 and its two additional protocols deal with the protection of cultural property during armed conflicts. Chapter 4 of the Second Additional Protocol to that instrument deals with criminal responsibility and jurisdiction.

239. Article 15 concerns the serious violations of the Protocol:

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300 ILC, Final Report, p. 11.

301 *Ibid*.

302 And what would be a "*prima facie*" case is quite uncertain. Nevertheless, this does not seem to be an issue for the ILC, which considers that "[t]he four Geneva Conventions of 1949 contain the same provision whereby each High Contracting Party is obligated to search for persons alleged to have committed, or to have ordered to be committed, grave breaches, and to bring such persons, regardless of their nationality, before its own courts. However, it may also, if it prefers, and in accordance with its domestic legislation, hand such persons over for trial to another High Contracting Party concerned, provided that the latter has established a *prima facie* case.[302] Therefore, under that model, the obligation to search for and submit to prosecution an alleged offender is not conditional on any jurisdictional consideration and that obligation exists irrespective of any request of extradition by another party. Nonetheless, extradition is an available option subject to a condition that the prosecuting State has established a *prima facie* case." (*Report of the International Law Commission on the work of its sixty-sixth session*, 5 May - 6 June, and 7 July - 8 August 2014, A/69/10, Chapter VI, pp. 144-145. – footnotes omitted).

303 According to Article 157, "[t]he situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation." Article 2, paragraph 2, provides that: "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."

304 ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, prec. note 297, p. 456, para. 95.

305 *Ibid*., pp. 460-461, para. 117.

306 See ILC, Final Report, p. 11.

"1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

a. Making cultural property under enhanced protection the object of attack;
b. Using cultural property under enhanced protection or its immediate surroundings in support of military action;
c. Extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
d. Making cultural property protected under the Convention and this Protocol the object of attack;
e. Theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act."

240. Article 16 concerns jurisdiction and provides that:

"1. Without prejudice to paragraph 2, each Party shall take the necessary legislative measures to establish its jurisdiction over offences set forth in Article 15 in the following cases:

a. When such an offence is committed in the territory of that State;
b. When the alleged offender is a national of that State;
c. In the case of offences set forth in Article 15 sub-paragraphs (a) to (c), when the alleged offender is present in its territory.

2. With respect to the exercise of jurisdiction and without prejudice to Article 28 of the Convention:

a. This Protocol does not preclude the incurring of individual criminal responsibility or the exercise of jurisdiction under national and international law that may be applicable, or affect the exercise of jurisdiction under customary international law;
b. Except in so far as a State which is not Party to this Protocol may be accept and apply its provisions in accordance with Article 3 paragraph 2, members of the armed forces and nationals of a State which is not Party to this Protocol, except for those nationals serving in the armed forces of a State which is a Party to this Protocol, do not incur individual criminal responsibility by virtue of this Protocol, nor does this Protocol impose an obligation to establish jurisdiction over such persons or to extradite them."

241. Article 17 on the prosecution reads as follows:

"1. The Party in whose territory the alleged offender of an offence set forth in Article 15 sub-paragraphs 1 (a) to (c) is found to be present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities, for the purpose of prosecution, through proceedings in accordance with its domestic law or with, if applicable, the relevant rules of international law.

2. Without prejudice to, if applicable, the relevant rules of international law, any person regarding whom proceedings are being carried out in connection with the Convention or this Protocol shall be guaranteed fair treatment and a fair trial in accordance with domestic law and international law at all stages of the proceedings, and in no cases shall be provided guarantees less favourable to such person than those provided by international law."

242. It results from these provisions that the States Parties to the Second Additional Protocol are under an obligation to take legislative measures to establish their jurisdiction over the alleged authors of serious violations when such violations are committed in their territory, when the alleged offender is one of their nationals or is present in their territories, depending on the violations allegedly committed.

243. The States Parties to the Protocol which have fulfilled the obligation to take the legislative measures shall extradite or prosecute the alleged authors of acts listed in Article 15, paragraph 1 (a) to (c) – this last sub-paragraph (c) being the most relevant one in the present case. They must establish their jurisdiction over the offences and alleged authors of the acts listed in Article 15, paragraph 1. The States Parties which have not fulfilled these obligations entail their international responsibility for breach of Article 17.

2. Possibilities of civil actions

244. Except in the very unrealistic case of criminal prosecution against criminal organisations,[307] criminal sanctions for the violation of the law of occupation are only provided for against individuals and do not concern commercial or financial corporations, which, however, are clearly more directly concerned when the discussed breaches are at stake. However, international law can play a much more limited role in the opening of a civil action before foreign courts (whether against natural or juridical persons). However, this is not out of question.

245. Notwithstanding the fact that the citizens of Azerbaijan may lodge appeals against the confiscation of their properties and the spoliation of their assets before Armenian courts and tribunals with a good chance to win their case before the European Court of Human Rights if their rights are denied in Armenia, as shown by the *Chiragov* judgment,[308] they could also envisage to act before the courts of third States where are situated the assets of the persons involved in and profiteering from illegal activities in the occupied territories of Azerbaijan.

B. Measures Concerning the Entry of the Separatist Regime's Leaders and Agents on the Territory of Third States

246. The wrongful activities of the leaders of the separatist regime established by Armenia in the occupied territories of Azerbaijan can entail the responsibility of Armenia.

247. However, this section is attached to provide with measures that might be taken by States, not for the involvement of these natural persons' economic and other illegal activities but for the fact that they lead this regime in itself.

248. The separatist regime established by Armenia on a substantial part of the territory of the Republic of Azerbaijan has been acting in violation of Azerbaijan's territorial integrity and sovereignty for years in total impunity. Its leaders and other agents can easily travel because of the provision of passports, including diplomatic ones by Armenia.[309] However, the other States of the international community, especially the ones the leaders of the so-called "NKR" visit, can take measures that could help ending their impunity.

249. The separatist regime is acting in violation of the territorial integrity, independence and sovereignty of the Republic of Azerbaijan. The so-called "NKR" and its leaders are responsible for acts amounting to continuous violations of peremptory norms of international law attributable to Armenia. As explained in some details above,[310] the States of the international community are under obligation to "cooperate to bring to an end through lawful means" such breaches.[311] The taking of such measures against the leaders of the separatist regime is a lawful mean that could bring to an end the multiple violations for which they are responsible. This being said, while there is, under general international law an obligation of conduct to that end, the concrete forms and modalities by which States comply with this obligation to cooperate are left to their appreciation.

250. However, in the circumstances, it can also be noted that, in addition to the economic sanctions or territorial restrictions that can be taken by States or international organizations, measures might be taken on specific grounds of international law. Notably, the obligation *aut dedere aut judicare* can be seen as a ground on which States having the leaders of the separatist regime on their territory could take measures against them. The problem arises in the same terms as in respect to the private persons accused of participating to or profiteering from Armenia's wrongful acts since, in case of grave breaches of the law of the war, including those applying to military occupation, the governmental leaders cannot prevail themselves of their immunities.[312]

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307 Which is not expressly provided for by the relevant conventions.
308 Prec. respectively notes 5 and 23.
309 See paras. 81 and 192 above.
310 See paras. 102 *et seq*. above.
311 Cf. Article 41 of the ILC Articles on State Responsibility.
312 Since the "NKR" is not a State as defined in international law, the question does not arise in their respect. As long as Armenian leaders would be concerned, this is indeed more controversial (see ICJ, Judgment, 14 February 2002, *Arrest*

CONCLUSIONS

251. The main findings of the present Opinion can be summarized as follows:

(i) All activities of Armenia and its affiliates in the occupied territories of Azerbaijan listed in para. 1(1) of the present Report are internationally wrongful acts;
(ii) The internationally wrongful acts committed in Nagorno-Karabakh and the other occupied territories of Azerbaijan are attributable to Armenia which is in effective control over these territories and the authorities of the so-called "NKR"; they entail therefore its responsibility whether committed by its own organs or by the secessionist authorities;
(iii) Several among these activities constitute serious breaches of obligations arising under peremptory norms of general international law (*jus cogens*);
(iv) This is notably the case of:

- the use of force in order to impose the *de facto* secession of Nagorno-Karabakh and the other districts of Azerbaijan occupied by Armenia in violation of the Charter of the United Nations;
- the ensuing violation of the sovereignty and territorial integrity of Azerbaijan;
- ethnic cleansing of the Azerbaijani population in the occupied territories of Azerbaijan, including the establishment of settlements and the transfer of populations resulting in the change of the demographic composition of the occupied territories;
- gross violations of the law of belligerent occupation, in particular of Article 43 of the 1907 Hague Regulations and 49 of the 1949 Fourth Geneva Convention;
- the exploitation of natural resources of the occupied territories without consideration for the primacy of the interests of the population (as it existed before the ethnic cleansing of the region); or
- the alteration of the cultural heritage of the region.

(v) These serious breaches can find no circumstances excluding responsibility in the right of peoples to self-determination or self-defence invoked by Armenia;
(vi) They also call for the application of the special consequences resulting from this aggravated responsibility, mainly:

- the non-recognition of the situation created by those serious breaches,
- the prohibition of aid or assistance in maintaining that situation and
- the exclusion of any immunities for the authors of these serious breaches;

(vii) Another consequence of this aggravated responsibility is that all States are entailed to invoke the responsibility of Armenia and,
(viii) although this is more controversial (but, from my point of view, quite certain), to take measures against Armenia "to ensure cessation of the breach and reparation in the interest of [Azerbaijan] or of the beneficiaries of the obligation breached" – that is the natural or legal persons victims of those breaches;
(ix) Therefore, third States could (and should be incited to) exclude goods produced from the benefit of any trade agreement existing or to be concluded in the future;

Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), *ICJ Reports* 2002, p. 24, para. 58: "The Court has carefully examined State practice, including national legislation and those few decisions of national higher courts, such as the House of Lords or the French Court of Cassation. It has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers of Foreign Affairs, where they are suspected of having committed war crimes or crimes against humanity."). However, I am among those who strongly argue that, when serious violations of obligations resulting from peremptory norms are concerned, the political leaders have no immunities (theory of the "transparency" of the State – see e.g.: A.Pellet, "Can a State Commit a Crime? Definitely, Yes!", *E.J.I.L.*, 1999, vol. 10, n°2, pp. 425-434 or "Le nouveau projet de la C.D.I. sur la responsabilité de l'Etat pour fait internationalement illicite: *Requiem* pour le crime", *in Man's Inhumanity to Man-Festschrift Antonio Cassese*, Kluwer, The Hague, 2002, pp. 654-681; translated in English and updated: "The New Draft Articles of the International Law Commission on the Responsibility of States for International Wrongful Acts: A *Requiem* for States' Crimes?", *Netherlands Yearbook of International Law*, 2001, pp. 55-79).

(x) If such measures are not taken, it would be open to Azerbaijan to challenge any regulation or decision to the contrary before the EU Courts and (but with much more difficulties) before the domestic courts of the States giving equal benefit to goods imported from the Azerbaijani occupied territories and from Armenia;

(xi) The EU Council could freeze the assets of natural or legal persons involved in or profiteering from economic or other illicit activities in the occupied territories of Azerbaijan;

(xii) The Security Council could also be incited to take measures under Chapter VII in order to put an end to the threat to the peace constituted by the continuing occupation of parts of Azerbaijan;

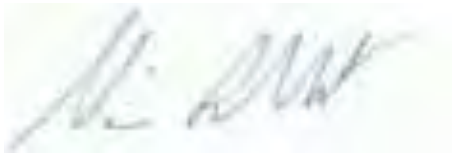
(xiii) In the (most likely) failure of the Security Council to act, the General Assembly could formally authorize States to take enforcement measures;

(xiv) Measures against the entry of the separatist regime's leaders and agents on the territory of third States are by no means legally impossible;

(xv) Absent sanctions decided by the United Nations, the European Union or individual States, third States are under a legal obligation to sue before their tribunals individuals accused of war crimes and of serious breaches of the law of belligerent occupation or to extradite them;

(xvi) Civil proceedings against these persons before national courts of third States are also possible, although not exempted of difficulties.

Done in Paris on 5 May 2016,



Alain PELLET*
Emeritus Professor, University Paris ouest Nanterre
La Dyfense; former Chairperson, UN International Law
Commission; Member, *Institut de Droit International*

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

The situation in the occupied territories of Azerbaijan

Elimination of racism, racial discrimination, xenophobia and related intolerance

Promotion and protection of human rights

Responsibility of States for internationally wrongful acts

The rule of law at the national and international levels

Security Council
Seventy-fifth year

Letter dated 4 June 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The aggression by Armenia against Azerbaijan has resulted in the seizure of a significant part of the territory of my country, namely, the Nagorno-Karabakh region and the seven adjacent districts, which remain under Armenia's occupation, in blatant violation of international law and Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993). The war claimed the lives of tens of thousands of people and caused considerable destruction of civilian infrastructure, property and livelihoods in Azerbaijan. The occupied territories were ethnically cleansed of all Azerbaijanis; more than 1 million people were forced to leave their homes and properties in these territories. Deliberate actions are currently being carried out in these territories with a view to securing their colonization and annexation. Implantation of settlers, destruction and appropriation of historical and cultural heritage, exploitation and pillage of and illicit trade in assets, natural resources and other wealth in the occupied territories are among such actions.

I have the honour to submit to you a report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory, prepared at the request of the Government of the Republic of Azerbaijan by Professor Malcolm Shaw QC, with the assistance of Naomi Hart, Barrister, Essex Court Chambers, London (see annex).* The report constitutes an updated version of the one

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presented and published in January 2009 (A/63/692-S/2009/51) and makes the following basic conclusions:

- The regular armed forces of Armenia took direct part in the capture of the Nagorno-Karabakh region and seven surrounding districts of Azerbaijan.
- Armenia has illegally installed and sustained the existence of the puppet regime within the occupied territories of Azerbaijan, by a variety of means, including the maintenance of military forces in these territories. Armenia cannot circumvent its responsibility for the breaches of international law by simply trying to disguise its role as the aggressor under the cover of the puppet regime.
- Under international law, territory cannot be acquired by the use of force and, consequently, no action taken by Armenia or by its puppet regime within the occupied territories of Azerbaijan can affect the pre-existing legal status of these territories, which thus remain Azerbaijani in international law.
- Armenia bears State responsibility for its breaches of international humanitarian law and international human rights law. Such breaches include the attempts to change the Azerbaijani laws and legal system in existence in the occupied territories, the interference with property rights and damage or destruction of cultural and historical property, the establishment of settlements of Armenians in the occupied territories, the mistreatment of protected persons and enforced disappearances.
- Armenia is under an obligation both to cease its violations and make reparation for them. Such obligations under international humanitarian law and international human rights law may be monitored and implemented by mechanisms in force for Armenia, such as the United Nations treaty bodies and the relevant international judicial institutions.
- 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 through relevant inter-State mechanisms.

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 32, 37, 68, 70, 75 and 83, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

Annex to the letter dated 4 June 2020 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 constitutes an updated version of the one presented on 23 January 2009 to the United Nations.[1] It examines the international legal responsibilities of the Republic of Armenia ("Armenia") as the belligerent occupier of the internationally recognised territory of the Republic of Azerbaijan ("Azerbaijan").[2] 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] UN Doc. A/63/692-S/2009/51.

[2] For more information on the matter, see also the following reports: "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/62/491-S/2007/615 (23 October 2007); "Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan", Annex to the Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/63/662-S/2008/812 (24 December 2008); "Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the Light of Armenia's Revisionist Claims", Annex to the letter dated 26 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/63/664-S/2008/823 (29 December 2008); "The Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan: Root Causes and Consequences", Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/475-S/2009/508 (6 October 2009); "The Facts Documented by Armenian Sources, Testifying to the Ongoing Organized Settlement Practices and Other Illegal Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/760-S/2010/211 (28 April 2010); "Report on the International Legal Rights of the Azerbaijani Internally Displaced Persons and the Republic of Armenia's Responsibility", Annex to the Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/66/787-S/2012/289 (3 May 2012); "Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/70/1016-S/206/711 (16 August 2016); "Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/880-S/2017/316 (26 April 2017); "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility", Annex to the Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/676-S/2020/90 (7 February 2020).

1. General

2. International law deals with question of occupation of territory of a State as part of what used to be called the law of war or the law of armed conflict and what is now most usually called international humanitarian law.[3] 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 relevant provisions of the Hague Regulations reflect rules of customary 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[4] 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".

7. It is, thus, abundantly clear that, as a matter of customary international law, occupation does not confer sovereignty over the occupied territory upon the occupying State. Dinstein, for example, writes that:

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[3] See, e.g., Y. Dinstein, *The International Law of Belligerent Occupation*, Cambridge, 2nd ed., 2019; E. Benvenisti, *The International Law of Occupation*, Princeton, 2nd ed., 2012; A. Clapham, P. Gaeta and M. Sassòli (eds.), *The 1949 Geneva Conventions*, Oxford, 2015, Part II C; A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation*, Cambridge, 2017; L. Green, *The Contemporary Law of Armed Conflict*, Manchester, 3rd ed., 2008, chapters 12 and 15; H.P. Gasser and K. Dörmann, "Protection of the Civilian Population", in D. Fleck (ed.), *Handbook of Humanitarian Law in Armed Conflict*, Oxford, 3rd ed., 2013, p. 264; UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, chapters 9 and 11; 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.

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

> "The main pillar of the law of belligerent occupation is embedded in the maxim that the occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure*. For its part, the Occupying Power acquires possession … but not title".[5]

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.[6] 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.[7] Accordingly, no action taken by Armenia or by its subordinate local authority within the occupied territories of Azerbaijan 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".

10. This provision is considered to be a rule of customary international law and thus binding on all States.[8] 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".[9]

11. The International Court of Justice has separately 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".[10]

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

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[5] *Op.cit*., p. 58. See also Benvenisti, *op.cit*., p. 6. Note in addition *Prefecture of Voiotia 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 September 2005, 129 International Law Reports, pp. 241, 252.

[6] See article 47 of Geneva Convention IV.

[7] See article 4 of Additional Protocol I.

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

[9] *Ibid*., p. 167.

[10] *Congo v. Uganda*, ICJ Reports, 2005, pp. 168, 229–30.

> "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".[11]

13. Since both Armenia and Azerbaijan are parties to this Convention, they are bound by its provisions. The obligations in Geneva Convention IV derive from both quoted paragraphs of article 2. 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".[12] That this happened from the early 1990s is indisputable, as is the continuing outbreak of low-level hostilities and loss of life.[13]

14. The International Court of Justice has discussed the meaning of this paragraph in its advisory opinion in the *Construction of a Wall* proceedings.[14] It noted that the Convention is applicable under this paragraph when two conditions were fulfilled – namely, 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.[15] It further underlined its approach by concluding that:

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

[12] Pictet (ed.), *op.cit.*, p. 20.

[13] See, e.g., an AFP report dated 5 September 2007, stating 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-76RMYP?OpenDocument>. 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 Resolutions 1497 and 2006. For statements deploring the number of casualties in more recent military incidents, see, e.g., Statement by the High Representative of the European Union for Foreign Affairs and Security Policy/Vice President of the European Commission Federica Mogherini, 2 April 2016: <https://eeas.europa.eu/headquarters/headquarters-homepage/2921/statement-by-high-representativevice-president-federica-mogherini-on-the-escalation-in-the-nagorno-karabakh-conflict_en>; Statement attributable to the Spokesman for the Secretary-General of the United Nations on the Nagorno-Karabakh conflict, 2 April 2016: <https://www.un.org/sg/en/content/sg/statement/2016-04-02/statement-attributable-spokesman-secretary-general-nagorno-karabakh>; Press Release by the Co-Chairs of the OSCE Minsk Group, 2 April 2016: <http://www.osce.org/mg/231216>; Statement by the NATO Secretary General, 5 April 2016: <http://www.nato.int/cps/en/natohq/news_129719.htm >.

[14] *Op.cit.*, pp. 174-5.

[15] *Ibid*.

> "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".[16]

15. 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 belligerents dispute the status of territory. … [R]especting international protections in such situations does not prejudice the status of the territory".[17]

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 Soviet Union ("USSR") disintegrated and the new successor States came into being, thus transforming an internal conflict 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,[18] the conflict over Nagorny Karabakh[19] 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 sovereign territory of Azerbaijan.

18. Fighting in the Nagorno-Karabakh region intensified after Armenia and Azerbaijan became independent, followed by the increased involvement of troops from Armenia during this period. The first armed attack by Armenia against 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 Azerbaijan was notoriously overrun.[20] Direct artillery bombardment of the Azerbaijani town of Lachin – mounted from within the territory of Armenia – took place in May of that year.[21] Armenian attacks against areas within Azerbaijan were resumed in 1993, eliciting a series of four Security

[16] *Ibid*., p. 177.

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

[18] Azerbaijan declared independence from the Soviet Union on 30 August 1991. This was subsequently formalised by means of the adoption of the Constitutional Act on the State Independence of 18 October 1991 then confirmed by a nationwide referendum on 29 December 1991.

[19] Note that "Nagorny Karabakh" or "Nagorno-Karabakh" is a Russian translation of the original name in Azerbaijani language – "Dağlıq Qarabağ" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. "Nagorny Karabakh" is conventionally used as a free-standing proper noun, whereas "Nagorno-Karabakh" is conventionally used as an attributive noun in conjunction with another noun (such as in "the Nagorno-Karabakh region" or "Nagorno-Karabakh forces"). This Report adopts these conventions.

[20] See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, 2003, p. 170.

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

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.[22]

19. Both the Security Council and General Assembly of the United Nations have recognised that a situation of armed conflict exists in the occupied territories.[23] Other organs of the United Nations have recognised the same. The United Nations Human Rights Committee, for example, has referred with regard to Azerbaijan explicitly to "[t]he situation of armed conflict with a neighbouring country".[24] 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".[25]

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".[26] Concern with "the conflict in the Nagorny-Karabakh region" was also expressed in the Committee's Concluding Observations on Azerbaijan on 14 April 2005.[27]

21. A similar position has been adopted by the United Nations 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".[28] The Committee also referred to the "conflict with Armenia" in its Concluding Observations on Azerbaijan on 14 December 2004.[29] That there was and remains a situation of armed conflict has been recognised by other international organisations, including the Organization for Security and Cooperation in Europe (OSCE),[30] the

[22] *Seven Years of Conflict in Nagorno-Karabakh*, New York, 1994, pp. 69-73.
[23] See, e.g., the Statement by the President of the Security Council, UN Doc. S/PRST/1995/21 (26 April 1995), p. 2; General Assembly resolution A/RES/62/243 (14 March 2008), Preamble.
[24] See the Concluding Observations of the Human Rights Committee: Azerbaijan, UN Doc. CCPR/C/79/Add.38 (3 August 1994), at para. 2. The reference to "armed conflict" was repeated in the Committee's Concluding Observations on Azerbaijan: UN Doc. CCPR/CO/73/AZE (12 November 2001), at para. 3.
[25] UN Doc. CERD/C/304/Add.75 (12 April 2001), at para. 3.
[26] *Ibid.*, at para. 7.
[27] UN Doc. CERD/C/AZE/CO/4 (14 April 2005), at para. 10.
[28] UN Doc. E/C.12/1/Add.20 (22 December 1997), at para. 12.
[29] UN Doc. E/C.12/1/Add.104 (14 December 2004), at para. 11.
[30] See, e.g., CSCE, First Additional Meeting of the Council, Helsinki (24 March 1992), Summary of Conclusions, para. 3.

Council of Europe,[31] and the Organisation of Islamic Cooperation ("OIC").[32] Further, the United Nations Security Council, its President and the General Assembly have repeatedly reaffirmed that the parties to the conflict are bound by rules of international humanitarian law.[33]

22. Aside from the existence of the armed conflict, the existence of a situation of occupation and Armenia's role in that occupation have been confirmed beyond dispute.

23. The United States 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 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".[34]

24. The United States 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".[35]

25. 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",[36]

while the International Crisis Group's Report of 11 October 2005 notes in its Executive Summary that:

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[31] See, e.g., Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), "The Conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", paras. 2, 6.

[32] See, e.g., Organisation of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), para. 13.

[33] Security Council resolution S/RES/822 (30 April 1993), para. 3 ("*reaffirms* that all parties are bound to comply with the principles and rules of international humanitarian law"); Security Council resolution S/RES/853 (29 July 1993), para. 11 ("*reaffirms* that all parties are bound to comply with the principles and rules of international humanitarian law"); Security Council resolution S/RES/874 (14 October 1993), para. 9 ("*Calls on* all parties to refrain from all violations of international humanitarian law"); Note by the President of the Security Council, UN Doc. S/26326 (18 August 1993) ("The Council reminds the parties that they are bound by and must adhere to the principles and rules of international humanitarian law"); General Assembly resolution A/RES/62/243 (14 March 2008), Preamble ("*Reaffirming* the commitments of the parties to the conflict to abide scrupulously by the rules of international humanitarian law").

[34] <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78799.htm>.

[35] <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78801.htm>. The Country Reports on Human Rights Practices for Azerbaijan for 2019 notes that: "Separatists, with Armenia's support, continued to control most of Nagorno-Karabakh and seven surrounding Azerbaijani territories", <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/azerbaijan/>.

[36] <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.

> "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".[37]

26. The Security Council has consistently reaffirmed both the sovereignty and territorial integrity of Azerbaijan, the inviolability of international borders 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 demanded the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan.

27. 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 Azerbaijan 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".

28. Resolutions 853 (1993) and 884 (1993) further called upon the Government 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.[38]

29. The General Assembly 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".

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

[37] "Nagorno-Karabakh: A Plan for Peace", Report No. 167, p. I.
[38] *Op.cit.*

> "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".[39]

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

32. The International Crisis Group noted in its September 2005 report that "[a]ccording 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 [Nagorny Karabakh]", while "[f]ormer 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".[40]

33. The above indicative materials demonstrate clearly that the regular armed forces of Armenia took direct part in the capture of Nagorny Karabakh and seven surrounding districts. Further, Armenia has sustained the existence of what it calls the "Republic of Nagorny Karabakh" ("NKR") or alternatively the "Republic of Artsakh", 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.[41]

34. 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.[42]

35. Armenia's role as occupying power means that it is internationally responsible for breaches of the obligations attendant upon that role.

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[39] David Atkinson, "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", Explanatory Memorandum, para. 6.

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

[41] See *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 167 and following. See further below, paragraph 82 and following.

[42] See Pictet (ed.), *op.cit*., p. 60 with which the official statement of the International Committee of the Red Cross ("ICRC") delivered by D. Thürer on 21 October 2005 agrees (see following footnote). See also Roberts, "What is a Military Occupation?", *op.cit*., p. 256 and *Construction of a Wall*, *op.cit.*, p. 174, noting that Geneva Convention IV applies when an armed conflict between two contracting parties exists.

(b) Armenia's Duties as an Occupier of Azerbaijani Territory

(1) General

36. In the official statement of the International Committee of the Red Cross ("ICRC") delivered by Thürer 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".[43]

37. 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 [*l'ordre et la vie publics*], while respecting, unless absolutely prevented, the laws in force in the country".

38. 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".[44]

39. 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.[45] 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.

40. There is abundant evidence, summarised in the following sections, showing that Armenia has failed to comply with this basic international legal obligation. It has

[43] <https://www.icrc.org/en/doc/resources/documents/statement/occupation-statement-211105.htm> (reply to Question 3).

[44] *Congo v. Uganda*, *op.cit.*, p. 231.

[45] See Benvenisti, *op.cit.*, p. 68. See also M. Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 European Journal of International Law, 2005, p. 661 and Roberts, "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 American Journal of International Law, 2006, p. 580.

entirely discarded the rights and interests of Azerbaijan as sovereign of the territories it occupies, as well as those of the local population. Instead, it has used the occupied territories as a vehicle to advance its own interests and with a view to ultimately incorporating those territories into Armenia itself.

(2) Protection of the Existing Local Legal System

41. International humanitarian law provides for the keeping in place of the local legal system during 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.[46]

42. 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.

43. 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".

44. 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.[47] Further, protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.[48]

[46] See Sassòli, *op.cit*., pp. 668-9.
[47] See articles 67 and 69-75 of Geneva Convention IV and article 75 of Additional Protocol I. See also Dinstein, *op.cit*., chapter 5 and Benvenisti, *op.cit*., chapter 4.
[48] Article 76 of Geneva Convention IV.

Representative of the delegates of the ICRC have the right to go to all places where protected persons are found, particularly places of internment, detention and work.[49]

45. 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.[50]

46. There is evidence that Armenia has failed to comply with its duties as occupier in respect of the legal system in existence prior to the occupation of Nagorny Karabakh and the surrounding districts. Such evidence includes the so-called "constitutional referenda" organized in the occupied territories of Azerbaijan in 2006 and 2017, which were declared illegal and invalid by both Azerbaijan and the international community,[51] and changes made to legislation applicable within the territories, such as the Criminal Code and the Electoral Code.[52]

47. The European Court of Human Rights has addressed various purported changes to the legal system in the occupied territories of Azerbaijan. As explained more fully below in relation to an occupier's duty to preserve existing property rights, the Court found that laws of the so-called "NKR" which purported to extinguish existing property rights were of no effect because "the 'NKR' is not recognised as a State under international law by any countries or international organisations".[53] The Court also referred to evidence presented by Armenia that the "NKR" has "its own legislation and its own independent political and judicial bodies".[54] However, it found that the "NKR" was not independent of Armenia in relation to the laws and legal systems it had purported to introduce in the occupied territories, in that "several laws of the 'NKR' have been adopted from Armenian legislation".[55]

[49] Article 143.

[50] See also article 14 of Additional Protocol I.

[51] See, e.g., Statement by the Ministry of Foreign Affairs of Azerbaijan, Annex to the Letter dated 11 December 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/61/627–S/2006/966 (12 December 2006); Statement by the OSCE Minsk Group Co-Chairs "On the 10 December referendum in Nagorno-Karabakh", 11 December 2006, <https://www.osce.org/mg/48044>; Declaration by the Presidency on behalf of the European Union "On the 'constitutional referendum' in Nagorno-Karabakh on 10 December 2006", 11 December 2006, <https://finlandabroad.fi/web/gha/foreign-ministry-s-press-releases/-/asset_publisher/kyaK4Ry9kbQ0/content/puheenjohtajavaltion-euroopan-unionin-puolesta-antama-julkilausuma-vuoristo-karabahissa-10-joulukuuta-2006-jarjestetysta/35732>; Statement by the Ministry of Foreign Affairs of Azerbaijan, Annex to the Letter dated 15 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/795–S/2017/140 (17 February 2017); Statement by the Co-Chairs of the OSCE Minsk Group, 17 February 2017, <https://www.osce.org/mg/300591>; EU Statement "On the so-called constitutional referendum in Nagorno-Karabakh", 8 March 2017, <https://eeas.europa.eu/sites/eeas/files/pc_1135_eu_en_on_socalled_referendum_nagorno_karabakh_1.pdf>.

[52] See, e.g., Note Verbale dated 14 February 2019 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, Annex, UN Doc. A/HRC/40/G/3 (2 April 2019), pp. 3–4.

[53] *Chiragov and Others v. Armenia*, *op.cit.*, para. 148.

[54] *Ibid.*, para. 182.

[55] *Ibid.*

(3) Property Rights

48. 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.[56] Dinstein notes that respect for private property under this provision also covers the situation where the owner of such property is actually prevented from exercising his rightful prerogatives[57] and includes in addition intangible assets.[58] Pillage is forbidden specifically under this provision,[59] while reprisals against the property of protected persons are prohibited.[60]

49. 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, and the arts and sciences, even when State property, shall be treated as private property and that all seizure of, destruction of or wilful damage done to institutions of this character, historic monuments, and works of art and science, is forbidden, and should be made the subject of legal proceedings.

50. 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.[61] It is a grave breach of the Convention to engage in extensive destruction not so justified.[62]

51. Armenia has flagrantly violated the rules which prohibit it, as occupier, from interfering with private property rights or from damaging cultural and historical property. Armenia's violations in this respect have been catalogued in depth in the recent report entitled "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility".[63] Without repeating all of the evidence set out in that report, in summary:

(i) An impartial and reputable NGO has presented evidence of Armenia privatising land and turning a blind eye to Armenian settlers profiting from the dismantling of local infrastructure and private property in the occupied territories.[64]

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[56] Article 52 of the Hague Regulations and article 55 of Geneva Convention IV.

[57] *Op.cit*., p. 243, citing the *Krupp* trial, US Military Tribunal, Nuremberg, 1948, 10 *Law Reports of Trials of War Criminals*, pp. 137-8 and *Loizidou v. Turkey*, App. No. 15318/89, ECtHR (Grand Chamber), Merits, 18 December 1996, para. 63 (which held that continuous denial of access to land violated the right to the peaceful enjoyment of possessions).

[58] *Ibid.*, p. 244, citing the *IG Farben* trial, US Military Tribunal, Nuremberg, 1948, 10 *Law Reports of Trials of War Criminals*, pp. 44-45.

[59] Article 47 of the Hague Regulations.

[60] Article 33 of Geneva Convention IV.

[61] See also article 23(g) of the Hague Regulations.

[62] Article 147 of Geneva Convention IV.

[63] *Op.cit.*, paras. 138–44 (interference with property), 223–29 (destruction of cultural heritage).

[64] *Ibid.*, para. 138.

(ii) Azerbaijan has published several reports on the longer-term appropriation and destruction of civilian property in the occupied territories, in flagrant violation of the applicable rules of international law.[65]

(iii) In 2019, Azerbaijan published satellite imagery showing the illegal appropriation and extensive exploitation of agricultural land, infrastructure and natural resources in the occupied territories by Armenia.[66]

(iv) The OIC has expressed grave concern at the interference with property rights in the occupied territories.[67]

(v) There is extensive evidence of Armenia (or those engaging its international responsibility as occupier) destroying cultural heritage, including mosques, castles, art galleries, libraries and museums.[68]

52. The international community has already recognised the illegality of the "NKR" purporting to nullify the property rights of former inhabitants of the occupied territories. For example, in the case of *Chiragov and Others v Armenia*, the European Court of Human Rights addressed a contention by Armenia that the property rights of certain individuals had been extinguished by the "NKR" enacting a law of privatisation and a "Land Code".[69] The Court recalled its own previous finding that "the 'NKR' is not recognised as a State under international law by any countries or international organisations" with the consequence that "the invoked laws cannot be considered legally valid for the purposes of the Convention and the applicants cannot be deemed to have lost their alleged rights to the land in question by virtue of these laws".[70]

(4) Protecting Protected Persons

53. A number of provisions of Geneva Convention IV detail 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). The ICRC Commentary regards this provision as "the basis of the [Geneva Convention IV], proclaiming as it does the principles

[65] *Ibid.*, paras. 141–142 and sources cited therein, in particular: UN Doc. A/70/1016–S/2016/711, *op.cit.*, p. 1; UN Doc. A/71/880–S/2017/316 (26 April 2017), *op.cit.*

[66] Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of Azerbaijan, "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019).

[67] UN Doc. A/74/676–S/2020/90, *op.cit.*, para. 144, citing the Final Communique of the 13th Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2016), paras. 16–17; Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan, *op.cit.*, Preamble, paras. 20.

[68] UN Doc. A/74/676–S/2020/90, *op.cit.*, paras. 224–9 and sources cited therein.

[69] *Op.cit.*, para. 148.

[70] *Ibid.*

on which the whole of 'Geneva Law' is founded".[71] It is to be noted that "wilfully causing great suffering or serious injury to body or health" is a grave breach of the Convention (article 147) and, as such, constitutes a war crime under article 8(2)(a)(iii) of the Statute of the International Criminal Court.

(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 29).

(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 the hands of an occupier. 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). Hostage-taking also constitutes a grave breach of the Convention (article 147) and thus a war crime under article 8(2)(a)(viii) of the Statute of the International Criminal Court.

54. The document entitled "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility" sets out in detail evidence of Armenia's breach of these obligations. Without repeating all of the evidence set out in that report, in summary:

(i) There is extensive evidence of Armenian agents and others engaging its responsibility as occupier perpetrating the murder and torture of civilians in the occupied territories of Azerbaijan.[72]

(ii) There is also evidence of a widespread practice of hostage-taking by Armenia and others for whose conduct it is internationally responsible.[73] As of January 2020, it had been established that, of the 3,889 persons who were missing as a result of the conflict, 267 civilians had been taken hostage, of whom 29 are children, 98 are women and 112 are elderly persons, while a further 1,102 Azerbaijani civilians (including 224 children, 357 women and 225 elderly persons) had previously been taken hostage by Armenian forces but already released.[74]

(5) Missing Persons

55. 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

[71] Pictet (ed.), *op.cit.*, pp. 199–200.

[72] *Op.cit.*, paras. 83–117 (unlawful killing of civilians), 154–160 (mistreatment of detainees, including large numbers of civilians), and the sources cited therein.

[73] *Ibid.*, paras. 166–73.

[74] State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, "Prisoners of War, Hostages and Missing Persons" <http://www.human.gov.az/en/view-page/27/%C6% 8FS%C4%B0R,%20G%C4%B0ROV%20V%C6%8F%20%C4%B0TK% C4%B0N%20D%C3%9C%C5 %9EM%C3%9C%C5%9EL%C6%8FR#.XmAak6hKjIU>.

contact with one another and of meeting, if possible. Each party shall encourage, in particular, the work of organizations engaged in this task provided they are acceptable to it and conform to its security regulations.

56. 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 ICRC or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the ICRC 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.”

57. As a party to Additional Protocol I, Armenia is bound by the above provision.

58. Further, in resolution 59/189, adopted by the 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.[75] On 11 June 2019, the Security Council unanimously adopted resolution 2474 (2019), its first ever resolution on this topic,[76] in which it reaffirmed its strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict and called upon all parties to armed conflict to put an end to such practices, in accordance with their obligations under international humanitarian law. Other provisions included calling upon the parties to armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and to facilitate family reunions and ensure impartial and effective investigations and prosecution of offences linked to missing persons as a result of armed conflict with a view to full accountability.

59. In addition, the International Convention on the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006 and in force from 23 December 2010, appears applicable to occupied territories, noting that Article 1 (2) declares that, "[N]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance". Article 2 defines 'enforced disappearance' as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Armenia became a party to the Convention on 24 January 2011.

60. Article 9(1)(a) of the Convention states:

> "1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:
>
> (*a*) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;".

61. It is clear from the jurisprudence of the European Court of Human Rights that the occupied territories of Azerbaijan fall within the 'jurisdiction' of Armenia for such human rights' purposes[77] and imposes upon the latter significant duties to investigate acts of enforced disappearance, having criminalised them,[78] and to either prosecute persons alleged to have committed acts or to extradite them to a State that will prosecute (Articles 6 – 11).

62. Resolution 1553 (2007) of the Parliamentary Assembly of the Council of Europe, entitled "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions", 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 in these conflicts. 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

[75] See also General Assembly resolutions A/RES/61/155 (19 December 2006); A/RES/63/183 (18 December 2008); A/RES/65/210 (21 December 2010); A/RES/67/177 (20 December 2012); A/RES/69/184 (18 December 2014); A/RES/71/201 (19 December 2016); A/RES/73/178 (17 December 2018).

[76] UN Press Release SC 13835, 11 June 2019, <https://www.un.org/press/en/2019/sc13835.doc.htm>.

[77] See below, paragraph 83 and following.

[78] Note that under Article 5, "[T]he widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law".

of 4,499 Azerbaijanis listed as missing as a result of the conflict over the Nagorno-Karabakh region 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.

63. The most recent estimate (as of the beginning of January 2020) is that 3,889 citizens of Azerbaijan are registered as missing as a result of the conflict, including 3,170 servicemen and 719 civilians. Among the civilians, 71 are children, 267 are women and 326 are elderly persons.[79]

(6) Prohibition on Settlements in Occupied Territories

64. 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".[80]

65. Such activity also constitutes a grave breach of Additional Protocol I[81] and, indeed, a breach of Armenia's own domestic legislation.[82] Attempts to change the demographic composition of occupied territories have also been condemned by the Security Council.[83] 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

[79] State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, *op.cit*.

[80] *Construction of a Wall*, *op.cit.*, p. 183.

[81] 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) but with a rather different definition ("the transfer *directly or indirectly* by the Occupying Power of parts of its own civilian population into the territory it occupies", emphasis added). Footnote 44 of the Elements of Crimes analysing article 8(2)(b)(viii) notes that the term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law: International Criminal Court, RC/11, 2011, p. 22.

[82] See J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, vol I: Rules*, ICRC, Cambridge, 2005, p. 462, footnote 36.

[83] See, e.g., Security Council resolutions S/RES/446 (1979), S/RES/452 (1979), S/RES/465 (1980), S/RES/476 (1980), S/RES/677 (1990), S/RES/1397 (2002), S/RES/1515 (2002), S/RES/1850 (2008) and S/RES/2334 (2016).

violation of international law",[84] 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.[85] This view was endorsed by the Sub-Commission in its consideration of the Report.[86]

66. 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 depopulated of its Azerbaijani inhabitants. There have been numerous independent reports of the introduction of settlers into the occupied areas.

67. 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 the Kalbajar district; 800 to 1,000 in the Aghdam district; under 10 in the Fuzuli district; under 100 in the Jabrayil district; 700 to 1,000 in the Zangilan district and from 1,000 to 1,500 in the Gubadly district.[87] The report also noted that some 3,000 settlers lived in Lachin town[88] and emphasised that "[s]ettlement incentives are readily apparent".[89] A later report of the OSCE Minsk Group Co-Chairs, based on a field assessment mission, expressed similar concern over Armenia's efforts to change the character of the occupied territories, including by importing ethnic Armenians. It reported that few of the current inhabitants of the occupied territories had lived there prior to the conflict; instead, they were ethnic Armenians who had sought refuge in Armenia but had been forced to move into the occupied territories.[90] The mission also "observed that many settlements have been renamed with Armenian names or that only Armenian names are used to refer to settlements that previously had Azeri names"; for example, "[t]he city of Agdam, which had as many as 70,000 inhabitants prior to the NK conflict, no longer appears on maps or road signs".[91] The report urged the parties to "refrain from additional actions that would change the demographic, social or cultural character of areas affected by the conflict (such as further settlement in disputed areas, the erection of monuments, and the changing of place names), or would make it impossible to reverse the status quo and achieve a peaceful settlement".[92]

68. 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

[84] UN Doc. A/50/18 (1995), para. 26.
[85] UN Doc. E/CN.4/Sub.2/1997/23 (27 June 1997). See also the First Report by Al-Khasawneh and Hatano, UN Doc. E/CN.4/Sub.2/1993/17 and Corr.1 (1993).
[86] Sub-Commission resolution 1997/29.
[87] UN Doc. A/59/747-S/2005/187 (21 March 2005), at p. 26.
[88] *Ibid*., at p. 29.
[89] *Ibid*., at p. 30.
[90] Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (2011), pp. 4, 7.
[91] *Ibid.*, p. 6.
[92] *Ibid.*, p. 8.

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".[93]

69. 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 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".[94]

70. The International Crisis Group report of September 2005 reported that:

> "Stepanakert 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".[95]

71. 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".[96]

72. Accordingly, Armenia's breach of this important rule of international humanitarian law has been clearly established. Azerbaijan has diligently brought Armenia's conduct of transferring ethnic Armenians into the occupied territories to

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[93] <http://refugees.org/countryreports.aspx?__VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpHb0J1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH&CountryDD%3ALocationList>.

[94] UN Doc. E/CN.4/Sub.2/AC.5/2003/WP.7 (5 May 2003), at pp. 34–5.

[95] *Op.cit.*, p. 7 (internal citations omitted). Note that the town of Khankandi was founded by the Khans of the Azerbaijani Karabakh Khanate in the eighteenth century. Khankandi is translated from Azerbaijani language as the Khan's Village. In September 1923, after the establishment of Soviet rule in Azerbaijan, Khankandi was renamed to Stepanakert after Stepan Shaumian, a Bolshevik Commissar and Vladimir Lenin's proxy in the South Caucasus. In 1991, the town was returned its historical name Khankandi. However, it is still referred to by the Armenians as "Stepanakert".

[96] *Op.cit.*, p. 22. See also the full analysis of the settlement programme presented by the Permanent Representative of Azerbaijan to the United Nations in November 2004: UN Doc. A/59/568 (11 November 2004).

the attention of the United Nations and the OSCE.[97] It is not necessary to repeat all of the evidence previously provided. For example, in a report of October 2007, Azerbaijan described acts by Armenia which were "designed to consolidate the status quo, as well as to prevent the Azerbaijani population from returning to their homes, thereby imposing a fait accompli."[98] It further stated:

> "[A]ll of Armenia's hopes for the recognition of an eventual fait accompli, and thus of the transfer of sovereignty over the occupied territories of Azerbaijan, involve an altering of the demographic composition of the occupied territories and prevention of a return to the pre-war situation. Indeed, the available information shows that Armenia has pursued a policy and developed practices that call for the establishment of settlements in the occupied Azerbaijani territories. There have been reports of a programme called 'Return to Artsax' whose purpose is to artificially increase the Armenian population in the occupied Azerbaijani territories to 300,000 by 2010. A working group set up to implement this resettlement programme under the leadership of the Prime Minister of Armenia includes both Armenian officials and representatives of non-governmental organizations operating in Yerevan."[99]

73. In a further report of April 2010, Azerbaijan presented extensive evidence derived from Armenian sources testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan.[100] Based on this evidence, Azerbaijan explained that "the policy and practice of the Republic of Armenia clearly testify to its intention to secure the annexation of Azerbaijani territories that it has captured through military force and in which it has carried out ethnic cleansing", including by way of "settlement activities, destruction and appropriation of historical and cultural heritage and systematic interference with the property rights of Azerbaijani displaced persons".[101] It continued:

> "[N]othing has been done to dismantle settlements and discourage further transfer of settlers into the occupied territories. Moreover, numerous reports, including Armenian ones in particular, … show that the Republic of Armenia, directly by its own means or indirectly through the subordinate separatist regime and with the assistance of Armenian Diaspora, continued the illegal activities in the occupied territories of Azerbaijan. Thus, during this period Armenian settlers have been encouraged to move into these territories, including the districts adjacent to the occupied Nagorno-Karabakh region of Azerbaijan, in particular the districts of Lachin, Kalbajar and Zangelan. In addition, this period was marked by consistent measures aimed at altering the

[97] In addition to the documents cited below, see the documents cited in footnote 2 above, as well as the Press release of the Ministry of Foreign Affairs of Azerbaijan, Annex to the Letter dated 29 March 2011 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/65/801–S/2011/208 (30 March 2011), pp. 2–3; Letter from the Permanent Mission of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 2; Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/782–S/2017/110 (7 February 2017), pp. 5–6; Letter dated 3 October 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/72/508–S/2017/836 (5 October 2017), pp. 6, 9; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/72/725–S/2018/77 (1 February 2018), p. 2; Letter dated 15 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/73/878–S/2019/406 (20 May 2019), p. 2.

[98] UN Doc. A/62/491–S/2007/615, *op.cit.*

[99] *Ibid*.

[100] UN Doc. A/64/760–S/2010/211, *op.cit*.

[101] *Ibid*.

> historical and cultural features of the occupied area depopulated of their Azerbaijani inhabitants. In this regard, alleged 'reconstruction' and 'development' projects for Shusha, one of the most beautiful cultural and historical centres of Azerbaijan, and 'archaeological excavations' in Aghdam, both carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots and substantiating the policy of territorial expansionism, give rise to serious concern and justified indignation."[102]

74. Two recent reports of Azerbaijan have provided particularly extensive and revealing evidence of the scale of Armenia's efforts to change the character of the occupied territories. The first, published in August 2016, is entitled "Illegal economic and other activities in the occupied territories of Azerbaijan" and provides voluminous evidence of Armenia's conduct in transferring ethnic Armenians into the territories (and offering generous incentives to the settlers); incorporating the occupied territories into its socioeconomic space and its customs territory (such as by regulating their banking and telecommunications sectors as if they were part of Armenia itself); replacing Azerbaijani names with Armenian ones; executing permanent energy, agriculture, social, residential and transport infrastructure changes; the exploitation of the territories' natural resources, especially its agricultural land; and abusing tourism as a means of advancing its annexationist policies.[103] The second was published in 2019 by Azerbaijan's national satellite operator and Ministry of Foreign Affairs, entitled "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery", which (as its title suggests) provides satellite imagery which shows Armenia's attempts to change irreversibly the character of the occupied territories by transferring settlers, pillaging natural resources, executing infrastructure changes, exploiting agricultural land, and expropriating public and private property.[104]

75. International organisations and eminent legal scholars have recognised the illegality of Armenia's conduct in attempting to change the character of the occupied territories. In 2012, the European Parliament resolved that there were "concerning reports of a settlement-building policy implemented by the Armenian authorities to increase the Armenian population in the occupied territories of Nagorno-Karabakh" and that there was a need to investigate such reports.[105]

76. In April 2016, the OIC expressed its grave concern at, *inter alia*, "unlawful actions aimed at changing the demographic … character of the occupied territories".[106] In October of the same year, the OIC expressed again its "profound concern over the continued occupation of a significant part of the territory of Azerbaijan and actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories",[107] resolving as follows:

> "15. **Stresses** that fait accompli may not serve as a basis for a settlement, and that neither the current situation within the occupied territories of the Republic

[102] *Ibid*.
[103] UN Doc. A/70/1016–S/2016/711, *op.cit*.
[104] "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019), *op.cit*.
[105] European Parliament Resolution 0128 (18 April 2012), para. 1(z).
[106] Final Communique of the 13th Islamic Summit Conference (Unity and Solidarity for Justice and Peace), *op.cit.*, para. 16.
[107] Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan, *op.cit*, Preamble.

of Azerbaijan, nor any actions, including arranging voting process, undertaken there to consolidate the status quo, may be recognized as legally valid;

16. **Demands** to cease and reverse immediately the transfer of ethnic Armenian settlers into the occupied territories of Azerbaijan and all other actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories, which constitute a blatant violation of international humanitarian and human rights law and has a detrimental impact on the process of peaceful settlement of the conflict, and agrees to render its full support to the efforts and initiatives of Azerbaijan, aimed at preventing and invalidating such actions, including within the General Assembly of the United Nations, inter alia, through their respective Permanent Missions to the United Nations in New York."[108]

77. In his Legal Opinion of April 2017, after citing extensive evidence recording mass forced displacement of Azerbaijanis from Nagorny Karabakh and their replacement with Armenian settlers,[109] Professor Alain Pellet concluded:

> "It results from the above that the establishment of settlements is clearly a breach of international law and that the actions purporting to change the demographic composition of the occupied territories of the Republic of Azerbaijan are contrary to the treaty provisions in force between Armenia and Azerbaijan and to customary rules of international law applied in the resolutions and decisions mentioned above. This is an absolute prohibition which does not tolerate any exception."

78. The importation of ethnically Armenian settlers into the occupied territories of Azerbaijan has been possible only because Armenia has simultaneously engaged in a campaign of forcibly expelling and preventing the return of Azerbaijani inhabitants of those territories, also in clear breach of Article 49 of Geneva Convention IV. The conflict has resulted in the forcible expulsion of more than 1 million Azerbaijanis from their homes and properties, both in Armenia and in the Azerbaijani territory which it occupies.[110]

79. Evidence of this practice has been documented in detail in the document entitled "Report on war crimes in the occupied territories of the Republic of Azerbaijan and the Republic of Armenia's responsibility". Without repeating all of the detail set out there, towns and regions which have been the subject of ethnic cleansing by Armenian forces include Shusha,[111] Aghdam,[112] villages near the Iranian border,[113] and the Kalbajar, Fuzuli, Jabrayil, Gubadly and Zangilan districts. The forcible displacement of civilians has been condemned by various international bodies, including the United Nations Security Council,[114] the United Nations General

[108] *Ibid.*, paras. 15–16.
[109] UN Doc. A/71/880–S/2017/316, *op.cit.*, pp. 34–36.
[110] Letter dated 24 July 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/72/940–S/2018/738 (26 July 2018), p. 1; UN Doc. A/72/725–S/2018/77, *op.cit.*, p. 3.
[111] UN Doc. A/73/878–S/2019/406, *op.cit.*, p. 1.
[112] *Ibid*, pp. 32–49.
[113] *Ibid*, pp. 50–62.
[114] Security Council resolution S/RES/822 (30 April 1993), Preamble; Security Council resolution S/RES/853 (29 July 1993), Preamble; Security Council resolution S/RES/874 (14 October 1993), Preamble; Security Council resolution S/RES/884 (12 November 1993), Preamble.

Assembly,[115] the European Union,[116] the OIC,[117] the United States Committee for Refugees and Immigrants,[118] the Grand Chamber of the European Court of Human Rights[119], and the Parliamentary Assembly of the Council of Europe (which "expresse[d] 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").[120] One scholar has described the cleansing of Azerbaijani civilians from towns and villages in the occupied territories as a "key component of the Karabakh insurgency's strategy" designed to "make a fait accompli of [the territories'] integration with Armenia".[121] Professor Pellet's Legal Opinion of April 2017 stated:

> "I deem it quite clear that the Azerbaijanis in Nagorno-Karabakh and the surrounding districts were victims of an ethnic cleansing:
>
> – while the Azerbaijani population constituted around 25 per cent of the population of the Nagorno-Karabakh area before the war, and constituted the almost exclusive population of the surrounding territories, the Armenian population is now usually estimated around 95 per cent of the total population of this area;
>
> – the situation is indisputably the result of Armenian or Armenia's controlled forces; and
>
> – there seems to be wide evidence of brutalities which were the origin of the situation."[122]

80. For more than a decade, Azerbaijan has been vigilant in bringing the international community's attention to the scale and character of Armenia's forced expulsions of Azerbaijanis from the occupied territories.[123]

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[115] General Assembly resolution A/RES/48/114 (20 December 1993), Preamble.

[116] "Statement on Nagorno-Karabakh", cited in European Political Cooperation (EPC) Press Release, Brussels, 22 May 1992, European Political Cooperation Documentation Bulletin (1992), vol. 8, Doc. 92/201, p. 260.

[117] Organisation of Islamic Cooperation, Resolution No. 4/43-E on Economic Assistance to OIC Member States and Muslim Communities in Disputed/Occupied Territories and Non-OIC Countries within the OIC Mandate (18–19 October 2016), para. A.1.

[118] World Refugee Survey 2001, country report on Azerbaijan.

[119] *Chiragov and Others v Armenia*, *op.cit.,* para. 18.

[120] Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), *op.cit.*, para. 2. See also Parliamentary Assembly of the Council of Europe, "Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan", Doc No. 13930 (11 December 2015), p. 3, para. 60.

[121] J.A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law*, Cambridge, 2016, pp. 237–39 (internal citations omitted).

[122] UN Doc. A/71/880–S/2017/316 (26 April 2017), *op.cit.*, p. 28 (internal citations omitted).

[123] See, e.g., UN Doc. A/62/491–S/2007/615, *op.cit.*, p. 47; "The Situation in the occupied territories of Azerbaijan: Report of the Secretary-General", UN Doc. A/63/804 (30 March 2009), comments of Azerbaijan, para. 10; UN Doc. A/64/760–S/2010/211, *op.cit*.; UN Doc. A/66/787–S/2012/289, *op.cit*., pp. 21, 23; Letter dated 9 May 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/66/796–S/2012/308 (10 May 2012), p. 2; UN Doc. A/72/508–S/2017/836 (5 October 2017), *op.cit*., p. 6; Information from the Military Prosecutor's Office of the Republic of Azerbaijan, "On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan" (31 May 2019); Statement by the Delegation of the Republic of Azerbaijan in the exercise of the right of reply to the statement by the Prime Minister of Armenia at the General Debate of the 74th session of the UN General Assembly, 26 September 2019, <http://un.mfa.gov.az/files/file/statements/Right%20of%20reply%2026.09.19.pdf>.

(7) Application to Subordinate Local Administrations

81. 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".

82. 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".[124] It is clear, 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".[125]

83. The degree of Armenia's control over the authorities which control the so-called "NKR" has been extensively scrutinised by the European Court of Human Rights.[126] That Court has found on numerous occasions that the "NKR" is a "subordinate local administration" under the financial, political and military control of Armenia, such that Armenia can be held responsible for breaches of the Convention committed by that administration.

84. In *Chiragov and Others v. Armenia,* described by the Court as "its leading case on the matter" of Armenia's responsibility for conduct of the "NKR" and the surrounding occupied areas of Azerbaijan,[127] it was emphasised that, in order to determine whether Armenia had jurisdiction under article 1 of the Convention, it was "necessary to assess whether it exercises effective control over Nagorno-Karabakh and the surrounding territories as a whole".[128] The conclusion was reached that:

> "it is hardly conceivable that Nagorno-Karabakh – an entity with a population of less than 150,000 ethnic Armenians – was able, without the substantial military support of Armenia, to set up a defence force in early 1992 that, against the country of Azerbaijan with a population of approximately seven million people, not only established control of the former NKAO but also, before the

[124] "Transformative Military Occupation: Applying the Laws of War and Human Rights", *op.cit.*, pp. 580, 586.

[125] *Op.cit*., p. 282.

[126] This has been in the context of the European Convention on Human Rights, and especially in relation to the jurisdiction and responsibility of Armenia under article 1 of that instrument. Nonetheless, the Court's factual findings on the degree of Armenia's control is relevant to an analysis of attribution under the rules of State responsibility.

[127] *Muradyan v. Armenia*, App. No. 11275/07, ECtHR, 24 November 2016, para. 126.

[128] *Chiragov and Others v. Armenia*, *op.cit.*, para. 170.

> end of 1993, conquered the whole or major parts of seven surrounding Azerbaijani districts."[129]

And that:

> "All of the above reveals that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the 'NKR', that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the 'NKR' and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin. The matters complained of therefore come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention."[130]

85. It is important to consider why the Court came to this conclusion. The case concerned the district of Lachin, one of the areas of Azerbaijan, outside of Nagorny Karabakh but occupied by Armenia. The Court referenced a range of factors which led ineluctably to the conclusion of Armenia's responsibility for the acts of the local subordinate administration. The first of these was military involvement where it was noted that Armenia had provided "substantial military support" to the Nagorno-Karabakh forces as from the start of the conflict in 1992. This involvement was formalised in the 1994 "military agreement" which "notably provides that conscripts of Armenia and the 'NKR' may do their military service in the other entity". Other indices of proof included the conclusion of the Parliamentary Assembly of the Council of Europe concerning "the occupation by Armenian forces of 'considerable parts of the territory of Azerbaijan'" and the International Crisis Group report of September 2005 noting "on the basis of statements by Armenian soldiers and officials, that '[t]here is a high degree of integration between the forces of Armenia and Nagorno-Karabakh'". The Court concluded that:

> "it finds it established that Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date. This military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue, and the evidence, not least the Agreement, convincingly shows that the Armenian armed forces and the 'NKR' are highly integrated."[131]

86. Secondly, the Court emphasised the political dependence of the "NKR" upon Armenia, demonstrated by, for example, the number of politicians who have assumed the highest offices in Armenia after previously holding similar positions in the "NKR" and the use by "NKR" residents of Armenian passports.[132] Thirdly, the Court emphasised that the facts of earlier cases before it (referring to *Zalyan, Sargsyan and Serobyan v. Armenia* ((dec.), nos. 36894/04 and 3521/07, 11 October 2007) demonstrated "not only the presence of Armenian troops in Nagorno-Karabakh but also the operation of Armenian law-enforcement agents and the exercise of jurisdiction by Armenian courts on that territory".[133] Finally, the Court referenced the "substantial" financial support given by Armenia to the 'NKR'", concluding that "the

[129] *Ibid.*, para. 174.
[130] *Ibid.*, para. 186.
[131] *Ibid.*, paras. 174–6 and 180.
[132] *Ibid.*, paras. 181–182.
[133] *Ibid.*, para. 182.

'NKR' would not be able to subsist economically without the substantial support stemming from Armenia".[134]

87. The Court's clear and firm finding of Armenia's responsibility for breaches or alleged breaches of the Convention occurring in either Nagorny Karabakh or the surrounding other occupied areas of Azerbaijan was reiterated in *Muradyan v. Armenia*, where the Court concluded that:

> "the Court considers that, by exercising effective control over Nagorno Karabakh and the surrounding territories, Armenia is under an obligation to secure in that area the rights and freedoms set out in the Convention and its responsibility under the Convention cannot be confined to the acts of its own soldiers or officials operating in Nagorno Karabakh but is also engaged by virtue of the acts of the local administration which survives by virtue of Armenian military and other support (see *Zalyan and Others*, cited above, §§ 214-215, as well as, *mutatis mutandis*, *Djavit An v. Turkey*, no. 20652/92, §§ 18-23, ECHR 2003-III; and *Amer v. Turkey*, no. 25720/02, §§ 47-49, 13 January 2009)."[135]

88. The Court emphasised that the responsibility of the State in question could be engaged by the acquiescence or connivance of the authorities of the State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction and that this was "particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community".[136] It was also noted that under the Convention, a State's authorities were strictly liable for the conduct of their subordinates and consequently under a duty to impose their will. They could not shelter behind their inability to ensure that it was respected.[137]

89. Thus, the State in question is responsible not only for its own activities, but for those of a "subordinate local administration *which survives there by virtue of its military and other support*".[138] Whether such is the case is a matter of fact. In *Ilaşcu* the Court regarded a State's responsibility to be engaged in respect of unlawful acts committed by a separatist regime in part of the territory of another member State in the light of military and political support given to help set up that separatist regime.[139]

90. The evidence available since the *Chiragov* judgment in fact serves to underscore the conclusions reached by the Court in that case and reaffirmed subsequently. For example, the International Crisis Group Report noted that "Armenian and de facto Armenian-Karabakh military forces are intertwined, with Armenia providing all logistical and financial support, as well as ammunition and other types of military equipment". The footnote (no. 81) to this sentence reads as follows:

> "Both Armenia's and the de facto Nagorno-Karabakh's leaderships used to strongly deny any close integration between the two structures. This changed after April 2016. In January 2017, a high-level military official from Armenia confirmed to Crisis Group the existence of close cooperation as well as Armenia's support and control of Nagorno-Karabakh-based military troops; he

[134] *Ibid*., paras. 183–184 and 185.
[135] *Muradyan v. Armenia*, *op.cit.*, para. 126.
[136] *Ilaşcu v. Moldova and Russia*, App. No. 48787/99, ECtHR (Grand Chamber), 8 July 2004, para. 318.
[137] *Ibid.*, paras. 314–319. See also *Issa v. Turkey*, App. No. 31821/96, ECtHR, 16 November 2004, para. 65 and following, especially para. 69; *Ireland v United Kingdom*, App. No. 5310/71, ECtHR (Grand Chamber), 18 January 1978, para. 159.
[138] *Ilaşcu v. Moldova and Russia*, *op.cit.*, para. 316 (emphasis added).
[139] *Ibid.*, para. 382.

> added that this also was confirmed by the 2015 European Court of Human Rights ruling in 'Chigarov and others v Armenia', which found Armenia responsible for military operations inside Nagorno-Karabakh."[140]

91. In addition, footnote 120 on page 22 of this publication declares that: "In the official negotiation process, de facto NK is represented by Armenia's officials. The president of de facto NK has often voiced full support for his Armenian counterpart in talks".

92. This is reinforced by the comment by Laurence Broers in his research paper entitled "The Nagorny Karabakh Conflict: Defaulting to War" to the effect that the self-styled "Nagorno-Karabakh Defence Army" is "closely integrated with Armenian armed forces", which "is reflected in the extent to which Armenian casualties in the April 2016 escalation originated in Armenia rather than in NK". [141]

93. Further, in Resolution 2085 (2016) adopted by the PACE, it was noted that the Assembly:

> "deplores the fact that the occupation by Armenia of Nagorno-Karabakh and other adjacent areas of Azerbaijan creates similar humanitarian and environmental problems for the citizens of Azerbaijan living in the Lower Karabakh valley",

while:

> "It notes that the lack of regular maintenance work for over twenty years on the Sarsang reservoir, located in *one of the areas of Azerbaijan occupied by Armenia*, poses a danger to the whole border region. The Assembly emphasises that the state of disrepair of the Sarsang dam could result in a major disaster with great loss of human life and possibly a fresh humanitarian crisis."[142]

94. The Assembly called for "the immediate withdrawal of Armenian armed forces from the region concerned".[143]

95. In addition, the fact that Armenia consistently presents papers to the United Nations purportedly on behalf of the so-called "NKR" or the so-called "Republic of Artsakh"[144] cannot be taken as anything other than as an assertion of an umbilical link, an inexorable connection between Armenia and its subordinate local administration in part of the occupied Azerbaijani territories. The existence of such a link and connection is evident also in purported "joint sessions" of the Security

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[140] International Crisis Group, "Nagorno-Karabakh's Gathering War Clouds", Europe Report No. 244 (1 June 2017), p. 15.

[141] L. Broers, *The Nagorny Karabakh Conflict: Defaulting to War*, Chatham House, July 2016, p. 6.

[142] Parliamentary Assembly of the Council of Europe Resolution 2085 (2016) (26 January 2016), paras. 4 and 6, respectively (emphasis added).

[143] *Ibid.*, para. 7.1.1.

[144] See, e.g., Letter dated 29 July 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/282 (7 August 2019); Letter dated 10 October 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/497–S/2019/810 (15 October 2019) (enclosing a Memorandum from the "Ministry of Foreign Affairs of the Republic of Artsakh"). See the Letter dated 19 August 2019 from the Chargé d'Affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/320–S/2019/669 (20 August 2019).

Council of Armenia and the *soi-disant* "Security Council" of the "NKR"[145] or "joint meetings" on "Armenia-Artsakh military cooperation".[146]

96. Further and specific details evidencing the increasing hold of Armenia over the occupied territories have been provided by the Government of Azerbaijan. Two documents will be briefly referenced. First, the report on "Illegal economic and other activities in the occupied territories of Azerbaijan", dated 15 August 2016,[147] provides a significant body of evidence that substantially reinforces and extends the factual basis underlying the Court's conclusion as to Armenia's responsibility in the *Chiragov* case. It covers in detail the close military links between Armenia and the "NKR",[148] the continued incorporation by Armenia of the occupied territories into its socioeconomic space and its customs territory,[149] the high dependence of the "NKR" upon external financial support primarily from Armenia and the Armenian diaspora,[150] and the close political links at all levels between Armenia and the "NKR".[151] In addition, and critically, Armenia has facilitated the transfer of Armenian settlers from Armenia and elsewhere into the occupied territories.[152] For example, according to a former *de facto* official, a secret order issued by the "NKR" *de facto* authorities "under Yerevan's supervision" called on ethnic Armenians to settle in the town of Lachin and nearby villages in order to control the one road connecting Armenia with Nagorny Karabakh.[153] It is also to be noted that in 2006, the "NKR" adopted a "constitution" claiming full but temporary jurisdiction over the adjacent territories and thus the settlements.[154] In October 2017, the "president" of the "NKR" identified expending the settlement of the adjacent territories as a priority for the period 2017-20.[155]

97. Secondly, Azerbaijan has presented to the United Nations, in a letter dated 20 May 2019, a joint report of the Azercosmos OJSCo (the satellite company of Azerbaijan) and the Ministry of Foreign Affairs entitled "Illegal activities in the territories of Azerbaijan under Armenia's occupation: evidence from satellite imagery".[156] This report provides considerable evidence testifying to ongoing activities in the occupied territories of Azerbaijan, including the implantation of settlers in those territories depopulated of their Azerbaijani inhabitants; depredation

[145] Office of the Prime Minister of Armenia, "Armenia, Artsakh Security Councils hold joint session in Yerevan" (23 December 2019) <https://www.primeminister.am/en/press-release/item/2019/12/23/Nikol-Pashinyan-meeting-Security-Council/>.

[146] Office of the Prime Minister of Armenia, "Nikol Pashinyan, Bako Sakakyan hold consultation with Armed Forces leadership" (22 February 2020), <https://www.primeminister.am/en/press-release/item/2020/02/22/Nikol-pashinyan-Bako-Sahakyan/>.

[147] UN Doc. A/70/1016–S/2016/711, *op.cit*.

[148] *Ibid.*, pp. 17–20.

[149] *Ibid.*, pp. 20–21

[150] *Ibid.*, pp. 21–27.

[151] *Ibid.*, pp. 30–31.

[152] *Ibid.*, pp. 32–42. See also "Digging out of Deadlock in Nagorno-Karabakh", Crisis Group Europe Report No. 255, 20 December 2019, p. 4, noting that settlers comprise around 11% of the population and their numbers continue to grow, citing in footnote 11 "Demographic Handbook of Artsakh 2019", "National Statistical Service of the Republic of Artsakh", 2019, which was cross-checked with other sources and further detailed in Appendix C, p. 32 and following.

[153] *Ibid.*, p. 4, citing an interview with a former *de facto* official in Yerevan, April 2018.

[154] *Ibid.*, p. 7. Article 142 of the "NKR" "Constitution" declares that: "Until the restoration of the state territorial integrity of the Nagorno-Karabakh Republic and the adjustment of its borders public authority is exercised on the territory under factual jurisdiction of the Republic of Nagorno-Karabakh", *ibid.*, footnote 38.

[155] *Ibid.*, p. 9.

[156] Identical letters dated 20 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, UN Doc. A/73/881–S/2019/420 (22 May 2019). See also "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery", *op.cit.***Error! Hyperlink reference not valid.**

and exploitation of natural, agricultural and water resources; infrastructure changes; and destruction and desecration of historical and cultural heritage. It graphically demonstrates the implantation of settlers,[157] the economic exploitation of the occupied areas by Armenia and its local subordinate administration[158] and the exploitation of agricultural and water resources.[159]

98. It is clear that substantial evidence is available from third party, Armenian and Azerbaijani sources to enable the determination to be made that, since the *Chiragov* judgment in 2015, the process of control exercised by Armenia over Nagorny Karabakh and the surrounding areas has quickened and become more deeply embedded.

99. In light of all of the above, it is clear that 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 "NKR".

3. The Application of International Human Rights Law to Occupations

100. 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".[160]

101. 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 or Use of Nuclear Weapons*, the Court emphasised that "the protection of the International Covenant of [sic] 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.[161]

102. The Court returned to this matter in its advisory opinion on the *Construction of a Wall*, where it declared more generally that:

> "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".[162]

103. 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

[157] "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery", *op.cit*, pp. 8–22.
[158] *Ibid.*, pp. 24–35.
[159] *Ibid.*, pp. 50–71.
[160] *Congo v. Uganda*, *op.cit*., p. 231 and 242 and following. See also Dinstein, *op.cit*., chapter 3.
[161] ICJ Reports, 1996, pp. 226, 239.
[162] *Op.cit.*, p. 178.

of human rights law and some matters may concern both branches of international law.[163] 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 on Civil and Political Rights ("ICCPR") and other relevant human rights treaties had to be applied by States parties. This was an approach that was deemed consistent with both the *travaux préparatoires* of, for example, the ICCPR and with the constant practice of the Human Rights Committee established under it.[164]

104. The Court concluded by affirming that the ICCPR, the International Covenant on Economic, Social and Cultural Rights ("ICESCR") 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".[165]

105. 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.[166] The Court interestingly referred in addition in the *Construction of a Wall* case to the prolonged occupation question and to the applicability of the ICESCR.[167]

106. 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".[168]

107. 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.

108. Armenia is a party to the following universal human rights conventions as from the date in parenthesis:

(i) ICCPR (23 June 1993);

(ii) ICESCR (13 September 1993);

(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);

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[163] *Ibid*.

[164] *Ibid.,* pp. 179–82.

[165] *Ibid*., pp. 180 and 181.

[166] See, e.g., *Difference Relating to Immunity from Legal Process of a Special Rapporteur*, ICJ Reports, 1999, p. 87 and *Congo v. Uganda*, *op.cit.*, p. 242. See also Article 4 of the International Law Commission's Articles on State Responsibility, 2001, UN Doc. A/56/10 and General Assembly resolution A/RES/56/83 (12 December 2001).

[167] *Op.cit*., p. 181 (emphasis added).

[168] *Congo v. Uganda*, *op.cit.*, pp. 178, 242–3.

(vi) Convention on the Elimination of All Forms of Discrimination against Women (13 September 1993);

(vii) Convention against Torture (13 September 1993);

(viii International Convention for the Protection of All Persons from Enforced Disappearance (24 January 2011).

109. 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 (article 18(1), ICCPR);

(ix) Prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20, ICCPR);

(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).

110. 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.

111. 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.[169] In the case of *Chiragov and Others v. Armenia*, which concerned alleged breaches of the Convention by Armenia within the occupied

[169] See, e.g., *Drozd and Janousek v. France and Spain*, App. No. 12747/87, ECtHR, 26 June 1992, para. 91. See also *Loizidou v. Turkey*, App. No. 15318/89, ECtHR, Preliminary Objections, 23 February 1995; *Loizidou v. Turkey*, Merits, *op.cit.*; *Cyprus v. Turkey*, App. No. 25781/94, ECtHR (Grand Chamber), 10 May 2001; *Ilaşcu v. Moldova and Russia*, *op.cit*.

territories of Azerbaijan and which has been referred to above, the Court further emphasised that:

> "One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State's own armed forces, or through a subordinate local administration (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV; *Banković and Others*, cited above, § 70; *Ilaşcu and Others*, cited above, §§ 314-16; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; and *Al-Skeini and Others*, cited above, § 138). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see *Cyprus v. Turkey*, cited above, §§ 76-77, and *Al-Skeini and Others*, cited above, § 138).".[170]

112. Accordingly, the Court has established that a State would be responsible under the European Convention for violations of that Convention committed by its own agents and officials and for violations committed by the relevant subordinate local administration of a territory outside of the national boundaries of the State in question. Accordingly, the responsibility of Armenia for violations of the European Convention of Human Rights in the occupied territory of Azerbaijan is engaged, as conclusively shown in the *Chiragov* case and affirmed in *Muradyan v. Armenia*. 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

113. 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[171] 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

[170] *Chiragov and Others v. Armenia*, *op.cit.*, para. 106.

[171] Commended to governments in General Assembly resolution A/RES/56/83 (12 December 2001). See also General Assembly resolutions A/RES/59/35 (2 December 2004), A/RES/62/61 (6 December 2007), A/RES/65/19 (6 December 2010), A/RES/71/133 (13 December 2016) and A/RES/74/108 (18 December 2019).

international law and constitutes a breach of an international obligation of the State. This principle has been affirmed in the case-law.[172]

114. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.[173] 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.[174] 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,[175] 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".[176]

115. 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.[177] Armenia is under such an international obligation.

116. 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 United Nations 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.

117. 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,[178] and to disseminate knowledge of the principles contained therein.[179] A variety of enforcement methods also exist, although the use of reprisals has been prohibited.[180] One of the means of implementation is the concept of the 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 civilians in occupied territory. 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

[172] See, e.g., *Chorzów Factory* case, PCIJ, Series A, No. 9, 1927, p. 21 and the *Rainbow Warrior* case, 82 International Law Reports, p. 499.

[173] Articles on State Responsibility, *op.cit.*, article 3.

[174] See the *Gabčíkovo–Nagymaros Project (Hungary v. Slovakia)* case, ICJ Reports, 1997, pp. 7, 38.

[175] See Articles on State Responsibility, *op.cit*., article 14. See also, e.g., the *Rainbow Warrior* case, *op.cit*., p. 499; the *Gabcikovo-Nagymaros*, *op.cit*., pp. 7, 54; *Genocide Convention (Bosnia v. Serbia)* case, ICJ Reports, 2007, para. 431; *Loizidou* v. *Turkey*, Merits, *op.cit.*, paras. 41–7 and 63–4; and *Cyprus* v. *Turkey*, *op.cit*., paras. 136, 150, 158, 175, 189 and 269.

[176] The *Chorzów 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.

[177] Articles on State Responsibility, *op.cit.*, article 30. See also the *Rainbow Warrior* case, *op.cit*., pp. 499, 573.

[178] Common article 1.

[179] See, e.g., article 144 of Geneva Convention IV and article 83 of Additional Protocol I.

[180] See, e.g., articles 20 and 51(6) of Additional Protocol I.

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.[181]

118. Additional Protocol I also provides for an International Fact-Finding Commission[182] with competence to inquire into grave breaches[183] 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.[184] The parties to a conflict may themselves, of course, establish an ad hoc inquiry into alleged violations of humanitarian law.[185]

119. An important monitoring and indeed implementation role is played by the ICRC.[186] This organization 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.[187] It operates in both international and internal armed conflict situations. It is involved in the Armenia-Azerbaijan conflict.

120. 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".[188] 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 the Commission 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.[189]

121. 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.[190] In such cases, pursuit of such individuals may be undertaken through the 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.

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[181] See article 9 of Geneva Convention IV.

[182] See article 90 of Additional Protocol I.

[183] 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, UN Doc. S/1994/674.

[184] See UK Manual, *op.cit.*, p. 415. As of today, 76 of the 174 States parties to the Protocol (but not including either Armenia or Azerbaijan) have accepted the competence of the Commission, <https://www.ihffc.org/index.asp?Language=EN&page=statesparties_list>.

[185] Articles 52, 53, 132 and 149 of the four 1949 Conventions respectively.

[186] 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.

[187] See, e.g., article 142 of Geneva Convention IV.

[188] *Op.cit.*, pp. 136, 175–6.

[189] Partial Award, Prisoners of War. Ethiopia's Claim 4 case, 1 July 2003, paras. 58 and 61–2.

[190] See, e.g., A. Cassese, *International Criminal Law*, 3rd ed., Oxford, 2013; W. Schabas, *An Introduction to the International Criminal Court*, 5th ed., Cambridge, 2017; R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, 4th ed., Cambridge, 2019; I. Bantekas and S. Nash, *International Criminal Law*, 4th ed., Oxford, 2010; and G. Werle, *Principles of International Criminal Law*, 3rd ed., The Hague, 2014.

State responsibility in such cases may be enforced through relevant inter-State mechanisms.

5. Conclusions

122. The following conclusions may be reached:

(1) The applicable law in the first instance is international humanitarian law, consisting of the Hague Regulations (reflecting customary international law), together with Geneva Convention IV and Addition Protocol I, to both of which Armenia is a party;

(2) Involvement of Armenia in the conflict with Azerbaijan gave to that conflict an international character;

(3) Involvement of Armenia in the capture and retention of the Nagorno-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, of public order and safety, while respecting, unless absolutely prevented, the laws in force in the occupied territory;

(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 3,889 as of January 2020;

(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 ICCPR; the ICESCR; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance;

(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;

(20) 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.

Professor Malcolm Shaw QC
With the assistance of Naomi Hart
08 April 2020

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

The situation in the occupied territories of Azerbaijan

Right of peoples to self-determination

Responsibility of States for internationally wrongful acts

The rule of law at the national and international levels

Security Council
Seventy-fifth year

Letter dated 21 July 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

As is well known, the ongoing armed conflict between Armenia and Azerbaijan began at the end of 1987 with the former's unlawful and groundless territorial claims on the Nagorno-Karabakh autonomous province of Azerbaijan. At the end of 1991 and the beginning of 1992, when both Armenia and Azerbaijan attained independence and were accorded international recognition, the conflict escalated into a full-fledged inter-State war. As a result, a significant part of Azerbaijan's territory, including the Nagorno-Karabakh region, the seven adjacent districts and some exclaves, were occupied by Armenia. The war claimed the lives of tens of thousands of people and caused considerable destruction of civilian infrastructure and property in Azerbaijan. The occupied territories were ethnically cleansed of all Azerbaijanis; more than 1 million people were forced to leave their homes in these territories. Deliberate actions are currently being carried out by Armenia in these territories with a view to securing their colonization and annexation, in grave violation of international law.

By resorting to fake historical narratives and fallacious legalistic arguments to conceal its policy of aggression and atrocity crimes against Azerbaijan and its people, Armenia distorts and misinterprets the norms and principles of international law. However, the key facts, based on legal documents, resolutions of the Security Council and the General Assembly, decisions of other international organizations and international courts and opinions of distinguished scholars, completely refute Armenia's false assertions.

Thus, Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), adopted in response to the use of force against Azerbaijan and the resulting occupation of its territories, qualified Armenia's actions as unlawful and invalidated

20-09902 (E) 180820

its claims over the territories of Azerbaijan once and for all. The resolutions provide authoritative clarification as to the committed acts, the violated obligations and the duties to put an end to the illegal situation thus created. The numerous decisions and documents adopted by other international organizations are framed along the same lines.

Azerbaijan has consistently promoted the critical importance of upholding international law and of its faithful application with a view to achieving a long-awaited breakthrough in resolving the conflict and ending the occupation of the territories of Azerbaijan and the suffering of people affected by the Armenian aggression. Over the years since the beginning of the conflict, Azerbaijan has actively encouraged discussions on the legal aspects of the conflict, including within the United Nations, and has brought to the attention of the international community numerous comprehensive legal reports and opinions.[1]

In continuation of this long-standing practice, I have the honour to submit to you a 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, prepared at the request of the Government of the Republic of Azerbaijan by Malcolm Shaw, QC, with the assistance of Naomi Hart, Barrister, Essex Court Chambers, London (see annex). The report constitutes an updated version of the one presented and published in December 2008 (A/63/664-S/2008/823).

The report examines, first, the concept of the territorial integrity of States; second, the evolution and status of the principle of self-determination; and, finally, the nature of Armenian claims, particularly with regard to the Nagorno-Karabakh region of Azerbaijan. As the author underlines in the report, the conflict in question is one where part of the internationally recognized territory of Azerbaijan has been captured and held by Armenia. Essentially, the conclusion of the report is that Armenia's claims as to the detachment of the Nagorno-Karabakh region from Azerbaijan are in clear contradiction of international law, that its understanding of the right to self-determination is flawed and that Armenia is in violation of the fundamental norm of respect for the territorial integrity of States and other relevant international legal principles, such as the rule prohibiting the use of force.

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 32, 37, 69, 75 and 83, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

[1] See, for example, the report on the legal consequences of the armed aggression by the Republic of Armenia against the Republic of Azerbaijan, 24 December 2008 (A/63/662-S/2008/812); the report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility, 3 May 2012 (A/66/787-S/2012/289); the legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan, 26 April 2017 (A/71/880-S/2017/316); the report on war crimes in the occupied territories of the Republic of Azerbaijan and the Republic of Armenia's responsibility, 7 February 2020 (A/74/676-S/2020/90); and the report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory, 5 June 2020 (A/74/881-S/2020/503).

Annex to the letter dated 21 July 2020 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 constitutes an updated version of the one presented by the Republic of Azerbaijan (Azerbaijan) on 26 December 2008 to the United Nations.[1] It examines 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 and maintained by the Republic of Armenia (Armenia).[2]

2. Such revisionist claims have been made with regard to the conflict over Nagorny Karabakh[3] 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 with recourse to the principle of self-determination. Thus, Armenia asserts that "the inalienable right of the people of Nagorno-Karabakh to self-determination represents a fundamental principle and foundation for the peaceful resolution".[4]

3. The conflict in question is one where part of the internationally recognised territory of Azerbaijan has been captured and held by Armenia. Further, Armenia has set up and sustained the existence of an illegal and entirely unrecognised entity within that territory of Azerbaijan, by a variety of political and economic means, including the maintenance of military forces in the occupied territories of Azerbaijan. This entity, which has the self-proclaimed title of the "Nagorno-Karabakh Republic" (NKR),[5] is under Armenia's direction and control,[6] although neither Armenia nor any other State recognises its assertion of statehood.

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 the Nagorno-Karabakh region of Azerbaijan.

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[1] UN Doc. A/63/664-S/2008/823 (29 December 2008).

[2] See paragraph 154 below.

[3] Note that "Nagorny Karabakh" or "Nagorno-Karabakh" is a Russian translation of the original name in Azerbaijani language – "Dağlıq Qarabağ" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. "Nagorny Karabakh" is conventionally used as a free-standing proper noun, whereas "Nagorno-Karabakh" is conventionally used as an attributive noun in conjunction with another noun (such as in "the Nagorno-Karabakh region" or "Nagorno-Karabakh forces"). This Report adopts these conventions.

[4] See, e.g., Statement by Zohrab Mnatsakanyan, Minister of Foreign Affairs of Armenia, at the 26th meeting of the Ministerial Council of the Organization for Security and Cooperation in Europe in Bratislava, 5 December 2019, Annex to the Letter dated 14 January 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/654-S/2020/38 (16 January 2020).

[5] Armenia refers to the entity it has established in the occupied Nagorno-Karabakh region of Azerbaijan as either the "Nagorno-Karabakh Republic" or alternatively the "Republic of Artsakh". "NKR" will be used hereafter, as appropriate, without prejudice to the status of the territory as an internationally recognised part of Azerbaijan and without exoneration of Armenia from its responsibility.

[6] See *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 167 and following.

5. Essentially, the conclusion of the Report is that Armenia's claims as to the detachment of the Nagorno-Karabakh region from Azerbaijan are incorrect as a matter of international law, its understanding of the right to self-determination is flawed and Armenia is in violation of international legal principles concerning *inter alia* the norm of territorial integrity.

6. The purpose of this Report has been to document Armenia's violations of Azerbaijan's territorial integrity with reference to the principle of self-determination. Since Azerbaijan and Armenia achieved independence, Armenia has also engaged in egregious violations of Azerbaijan's territorial integrity by other means, including by carrying out armed attacks on Azerbaijan (both within Nagorny Karabakh and in surrounding territories) and by establishing and maintaining an illegal occupation in approximately one fifth of Azerbaijan's territory. These violations have been the subject of other reports[7] and are not documented in this Report.

A. The Fundamental Norm of the Territorial Integrity of States

I. International Practice

(a) Introduction

7. 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".[8]

8. 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

[7] See, e.g., "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/62/491-S/2007/615 (23 October 2007); "Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia Against the Republic of Azerbaijan", Annex to the Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/63/662-S/2008/812 (24 December 2008); "The Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan: Root Causes and Consequences", Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/475-S/2009/508 (6 October 2009); "The Facts Documented by Armenian Sources, Testifying to the Ongoing Organized Settlement Practices and Other Illegal Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/760-S/2010/211 (28 April 2010); "Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/70/1016-S/206/711 (16 August 2016); "Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/880-S/2017/316 (26 April 2017); "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility", Annex to the Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/676-S/2020/90 (7 February 2020); "Report on the International Legal Responsibilities of Armenia as the Belligerent Occupier of Azerbaijani Territory", Annex to the Letter dated 4 June 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/881-S/2020/503 (5 June 2020).

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

such States is bound to assume major importance.[9] 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.

9. 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.

10. It was emphasised in the *Island of Palmas* 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",[10]

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".[11]

11. Accordingly, the concept of State sovereignty can only be exercised through exclusive territorial control so that such control becomes the cornerstone of international law, while the exclusivity of 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 meant that territory became "perhaps the fundamental concept of international law".[12] This principle is two-sided. It establishes both the supervening competence of the State over its territory and the absence of 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. The International Court clearly underlined in the *Corfu Channel* case that "[b]etween independent

[9] 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; G. Distefano, *L'Ordre International entre Légalité et Effectivité: 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; S. P. Sharma, *Territorial Acquisition, Disputes and International Law*, The Hague, 1997; "The Changing Nature of Territoriality in International Law", 47 Netherlands YIL, 2016; M.G. Kohen (ed.), *Territoriality and International Law*, Cheltenham, 2016.

[10] 1 RIAA pp. 829, 839 (1928).

[11] *Ibid*., at p. 838.

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

States, respect for territorial sovereignty is an essential foundation of international relations".[13]

12. These principles have been further discussed by the world court. The Permanent Court of International Justice, for example, emphasised in the *Lotus* case that:

> "Now 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",[14]

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"[15] and noted in the *Asylum* case that "derogation from territorial sovereignty cannot be recognised unless its legal basis is established in each case".[16]

13. 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.

14. 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. … [T]his rule plays a fundamental role in international relations".[17] 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".[18] As the International Court emphasised in its *Kosovo* advisory opinion, "the principle of territorial integrity is an important part of the international legal order"[19] and further reaffirmed in *The Temple Interpretation* case, "the obligation which all States have to respect the territorial integrity of all other States".[20]

15. 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 and cannot be changed in the absence of consent.

16. 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.[21]

(b) Societal Basis for the Norm of Territorial Integrity

17. 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

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[13] ICJ Reports, 1949, pp. 4, 35.
[14] PCIJ, Series A, No. 10, p. 18.
[15] ICJ Reports, 1949, pp. 6, 22.
[16] ICJ Reports 1950, pp. 266, 275.
[17] Kohen, "Introduction" in Kohen (ed.), *Secession: International Law Perspectives*, Cambridge, 2006, p. 6.
[18] See the Opinion on the "Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty" by Professors Franck, Higgins, Pellet, Shaw and Tomuschat on 8 May 1992, para. 2.16, http://www.uni.ca/library/5experts.html.
[19] ICJ Reports, 2010, pp. 403, 437.
[20] ICJ Reports, 2013, pp. 281, 317.
[21] See further below, para. 69 and following.

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".[22]

18. 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".[23] The International Court, for example, has referred particularly to "the permanence and stability of the land frontier" in the *Tunisia/Libya Continental Shelf* case,[24] to the need for "stability and finality" in the *Temple of Preah Vihear* case,[25] and to the "stability and permanence" of boundaries in the *Aegean Sea Continental Shelf* case.[26] This was reaffirmed by the Tribunal in *Bangladesh v India*, where it was stated that, "maritime delimitations, like land delimitations, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term".[27]

19. Each of these declarations underscores the importance of the core principle of respect for the territorial integrity of States.

20. 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".[28]

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

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[22] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 10970, General Assembly resolution 2625 (XXV).

[23] Shaw, "The Heritage of States: The Principle of *Uti Possidetis Juris* Today", 67 *British Year Book of International Law*, 1996, pp. 75, 81.

[24] ICJ Reports, 1982, pp. 18, 66.

[25] ICJ Reports, 1962, pp. 6, 34.

[26] ICJ Reports, 1978, pp. 3, 36.

[27] Award of 7 July 2014, para. 216.

[28] *Temple of Preah Vihear*, ICJ Reports, 1962, pp. 6, 34.

> "a limit, a boundary, across which the jurisdictions of the respective bordering States may not pass, implied definitiveness and permanence".[29]

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

22. 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,[30] while the London Protocol 1852 guaranteed that of Denmark and the Treaty of Paris 1856 that of the Ottoman Empire.[31] Further the Treaty of 2 November 1907 recognised the independence and territorial integrity of Norway.

23. The final text 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".[32] This constituted a key inspiration with regard to the creation of the League of Nations.

24. 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".

25. 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.

26. 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 United Nations. It is discussed later in this Report in more detail.[33]

27. The Manila Declaration on the Peaceful Settlement of International Disputes, approved by the General Assembly on 15 November 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

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[29] HMSO, 1977, p. 11.

[30] See, e.g., M. Kutter, *Die Schweizer und 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 E.J. Osmańczyk and A. Mango, *Encyclopedia of the United Nations and International Agreements*, 3rd ed., 2004, vol. 4, p. 2294.

[31] *Ibid*.

[32] http://wwi.lib.byu.edu/index.php/President_Wilson's_Fourteen_Points.

[33] See below, para. 69 and following.

well as other generally recognized principles and rules of contemporary international law".[34]

28. 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 States …".

29. The United Nations Millennium Declaration, adopted by the General Assembly on 8 September 2000,[35] noted the rededication of the Heads of State and of Government gathered at the United Nations to supporting *inter alia* "all efforts to uphold the sovereign equality of all States, [and] respect for their territorial integrity and political independence". This Declaration was reaffirmed in the World Summit Outcome 2005, in which world leaders agreed "to support all efforts to uphold the sovereign equality of all States, [and] respect their territorial integrity and political independence".[36] In its turn, this provision in the World Summit Outcome was explicitly reaffirmed by the United Nations Global Counter-Terrorism Strategy 2006.[37] In the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, "Transforming our world: the 2030 Agenda for Sustainable Development", adopted by the General Assembly on 25 September 2015, the Heads of State and Government and High Representatives "reaffirm[ed], in accordance with the Charter of the United Nations, the need to respect the territorial integrity and political independence of States".[38]

30. References to territorial integrity may also be found in multilateral treaties of a global character. 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".

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

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[34] General Assembly resolution 37/10.
[35] General Assembly resolution 55/2.
[36] General Assembly resolution 60/1, para. 5.
[37] General Assembly resolution 60/288.
[38] General Assembly resolution 70/1, para. 38. See also General Assembly resolutions 53/243, 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; 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; and 59/195 on Human Rights and Terrorism, paragraph 1 of which refers to the territorial integrity of States.

> "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 embodied in the Charter of the United Nations",

while article 19 of that Convention provides that the passage of a foreign ship through the territorial 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".[39]

32. 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, adopted by the General Assembly of the United Nations on 24 October 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".[40]

33. 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".[41] The Declaration on Principles of International Law Concerning Friendly Relations 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".[42]

34. The United Nations, while underlining the presumption of territorial integrity with regard to colonial territories in the move to independence,[43] 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:

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[39] See also article 39 providing for a similar rule with regard to the transit passage of ships and aircraft.
[40] General Assembly resolution 2625 (XXV).
[41] General Assembly resolution 1514 (XV).
[42] General Assembly resolution 2625 (XXV).
[43] See further, below, para. 82 and following.

"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".

35. On the same topic, although perhaps more robustly, the Declaration on Principles of International Law Concerning Friendly Relations ended the section on 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".[44]

36. 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".

37. 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.

38. 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 expression also in the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007.[45] Article 46(1) of the Declaration provides 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".

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

39. 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

40. The Helsinki Final Act, adopted on 1 August 1975 by the Conference on Security and Cooperation in Europe (CSCE), included a Declaration on Principles Guiding Relations between Participating States (termed the "Decalogue"). Several of

[44] See further, below, para. 147 and following.
[45] General Assembly resolution 61/295.

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".

41. 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".

42. The Charter of Paris for a New Europe adopted by the renamed Organisation for Security and Cooperation in Europe (OSCE) 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".

43. 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. 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). The Charter for European Security, adopted at the OSCE Istanbul Summit in November 1999, 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".

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

45. Secondly, the Framework Convention for the Protection of National Minorities, adopted on 1 February 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".

46. 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

47. The North Atlantic Treaty, which was adopted on 4 April 1949 and established the North Atlantic Treaty Organization (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".

(iii) The Commonwealth of Independent States

48. The Charter of the Commonwealth of Independent States (CIS), 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".

49. The CIS Collective Security Treaty was initially signed on 15 May 1992[46] 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,[47] 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".

50. Further, the Charter of GUAM,[48] 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 States

51. Article 5 of the Pact of the League of Arab States, adopted on 22 March 1945,[49] 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) The Americas

52. Article 1 of the Charter of the Organization of American States 1948[50] 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".

53. 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:

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

[47] 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.

[48] 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, see preamble.

[49] http://avalon.law.yale.edu/20th_century/arableag.asp.

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

> "(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 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".

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

(vi) Africa

55. The Charter of the Organisation of African Unity (OAU) 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 (AU) 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 AU 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". The principle of the territorial integrity was reaffirmed *inter alia* in the African Union Convention for the Protection and Assistance of Internally Displaced Persons, 2009.

56. 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

57. The 1972 Charter of the Organisation of the Islamic Conference 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 1997 Extraordinary Session of the Islamic Summit reaffirmed in its preamble respect for the principles of "sovereignty, territorial integrity and non-interference in internal affairs of states".[51] The Charter of the Organisation, later renamed to the Organisation of Islamic Cooperation, was replaced with an amended document dated 14 March 2008, which refers twice in its preambular 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 all Member States "undertake to respect national sovereignty, independence and territorial integrity of other Member States and shall refrain from interfering in the internal affairs of others".

(viii) Asia

58. The Southeast Asia Collective Defence Treaty (the Manila Pact) was signed on 8 September 1954 by the United States, United Kingdom and France with a number of Southeast Asian States, creating the Southeast Asia Treaty Organisation. In article II, the parties agreed that they "separately and jointly, by means of continuous 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 ceased to exist in 1977.

59. The Association of South East Asian Nations (ASEAN) was created on 8 August 1967. In the Treaty of Amity and Cooperation in Southeast Asia, 1976, the States parties agreed to be bound by a number of "fundamental principles" laid down in article 2, including "[m]utual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations". Article 10 provides that "[e]ach High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, 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, non-interference, consensus and unity in diversity".[52] 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".

60. Further, the Charter of the South Asian Association for Regional Cooperation,[53] 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 "[c]ooperation within the framework of the Association shall be based on respect for the principles of sovereign equality,

[51] UN Doc. A/51/915 (6 June 1997).

[52] The Member States currently are Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

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

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

61. 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.

62. 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 United Kingdom (article III). The Indo-Nepal Treaty of 31 July 1950 provided for mutual recognition of both States' 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".[54]

63. Further, a series of agreements between eastern European States after the end of the Cold War provided for the mutual recognition of borders.[55] 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).[56]

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[54] UN Doc. A/50/790-S/195/999 (30 November 1995). This agreement was witnessed by France, the United Kingdom, the United States, Germany and Russia. See also the Croatia-Bosnia Treaty on the State Border of 30 July 1999.

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

[56] 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".

64. 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 United Nations Resolutions of a Specific Nature

65. The norm of territorial integrity has also been referred to and reaffirmed in a large number of United Nations resolutions adopted with regard to specific situations. In particular, and covering recent years only, the territorial integrity of the following States has been explicitly and specifically reaffirmed: Kuwait,[57] Ukraine,[58] Iraq,[59] Afghanistan,[60] Angola,[61] East Timor,[62] Sierra Leone,[63] Burundi,[64] Lebanon,[65] Georgia,[66] Cyprus,[67] the Comoros,[68] the Democratic Republic of the Congo,[69] Rwanda and other States in the region,[70] Burundi,[71] Côte d'Ivoire,[72] Somalia,[73] Sudan,[74] Chad and the Central African Republic,[75] Haiti,[76] the States of the Former Yugoslavia,[77] Nepal,[78] and Libya.[79]

66. 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

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[57] Security Council resolution 687 (1991).
[58] See Security Council Presidential statement of 20 July 1993, S/26118. See also Security Council resolutions 2166 (2014) and 2202 (2015) and see, e.g., General Assembly resolutions 68/262.
[59] Ibid. and resolutions 1770 (2007), 1790 (2007), 1830 (2008), 1936 (2010), 2061 (2012), 2169 (2014), 2299 (2016), 2421 (2018) and 2470 (2019).
[60] See Security Council resolutions 1267 (1999), 1776 (2007) and 2489 (2019).
[61] See Security Council resolution 1268 (1999). See also General Assembly resolution 52/211.
[62] See, e.g., Security Council resolutions 389 (1976), 1272 (1999), and 1745 (2007).
[63] Security Council resolution 1306 (2000).
[64] Security Council resolution 1719 (2006).
[65] 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), 1773 (2007) and 2485 (2019). See also General Assembly resolution 36/226.
[66] See, e.g., Security Council resolutions 1752 (2007), 1781 (2007) and 1808 (2008).
[67] See, e.g., General Assembly resolutions 3212 (XXIX) and 37/253.
[68] See, e.g., General Assembly resolution 37/43.
[69] See, e.g., Security Council resolutions 1756 (2007), 1771 (2007), 1794 (2007), 1804 (2008), 1807 (2008), 2389 (2017), 2409 (2018) and 2502 (2019). See also General Assembly resolution 60/170.
[70] See, e.g., Security Council resolutions 1771 (2007), 1804 (2008) and 1807 (2008).
[71] See, e.g., Security Council resolution 1791 (2007).
[72] See, e.g., Security Council resolutions 1739 (2007), 1765 (2007), 1795 (2008) and 1826 (2008).
[73] See, e.g., Security Council resolutions 1766 (2007), 1772 (2007), 1801 (2008), 1811 (2008), 1816 (2008), 1918 (2010), 1976 (2011), 2184 (2014), 2316 (2016), 2442 (2018) and 2500 (2019).
[74] See, e.g., Security Council resolutions 1769 (2007), 1784 (2007), 1841 (2008) and 1828 (2008).
[75] See, e.g., Security Council resolution 1778 (2007).
[76] See, e.g., Security Council resolutions 1780 (2007) and 1840 (2008).
[77] See, e.g., Security Council resolutions 1785 (2007), 1845 (2008), 1948 (2010), 2074 (2012), 2247 (2015), 2384 (2017) and 2496 (2019).
[78] See, e.g., Security Council resolution 1796 (2008).
[79] See, e.g., Security Council resolution 2486 (2019).

the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders".

(g) Conclusion

67. It can, therefore, be seen 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 United Nations 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 concluded, "international law places great importance on the territorial integrity of nation states".[80]

II. Some Relevant Consequential Principles

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

(a) Prohibition of the Threat or Use of Force

69. The territorial integrity of States is protected by the international legal prohibition on threat or use of force. Article 2(4) of the Charter of the United Nations 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".

70. 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".[81]

71. The 1970 Declaration on the Principles of International Law Concerning Friendly Relations[82] 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".

72. Beyond these preambular comments, the Declaration interpreted specifically a number of principles, contained in the Charter of the United Nations, 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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[80] *Reference Re Secession of Quebec* [1998] 2 S.C.R. 217, para. 112.
[81] General Assembly resolution 375 (IV).
[82] 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".

73. It is accepted that the unlawful use of force is not only a rule contained in the Charter of the United Nations 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 the Law of Treaties noted that "the law of the Charter concerning the prohibition of the use of force in itself 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,[83] 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".[84] 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,[85] but also uncontradicted statements by Governments in the course of the Vienna Conference on the Law of Treaties[86] and the view of the International Court in the *Military and Paramilitary Activities in and against Nicaragua* case.[87]

74. 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 Concerning Friendly Relations 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".

75. 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

[83] *Yearbook of the International Law Commission*, 1966, vol. II, pp. 247–8.

[84] J. Crawford, *The International Law Commission's Articles on State Responsibility*, Cambridge, 2002, p. 246.

[85] *Ibid.*, referring to *Yearbook of the International Law Commission*, 1966, vol. II, p. 248.

[86] The Commission noted in a footnote to these 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; 55th meeting, paras. 31 and 42; and 56th meeting, paras. 6, 20, 29 and 51", see Crawford, *The International Law Commission's Articles on State Responsibility*, *op.cit.*, p. 246.

[87] 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.

> 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".

76. The International Court in the *Construction of a Wall* advisory opinion[88] emphasised that, just as the principles as to the use of force incorporated in the Charter reflected customary international law, "the same is true of [their] corollary entailing the illegality of territorial acquisition resulting from the threat or use of force". In the *Kosovo* advisory opinion[89] the International Court similarly recognised extensive Security Council practice condemning unilateral declarations of independence which were "connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)". The Court has made clear that all States are under an obligation not to recognise a situation resulting from the breach of such fundamental norms of international law.[90]

(b) The Objectivisation of Boundary Treaties

77. 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.

78. 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 of Preah Vihear, ICJ Reports, 1962*, p. 34; *Aegean Sea Continental Shelf, ICJ Reports, 1978*, p. 36).
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> 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 not dependent upon the continued life of the treaty under which the boundary is agreed".[91]

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[88] ICJ Reports, 2004, pp. 136, 171. See also General Assembly resolution ES-10/14, 8 December 2003.
[89] *Kosovo Advisory Opinion*, ICJ Reports, 2010, pp. 403, 437–438.
[90] *Construction of a Wall Advisory Opinion*, ICJ Reports, 2004, pp. 136, 200.
[91] ICJ Reports, 1994, pp. 6, 37.

79. 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.[92] 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.[93] 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.[94]

80. 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 (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 so-called "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.

81. 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",[95] while the Arbitration Commission established by the International Conference on Yugoslavia stated in Opinion No. 3 that "all external frontiers 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".[96]

[92] See, e.g., A.D. McNair, *The Law of Treaties* (1961), pp. 681–91 and T.O. Elias, *The Modern Law of Treaties* (1974), p. 119.
[93] ICJ Reports, 1974, pp. 3, 18.
[94] *Yearbook of the International Law Commission* (1966 II), p. 259.
[95] 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.
[96] 92 *International Law Reports*, pp. 170, 171.

(c) The Principle of *Uti Possidetis Juris*[97]

82. 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 International Court made clear in the *Burkina Faso/Mali* case,[98] "[t]here 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…".

83. 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.

84. The principle of *uti possidetis* first appeared in modern 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 succeeded to the boundaries of the former Spanish colonies or administrative units.[99] 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.

85. Resolution 16(1) adopted by the OAU 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.[100]

86. The Court declared that the 1964 resolution "deliberately defined and stressed the principle of *uti possidetis juris*", rather than establishing it. The resolution

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[97] See, e.g., Kohen, *Possession Contestée et Souveraineté Territoriale*, Geneva, 1997, chapter 6, and *ibid.*, "*Uti Possidetis*, Prescription et Pratique Subséquent à un Traité dans l'Affaire de *l'Ile de Kasikili/Sedudu* devant la Cour Internationale de Justice", 43 German YIL, 2000, p. 253; G. Nesi, *L'Uti Possidetis Iuris nel Diritto Internazionale*, Padua, 1996; Luis Sánchez Rodríguez, "L'*Uti Possidetis* et les Effectivités dans les Contentieux Territoriaux et Frontaliers", 263 Hague Recueil, 1997, p. 149; J.M. Sorel and R. Mehdi, "L'*Uti Possidetis* Entre la Consécration Juridique et la Pratique: Essai de Réactualisation", AFDI, 1994, p. 11; T. Bartoš, "*Uti Possidetis. Quo Vadis*?", 18 Australian YIL, 1997, p. 37; "L'Applicabilité de l'*Uti Possidetis Juris* dans les Situations de Sécession ou de Dissolution d'Ētats", Colloque, RBDI, 1998, p. 5, and Shaw, "Heritage of States", *op.cit*.

[98] ICJ Reports, 1986, pp. 554, 566. See also the *Tunisia/Libya* case, ICJ Reports, 1982, pp. 18, 65–6.

[99] See *Colombia-Venezuela*, 1 *Reports of International Arbitral Awards*, pp. 223, 228 and *El Salvador/Honduras (Nicaragua Intervening)*, ICJ Reports, 1992, pp. 351, 387.

[100] ICJ Reports, 1986, pp. 554, 565–6.

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".[101]

87. This definition was reaffirmed by the International Court in the *El Salvador/Honduras* case and referred to as an authoritative statement.[102] The Court declared that *uti possidetis* was essentially "a retrospective principle, investing as international boundaries administrative limits intended originally for quite other purposes".[103] It was underlined in the *Burkina Faso/Mali* case[104] that "the principle of *uti possidetis* freezes the territorial title; it stops the clock but does not put back the hands".

88. 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 International Court in the *Burkino Faso/Mali* case[105] took pains to emphasise that the principle was not "a special rule which pertains solely to one specific system of international law", but rather:

> "[i]t 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 struggles provoked by the challenging of frontiers following the withdrawal of the administering power".[106]

89. This formulation was repeated and affirmed in the decision of the International Court in *Nicaragua v Honduras*[107] and reaffirmed by the Tribunal in *Croatia v Slovenia*, where it was noted that *uti possidetis* was a "well-established principle of international law …. [which] governs the transformation of administrative borders into international boundaries following the dissolution of a State".[108]

90. That *uti possidetis* is a general principle appears also from later practice. This may be seen, for example, with regard to the former USSR,[109] Czechoslovakia[110] and the former Yugoslavia. In the latter case, the Yugoslav Arbitration Commission

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[101] *Ibid.*, at p. 566.
[102] ICJ Reports, 1992, pp. 351, 386.
[103] *Ibid.*, at 388.
[104] ICJ Reports, 1986, pp. 554, 568.
[105] *Ibid.*, at p. 565.
[106] *Ibid*. See also the Separate Opinion of Judge Kooijmans, *Qatar v. Bahrain*, ICJ Reports, 2001, pp. 40, 230–2.
[107] ICJ Reports, 2007, pp. 659, 706 and following.
[108] Award of 29 June 2017, para. 256.
[109] See, e.g., R. Yakemtchouk, "Les Conflits de Territoires and de Frontières dans les Etats de l'Ex-URSS", *AFDI*, 1993, p. 401. See further below, paragraph 94 and following.
[110] See J. Malenovsky, "Problèmes Juridiques Liés à la Partition de la Tchécoslovaquie", *AFDI*, 1993, p. 328.

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".[111]

91. 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*. It can be stated that the principle of *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)*".[112]

92. This approach was confirmed, for example, by the Under-Secretary of State of the Foreign and Commonwealth Office of the United Kingdom, who stated in a Note in January 1992[113] that:

> "the borders of Croatia will become 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".

93. 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.

94. 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,[114] 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),[115] 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

[111] 92 *ILR*, p. 168. See also A. Pellet, "Note sur la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1991, p. 329, and Pellet, "Activité de la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1992, p. 220.
[112] 92 *ILR*, p. 171.
[113] UKMIL, 63 *BYIL*, 1992, p. 719.
[114] See 31 *ILM*, 1992, p. 138 and p. 147 and following, and 34 *ILM*, 1995, p. 1298.
[115] 31 *ILM*, 1992, p. 148.

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.

95. 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.[116] 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.[117]

96. 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".[118] This reference was thus not restricted to international frontiers and 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*.

97. 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. As the International Court emphasised in the *Chagos* advisory opinion, State practice and *opinio juris* "confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination" and, further, that "States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law".[119] The *uti possidetis* line may be altered, following the acquisition of independence, but provided that the relevant parties agree.[120]

98. 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[121] and Ruanda-Urundi[122] are instructive here in showing that the United Nations was convinced that for reasons of peace and security the territory in question should come to independence in a partitioned form and the United Nations proceeded to affirm this formally. However, these cases involved territories under United Nations supervision (as mandate or trust territories respectively) and it is difficult to think of an example of a non-consensual

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[116] See also the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Ukraine, the Russian Federation, the United Kingdom and the United States), UN Doc. A/49/765-S/1994/1399.

[117] See Malenovsky, "Problèmes", *op.cit*.

[118] 92 *ILR*, p. 174 (emphasis added).

[119] ICJ Reports, 2019, para. 160.

[120] Shaw, "Heritage of States", *op.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.

[121] See General Assembly resolution 181 (II) and Shaw, "Heritage of States", *op.cit.*, p. 148.

[122] *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).

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[123]

I. Self-Determination as a Legal Right

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

100. 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 United States. 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 at the date of that instrument,[124] its influence can be detected in the various provisions for minority protection[125] and in the establishment of the mandates system based as it was upon the sacred trust concept.[126] In the early 1920s, 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.[127]

101. Self-determination does, however, appear in the Charter of the United Nations. Article 1(2) states 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 United Nations. 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 United Nations, 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.

102. Practice since 1945 within the United Nations, both generally and particularly with regard to specific cases, can be seen as having ultimately established the legal

[123] 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, *The 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; A. Coleman, *Resolving Claims to Self-Determination*, London, 2015; D. French (ed.), *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge, 2013; and Shaw, *International Law*, Cambridge, 2017, 8th ed., p. 198 and following.

[124] 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.

[125] See, e.g., I. Claude, *National Minorities*, Cambridge, 1955, and J. Lador-Lederer, *International Group Protection*, Leiden, 1968.

[126] See, e.g., H.D. Hall, *Mandates, Dependencies and Trusteeships*, Washington, 1948 *and* Q. Wright, *Mandates under the League of Nations*, Chicago, 1930.

[127] 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.

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".

103. 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 Charter of the United Nations. 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.[128] The International Court initially 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",[129] but took this further in its advisory opinion in the *Chagos* case. In this case, the Court described the Colonial Declaration as "a defining moment in the consolidation of State practice on decolonization"[130] and noted in particular that "it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption"[131] and that "the wording used … has a normative character, in so far as it affirms that '[a]ll peoples have the right to self-determination".[132]

104. The Declaration on Principles of International Law Concerning Friendly Relations, which can be regarded as constituting an authoritative interpretation of the seven Charter provisions it 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".

105. The International Court in the *Chagos* case declared that "[b]y recognizing the right to self-determination as one of the 'basic principles of international law', the Declaration confirmed its normative character under customary international law".[133]

106. In addition to this general, abstract approach, the United Nations 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.[134] It is also possible that a rule of customary law has been created since practice in the United Nations system is still State practice, but the identification of the *opinio juris* element (as distinct from States' mere

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[128] 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.

[129] 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 Kohen (ed.), *Secession, op.cit.*, p. 23.

[130] ICJ Reports, 2019, para. 150.

[131] *Ibid.*, para. 151.

[132] *Ibid.*, para. 153.

[133] *Ibid.*, para. 155.

[134] 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).

compliance with their duties under the Charter) is not easy and will depend upon careful assessment and judgment.

107. In 1966, the General Assembly adopted the two International Covenants on Human Rights, namely, on Civil and Political Rights and on Economic, Social and Cultural 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 realization of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations".

108. 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 be noted below (see paras. 122–123).

109. There has also been judicial discussion of the principle of self-determination. In the *Namibia* advisory opinion[135] the International Court emphasised that "the subsequent development of 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 of them". The *Western Sahara* advisory opinion reaffirmed this point.[136]

110. The Court moved one step further in the *East Timor (Portugal v. Australia)* case[137] when it declared that "Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable." The Court also emphasised that the right of peoples to self-determination was "one of the essential principles of contemporary international law".

111. In the *Construction of a Wall* advisory opinion,[138] 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

[135] ICJ Reports, 1971, pp. 16, 31.
[136] ICJ Reports, 1975, pp. 12, 31.
[137] ICJ Reports, 1995, pp. 90, 102.
[138] ICJ Reports, 2004, pp. 136, 172. See also *ibid.*, p. 199. See also the *Kosovo Advisory Opinion*, ICJ Reports, 2010, pp. 403, 436 and 438.

a right *erga omnes* (see *East Timor (Portugul* v. *Australia), Judgment, 1. C. J. Reports 1995*, p. 102, para. 29)".

112. 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.[139] 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 from Canada, by declaring that the principle of self-determination "has acquired a status beyond 'convention' and is considered a general principle of international law".[140] It is also clear from the *Chagos* advisory opinion (discussed above) that the right to self-determination constitutes a rule of customary international law.[141]

113. Since it is undeniable that the principle of self-determination is a legal norm, the question arises as to its scope and application. Although the usual formulation contained in international instruments[142] 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 "peoples" as defined in a political–sociological sense[143] 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

114. The following propositions, based on international practice and doctrine, may be put forward.[144]

(a) Self-Determination Applies to Mandate and Trusteeship Territories

115. 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.[145]

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[139] [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.

[140] *Ibid.*, para. 115.

[141] ICJ Reports, 2019, para. 146 and following.

[142] 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".

[143] 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.

[144] See, e.g., O. De Schutter, *International Human Rights Law*, Cambridge, 3rd ed., 2019, chapter 7.5; K. Knop, *Diversity and Self-Determination in International Law*, Cambridge, 2002, and J. Fisch, *The Right of Self-Determination of Peoples*, Cambridge, 2015.

[145] 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.

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 Charter of the United Nations.[146]

(b) Self-Determination Applies to Non-Self-Governing Territories under the Charter of the United Nations

116. The right of self-determination was subsequently recognised as applicable to all non-self-governing territories as enshrined in the Charter of the United Nations. 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. The legal status of the right was confirmed by the International Court of Justice in a number of advisory opinions.[147] The United Nations based 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.[148] 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".[149]

117. 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.[150]

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

118. 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.[151]

119. The Palestinian people under Israeli occupation (that is, in the territories occupied since the 1967 war) has, in particular, been recognised as having the right

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[146] See, e.g., *Certain Phosphate Lands in Nauru*, ICJ Reports, 1992, pp. 240, 257 and *Cameroon v. Nigeria*, ICJ Reports, 2002, pp. 303, 409.

[147] 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 Wall* case, ICJ Reports, 2004, pp. 136, 172 and the *Chagos* advisory opinion, ICJ Reports, 2019, paras. 150–153.

[148] 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".

[149] [1998] 2 S.C.R. 217, para. 132.

[150] *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.

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

to self-determination. This was noted in a number of United Nations resolutions[152] and by the International Court in the *Construction of a Wall* advisory opinion.[153] Further examples of this might include, amongst others, Afghanistan under Soviet occupation.[154]

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

120. Cassese has written that:[155]

> "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".

121. 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.

(i) Generally

122. 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 International Covenant on Civil and Political Rights.[156] 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

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[152] 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. The application of the right to self-determination to peoples which remain under colonial domination and foreign occupation has been reaffirmed in numerous United Nations resolutions, including those adopted at the level of the Heads of State and Government. Among them are the Millennium Declaration (General Assembly resolution 55/2), para. 4; World Summit Outcome (General Assembly resolution 60/1), para. 4; Outcome Document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288), annex, para. 27; Outcome Document of the United Nations summit for the adoption of the post-2015 development agenda, entitled "Transforming our world: the 2030 Agenda for Sustainable Development" (General Assembly resolution 70/1), para. 35; Political Declaration of the Nelson Mandela Peace Summit (General Assembly resolution 73/1), para. 6. The only document on self-determination regularly adopted within the United Nations is the annual resolution of the Third Committee of the General Assembly on the universal realization of the right of peoples to self-determination. The resolution makes particular focus on the situations of peoples under colonial, foreign and alien domination resulting from "acts of foreign military intervention, aggression and occupation", regards such acts as leading to the suppression of the right of peoples to self-determination and other human rights and, in this regard, calls upon those States responsible to cease immediately their military intervention in and occupation of foreign countries and territories. See, e.g., General Assembly resolution 74/140.

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

[154] See, e.g., Cassese, *Self-Determination*, *ibid.*, p. 94 and following.

[155] *Ibid.*, p. 101.

[156] 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 ed., 2005, part 1.

individual human rights".[157] The Committee has taken the view, as Higgins has noted,[158] 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".

123. In its discussion on self-determination, the Committee has encouraged States parties to provide in their reports details about peoples' participation in social and political structures.[159] Further, 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.[160] 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.

124. 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:

> "rights of all peoples to pursue freely their economic, social and cultural development without outside interference. 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…".[161]

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[157] General Comment 12: see HRI/GEN/1/Rev.1, 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., the *Kitok* case, Report of the Human Rights Committee, UN Doc. A/43/40, pp. 221, 228; the *Lubicon Lake Band* case, UN Doc. A/45/40, vol. II, pp. 1, 27; and *RL v. Canada*, UN Doc. A/47/40, 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, UN Doc. A/56/40, vol. II, annex X, A. See also *Diergaardt et al.* v. *Namibia*, UN Doc. A/55/40, vol. II, annex IX, sect. M, para. 10.3 and A. Conte and R. Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, London, 2nd ed., 2009, chapter 9.

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

[159] See, e.g., the report of Colombia, UN Doc. 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", UN Doc. CCPR/C/83/Add.1, 1995, p. 4.

[160] See, e.g., with regard to Canada, UN Doc. A/46/40, p. 12. See also UN Doc. A/45/40, pp. 120–1, with regard to Zaire.

[161] UN Doc. A/51/18. See also P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination*, Oxford, 2016, pp. 84–6 and 334–6.

125. 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".[162]

(ii) Minorities

126. The international protection of minorities has gone through various guises.[163] 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.[164] 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 procedure for minorities to submit petitions to the League, although they had no standing as such before the Council or the Permanent Court of International Justice.[165] After the Second World War, 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.[166]

127. 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.[167] 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.

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[162] [1998] 2 S.C.R. 217, para. 126 (emphasis in original).

[163] See, e.g., M. Weller, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Oxford, 2007; O. De Schutter, *International Human Rights Law*, Cambridge, 3rd ed., 2019, chapter 7.5; A. Conte and R. Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, London, 2nd ed., 2009, chapter 10; 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; 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 *International Protection of Human Rights Law*, Harlow, 2nd ed., 2010, chapter 13; and the Capotorti Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/384/Rev.1, 1979.

[164] See, generally, Thornberry, *International Law and Minorities*, *op.cit.*, pp. 38 ff.

[165] See, e.g., the Capotorti Report, *op.cit.*, pp. 20–2.

[166] 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.

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

128. The United Nations 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, to practise 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 "[n]othing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states".[168]

129. In a 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 "[n]othing 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

130. International law has also concerned itself increasingly with the special position of indigenous peoples.[169] 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).

131. A Declaration on the Rights of Indigenous Peoples was adopted by the United Nations in 2007.[170] 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.[171] In exercising their right to self-determination, it was noted that indigenous peoples have the right to autonomy

[168] Article 8(4).

[169] See, e.g., 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 ed., 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.

[170] General Assembly resolution 61/295.

[171] Articles 1 and 3.

or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[172] 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

132. The relevant formulation in the Charter of the United Nations 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)[173] 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 United Nations[174] or to the population of a non-self-governing or trust territory.[175] Accordingly, the principle of self-determination as it has been enshrined in the Charter of the United Nations 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 turn underlined the principle of non-intervention by States into the domestic affairs of other States.

133. 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 "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".[176] While this view may now in hindsight be seen as unduly cautious,

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[172] 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).

[173] Note in addition the title of the organisation ("United Nations") and the articles cited above, the preamble and article 14.

[174] 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 United Nations.

[175] See articles 73 and 76 respectively.

[176] *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.I/I/I of 16 May 1945, 6 *UNCIO Docs.*, p. 296.

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".[177]

134. 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 United Nations 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,[178] 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

135. 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 to be recognised as applying to independent States.

136. The United Nations 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".

137. In addition, it was specifically noted that:

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[177] "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.

[178] See above, para. 98.

> "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".

138. 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 right 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". [179]

139. In addition, the Charter of Paris for a New Europe 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".

140. 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. [180] The United Nations 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". [181]

141. 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", [182]

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

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[179] 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. 40.

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

[181] *UN Monthly Chronicle* (February 1970), p. 36. See also the comment by the United Kingdom 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.

[182] 92 *ILR*, p. 168.

existing state's territorial integrity or the stability of relations between sovereign states".[183]

142. In its report of September 2009, the Independent International Fact-Finding Mission on the Conflict in Georgia (appointed by the EU Council of Ministers and led by the distinguished Swiss diplomat Heidi Tagliavini) expressed the same view, stating:

> "According to the overwhelmingly accepted *uti possidetis* principle, only former constituent republics such as Georgia but not territorial sub-units such as South Ossetia or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle I of the Helsinki Final Act which states 'the 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.'"[184]

143. 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".[185]

144. 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".[186]

145. 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".[187]

146. 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

[183] [1998] 2 S.C.R. 217, paras. 122 and 127.
[184] Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Vol. I (September 2009), p. 17, <https://www.echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf>.
[185] *Op.cit.*, p. 122.
[186] *Ibid.*, p. 339.
[187] *The Creation of States*, *op.cit.*, p. 390.

> 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".[188]

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

147. The Declaration 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".[189]

148. 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 "[e]very 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.

149. 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.

150. 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-determination is absolutely beyond reach. Extreme and unremitting persecution and the lack of any reasonable prospect for peaceful challenge may make secession legitimate",[190]

while Crawford has noted that:

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[188] *Ibid.*, p. 415.

[189] See also the similar clause in the Vienna Declaration of the World Conference on Human Rights 1993.

[190] *Op.cit.*, p. 120.

> "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".[191]

151. 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.[192] The International Court in the *Kosovo* advisory opinion noted that whether the international law right of self-determination conferred a right of secession from an already independent State was "a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of 'remedial secession' and, if so, in what circumstances".[193] In the event, the Court did not take the matter further as it felt that it was not necessary to decide on this for the purposes of the case.

152. 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.

153. 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.

[191] *The Creation of States*, *op.cit.*, p. 119.
[192] [1998] 2 S.C.R. 217, para. 135.
[193] ICJ Reports, 2010, pp. 403, 438.

C. Armenia's Revisionist Claims and Responses Thereto

154. Armenia's revisionist claims with regard to self-determination and territorial integrity proceed as follows.[194]

(a) Prior to Azerbaijan's Independence

155. 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 Nagorno-Karabakh Autonomous Oblast (NKAO) was subject to pressures aimed at reducing the ethnic Armenian population.[195] However, it is well known that Nagorny Karabakh has been part of Azerbaijan for centuries.[196] In 1919 the Allied Powers recognized that Nagorny Karabakh formed part of Azerbaijan.[197] After Soviet rule was established in the region, in response to territorial claims of Armenia, the decision was taken on 5 July 1921 to leave Nagorny Karabakh within Azerbaijan.[198] The status of Nagorny Karabakh as an autonomous oblast within the Soviet Socialist Republic of Azerbaijan (Azerbaijan SSR) was governed by the Law "On the Nagorno-Karabakh Autonomous Oblast", adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981. According to article 78 of the Constitution of the USSR, the territory of a Union Republic[199] could not be altered without its consent, while the borders between the Union Republics could be altered by mutual agreement of the Republics concerned, subject to approval by the USSR. It is also well documented that the NKAO possessed all essential elements of self-government and enjoyed a wide range of rights and privileges. In a letter dated 30 January 2018, Azerbaijan noted that "[i]n

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[194] See, e.g., Armenia's Initial Report to the Human Rights Committee, UN Doc. CCPR/C/92/Add.2 (30 April 1998); and Armenia's Initial Report to the Committee on the Economic, Social and Cultural Rights, UN Doc. E/1990/5/Add.36 (9 December 1998); "Legal aspects for the right to self-determination in the case of Nagorny Karabakh", Annex to the note verbale dated 21 March 2005 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2005/G/23 (22 March 2005); "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy", Annex to the letter dated 23 March 2009 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/63/781-S/2009/156 (24 March 2009); Remarks by Nikol Pashinyan, Prime Minister of Armenia, at the meeting with Armenia's ambassadors accredited abroad, 27 August 2019, <http://www.primeminister.am/en/statements-and-messages/item/2019/08/27/Nikol-Pashinyan-meeting-ambassadors-27-08/>; Statement by Nikol Pashinyan, Prime Minister of Armenia, at the 74th session of the UN General Assembly, 26 September 2019, <http://www.primeminister.am/en/statements-and-messages/item/2019/09/26/Nikol-Pashinyan-74th-session-of-UN-General-Assembly/>; Letter dated 18 November 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/555-S/2019/894 (19 November 2019); UN Doc. A/74/654-S/2020/38, *op.cit.* See also S. Avakian, "Nagorno-Karabagh: Legal Aspects", Moscow, 5th ed., 2015, appearing on the website of the Ministry of Foreign Affairs of Armenia, <http://www.mfa.am/filemanager/Statics/nk-eng-2015.pdf>.

[195] See, e.g., UN Doc. E/1990/5/Add.36, *op.cit.*, p. 4 and UN Doc. CCPR/C/92/Add.2, *op.cit.*, pp. 6–7.

[196] See, e.g., UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 5–6, paras. 20–24.

[197] See, e.g., *ibid.*, p. 7, para. 30. See also "Profiles in displacement: Azerbaijan", Report of the Representative of the Secretary-General, Francis M. Deng, UN Doc. E/CN.4/1999/79/Add.1 (25 January 1999), pp. 7–8, para. 21.

[198] *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 Nagorno-Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials", Baku, 1989, p. 92; See also UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 12–17, paras. 53–72.

[199] Within the USSR, there were fifteen Union Republics: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

terms of economic development, the region was second, behind only the capital city of Baku. Overall, it edged out Azerbaijan and Armenia in almost all categories, including in the number of hospital beds, physicians in all specialties, public libraries, schools, preschool facilities and other social infrastructure. The Armenian language was widely used in public life and in the work of local authorities. The State Pedagogical Institute has functioned in Khankandi with more than 2,000 students, mostly Armenians."[200] Above all, Armenia's assertions 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, for otherwise the international community would be faced with scores of revisionist claims based upon historical arguments.

156. Armenia claims that the key to the legal situation is the period commencing 20 February 1988, when the members of the Armenian community represented in the local self-government institutions of the NKAO adopted a resolution seeking the transfer of the autonomous oblast from the Azerbaijan SSR to the Soviet Socialist Republic of Armenia (Armenian SSR) (within the USSR). This was accepted by the Armenian SSR on 15 June 1988, but was rejected by the Azerbaijan SSR two days previously and again on 17 June 1988. The members of the Armenian community of the NKAO adopted another resolution on 12 July 1988 – this time on the unilateral secession of the oblast from Azerbaijan – and confirmed it on 16 August 1988. These decisions were declared null and void by the Azerbaijan SSR on 12 July 1988 and 26 August 1989, respectively.[201] On 18 July 1988, the Presidium of the Supreme Soviet of the USSR, the body with the primary relevant authority (faced with the above-mentioned resolutions adopted by the Armenian community of the NKAO, their support by the Armenian SSR and rejection by the Azerbaijan SSR) decided to leave the NKAO within the Azerbaijan SSR, in accordance with the relevant constitutional provisions.[202] On 1 December 1989, the Supreme Soviet of the Armenian SSR adopted a resolution calling for the unification of the Armenian SSR and Nagorny Karabakh. 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 claimed unification of Armenia with Nagorny Karabakh without the consent of the Azerbaijan SSR.[203]

157. On 2 September 1991, the Armenians of Nagorny Karabakh adopted a "Declaration of Independence" of the "NKR". This was declared invalid by the Azerbaijan SSR, on 27 November 1991 by the USSR State Council, and the following day by the USSR Committee of the Constitutional Oversight. However, on 10 December 1991, the Armenians held a "referendum on independence" of Nagorny Karabakh (without the support or consent of Azerbaijan, now an independent State 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 "NKR". On 28 December that year, the so-called "parliamentary elections" were held there and, on 6 January 1992, the newly convened "parliament" adopted a "Declaration of Independence", followed

[200] Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/72/725–S/2018/77 (1 February 2018); See also UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 17–18, paras. 74–77.

[201] 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.

[202] See *Bulletin of the Supreme Soviet of the USSR*, 1988, No. 29, pp. 20–21.

[203] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 3, p. 38.

two days later by the adoption of a "Constitutional Law 'On Basic Principles of the State Independence" of the "NKR".[204]

158. Azerbaijan had declared independence on 18 October 1991. This was confirmed on 29 December 1991 by a nationwide referendum. On 8 December 1991, a formal declaration was made by the States-founders of the USSR that "the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists".[205]

159. Armenia's view is that, following the collapse of the USSR, on the territory of the former Azerbaijan SSR two States were formed: the Republic of Azerbaijan and the "NKR"[206] and that "[t]he establishment of both States has similar legal basis".[207] 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.

160. First, the critical moment for the purposes of *uti possidetis* and thus the legitimate inheritance of territorial frontiers is the time of independence. The International Court has made this very clear. In *Burkina Faso/Mali*, it was stated that:[208]

> "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:[209]

> "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".

161. What mattered, therefore, was the frontier "which existed at the moment of independence".[210] Insofar as the situation in Nagorny Karabakh 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.

162. 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.

163. 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

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[204] See UN Doc. E/1990/5/Add.36, *op.cit.*, pp. 7–9.
[205] Agreement Establishing the Commonwealth of Independent States, 8 December 1991, 31 *ILM*, 1992, p. 138.
[206] See UN Doc. CCPR/C/92/Add.2, *op.cit.*, p. 8; UN Doc. A/74/555-S/2019/894, *op.cit*.
[207] See, e.g., UN Doc. A/63/781-S/2009/156, *op.cit.*, p. 11, para. 43; Remarks by Nikol Pashinyan, Prime Minister of Armenia, 27 August 2019, *op.cit*.
[208] ICJ Reports, 1986, pp. 554, 566 (emphasis added). This was reaffirmed in *El Salavador/Honduras*, ICJ Reports, 1992, pp. 351, 386–7.
[209] ICJ Reports, 1986, p. 568.
[210] Ibid., p. 570.

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.[211] 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".[212]

164. Thirdly, it has been established that the principle of *uti possidetis* is applicable to all contexts in which States may achieve their independence.[213] It is not, for example, limited to decolonisation contexts. The International Court made clear in *Burkina Faso/Mali* that the principle "is not a special rule which pertains solely to one specific system of international law" but is "a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs".[214] This text was repeated and affirmed by the Court in *Nicaragua v Honduras*.[215] The Yugoslav Arbitration Commission stated in Opinion Nos. 2[216] and 3, citing *Burkina Faso/Mali*, that the principle applied to the dissolution of the Former Yugoslavia, which was not a decolonisation context.[217] In any event, whatever the status of *uti possidetis juris* as a principle generally applicable to newly independent States, its application to the former republics of the Soviet Union is put beyond doubt by the various international instruments concluded by those republics upon achieving independence which reflected the principle and committed those States to respecting the boundaries as they stood at the moment of each new State's independence. The Agreement Establishing the Commonwealth of Independent States (signed on 8 December 1991) and the Alma Ata Declaration of 21 December 1991 both contain an obligation on all signatory States, including Armenia and Azerbaijan, to respect "the inviolability of existing borders".

165. 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. As discussed earlier in this Report,[218] 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 the Azerbaijan SSR or by the authorities of the USSR at the relevant time.

166. In a recent letter to the United Nations, Armenia has adopted the position that the principle of *uti possidetis* is not relevant because "the consistent body of jurisprudence demonstrates that the doctrine of *uti possidetis juris* is not an automatic rule that binds successors, but rather it based on their expressed consent" and that "[i]nternational courts and tribunals have only ever applied the doctrine of *uti possidetis juris* in their jurisprudence with the mutual consent of the parties".[219] There is simply no support for that position in the relevant authorities. It would undermine the very purpose of the *uti possidetis* principle as an automatic default rule for defining the borders of new States and thereby avoiding conflict if it applied only where the States had expressly consented to it. In any event, even if its legal analysis

[211] 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.
[212] ICJ Reports, 1992, pp. 351, 559.
[213] See also above paras. 89 and following.
[214] ICJ Reports, 1986, pp. 554, 565.
[215] ICJ Reports, 2007, pp. 659, 706.
[216] 92 *ILR*, p. 168.
[217] 92 *ILR*, p. 171.
92 *ILR*, p. 168.
[218] See paras. 155–157 above.
[219] UN Doc. A/74/555-S/2019/894, op.cit., p. 3.

were correct, Armenia is wrong to claim that "Armenia and Azerbaijan, as former Union Republics, did not form a common agreement on the principle of *uti possidetis juris*".[220] They reached precisely such an agreement in article 5 of the Agreement Establishing the Commonwealth of Independent States (signed on 8 December 1991) and in the Alma Ata Declaration of 21 December 1991.[221] The fact (as Armenia refers to) that the so-called "NKR" had purported to declare independence before these instruments were signed (on 2 September 1991) is irrelevant as that declaration of independence had no effect under international law and did not deprive Azerbaijan of its right to territorial integrity.

167. Armenia's reference to 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[222] also provides no support to its position. Under article 72 of the Constitution of the USSR, only Union Republics, not their autonomous units or any other parts, had the right to secede freely from the USSR. In fact, although the formal objective of the Law was to regulate mutual relations within the framework of the USSR by establishing specific guidelines to be followed by Union Republics in the event of their secession from the USSR, the true intention behind that Act, hastily adopted shortly before the Soviet Union ceased to exist, was to create serious barriers to the path of secession of Union Republics and thus prevent the dissolution of the USSR.[223]

168. According to the said Law, 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 legal status as a State. 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 as 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.

169. 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".[224] It is therefore curious 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.

170. During the short period from the adoption of the Law until the formal dissolution of the USSR, none of the Union Republics resorted to the secession procedure

[220] *Ibid.*, p. 4.
[221] See above, para. 94 and following.
[222] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 15, pp. 303–308.
[223] Identical letters dated 20 September 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, UN Doc. A/74/450–S/2019/762 (23 September 2019).
[224] Cassese, *Self-Determination*, *op.cit.*, pp. 264–265.

stipulated in it. 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 lost any legal effect even before the Soviet Union had ceased to exist as international legal person. Cassese has written that the "process of independence by the twelve republics therefore *occurred outside the realm of law, both international and municipal*" and "was precipitated by the political crisis at the centre of the Soviet Union and the correlative increase in the strength of centrifugal forces".[225]

171. 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.

172. 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.

173. Finally, Armenia's arguments that Azerbaijan proclamation that it succeeded to the 1918–20 State of Azerbaijan[226] meant that Azerbaijan succeeded to the boundaries of its former incarnation is equally fallacious. It is 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.[227] 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

174. 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.

175. The United Nations Security Council explicitly referred, in its resolutions 853 (1993), 874 (1993) and 884 (1993), adopted in response to the use of force against Azerbaijan and the resulting occupation of its territories, to "the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic", while "*Reaffirming* the sovereignty and territorial integrity of the Azerbaijani Republic", as well as "the

[225] *Ibid.*, p. 266 (emphasis in original).
[226] See e.g. the terms of the Declaration of 30 August 199 and article 2 of the Declaration of 18 October 1991.
[227] See, e.g., Shaw, *Title to Territory in Africa*, Oxford, 1986, chapter 4.

inviolability of international borders". Similar language had been used earlier, in resolution 822 (1993).

176. In a letter dated 20 September 2019,[228] Azerbaijan stated:

> "The resolutions of the Security Council provide authoritative clarification as to the committed acts, the violated obligations and the duties to put an end to the illegal situation thus created. They qualified Armenia's actions as the unlawful use of force and invalidated its claims over the territories of Azerbaijan once and for all. The numerous decisions and documents adopted by other international organizations are framed along the same lines. Thus, in its declaration made in connection with the capture and occupation of the territories of Azerbaijan, the Minsk Group of the Conference on Security and Cooperation in Europe, which is mandated to promote a resolution of the conflict and facilitate negotiations to that end, stated in particular that "no acquisition of territory by force can be recognized, and the occupation of territory cannot be used to obtain international recognition or to impose a change of legal status."

and further:

> "The primary objective of the ongoing peace process, the mandate of which is based on the Security Council resolutions, is to ensure the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan, the restoration of the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders and the return of the forcibly displaced persons to their homes and properties. The achievement of that objective is a must, not a compromise. It is equally inevitable and pressing, as the unlawful use of force and the resulting military occupation and ethnic cleansing of the territories of Azerbaijan do not represent a solution and will never bring peace, reconciliation and stability."

177. Armenia continues to violate its obligations to respect Azerbaijan's territorial integrity by using force to occupy the latter's sovereign territories and actively supporting and advertising the subordinate local administration it has set up in these territories. For example, Armenia consistently presents papers to the United Nations purportedly on behalf of the so-called "NKR" – the fact which cannot be taken as anything other than as an assertion of an umbilical link and inexorable connection between them.[229] Armenia also participates in purported "joint sessions" of its Security Council and the *soi-disant* "Security Council" of the "NKR"[230] and "joint meetings" on "Armenia-Artsakh military cooperation".[231]

178. The assertion that the "NKR" has seceded from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of

[228] UN Doc. A/74/450–S/2019/762, *op.cit*.

[229] See, e.g., the Letter dated 10 October 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/497–S/2019/810 (15 October 2019) (enclosing a Memorandum from the "Ministry of Foreign Affairs of the Republic of Artsakh"); Letter dated 29 July 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/282 (7 August 2019). See the Letter dated 19 August 2019 from the Chargé d'Affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/320–S/2019/669 (20 August 2019).

[230] Office of the Prime Minister of the Republic of Armenia, "Armenia, Artsakh Security Councils hold joint session in Yerevan" (23 December 2019): <https://www.primeminister.am/en/press-release/item/2019/12/23/Nikol-Pashinyan-meeting-Security-Council/>.

[231] Office of the Prime Minister of the Republic of Armenia, "Nikol Pashinyan, Bako Sakakyan hold consultation with Armed Forces leadership" (22 February 2020), <https://www.primeminister.am/en/press-release/item/2020/02/22/Nikol-pashinyan-Bako-Sahakyan/>.

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 "NKR" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.[232] As recognised by the International Court in the *Kosovo* advisory opinion,[233] a declaration of independence brought about in violation of a fundamental rule of international law, such as an unlawful use of force as in Armenia's case with regard to the "NKR", is legally ineffective and thus the illegal situation it creates must not be recognised as lawful by any State. Further, the illegality of the acquisition of territory resulting from the threat or use of force was reaffirmed in the *Construction of a Wall* advisory opinion.[234]

D. Conclusions

179. 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).

180. 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.

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[232] *Chiragov and Others v Armenia*, *op.cit.*, paras. 170–186.
[233] See above, para. 76.
[234] ICJ Reports, 2004, pp. 136, 171.

(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, including Armenia.

(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.

NON-ALIGNED MOVEMENT

Original: English

17th Summit of Heads of State and Government of the Non-Aligned Movement

Island of Margarita, Bolivarian Republic of Venezuela

17 - 18 September 2016

FINAL DOCUMENT

Margarita, B.R. Venezuela
17-18 September 2016

1. The Heads of State or Government of the Movement of Non-Aligned Countries[1], met under the Chairmanship of H.E. Mr. Nicolbs Maduro, President of the Bolivarian Republic of Venezuela, in the Margarita Island on the 17th and the 18th of September 2016 to address existing, new and emerging issues of collective concern and interest of the Non-Aligned Movement. In this regard, they reaffirmed and underscored the Movement's abiding faith in and strong commitment to its founding principles[2], ideals and purposes, particularly in establishing a peaceful and prosperous world and a just and equitable world order as well as to the purposes and principles enshrined in the United Nations Charter.

[…]

500. The Heads of State or Government expressed their regret that in spite of the United Nations Security Council resolutions (S/RES/822, S/RES/853, S/RES/874, S/RES/884) the **conflict between Armenia and Azerbaijan remains unresolved and continues to endanger international and regional peace and security.** They reaffirmed the importance of the principle of non-use of force enshrined in the Charter of the United Nations, and **encouraged the parties to continue to seek a negotiated settlement of the conflict within the territorial integrity, sovereignty and the internationally recognized borders of the Republic of Azerbaijan;**

[…]

Original: English

NAM 2019/CoB/Doc.1

18th Summit of Heads of State and Government of the Non-Aligned Movement

Baku, the Republic of Azerbaijan

25 - 26 October 2019

FINAL DOCUMENT

Baku, Azerbaijan
25-26 October 2019

1. The Heads of State and Government of the Movement of Non-Aligned Countries[1] met under the Chairmanship of H.E. Mr. Ilham Aliyev, President of the Republic of Azerbaijan, from 25 to 26 October 2019, to undertake a review of the progress achieved in the implementation of the outcomes of the XVII Summit of the Movement held in Margarita, the Bolivarian Republic of Venezuela on 17-18 September 2016, and to address existing, new, and emerging issues of collective concern and interest of the Non-Aligned Movement. In this regard, they reaffirmed and underscored the Movement's abiding faith in and strong commitment to its founding principles2, ideals and purposes, particularly in establishing a peaceful and prosperous world and a just and equitable world order, as well as to the purposes and principles enshrined in the United Nations Charter.

[…]

662. The Heads of State and Government *expressed* their regret that in spite of the United Nations Security Council resolutions (S/RES/822, S/RES/853, S/RES/874, S/RES/884) the conflict between Armenia and Azerbaijan remains unresolved and continues to endanger international and regional peace and security. They *reaffirmed* the importance of the principle of non-use of force enshrined in the Charter of the United Nations, and encouraged the parties to continue to seek a negotiated settlement of the conflict within the territorial integrity, sovereignty and the internationally recognized borders of the Republic of Azerbaijan.

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

SEVENTH MEETING OF THE
COMMITTEE OF SENIOR OFFICIALS

PRAGUE 1992

JOURNAL NO. 2

2nd DAY OF THE SEVENTH MEETING OF THE COMMITTEE

1. Date: Friday, 28 February 1992
   Opened: 11.40 a.m.
   Suspended: 3.25 p.m.
   Resumed: 4.40 p.m.
   Suspended: 5.30 p.m.
   Resumed: 6.20 p.m.
   Closed: 6.35 p.m.

2. Chairman: Mr. J. Kubis (Czech and Slovak Federal Republic)

3. Subjects discussed:

Agenda item 3:	Consideration of the interim report on the situation in Nagorno-Karabakh
Agenda item 4:	Examination of the human rights situation in Yugoslavia and need for further action
Agenda item 5:	Current issues
Agenda item 6:	Working methods of the CSCE Council and of the Committee of Senior Officials
Agenda item 7:	Date of the Eighth Meeting of the Committee of Senior Officials
Agenda item 8:	Any other business

PR-097

(1) The Committee of Senior Officials noted the "Interim Report of the Rapporteur Mission on the situation in Nagorno-Karabakh".

The Committee of Senior Officials:

(2) - urges the interested parties to impose an immediate cease-fire on all forces **in the Nagorno-Karabakh area of the Azerbaijan Republic,** the population of which expresses their will to enjoy all their rights including all those contained in the Principles of the Helsinki Final Act, and to implement fully their undertakings in the Communiqué issued by the Foreign Ministers of Armenia, Azerbaijan, and the Russian Federation in Moscow on 20 February 1992;

(3) - underlines the fact that the presence in the area of groups of eminent persons from CSCE participating States will contribute to the establishment of an effective cease-fire and urges concerned parties to guarantee their safety and to take all necessary steps to this end;

(4) - requests that all participating States and all states in the region impose an immediate embargo on all deliveries of weapons and munitions to forces engaged in combat in the Nagorno-Karabakh area, and inform the Conflict Prevention Centre of steps taken in this respect;

(5) - urgently requests the Chairman-in-Office of the CSCE to contact international and voluntary organizations with appropriate resources to provide humanitarian assistance, and to encourage them to provide such assistance, both to the inhabitants of Nagorno-Karabakh, and to the refugees and displaced persons on both sides of this conflict, including those from the Republics of Armenia and Azerbaijan;

(6) - requests that the Chairman-in-Office of the CSCE convene representatives of the States concerned with a view to immediately establishing safe corridors for the delivery of humanitarian assistance to the inhabitants of Nagorno-Karabakh;

(7) - requests the Chairman-in-Office of the CSCE, in contact with the authorities of Armenia and Azerbaijan, as well as local authorities and representatives in Nagorno-Karabakh, to promote, if necessary under the auspices of the International Committee of the Red Cross, the immediate exchange of hostages;

(8) - requests the Chairman-in-Office of the CSCE, in conjunction with the authorities of Armenia and Azerbaijan, as well as local authorities and representatives in Nagorno-Karabakh, to promote, if necessary under the auspices of the International Committee of the Red Cross, the immediate return of remains of all the dead to their families for respectful burial.

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(9) The Committee of Senior Officials, seeking a peaceful and lasting settlement to the situation in Nagorno-Karabakh in accordance with the Principles, commitments and provisions of the CSCE and the equal legitimate aspirations of all peoples concerned, agreed that this requires from all the concerned parties:

(10) - respect for international obligations with regard to the rule of law, democracy and human rights including all those based on the Principles, commitments and provisions of the CSCE;

(11) - guarantees for the rights of ethnic and national communities and minorities, in accordance with the commitments subscribed to in the framework of the CSCE;

(12) - respect for the inviolability of all borders, whether internal or external, which can only be changed by peaceful means and by common agreement;

(13) - commitment to settle by agreement all questions concerning regional disputes;

(14) - guarantees for the absence of territorial claims towards any neighbouring State, including abstention from hostile propaganda activities that would, inter alia, promote such territorial claims.

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The Committee of Senior Officials:

(15) - requests participating States in the region, in particular Kazakhstan and the Russian Federation, to continue their efforts to achieve a final and complete cease-fire and to promote negotiation among the parties in the framework of the CSCE and on the basis of CSCE principles;

(16) - strongly urges the continuation of the dialogue among all interested parties, including local authorities from Nagorno-Karabakh and representatives of Armenian and Azeri inhabitants from Nagorno-Karabakh. Among the first issues to be discussed in this dialogue should be the question of observers to monitor the cease-fire, the immediate needs of the refugees and displaced persons, the re-establishment of normal trade relations, and the establishment of an independent commission, including third parties, to review further problems relating to the refugees and displaced persons;

(17) - requests the Chairman-in-Office of the CSCE to stand ready to participate in this dialogue, and, if requested by the parties, to pursue it under the auspices of the CSCE;

(18) - requests the Chairman-in-Office of the CSCE to contact the governments of CSCE participating States to determine whether it would be possible to provide a group of observers to monitor a cease-fire when it is established, and to make recommendations on this subject;

(19) - calls the attention of the interested parties to the possibility of using the various CSCE mechanisms to facilitate progress toward a solution to the Nagorno-Karabakh problem, and, in this connection, the possibility of requesting the Chairman-in-Office of the CSCE to form an international advisory commission on constitutional questions;

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(20) - requests the CSCE participating States which may be able positively to influence the situation to report on progress toward a peaceful settlement at subsequent CSO meetings, in particular on the elements mentioned above;

(21) - agrees that the possibility of additional missions to Nagorno-Karabakh to monitor the evolving situation will be considered whenever useful.

FIRST ADDITIONAL MEETING OF THE COUNCIL

HELSINKI 1992

Helsinki Additional Meeting of the CSCE Council

24 March 1992

Summary of Conclusions

I.

1. The Council of the CSCE held its First Additional Meeting in Helsinki on 24 March 1992.

2. The Ministers welcomed Croatia, Georgia and Slovenia as participating States, following receipt of letters accepting CSCE commitments and responsibilities from each of them (Annexes 1-3). The Ministers do not consider that the admission of Croatia and Slovenia affects in any way the Conference on Yugoslavia nor prejudges the results of this Conference. The Ministers support the efforts of the Brussels Conference on Yugoslavia in search of an overall political settlement of the Yugoslav crisis.

II.

3. The Ministers expressed their deep concern about the continuing escalation of the armed conflict in and around Nagorno-Karabakh and the resulting increased suffering and loss of life of the inhabitants. They held an extensive discussion of ways and means to end the conflict, bearing in mind the implications for regional and international security which could result from its continuation and further extension. They called upon all parties to exercise restraint.

4. The Ministers reiterated in the strongest terms the call for an immediate and effective cease-fire including an active commitment by responsible local commanders to its implementation. They issued an appeal for the re-establishment of conditions for confidence and constructive dialogue, including the cessation of measures of economic and political constraint.

5. The Ministers reviewed the ongoing action within the CSCE framework and endorsed in their entirety the decisions taken by the Committee of Senior Officials. They expressed their appreciation for the activities of the Chairman-in-Office of the CSCE undertaken in this connection and stressed their willingness to extend all possible assistance to him whenever it is needed.

6. The Ministers welcomed the complementary efforts made by the European Community and its member States, by the member States of the Commonwealth of Independent States, by the members of the North Atlantic Co-operation Council, and, in particular, the efforts made by the United Nations Secretary-General.

They requested the Chairman-in-Office of the CSCE to keep in close contact with the United Nations in this respect and to arrange for regular exchanges of information.

The Ministers agreed that the CSCE must play a major role in promoting a peace process relating to the conflict. They agreed that the situation in and around Nagorno-Karabakh requires further CSCE action.

7. The Ministers mandated the Chairman-in-Office of the CSCE Council of Ministers, Mr. Jiří Dienstbier, to visit the region shortly in order to contribute, in particular, to the establishment and maintenance of an effective cease-fire as well as to the establishment of a framework for an overall peaceful settlement.

8. The Ministers expressed their firm conviction that a conference on Nagorno-Karabakh under the auspices of the CSCE would provide an ongoing forum for negotiations towards a peaceful settlement of the crisis on the basis of the principles, commitments and provisions of the CSCE. The Ministers therefore requested the Chairman-in-Office of the CSCE Council of Ministers to convene such a conference as soon as possible.

9. The Ministers furthermore agreed that this Conference, which will take place in Minsk, will have as participants Armenia, Azerbaijan, Belarus, Czech and Slovak Federal Republic, France, Germany, Italy, Russian Federation, Sweden, Turkey and United States of America. Elected and other representatives of Nagorno-Karabakh will be invited to the Conference as interested parties by the Chairman of the Conference after consultation with the States participating at the Conference. The Chairman-in-Office of the

CSCE Council will appoint the Chairman of the Conference on Nagorno-Karabakh under the auspices of the CSCE.

10. The Ministers urged all CSCE participating States and all concerned parties to take all necessary steps to ensure that humanitarian assistance is provided to all those in need through rapid and effective means including safe corridors under international control.

11. The Ministers noted the commitment of Armenia and Azerbaijan to fully support the mission of the Chairman-in-Office of the CSCE Council to the region as well as other actions on which the CSCE Council has agreed and appeal to these two countries to pursue actively this commitment to reach a lasting, peaceful solution.

III.

12. The Ministers agreed that the Stockholm Council Meeting will be held on 14-15 December 1992.

& R Q I H U H Q F H R Q Security and Co-operation in Europe

Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated 27 July 1993

1. Following my visit to the Caucasus region and to the area of the Nagorny Karabakh conflict, I would like to add some further elements to those already provided by the United Nations representatives in Baku and Erevan. I also wish to take this opportunity to express my thanks for the invaluable assistance and full cooperation these representatives provided in both capitals.

2. The situation has, of course, changed dramatically with the seizure of the city of Agdam by opposing forces. This has dealt the negotiating process a severe blow and has somewhat altered the assumptions on the basis of which my mission has been decided upon by the Conference on Security and Cooperation in Europe (CSCE).

3. The aim of the mission, which included representatives of the CSCE Chairman-in-Office, was to determine, on the basis of an assessment of the situation in the region, whether and when the timetable of urgent steps to implement United Nations Security Council resolution 822 (1993), worked out by the nine countries in the Minsk Group, could come into force.

4. In the course of the visit, both the President of Armenia and the acting President of Azerbaijan reconfirmed their full and determined support for the CSCE Minsk Group timetable. Both insisted that it should enter into force as early as possible and without any changes. Both pledged the cooperation of their Governments and authorities for its implementation. A most refreshing finding was, above all, the two Presidents' apparent willingness to consult and to cooperate between them, whenever necessary and desirable, concerning such implementation.

5. In Nagorny Karabakh I found a completely different attitude on the part of the local Armenian community leaders. Their attitude appeared to be rigid and governed by military, rather than diplomatic, considerations. Although the Chairman of their Supreme Council had signed the timetable, they now held us this signature had been affixed in his personal, not his official capacity. They then went through a number of objections and in the end they handed me a letter dated 17 July 1993 spelling out such objections.

6. Some of them were of a general political nature, such as, for instance, a series of remarks and questions on the political process under way in Azerbaijan. Other points related to the plan itself, but none of those seemed to represent a fundamental obstacle to the entry into force of the timetable.

7. I then agreed to send them a reply to the various points and objections raised. This I did on 16 July, refuting the political points as being not pertinent in the context of the negotiating process. I also provided them with the requested explanations and clarifications on the technical issues and asked them to confirm their signature definitively.

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8. In their letter dated 20 July, they appeared to have dropped some of their earlier objections, while insisting on some others, and raising such new points. They reiterated having given their agreement in principle. They did not conflict it, but neither did they openly challenge it. They also reconfirmed their attachment to a peaceful solution.

9. I then convened a meeting of the nine countries, which was held in Vienna on 22 and 23 July. While the meeting was in progress and we were working on the final version of the timetable, we received the news that the city of Agdam, after a continued escalation of hostilities and armed attacks, had been seized by opposing forces. We were then facing a situation where not only had resolution 822 (1993) not been implemented three months after its approval, but further territories of the Azerbaijani Republic were being occupied.

10. I then proposed to publish the attached statement (see appendix), which was unanimously endorsed by the nine.

11. The nine also approved the terms of a letter that I sent to the Chairman-in-Office, with a view to suggesting that a CSCE presence be established in the region and recommending that preparations for a CSCE Monitoring Mission be continued.

12. I hardly need to underline that the seizure of Agdam is in fish contradiction with past Nagorny Karabakh Armenian assurances that they remained committed to a peaceful settlement of the conflict and, specifically, that they had no intention of taking Agdam. It also belies their statement to me that their forces in the Agdam region had no intention of advancing any further and, therefore, had surrounded themselves with minefields that could not be removed (hence their refusal to let my mission travel along the Agdam-Atepatakert road, as we had requested). Nor can the taking of Agdam be excused on grounds of self-defence. I myself had visited the place and, from what my mission and I have seen, I consider that the military situation was such that Agdam posed no serious military threat to Nagorny Karabakh.

13. We are now trying to assess whether the seizure of Agdam signifies a definitive departure by the Nagorny Karabakh Armenians from a compromise settlement in which - just as the other parties to the conflict - they would not fully achieve their present objectives.

14. The CSCE negotiating process will continue despite this undoubted setback. It is, however, my conviction that, given the present political and military balance of forces, a new impetus cannot be provided to the peace process by diplomatic ingenuity alone. Political pressure is needed by the international community, and some diplomatic groundwork should be done in selected capitals, along with the continuation of the CSCE negotiating process. Needless to say, CSCE readiness to send an observer mission is being maintained.

15. I believe that our ongoing negotiating process would be well served by further political support and coordinated political pressure by the international community. In this spirit, I venture to suggest some areas where, in my assessment, early action by the Security Council would contribute in an important way to the peaceful settlement of the conflict in accordance with resolution 822 (1993).

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16. These areas may include:

(a) Condemning the seizure of Agdam as a new specific threat to peace and security in the region, and as an act that cannot be justified on self-defence grounds and that contradicts the commitment to a peaceful settlement of the conflict;

(b) Condemning all bombardments and shelling of inhabited areas and population centres in the area of conflict;

(c) Demanding an immediate and unconditional withdrawal from all recently occupied territories, as already requested in Security Council resolution 822 (1993), including the city of Agdam, which should be kept free from further destruction and looting, and other territories occupied after that resolution was approved;

(d) Requesting an immediate cessation of hostilities throughout the area of conflict;

(e) Requesting that arrangements be made, with international assistance, so that refugees can return to their homes as soon as the occupying forces are withdrawn;

(f) Supporting the immediate of urgent steps to implement United Nations Security Council resolution 822 (1993), worked out by the nine countries of the Minsk Group, and endorsing the Group's continuing efforts to find a peaceful solution to the conflict;

(g) Requesting all States to impose an immediate embargo on all deliveries of weapons and munitions to forces engaged in combat in the Nagorny Karabakh area;

(h) Warning parties to the conflict against any further escalation of hostilities and about the international consequences of such actions.

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Appendix

Statement by the Chairman of the CSCE Minsk Conference
on the attempted and reported seizure of the
Azerbaijani city of Agdam

The Chairman of the CSCE Minsk Conference on Nagorny Karabakh, together with the representatives of the nine countries that are co-sponsors of the cease-fire timetable for Nagorny Karabakh, strongly condemn the offensive and the reported seizure of the Azerbaijani city of Agdam. They ask for the immediate cessation of hostilities and for the withdrawal from the occupied territory.

This unacceptable act occurred at the very moment when the Minsk Group was putting the final touches to the cease-fire timetable. It specifically violated promises and repeated commitments made to the Chairman of the Minsk Conference by the leaders of the Armenian community of Nagorny Karabakh that they would not seize Agdam.

This behaviour, recalling similar actions with respect to the Azerbaijani territory of Kelbajar, calls into question whether it is possible to continue to include this group in the CSCE negotiating process for the Nagorny Karabakh conflict.

The Minsk Group has worked in good faith for more than one year to help to find a peaceful solution to the situation in Nagorny Karabakh. Based on this work, CSCE is prepared to dispatch a substantial Monitoring Mission to help to ensure that a cease-fire is respected while negotiations move forward on the political status of Nagorny Karabakh. Each time the Group has reached a significant milestone in the work, military actions have been undertaken that have undercut these efforts. It is in the interest of the Armenian community of Nagorny Karabakh to respect Security Council resolution 822 (1993) and the decisions of the Minsk Group and to withdraw immediately from territories recently seized by force. This is the key factor in ensuring that peaceful negotiations can move forward.

Those who encourage the Armenian community of Nagorny Karabakh to continue the fighting and the encroachment on the surrounding territories share responsibility for the continuing loss of Armenian lives and the destruction of the Armenian economy.

For his part the Chairman of the Minsk Conference requested CSCE to establish a presence in the region as soon as possible. A report will also be presented to the President of the United Nations Security Council on this serious and alarming setback to the Group's efforts to find a solution to the ongoing conflict.

The Group will meet again next week to consider further steps.

Letter dated 1 October 1993 from the Chairman of the CSCE Minsk Conference on Nagorny Karabakh addressed to the President of the Security Council

Pursuant to paragraphs 6 and 13 of Security Council resolution 853 (1993), I wish to report on the present state of the efforts made by the Minsk Group for the peaceful settlement of the Nagorny Karabakh conflict.

The Minsk Group held unofficial consultations in Moscow from 9 to 11 September and again in Paris from 22 to 28 September. At the same time, direct contacts between the parties to the conflict were carried out in Moscow on 12 and 13 September, and again in the days around 24 September, on the fringes of a meeting of Commonwealth of Independent States leaders that took place there on that day.

These direct contacts resulted in the cease-fire in force from 31 August being extended to 5 October; further extensions are being discussed at the present time.

The Moscow and Paris Minsk Group consultations took into account the result of the direct contacts, as well as other elements and positions put forward by the parties. The result was an "Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)" dated 28 September 1993, which is attached.

This timetable is now being sent to the parties, with the request that they signify their acceptance of it by 7 October at 12 noon, local time.

As in previous cases, the timetable provides for the withdrawal from occupied territories, the restoration of communications and transportation, the transformation of the present cease-fire into a permanent cessation of all military activities, under the supervision of a CSCE monitoring mission, and the opening of the Minsk Conference, which is foreseen for 2 November 1993. In relation to earlier versions, the timetable presents an adjusted sequence of events and a clearer reciprocity of actions by the parties.

Thanks to all these developments, I feel the solution of the conflict may be approaching a turning-point. This makes it imperative for all - individual Governments as well as international organizations - to redouble their efforts to try to make the turning-point a reality.

In these circumstances, the adoption by the United Nations of a new document (Security Council resolution or statement by the President of the Security Council) on the Nagorny Karabakh conflict would represent a source of guidance and encouragement in the right direction, both for the parties to the conflict and for the rest of the Minsk Group.

Together with other members of the Group, I have reflected on some points which might usefully be included in this new document. I venture to pass them on to you. They are as follows:

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- A confirmation of the earlier United Nations resolutions on the conflict;

- A call for a withdrawal from recently occupied territories, including the newly occupied territories;

- A welcoming of the direct contacts aimed in particular at establishing a stable and effective cease-fire, and a call to the parties to make the cease-fire permanent;

- An expression of support for the "Adjusted timetable" of 28 September 1993, and a call to the parties to the conflict to accept it;

- An underlining of the desirability of an early convening of the CSCE Minsk Conference, with a view to arriving at an overall settlement of the conflict, in conformity with the 24 March mandate of the CSCE Council of Ministers;

- An expression of readiness on the part of the United Nations to send its representatives to observe the Minsk Conference, if invited, and to provide all possible assistance for the substantive negotiations that will follow the opening of the Conference;

- An expression of support for the monitoring mission developed by the CSCE and of the willingness of the United Nations to be associated with it in any possible way;

- An expression of determination by the international community to help alleviate the human suffering caused by the conflict, in particular as concerns refugees and displaced persons, and human rights violations in general.

Appendix

[Original: English/Russian]

Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)

The following urgent steps will be implemented by the parties to the conflict. In the context of the timetable, the term "parties to the conflict" refers to the Governments of Armenia and Azerbaijan and to the leadership of Nagorny Karabakh, each according to its own role in the conflict. The Azeri interested party of Nagorny Karabakh will continue to have a role in the negotiations towards a peaceful settlement of the conflict. The terms "party to the conflict" and "leadership of Nagorny Karabakh" do not imply recognition of any diplomatic or political status under domestic or international law.

The parties to the conflict will continue to make all advance technical preparations, including by direct contacts between them, to ensure that the actions for which they are responsible can be accomplished according to the present timetable. They will coordinate closely with the head of the CSCE verification or monitoring missions as soon as he arrives in the region to demonstrate that all necessary preparations have been made.

Technical problems that may delay implementation of any step of the timetable will not affect the obligation of the parties to the conflict to carry out the subsequent steps of the timetable. The technical nature of such problems will be verified by the head of the CSCE verification or monitoring mission.

By signing the present timetable, the parties to the conflict confirm that they have agreed to continue to observe a complete and durable cease-fire at least until the opening of the Minsk Conference.

The parties to the conflict will, as soon as possible, exchange lists of all prisoners and hostages being held, whether by authorities or private persons, and all available information on persons who died in their custody. They will also exchange lists of missing persons, with a view to receiving all available information concerning their fate. The parties will immediately take all necessary action to facilitate access by the International Committee of the Red Cross (ICRC) to all prisoners and hostages.

In the present timetable, the term "withdrawal" is to be understood as withdrawal to the relevant segment of the 1988 district borders.

18-20 October - Minsk Group preparatory meeting for the opening session of the Minsk Conference.

23 October - Announcement by the Nagorny Karabakh leadership of readiness to withdraw from all recently occupied areas of Azerbaijan, and by all parties to the conflict that all obstacles to communications and transportation are removed and that a programme of restoration is under way.

- CSCE verification mission, led by a representative of the Chairman-in-Office accompanied by at least 15 to 20 experts and possibly by United Nations representatives, arrives in the region. As soon as possible after arrival, the head of the mission will set up a joint coordination commission along the lines set out in attachment II to the present appendix.

24 October - Withdrawal from the Kubatli district begins, including clearing of own mines.

25 October - The verification mission enters the Kubatli district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from the Kubatli district is completed by 2359 local time.

26 October - The main gas pipeline from Azerbaijan into Armenia and Nakhichevan is reopened. This is verified by the verification mission.

- Withdrawal from the Agdam district begins, including clearing of own mines.

28 October - The verification mission enters the Agdam district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from the Agdam district is completed by 2359 local time.

- The exchange of acknowledged hostages and prisoners of war is effected.

29 October - The Kazakh-Idjevan road is reopened from both sides. This is verified by the verification mission.

- Withdrawal from Fizuli begins, including clearing of own mines.

31 October - The verification mission enters the Fizuli district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from the Fizuli district is completed by 2359 local time.

1 November - Reopening of the Kazakh-Idjevan railway from both sides. This is verified by the verification mission.

2 November - Opening session of the Minsk Conference (at the highest level among the parties to the conflict). Adoption of the agenda of the Conference.

- Signing by the parties to the conflict of a statement on the "Timetable of urgent steps", the continuation of the negotiations towards a peaceful settlement of the crisis on the basis of the principles, commitments and provisions of the CSCE and the continued implementation of Security Council resolutions

822 (1993) and 853 (1993). This statement will commit the parties to the irreversibility of the process.

- Solemn confirmation at the Conference of determination to ensure free and unimpeded access of international humanitarian relief efforts to the region, in particular in all areas affected by the conflict.

- Parties to the conflict commit themselves, in cooperation with the International Committee of the Red Cross, to return all hostages and prisoners of war or their remains, and to cooperate in accounting for the missing.

- Confirmation of the cease-fire, which is transformed into a permanent cessation of military activities. This term involves the exclusion, on a permanent basis, of:

  - The use of any type of weapon for military purposes, including shelling and aerial bombardments (complete cease-fire);

  - Any offensive operation or attack;

  - Any military manoeuvre;

  - Any movement of military units or military equipment and any transport for the purpose of resupplying of munitions to existing units or deploying reinforcements (except movements for withdrawal to the rear or reintroduction of lightly armed security personnel into the Kelbajar district, with prior notification to the relevant CSCE mission);

  - Any patrolling for either reconnaissance or combat purposes;

  - Any kidnapping or taking of hostages, plunder or killing of civilians.

Violations of the permanent cessation of military activities will be promptly reported by the relevant CSCE mission to the Chairman-in-Office of the CSCE, along with a factual analysis, with a view to enabling the CSCE to take the appropriate measures, including the possibility of reporting violations and making recommendations to the Security Council.

Together with the announcement of the cessation of military activities, parties to the conflict should also state at the conference that, in the case of violations, they will punish those responsible on their own side.

4 November - End of the opening session of the Minsk Conference.

- Withdrawal from the Djebrail district begins at 0001 local time, including clearing of own mines.

6 November - CSCE verification mission enters the Djebrail district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from this area is completed by 2359 local time.

- Announcement by the Government of the Azerbaijani Republic that "there will be restraint in the reintroduction of security personnel in the Kelbajar district". Such personnel will number approximately 1 per cent of the population having returned to the district and in any case will not exceed 500. Their weapons will be limited to pistols and sub-machine-guns/automatic rifles. A CSCE mission will monitor the level of security forces and the type of weapons to be reintroduced, in order to oversee that they correspond to the above provisions. These provisions shall apply until the Minsk Conference has completed its work or a subsequent regime of the district has been agreed.

7 November - The first elements of the CSCE monitor mission, comprising about 50 monitors, begin operating in the region on the basis of the terms of reference approved by the CSCE and of the present timetable.

- Withdrawal from the Kelbajar district begins at 0001 local time, including clearing of own mines.

9 November - CSCE verification mission completes verification of the withdrawal of all occupying forces from the Djebrail district.

10 November - Reopening of all remaining communications and transportation within the region.

12 November - Verification mission enters the Kelbajar district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from the Kelbajar district is completed by 2359 local time.

13 November - Withdrawal from the Martakert district begins at 0001 local time, including clearing of own mines.

16 November - CSCE verification mission enters the Martakert district, provided the head of mission is satisfied that the safety of the mission is ensured. Withdrawal from this area is completed by 2359 local time.

18 November - CSCE verification mission completes verification of the withdrawal from the Martakert district.

28 September 1993

Declaration of the Nine

The nine Minsk Group countries - Germany, United States of America, Belarus, France, Italy, Russian Federation, Sweden, Czech Republic and Turkey - vigorously condemn the behaviour of the parties to the recent hostilities in the Nagorny Karabakh conflict during the most recent cease-fire violation and the seizure of additional territory by force.

These actions constitute unacceptable violations of the Conference on Security and Cooperation in Europe (CSCE) principle of non-use of force and undercut the efforts of the international community to find a peaceful solution to this conflict. Those responsible for these events have added to the suffering of their own people.

The nine countries also condemn the looting, burning and destruction of villages and towns, which cannot be justified under any standards of civilized behaviour. **No acquisition of territory by force can be recognized, and the occupation of territory cannot be used to obtain international recognition or to impose a change of legal status.**

The Nine request the unilateral withdrawal of occupying forces from the areas of Goradiz and Zangelan and the immediate restoration and prolongation of the cease-fire which was broken.

They insist on the acceptance of their proposed timetable providing for a full and permanent cease-fire, withdrawals from occupied territories and the dispatching of a monitor mission, leading to the early convening of the Minsk Conference. Acceptance of this timetable (called for by United Nations Security Council resolution 874 (1993)) is essential to implement United Nations Security Council resolutions 822 (1993), 853 (1993) and 874 (1993), which should all be fully complied with. All issues not dealt with in the timetable, including the status of Nagorny Karabakh, will be decided through negotiations at the Minsk Conference.

The Nine expect the leaders of all the parties to express specific, clear-cut assurances of their readiness to refrain from the use of force in the solution of this conflict and to take concrete steps to demonstrate their commitment to the negotiating process, in particular by issuing a unilateral cease-fire declaration and by participating constructively in the Minsk Group negotiations. This would facilitate agreement on the comprehensive proposal of the Nine, early return of refugees and displaced persons to their homes and the steps which will be necessary for people on both sides to survive the winter.

The Nine wish to warn the parties to the conflict that they will be held responsible for cease-fire violations and excesses in the use of force in response to violations. Such behaviour is incompatible with the negotiating process and will be condemned before world opinion. If the leaders of the parties wish to be viewed as responsible authorities, they must act responsibly.

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Package proposal by the nine countries of the Minsk Group on the Nagorny Karabakh conflict, dated 8 November 1993

The package proposal is based on the proposal of the Nine (see S/26522, appendix), amended as follows:

1. Concerning the first preambular paragraph, the present text of the Nine will remain, with the expression "political status" replaced by "legal status".

2. The following sentence will be included in the preamble:

> "The opening of the Minsk Conference can in no way be interpreted as implying acceptance or recognition of the situation on the ground. Questions relating to or arising from the conflict and not addressed in the timetable (including withdrawal or displaced persons/refugee questions such as Lachin, Shusha/Shushi, Shahurnian/Garanboy and the enclaves) will remain open and are to be resolved at the Conference."

3. The Preparatory Meeting (taking place before the withdrawal) will deal with all questions concerning the procedure and the decision-making process of the Conference.

4. Withdrawals will be included in the timetable in the following order:

(a) Kubatli (and Zangelan, if withdrawal has not been effected already);

(b) Fizuli (and Goradiz, including the main road along the Iranian border, if withdrawal has not been effected already);

(c) Agdam;

(d) Mardakert;

(e) Djebrail;

(f) Kalbajar.

All withdrawals will take place before the inauguration of the Minsk Conference.

5. The question of Azeri villages allegedly occupied in Kazakh, Zangelan and Nakhichevan will be taken care of by:

(a) An obligation to respect the Azeri-Armenian international border;

(b) Visits by the CSCE Monitor Mission.

6. United Nations Security Council resolutions 822 (1993), 853 (1993) and 874 (1993) will be attached to the timetable as "essential guidelines".

/...

7. All other clauses agreed in Vienna (such as on refugees, announcements, emergency meetings of the Minsk Group, etc.) will be included.

8. Technical changes recommended by CSCE military experts and other technical changes will be included in the timetable.

All other clauses of the "adjusted timetable" dated 28 September 1993 not affected by the above points are confirmed.

A new version of the timetable based on the above points will be sent to the parties as early as possible.

Parties will be required to reply by 22 November 1993.

& R Q I H U H Q F H R Q **Security and Co-operation in Europe**

CSCE

BUDAPEST DOCUMENT 1994

TOWARDS A GENUINE PARTNERSHIP IN A NEW ERA

Corrected version 21 December 1994

REGIONAL ISSUES

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

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

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

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

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

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

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

Organization for Security and Co-operation in Europe

LISBON SUMMIT

1996

LISBON DOCUMENT 1996

LISBON 1996

ANNEX 1

STATEMENT
OF THE OSCE CHAIRMAN-IN-OFFICE

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

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

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

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

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

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

This statement will be included in the Lisbon Summit documents.

Organization for Security and Co-operation in Europe

Conclusions of the Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding its Nagorno-Karabakh (NK) region

1. Settlement Figures for Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

It is very difficult for the FFM to precisely estimate the number of settlers in these six districts. No district appears to have a working registration system or a land cadastre and inhabitants are spread over large distances in atomized clusters reachable only over frequently impassable roads. For this reason, the FFM has been extremely careful in coming to conclusions on figures and can only report on populations that it itself has interviewed, counted or directly observed. Therefore, the FFM's population estimates reflect its best count of only those populations in the areas it visited which are discussed in this report. The FFM did not extrapolate population figures from that which it observed in part of a district to estimate a figure for the entire district and it did not accept individuals' statements (for example, those of a village elder) as reliable until it could corroborate them. That said, the FFM is confident that it did not miss any significant population point in the territories. Settlement figures for the areas discussed in this report, whose populations the FFM has interviewed, counted or directly observed, are as follows: in Kelbajar District approximately 1,500; in Agdam District from 800 to 1,000, in Fizuli District under 10; in Jebrail District under 100; in Zangelan District from 700 to 1,000; and in Kubatly District from 1000 to 1,500. Thus, the FFM's conclusions on the number of settlers do not precisely correspond with population figures provided by the local authorities, which were higher.

As the FFM's narrative and numerical estimates show, population densities and distributions vary significantly both within and across districts. Given the size of the territories and their former populations, overall settlement is quite limited.

2. Characteristics of the Settlements in Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

2.1 Categories of Settlements

Throughout the territories, the FFM observed people reconstructing and inhabiting structures, villages or towns that were destroyed in the conflict. No single newly planned or established settlement was observed, but the FFM did examine three villages in Agdam District over which at least twenty identical new houses had been built and finished for occupancy on the ruined foundations of previous dwellings.

As a general matter, the standard of reconstruction in the areas visited by the FFM ranged from:

- "no intervention" with the settlement infrastructure (village in ruins and no habitation); to
- "basic rehabilitation" (including, but not limited to, provisional electrical supply, provisional water supply, possible school and/or local administration building); to
- "reconstruction" (exhibiting a wider range of social and physical infrastructure, and at higher quality).

2.2 Nature of Structures

Specifically, standards of repair to buildings observed by the FFM in the territories ranged from:

- "emergency repairs" (executed in a haphazard, makeshift or provisional manner, using material from nearby ruins); to
- "rehabilitation" (involving partial repair to the structure's central core and a new roof, using both new materials and materials from nearby ruins); to
- "reconstruction" (structures that are completely new or with everything new but the foundations).

Almost all inhabitable buildings observed in the territories have been rehabilitated by people who made use of the existing walls and foundations of pre-war structures. In only a few cases did the FFM find structures where the walls and foundations were completely new. Nearly all those structures, however, were rebuilt on previously existing sites and in the physical context of pre-war settlements.

3. Origins of Settlers

The FFM has concluded that the overwhelming majority of settlers are displaced persons from various parts of Azerbaijan, notably from Goranboy, Chaikent, Sumgayit and Baku. Most of them, however, came to the territories after a period living as displaced persons in Armenia.

Apart from these displaced persons, the FFM has found three categories of Armenians from Armenia in the territories. In relative terms, the largest group (although in absolute numbers probably rather small) consists of victims of Armenia's 1988 earthquake who spent long periods in temporary shelters before entering the territories. The next largest category is made up of Armenians who came to the territories for economic reasons, whether to build a better life or escape debts at home. Seasonal agricultural workers and shepherds belong to a third group. Most settlers have no passports and many lack NK identity cards, facts about which they often complained.

4. Settlers' Reasons for Coming

Practically all settlers (both displaced persons from Azerbaijan and earthquake victims from Armenia) who came to the territories did so because they were homeless. They usually heard about the option of settlement by word-of-mouth, through the media or from

NGOs in Armenia and NK. In connection with the latter, settlers often mentioned the Karabakh Refugee Committee. The FFM found no clear indications that the NK or Armenian authorities directly organized resettlement. As well, there was no sign of non-voluntary resettlement in the territories. Likewise, the FFM found no evidence of systematic recruitment of settlers to come to the territories.

5. Settlement Incentives in Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

The FFM observed disparate settlement incentives traceable to the authorities within and between the various territories. Broadly speaking, there are some indications of proactive, but uneven, incentives in Kelbajar (west of NK) and in parts of Agdam District close to Mardakert/Agdere (due east of NK). In Zangelan and parts of Kubatly Districts (southwest of NK) there are signs of a more reactive provision of incentives, while in the relevant parts of Fizuli District, in Jebrail District (south and southeast of NK) and in other parts of Agdam District, the FFM found what appeared to be a policy of turning a blind eye to the economic activities taking place there.

Thus, on the proactive side in Kelbajar, the FFM found evidence of limited benefits for settlers, including the assignment of ruins or plots or the actual provision of houses (sometimes on a turn-key basis), modest infrastructure and social welfare, tax exemptions, and low or no utility fees. In other places, the authorities have done no more than accommodate settlers' needs after they had begun to trickle into the area.

In Agdam District, the situation is even more variable. For example, Agdam town and its outskirts are completely without incentives or infrastructure. In the town and surrounding suburbs, limited economic activity appears to be tolerated. Further north in the district, the FFM found proactive incentives including electrification, water supply and the construction and distribution of newly built and outfitted homes on a turn-key basis.

The Lachin authorities have extended elements of infrastructure to the neighboring districts of Kubatly and Zangelan to accommodate people's needs after they began to settle in those places. To be sure, such steps can also attract new settlers. In any event, infrastructure improvements do not seem to go beyond reactive, low-level support.

In Fizuli, Jebrail and parts of Agdam, including Agdam town, the FFM witnessed the signs of a ‘laissez faire’ policy, which tolerated the de facto extraction of material from the infrastructure and buildings as well as the extensive cultivation of agricultural land for economic gain.

6. The Role of the Armenian Diaspora in Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

Local authorities and interviewees frequently stressed that the Armenian diaspora provides support for infrastructure, medical care, social welfare and housing. In some situations, these efforts are outside of the local authorities' knowledge and control. However, its effects are clearly visible and boost the local authorities. Thus, in certain cases, the diaspora factor can be seen as constituting an indirect element of settlement policy.

7. Involvement of the Armenian and NK Authorities in Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

The FFM has seen no evidence of direct involvement by the authorities of Armenia in the territories, except for the provision of electricity to parts of the Jebrail and Kubatly Districts from Kapan, Armenia. The FFM has encountered NK's direct involvement in some of the territories, to wit: official acknowledgement of responsibility for schools in Kelbajar, payment of salaries for some 70 to 80 school teachers in the Kubatly and Zangelan Districts, and supply of basic health care and law and order especially in, but not limited to, the areas under administration by the Lachin authorities. The FFM learned of cases in Kelbajar and a small strip of Agdam District where people voted in both local and NK elections.

8. Economic Activities in Kelbajar, Fizuli, Jebrail, Agdam, Zangelan and Kubatly

Almost everywhere in the territories where the FFM encountered people, it observed the cultivation of small-scale subsistence plots and the personal re-use of construction materials taken from nearby ruins. The more organized extraction of metals and bricks for resale was also seen universally, albeit sporadically, throughout the territories. The FFM witnessed, and confirmed with the NK authorities, that the systematic conversion of former vineyards to wheat cultivation is taking place. In this connection, the FFM witnessed the extensive and often systematic extraction of vineyard infrastructure, including removal of irrigation pipes and reinforced-concrete vine supports.

In the Kelbajar District, the FFM observed organized, large-scale farming activity. Bee-keeping is quite widespread there as well. In and around Kelbajar town, the FFM saw long-haul flat-bed trucks transporting large logs extracted from the region's forests.

In Agdam District, the FFM encountered both small-scale dairy activity and large- scale agricultural efforts whose harvests are intended for resale. In Agdam town and in its suburbs the FFM saw evidence of some extraction of metal and building materials from ruins and infrastructure, as well as limited grazing activity.

In Fizuli and Jebrail Districts, there is extensive large-scale farming. Given that almost no one lives in these districts, this activity appears to be managed and manned seasonally by people from the outside. Throughout these two districts, the FFM has seen the evidence of the extraction of materials from ruins and infrastructure, including water pipes, metal scraps, bricks and stones. In some cases, these materials were neatly stacked alongside the road for pick-up. Limited nomadic grazing and herding also take place.

In Zangelan and Kubatly Districts, the FFM observed extensive agricultural activity, grazing and herding, and infrastructure extraction.

9. Lachin District

9.1 Settlement Figures

The local and NK authorities report that some 3,000 settlers live in Lachin town. Concerning Lachin District, they could only offer a range of between 5,000 and 8,000

settlers, despite the fact that Lachin authorities have a settlement permission requirement and formal registration system ('propiska') in place.

As mentioned above in Chapter V-1, the FFM was extremely careful in reaching conclusions on figures and can only report on settlements and populations that it has actually observed, counted or interviewed. Thus, while the authorities' figure of 3,000 settlers in Lachin town corresponds with the FFM's findings, the FFM estimates that fewer than 8,000 people live in the district overall.

9.2 Characteristics of Settlements and Structures

Lachin town's physical and social infrastructure is well developed. Although it still contains many ruins and not all of its infrastructure has been repaired, the FFM observed many fully reconstructed or built-from-scratch buildings and houses. The quality of reconstruction is generally higher in Lachin town than in the rest of Lachin District. Throughout Lachin District, the FFM often found only basic infrastructure, which usually included a local administration and school, but not always electricity and running water. As well, the FFM saw a considerable number of villages that are completely destroyed and deserted.

9.3 Origins of Settlers

Generally, the pattern of settlers' origins in Lachin is the same as in the other territories. Thus, the overwhelming majority has come to Lachin from various parts of Azerbaijan, mostly after years of living in temporary shelters in Armenia. A comparatively small minority are Armenians from Armenia, including earthquake victims. They heard about Lachin as a settlement options by word-of-mouth, through the media or from NGOs in Armenia and NK. There was no evidence of non- voluntary resettlement or systematic recruitment.

9.4 Settlers' Reasons for Coming

Although incentives and quality of life played a larger role in people's decision to move to Lachin, the general reasons for settlement do not differ markedly from those found in the other territories. Because conditions are better in Lachin, it also draws settlers away from the other territories. For example, the FFM interviewed residents of Lachin town who had moved from Kelbajar District in search of less hardship.

9.5 Settlement Incentives

Settlement incentives are readily apparent. In Lachin town, and to a lesser and uneven extent in Lachin District, they include social welfare, medical care, a functioning infrastructure and administration, schools, decent roads, tax exemption or tax benefits, reduced rates for utilities, cheap or free electricity, and running water. The FFM determined, however, that the Lachin incentives do not include exemption from military service for males. On the basis of all of its observations and interviews in Lachin District, the FFM has concluded that the authorities pursue a proactive settlement policy.

9.6 The Role of the Armenian Diaspora

The FFM saw and was told of substantial diaspora contributions to reconstruction, infrastructure and social welfare in Lachin District and Lachin town. The local authorities acknowledge the importance of this contribution. Thus, the diasporan factor is an important part of settlement policy in Lachin.

9.7 Involvement of the NK and Armenian Authorities in Lachin

The direct involvement of NK in Lachin District is uncontested. Nagorno-Karabakh provides the Lachin budget and openly acknowledges direct responsibility for the district. Lachin residents take part both in local and NK elections.

While the links between Nagorno Karabakh and the Republic of Armenia remain outside the purview of this report, the FFM found no evidence of direct involvement of the government of Armenia in Lachin settlement. However, the FFM did interview certain Lachin residents who had Armenian passports and claimed to take part in Armenian elections.

9.8 Economic Activities in Lachin

In Lachin town, the FFM found signs of normal urban existence, including shopping, dining in restaurants, and going to school (albeit often without heat or electricity in all three cases). There, settlers also cultivated small garden plots, but more as a supplement to their livelihoods than as the basis for it. In Lachin District, agriculture and dairy farming played an important role in the economy.

Prague, February 28, 2005

Emily Haber

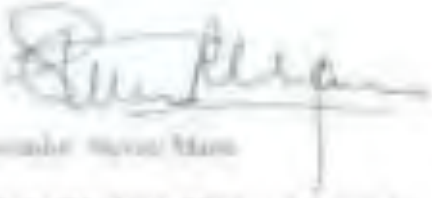
Head of the Fact Finding Mission

Organization for Security and Co-operation in Europe

Recommendations by the OSCE Minsk Group Co-Chairs on the results of the Minsk Group Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan

Based on their conclusions from the report of the FFM as well as their experience in the region and the efforts to facilitate a negotiated settlement to the conflict, the Co-Chairs make the following recommendations:

- The Co-Chairs discourage any further settlement of the occupied territories of Azerbaijan.
- The Co-Chairs urge the parties to accelerate negotiations toward a political settlement in order, inter alia, to address the problem of the settlers and to avoid changes in the demographic structure of the region, which would make more difficult any future efforts to achieve a negotiated settlement.
- In view of the extensive preparation that would be required before the return of refugee and internally displaced persons could be possible in the framework of a negotiated resolution of the conflict. The Co-Chairs recommend that the relevant international agencies reevaluate the needs and funding assessments in the region, inter alia, for the purpose of resettlement.
- In order to ensure the preservation of the cultural heritage and sacred sites, including, inter alia, cemeteries of the affected regions, the Co-Chairs urge the parties to allow for direct contacts between the interested communities.
- The Co-Chairs also urge the sides to develop practical measures to build trust and confidence between the parties and the communities and work with their publics to prepare the groundwork for a peaceful settlement.
- Taking into account the implications of the situation for the future settlement of the Nagorno-Karabakh conflict, the Co-Chairs reserve the option of further investigation and consideration of this issue for the benefit of the Minsk peace process, including fulfillment of this letter's recommendation.



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PRESS RELEASE

Statement by the OSCE Minsk Group Co-Chair countries

L'AQUILA, Italy, 10 July 2009 - The countries of the Co-Chairs of the OSCE Minsk Group released the following today:

Joint Statement on the Nagorno-Karabakh Conflict by U.S. President Obama, Russian President Medvedev, and French President Sarkozy at the L'Aquila Summit of the Eight, July 10, 2009.

We, the Presidents of the OSCE Minsk Group's Co-Chair countries France, the Russian Federation, and the United States of America affirm our commitment to support the leaders of Armenia and Azerbaijan as they finalize the Basic Principles for settlement of the Nagorno-Karabakh conflict.

We are instructing our mediators to present to the Presidents of Armenia and Azerbaijan an updated version of the Madrid Document of November 2007, the Co-Chairs last articulation of the Basic Principles. We urge the Presidents of Armenia and Azerbaijan to resolve the few differences remaining between them and finalize their agreement on these Basic Principles, which will outline a comprehensive settlement.

Fact sheet

The ministers of the US, France, and Russia presented a preliminary version of the Basic Principles for a settlement to Armenia and Azerbaijan in November 2007 in Madrid.

The Basic Principles reflect a reasonable compromise based on the Helsinki Final Act principles of Non-Use of Force, Territorial Integrity, and the Equal Rights and Self-Determination of Peoples.

The Basic Principles call for inter alia:

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

The endorsement of these Basic Principles by Armenia and Azerbaijan will allow the drafting of a comprehensive settlement to ensure a future of peace, stability, and prosperity for Armenia and Azerbaijan and the broader region.

For PDF attachments or links to sources of further information, please visit:
http://www.osce.org/item/38731.html

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PRESS RELEASE

Statement by the OSCE Minsk Group Co-Chair countries

Muskoka, Canada, 26 June 2010 - The countries of the Co-Chairs of the OSCE Minsk Group released the following today:

G8 Summit: Joint Statement on the Nagorno Karabakh Conflict by Dmitry Medvedev, President of the Russian Federation, Barack Obama, President of the United States of America, and Nicolas Sarkozy, President of the French Republic

We, the Presidents of the OSCE Minsk Group's Co-Chair countries, France, the Russian Federation, and the United States of America, reaffirm our commitment to support the leaders of Armenia and Azerbaijan as they finalize the Basic Principles for the peaceful settlement of the Nagorno-Karabakh conflict.

We welcome as a significant step the recognition by both sides that a lasting settlement must be based upon the Helsinki Principles and the elements that we proposed in connection with our statement at the L'Aquila Summit of the Eight on July 10, 2009, relating to: the return of the occupied territories surrounding Nagorno-Karabakh, interim status for Nagorno-Karabakh guaranteeing security and self-governance, a corridor linking Armenia to Nagorno-Karabakh; 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.

Now the Presidents of Armenia and Azerbaijan need to take the next step and complete the work on the Basic Principles to enable the drafting of a peace agreement to begin. We instruct our Ministers and Co-Chairs to work intensively to assist the two sides to overcome their differences in preparation for a joint meeting in Almaty on the margins of OSCE Informal Ministerial.

Organization for Security and Co-operation in Europe

Executive Summary of the

"Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh"

The OSCE Minsk Group Co-Chairs conducted a Field Assessment Mission to the seven occupied territories of Azerbaijan surrounding Nagorno-Karabakh (NK) from October 7-12, 2010, to assess the overall situation there, including humanitarian and other aspects. The Co-Chairs were joined by the Personal Representative of the OSCE Chairman-in-Office and his team, which provided logistical support, and by two experts from the UNHCR and one member of the 2005 OSCE Fact-Finding Mission. This was the first mission by the international community to the territories since 2005, and the first visit by UN personnel in 18 years.

In traveling more than 1,000 kilometers throughout the territories, the Co-Chairs saw stark evidence of the disastrous consequences of the Nagorno-Karabakh conflict and the failure to reach a peaceful settlement. Towns and villages that existed before the conflict are abandoned and almost entirely in ruins. While no reliable figures exist, the overall population is roughly estimated as 14,000 persons, living in small settlements and in the towns of Lachin and Kelbajar. The Co-Chairs assess that there has been no significant growth in the population since 2005. The settlers, for the most part ethnic Armenians who were relocated to the territories from elsewhere in Azerbaijan, live in precarious conditions, with poor infrastructure, little economic activity, and limited access to public services. Many lack identity documents. For administrative purposes, the seven territories, the former NK Oblast, and other areas have been incorporated into eight new districts.

The harsh reality of the situation in the territories has reinforced the view of the Co-Chairs that the status quo is unacceptable, and that only a peaceful, negotiated settlement can bring the prospect of a better, more certain future to the people who used to live in the territories and those who live there now. The Co-Chairs urge the leaders of all the parties to avoid any activities in the territories and other disputed areas that would prejudice a final settlement or change the character of these areas. They also recommend that measures be taken to preserve cemeteries and places of worship in the territories and to clarify the status of settlers who lack identity documents. The Co-Chairs intend to undertake further missions to other areas affected by the NK conflict, and to include in such missions experts from relevant international agencies that would be involved in implementing a peace settlement.

ORGANIZATION OF ISLAMIC COOPERATION

OIC/CFM-46/2019/POL/RES/FINAL

RESOLUTIONS

ON

POLITICAL AFFAIRS

ADOPTED BY THE

46TH SESSION OF THE COUNCIL OF FOREIGN MINISTERS

(SESSION OF FIFTY YEARS OF ISLAMIC COOPERATION: ROADMAP FOR PROSPERITY AND DEVELOPMENT)

ABU DHABI, UNITED ARAB EMIRATES

1-2 MARCH 2019
24-25 JUMADAH AL-THANI 1440 H

Resolution No. 12/46-POL
On
The Aggression of the Republic of Armenia against the Republic of Azerbaijan

The Forty- Sixth Session of the Council of Foreign Ministers, (Session: 50 Years Of Islamic Cooperation: Roadmap For Prosperity And Development), held in Abu Dhabi, United Arab Emirates 24-25 Jumadah Al-Thani 1440 H (1-2 March 2019),

Proceeding from the principles and objectives of the Charter of the Organization of the Islamic Conference,

Gravely concerned over the aggression by the Republic of Armenia against the Republic of Azerbaijan which has resulted in the occupation of about 20 percent of the territory of Azerbaijan,

Expressing its profound concern over the continued occupation of a significant part of the territory of Azerbaijan and actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories;

Expressing its grave concern also over the destruction, plunder and appropriation of the public and private property in the occupied territories of Azerbaijan, as well as illegal exploitation of the natural resources in those territories, illicit trade in such resources and products made out of these commodities,

Concerned about the loss, destruction, removal theft, pillage, illicit movement or misappropriation of cultural property in the occupied territories of Azerbaijan and acts of vandalism or damage directed against such property,

Deeply distressed over the plight of more than one million Azerbaijani displaced persons and refuges resulting from the Armenian aggression and over magnitude and severity of these humanitarian problems,

Reaffirming all previous relevant resolutions and, in particular, Resolution No. 10/11-P(IS), adopted by the Eleventh Session of the Islamic Summit Conference held in Dakar, Republic of Senegal, from 6-7 Rabiul Awwal, 1429H (13-14 March 2008),

Urging strict adherence to the Charter of the United Nations and full implementation of the relevant United Nations Security Council resolutions,

Taking note of all diplomatic and other efforts towards the settlement of the conflict between Armenia and Azerbaijan,

Reaffirming commitment by all Member States to respect the sovereignty, territorial integrity and political independence of the Republic of Azerbaijan,

Noting also the destructive impact of the policy of aggression of the Republic of Armenia on the peace process within the OSCE framework,

Taking note of the Report of the Secretary General,

1. Strongly condemns the aggression of the Republic of Armenia against the Republic of Azerbaijan;

2. Considers the actions perpetrated by the Armenian forces against the civilian Azerbaijani population and other protected persons during the conflict as crimes against humanity and underscores in this regard that the perpetrators of such crimes must be held accountable;

3. Strongly condemns any acts of vandalism, looting and destruction of the archeological, cultural and religious monuments in the occupied territories of Azerbaijan;

4. Strongly demands the strict implementation of the United Nations Security Council resolutions 822(1993), 853(1993), 874(1993) and 884(1993), and the immediate, unconditional and complete withdrawal of the Armenian forces from the Nagorno-Karabakh region and other occupied Azerbaijani territories and strongly urges Armenia to respect the sovereignty and territorial integrity of the Republic of Azerbaijan;

5. Express its concern that Armenia has not yet implemented demands contained in the above stated UN Security Council resolutions;

6. Calls on the UN Security Council to recognize the existence of aggression against the Republic of Azerbaijan; to take the necessary steps under Chapter VII of the Charter of the United Nations to ensure compliance with its resolutions; to condemn and reverse aggression against the sovereignty and territorial integrity of the Republic of Azerbaijan, and decides to take coordinated action to this end within the United Nations;

7. Urges all states to refrain from providing any supplies of arms and military equipments to Armenia and not to allow the use of their territories for transit of such supplies, in order to deprive it of any opportunity to escalate the conflict and to continue the occupation of the Azerbaijani territories.

8. Calls upon Member States, as well as other members of the international community, to use such effective political and economic measures, as required in order to put an end to Armenian aggression and occupation of the Azerbaijani territories, including, inter alia, through refraining from economic activities in and investments to the Republic of Armenia as well as through limiting overall cooperation with the Republic of Armenia,

9. Requests Secretary General to elaborate and submit to the next OIC Council of Foreign Ministers the set of recommendations and proposals for additional joint and individual efforts of the OIC Member States aimed at urging Armenia to respect the territorial integrity of Azerbaijan, put an end to the occupation of the Azerbaijani territories and completely withdraw from the occupied Azerbaijani territories;

10. Calls for the earliest political settlement of the Armenia-Azerbaijan conflict on the basis of sovereignty, territorial integrity and inviolability of the internationally recognized borders of the Republic of Azerbaijan, in accordance with the generally accepted norms and principles of international law, the relevant UN Security Council resolutions and the OSCE documents and decisions;

11. Decides to instruct the Permanent Representatives of Member States to the United Nations in New York, while voting in the UN General Assembly, to give full support to the issue of territorial integrity of the Republic of Azerbaijan;

12. Urges Armenia and all Member States of the OSCE Minsk Group to engage constructively in the ongoing OSCE peace process on the basis of the relevant resolutions of the UN Security Council and the relevant OSCE decisions and documents;

13. Expresses its full support for the three principles of the settlement of the armed conflict between Armenia and Azerbaijan contained in the statement of the OSCE Chairman-in-Office at the 1996 Lisbon OSCE Summit, namely the territorial integrity of the Republic of Armenia and the Republic of Azerbaijan, highest degree of self-rule of the Nagorno-Karabakh region within Azerbaijan and guaranteed security for this region and its whole population;

14. Stresses that fait accompli may not serve as a basis for a settlement, and that neither the current situation within the occupied territories of the Republic of Azerbaijan, nor any actions, including arranging voting process, undertaken there to consolidate the status quo, may be recognized as legally valid;

15. Urges all States not to recognize as lawful the situation resulting from the occupation of the territories of Azerbaijan, nor render aid or assistance in maintaining that situation emerged as a result of serious breaches of international law and, to this end, encourages all States to cooperate with a view to ending aggression against Azerbaijan and occupation of its territories;

16. Demands to cease and reverse immediately the transfer of ethnic Armenian settlers into the occupied territories of Azerbaijan and all other actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories, which constitute a blatant violation of international humanitarian and human rights law and has a detrimental impact on the process of peaceful settlement of the conflict, and agrees to render its full support to the efforts and initiatives of Azerbaijan, aimed at preventing and invalidating such actions, including

within the General Assembly of the United Nations, inter alia, through their respective Permanent Missions to the United Nations in New York;

17. Requests Member States to take decisive measures to prevent any activities by their natural or legal persons that affect the sovereignty and territorial integrity of Azerbaijan, including the engagement in or facilitation of any activity in the Nagorno-Karabakh region and other occupied territories of Azerbaijan;

18. Calls upon Member States to take effective measures to prevent imports/exports, sale and realization of any product in their territories produced in the occupied territories of Azerbaijan, including its Nagorno-Karabakh region, or the products which were produced through utilization of resources shipped from the occupied territories of Azerbaijan, as well as not to allow any sort of advertising and marketing of products aimed at propagating the separatist regime established by Armenia in the occupied territories of Azerbaijan and also to prohibit financial services, such as provision of financing, financial assistance, insurance and reinsurance services, related to the importation/exportation of goods subject to this prohibition;

19. Also calls upon Member States to take effective measures to prevent tourism companies; travel agencies, tour operators and their umbrella organizations, operating on their territories, from organizing tourist visits to and the promotion of tourism in the occupied territories of Azerbaijan, propagating illegal separatist regime at the international tourism fairs and other tourism events, in contravention of the fundamental aims of tourism set forth in the Statute of the United Nations World Tourism Organization (UNWTO) and the principles of the Global Code of Ethics for Tourism approved by UNWTO and endorsed by the United Nations General Assembly;

20. Strongly condemns the use of military force starting from April 2, 2016, by the armed forces of Armenia from their positions in the occupied territories of Azerbaijan, subjecting the armed forces of Azerbaijan and the adjacent populated areas to intensive fire with heavy artillery and large-caliber weapons, resulting in casualties among Azerbaijani civilians, including children, and substantial damages to the private and public property.

21. Welcomes the establishment of the Contact Group on the aggression of the Republic of Armenia against the Republic of Azerbaijan within the OIC following the decision of the 13th Islamic Summit and encourages Member States to take an active part in its work.

22. Commends the meetings of the Contact Group on the aggression of the Republic of Armenia against the Republic of Azerbaijan and expresses its full support for the activity of the Contact Group; reaffirms the appeal of the Contact Group addressed to the OIC Secretary General, contained in the report of its meeting held on 24 September 2018 in New York and urges the

OIC Member States to undertake all necessary measures to implement the relevant OIC decisions and resolutions with a view to further compel Armenia to comply with the UNSC resolution 822 (1993), 853 (1993), 874 (1993) and 884 (1993). (Azerbaijan)

23. Requests the Secretary General to communicate the principled and firm position of the OIC vis-à-vis the Armenian aggression against the Republic of Azerbaijan, to the Secretary-General of the United Nations, the Secretary-General of the Organization for Security and Cooperation in Europe (OSCE), the Chairman-in Office of the OSCE, the Secretary-General of the Council of Europe and the President of the Council of the European Union;

24. Reaffirms its total solidarity with and support for the efforts undertaken by the Government and people of Azerbaijan to defend their country;

25. Expresses its concern over the severity of humanitarian problems concerning the existence of more than one million displaced persons and refugees in the territory of the Republic of Azerbaijan and requests Member States, the Islamic Development Bank and other Islamic Institutions to render much needed financial and humanitarian assistance to the Republic of Azerbaijan;

26. Calls for enabling the Azerbaijani forcibly displaced persons and refugees to exercise their inalienable right to return to their homes in safety, honor and dignity without further delay;

27. Expresses its appreciation to all Member States which have provided humanitarian assistance to the Azerbaijani refugees and displaced persons and urges all other States to extend their assistance to these people;

28. Considers that Azerbaijan has the right for appropriate reparation with regard to damages it suffered as a result of the conflict and puts the responsibility for providing such reparation on Armenia;

29. Requests the Secretary General to follow up the implementation of this resolution and to report thereon to the 47th CFM.

Original: English **OIC/CFM-46/2019/ECO/RES/FINAL**

RESOLUTIONS

ON

ECONOMIC ISSUES

ADOPTED BY THE

46TH SESSION OF
THE COUNCIL OF FOREIGN MINISTERS (CFM)

(SESSION OF 50 YEARS OF ISLAMIC COOPERATION: ROADMAP FOR PROSPERITY AND DEVELOPMENT)

ABU DHABI, STATE OF THE UNITED ARAB EMIRATES
1-2 MARCH 2019
24-25 JUMADAH AL-THANI 1440H

RESOLUTION No. 4/46-E
ON
ECONOMIC ASSISTANCE TO OIC MEMBER STATES AND MUSLIM COMMUNITIES IN DISPUTED/OCCUPIED TERRITORIES AND NON-OIC COUNTRIES WITHIN THE OIC MANDATE

The Council of Foreign Ministers in its 46th session (Session of 50 Years of Islamic Cooperation: Roadmap for Prosperity and Development) held in Abu Dhabi, State of the United Arab Emirates, on 24-25 Jumada II 1440H (1-2 March 2019),

Recalling the relevant provisions of the Charter of Organization of Islamic Cooperation on enhancing and strengthening the bond of unity and solidarity among Member States,

[...]

A. ECONOMIC ASSISTANCE TO OIC MEMBER STATES

i. ECONOMIC ASSISTANCE TO THE REPUBLIC OF AZERBAIJAN:

Confirming full solidarity of the OIC Member States with the Government and people of Azerbaijan at this very critical time of the country's history,

Referring to the relevant UN Security Council Resolutions regarding this conflict,

Deploring the Armenia-backed aggressive separatism instigated in the Nagorno-Karabakh region of the Republic of Azerbaijan, followed by aggression and occupation by Armenia of about 20 percent of Azerbaijani territories and resulted in violent displacement of almost one million Azerbaijani people from their homes, which, as such, resembles the terrible concept of ethnic cleansing,

Being conscious of the fact that economic damage inflicted upon Azerbaijan in its territories currently occupied by Armenia already exceeds US$60 billion,

Welcoming and appreciating the assistance extended by some Member States and OIC relevant bodies, United Nations institutions and international organizations,

Emphasizing the fact that despite the efforts and achievements of the Republic of Azerbaijan in solving the problems of Internally Displaced Peoples (IDPs) and refugees, there is still a need for technical and financial assistance by donor countries and international organizations,

1. **Appeals** to the Member States, International Community and Islamic Institutions to make available to the Government of Azerbaijan the financial and technical assistance with a view of implementing development projects aimed at improvement of social and living conditions of IDPs;

2. **Calls upon** the international organizations to continue to support economic and social development activities of Azerbaijan.

[...]

OIC/ICECS-42/2019/CS/FINAL

Original: English

RESOLUTIONS

ON

CULTURAL, SOCIAL AND FAMILY AFFAIRS

ADOPTED BY THE

46TH SESSION OF THE COUNCIL OF FOREIGN MINISTERS
(SESSION OF FIFTY YEARS OF ISLAMIC COOPERATION: ROADMAP FOR PROSPERITY AND DEVELOPMENT)

ABU DHABI – UNITED ARAB EMIRATES

1-2 MARCH 2019
24-25 JUMADAH AL-THANI 1440 H

RESOLUTION NO. 3/46-C
ON
PROTECTION OF ISLAMIC HOLY PLACES

The Forty Sixth Session of the Council of the Foreign Ministers of the Organization of Islamic Cooperation (Session of Fifty Years of Islamic Cooperation: Roadmap for Prosperity and Development), held in Abu Dhabi, the United Arab Emirates on 24-25 Jumada Al-Thani1440 (1-2 March 2019),

Recalling the decisions adopted by the Islamic Summit Conferences and other OIC Conferences, in particular the 13th Ordinary and the 4th Extraordinary Sessions of the Islamic Summit Conferences, the 44th Session of Council of Foreign Ministers (CFM), the 10th Session of the Islamic Conference of Culture Ministers (ICCM), and the 11th Session of COMIAC;

[...]

C) THE DESTRUCTION AND DESECRATION OF ISLAMIC HISTORICAL AND CULTURAL RELICS AND SHRINES IN THE OCCUPIED AZERBAIJAN TERRITORIES RESULTING FROM THE AGGRESSION OF THE REPUBLIC OF ARMENIA AGAINST THE REPUBLIC OF AZERBAIJAN

Emphasizing that pieces of Azerbaijani history, culture, archaeology, and ethnography remaining in its territories occupied by Armenia are an integral part of Islamic heritage, and, therefore, must be protected;

Reaffirming United Nations Security Council (UNSC) Resolutions 822 (1993), 853 (1993), 874 (1993), and 884 (1993), which call on the Armenian forces to withdraw immediately, completely and unconditionally from all the occupied Azerbaijani territories, including the Lachin and Shusha areas, and strongly urge Armenia to respect the sovereignty and territorial integrity of the Republic of Azerbaijan;

Reaffirming alsothat the utter and barbaric destruction of mosques and other Islamic Shrines in Azerbaijani territories occupied by, for the purpose of ethnic cleansing is a war crime and a crime against humanity;

Noting the tremendous losses inflicted by the Armenian aggressors on the Islamic heritage in the Azerbaijani territories occupied by the Republic of Armenia, including total or partial demolition of rare antiquities and places of Islamic civilization, history, and architecture, such as mosques, mausoleums, graves, archaeological excavations, museums, libraries, art exhibition halls, and government theatres and conservatories, besides the destruction and smuggling out of the country of large quantities of priceless treasures and millions of books and historic manuscripts;

Stating that such actions by the Republic of Armenia constitute a serious violation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and 1954 and 1999 protocols thereto;

Fully sharing the anguish of the government and people of Azerbaijan in this regard:

1. **Strongly condemns** the barbaric acts committed by the Armenian aggressors in the Republic of Azerbaijan with the aim of total annihilation of the Islamic historic and cultural heritage in the occupied Azerbaijani territories.

2. **Vigorously demands** the strict and unconditional implementation by the Republic of Armenia of UN Security Council Resolutions 822 (1993), 853 (1993), 874 (1993), and 884 (1993).

3. **Stresses** the need to ensure the protection of cultural heritage, cultural property and sacred sites in the occupied territories of Azerbaijan, including, inter alia, the prohibition and prevention of any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation, as well as any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence;

4. **Demands** that Armenia cease any attempts to introduce Azerbaijani historical and cultural heritage as its own, including at tourism fairs and exhibitions.

5. **Reaffirms** its support for the efforts deployed by Azerbaijan at regional and international levels and aimed at protecting and preserving Islamic cultural values and treasures in the territories occupied by Armenia.

6. **Reaffirms** also Azerbaijan's right to claim appropriate reparation for the damages it has sustained, and **affirms** Armenia's responsibility to provide such reparation.

7. **Requests** the relevant OIC subsidiary organs and specialized agencies to explore the possibility of drawing up a program to help rebuild the mosques, educational institutions, libraries, and museums in the Azerbaijani territories liberated from occupation with the help of OIC Member States.

8. **Thanks** the Secretary-General for transmitting the OIC Member States' position on this issue to the United Nations, the Organization for Security and Cooperation in Europe (OSCE), UNESCO, and other international bodies, and for the coordination measures he has taken within the framework of OIC subsidiary, specialized, and affiliated organs. It also **thanks** those organs and organizations for their response, especially for the adoption by the IDB and ISESCO of programs to implement projects aimed at protecting Islamic holy places in the Republic of Azerbaijan.

9. **Requests** the Secretary-General to follow up the issues incorporated in this resolution and report thereon to the 46th Session of the Council of Foreign Ministers.

OIC/ICECS-42/2019/CS/FINAL

Original: English

RESOLUTIONS

ON

CULTURAL, SOCIAL AND FAMILY AFFAIRS

ADOPTED BY THE

46TH SESSION OF THE COUNCIL OF FOREIGN MINISTERS
(SESSION OF FIFTY YEARS OF ISLAMIC COOPERATION: ROADMAP FOR PROSPERITY AND DEVELOPMENT)

ABU DHABI – UNITED ARAB EMIRATES

1-2 MARCH 2019
24-25 JUMADAH AL-THANI 1440 H

RESOLUTION NO. 7/46-C
ON
AFFILIATED INSTITUTIONS

The Forty Sixth Session of the Council of the Foreign Ministers of the Organization of Islamic Cooperation (Session of Fifty Years of Islamic Cooperation: Roadmap for Prosperity and Development), held in Abu Dhabi, the United Arab Emirates on 24-25 Jumada Al-Thani1440 (1-2 March 2019),

[...]

B) THE ISLAMIC CONFERENCE YOUTH FORUM FOR DIALOGUE AND COOPERATION (ICYF)

[...]

11. **Appreciates** the activities of ICYF in promoting the program of "The OIC Memorial Day for commemoration of humanitarian catastrophes of Muslim communities throughout the Twentieth century", including partnership with ISESCO and Parliamentary Union of the OIC Member States (PUIC) to this end and **calls upon** the Member States to actively take part in the program; **invites** the Member States to actively support ICYF campaign #SaveRohingyaNow; **Welcomes** "Justice for Khojaly" international civil awareness Campaign initiated by Mrs. Leyla Aliyeva, ICYF General Coordinator for Inter-cultural Dialogue and aimed at disseminating of historical truth on the massacre of Azerbaijani civilians perpetrated by the Armenian armed forces in the town of Khojaly (the Republic of Azerbaijan) in February 1992; commending the activities of the Campaign in 2017 marking 25th tragic anniversary of the Khojaly massacre, **calls upon** the Member States and the OIC institutions to support and actively participate in the activities of the Campaign and exert due efforts for recognition on national and international levels of this genocidal act as crime against humanity as well as for bringing to justice its perpetrators; **welcomes also** ICYF programme to educate European youth in true history of Muslim sufferings in Anatolia in 1915;

[...]

OIC/SUM-14/2019/FC

FINAL COMMUNIQUÉ

OF THE 14TH ISLAMIC SUMMIT CONFERENCE

(*SESSION OF HAND IN HAND TOWARD THE FUTURE*)

MAKKAH AL-MUKARRAMAH, KINGDOM OF SAUDI ARABIA
31 MAY 2019
(26 RAMADAN 1440 A.H.)

FINAL COMMUNIQUE

OF THE 14TH ISLAMIC SUMMIT CONFERENCE

(*SESSION OF HAND IN HAND TOWARD THE FUTURE*)

MAKKAH AL-MUKARRAMAH, KINGDOM OF SAUDI ARABIA

31 MAY 2019

(26 RAMADAN 1440 A.H.)

1. The Heads of State and Government of the Member States of the Organization of Islamic Cooperation (OIC) held the 14th Session of the Islamic Summit Conference (*Session of Hand in Hand toward the Future*) in Makkah Al-Mukarramah, Kingdom of Saudi Arabia. The Summit Conference was chaired by the Custodian of the Two Holy Mosques, King Salman Bin Abdulaziz Al-Saud, May Allah protect him.

[...]

34. The Conference reiterated its principled position on condemnation of the aggression of the Republic of Armenia against the Republic of Azerbaijan, reaffirmed that acquisition of territory by use of force is inadmissible under the Charter of the United Nations and international law, and urged for strict implementation of UN Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) and for immediate, complete and unconditional withdrawal of the armed territories of the Republic of Azerbaijan. The Conference called for the resolution of the conflict on the basis of the sovereignty, territorial integrity and inviolability of the internationally recognized borders of the Republic of Azerbaijan. The Conference also expressed its grave concern by the continuing arms supply to the aggressor, unlawful actions aimed at a changing the demographic, cultural and physical character of the occupied territories, including by destruction and misappropriation of cultural heritage and sacred sites, illegal economic and other activities and interference with the public and private property rights in the Nagorno-Karabakh region and other occupied territories of Azerbaijan. In that regard, the Conference urged Member States to take effective measures, including through national legislation, that would prevent any arms supply to the aggressor from or via their territories, any activities by any natural and legal persons operating on their territories against the sovereignty and territorial integrity of Azerbaijan, including the participation in or facilitation any unlawful activity in the Nagorno-Karabakh region and other occupied territories of Azerbaijan, as well as any action which would help maintain the occupation. The Conference reaffirmed its principled support for the efforts of the Republic of Azerbaijan, including with the UN General Assembly, aimed at restoring its territorial integrity and sovereignty.

35. The Conference commended the meetings of the Contact Group on the aggression of the Republic of Armenia against the Republic of Azerbaijan and expressed its full support for the activity of the Contact Group; reaffirmed the appeal of the Contact Group addressed to the OIC Secretary General, contained in the report of its meeting held on 24 September 2018 in New York and urged the OIC Member States to undertake all necessary measures to implement the relevant OIC decisions and resolutions with a view to further compel Armenia to comply with the UNSC resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

[...] .....

COUNCIL OF EUROPE

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1416 (2005)[1]

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

Parliamentary Assembly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1690 (2005)[1]

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

Parliamentary Assembly

The Parliamentary Assembly refers to its Resolution 1416 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, and recommends that the Committee of Ministers :

urge the parties concerned to comply with United Nations Security Council Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993), in particular by refraining from any armed hostilities and by withdrawing military forces from all occupied territories of Azerbaijan ;

monitor the compliance by Armenia and Azerbaijan with the United Nations Security Council resolutions and the decisions of the OSCE Council of Ministers on this conflict and inform the Assembly of the outcomes of this monitoring ;

report to the Assembly on the efforts undertaken by member states for the peaceful settlement of the conflict in accordance with the resolutions of the United Nations Security Council, and on whether member states refrain from supplying any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory in violation of Resolution 853 of the United Nations Security Council ;

recalling its Recommendation 1251 (1994) on the conflict in Nagorno-Karabakh, place at the disposal of Armenia and Azerbaijan, if they so wish, experts who could help draw up a political status for Nagorno-Karabakh ;

allocate resources for an action plan of specific confidence-building measures for Armenia and Azerbaijan ;

allocate resources for specific training programmes for teachers and journalists from both countries aimed at better mutual understanding, tolerance and reconciliation ;

allocate resources for specific action by the European Commission against Racism and Intolerance concerning both countries, in particular with regard to educational institutions and the public media ;

instruct its competent steering committee to analyse how far the European Convention for the Peaceful Settlement of Disputes reflects the current requirements of conflict settlement among member states of the Council of Europe, and where it should be revised in order to provide an adequate instrument for the peaceful settlement of disputes between member states of the Council of Europe ;

take Resolution 1416 into account when deciding on action concerning both countries ;

forward Resolution 1416 and the recommendation to the governments of member states with a view to supporting them nationally, bilaterally and internationally.

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

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 206 (2015)
16.06.2015

European Court of Human Rights Grand Chamber Judgment

Azerbaijani refugees' rights violated by lack of access to their property located in district controlled by Armenia

In today's **Grand Chamber** judgment[1] in the case of Chiragov and Others v. Armenia (application no. 13216/05) the European Court of Human Rights held, by a majority, that there had been:

a continuing violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights;

a continuing violation of Article 8 (right to respect for private and family life) of the Convention; and

a continuing violation of Article 13 (right to an effective remedy).

The case concerned the complaints by six Azerbaijani refugees that they were unable to return to their homes and property in the district of Lachin, in Azerbaijan, from where they had been forced to flee in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

There are currently more than one thousand individual applications pending before the Court which were lodged by persons displaced during the conflict over Nagorno-Karabakh.

In the applicants' case, the Court confirmed that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and thus had jurisdiction over the district of Lachin.

The Court considered that there was no justification for denying the applicants access to their property without providing them with compensation. The fact that peace negotiations were ongoing did not free the Government from their duty to take other measures. What was called for was a property claims mechanism which would be easily accessible to allow the applicants and others in their situation to have their property rights restored and to obtain compensation.

[...]

Decision of the Court

Admissibility

In its decision of December 2011, the Court had joined to the merits of the case three questions concerning the admissibility of the complaints.

Exhaustion of legal remedies at national level

The Court dismissed the Armenian Government's objection that the applicants had failed to exhaust the legal remedies at national level. It found that the Government had not shown that there was any legal remedy – whether in Armenia or in the "NKR" – capable of providing redress in respect of the applicants' complaints. Furthermore, given that the Armenian Government had denied that their authorities had been involved in the events giving rise to the applicants' complaints or that Armenia exercised jurisdiction over Nagorno-Karabakh and the surrounding territories, it would not have been reasonable to expect the applicants to bring claims for restitution or compensation before the

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Armenian authorities. Finally, as no political solution to the conflict had been reached and military build-up in the region had escalated in recent years, it was not realistic that any possible remedy in the unrecognised "NKR" could in practice provide redress to displaced Azerbaijanis.

The applicants' victim status

The Court also dismissed the Armenian Government's objection concerning the applicants' victim status. It found that all six applicants had provided sufficient evidence to demonstrate that they had lived in the district of Lachin for major parts of their lives until being forced to leave, and that they had sufficiently substantiated that they had had houses and land there.

The Court observed that under the Soviet legal system, there was no private ownership of land, but citizens could own residential houses. Plots of land could be allocated to citizens for special purposes such as farming or construction of individual houses. In that case, the citizen had a "right of use", limited to the specific purpose, which was protected by law and could be inherited. There was therefore no doubt that the applicants' rights in respect of the houses and land represented a substantive economic interest. In conclusion, at the time they had to leave the district of Lachin, the applicants held rights to land and to houses which constituted "possessions" within the meaning of Article 1 of Protocol No. 1. There was no indication that those rights had been extinguished afterwards; their proprietary interests were thus still valid. Moreover, their land and houses also had to be considered their "homes" for the purposes of Article 8.

Jurisdiction of Armenia

Finally, the Court dismissed the Armenian Government's objection that Armenia did not have effective control over the territory of Nagorno-Karabakh and the surrounding territories and thus lacked jurisdiction.

The Court noted in particular that numerous reports and public statements, including from members and former members of the Armenian Government, demonstrated that Armenia, through its military presence and by providing military equipment and expertise, had been significantly involved in the Nagorno-Karabakh conflict from an early date. Armenia's military support continued to be decisive for the control over the territories in question. Furthermore, it was evident from the facts established in the case that Armenia gave the "NKR" substantial political and financial support; its citizens were moreover required to acquire Armenian passports to travel abroad, as the "NKR" was not recognised by any State or international organisation. In conclusion, Armenia and the "NKR" were highly integrated in virtually all important matters and the "NKR" and its administration survived by virtue of the military, political, financial and other support given to it by Armenia. Armenia thus exercised effective control over Nagorno-Karabakh and the surrounding territories.

[…]

The judgment is available in English and French.

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the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en
@ECHRpress.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2085 (2016)[1]

Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water

Parliamentary Assembly

1. The Parliamentary Assembly reminds all its member States that the right to water is essential to life and health, in accordance with the 1966 Helsinki Rules on the Uses of the Waters of International Rivers and the 2004 Berlin Rules on Water Resources, and thus constitutes a prior condition for the enjoyment of other human rights. The Assembly emphasises the obligation of States to secure their population's access to sufficient, safe and affordable water resources.

2. The Assembly regards unimpeded access to drinking water, which cannot be restricted by the existence of borders, as a basic right, a source of life and an asset of strategic importance to every State. It confirms that deliberate deprivation of water cannot be used as a means to harm innocent citizens.

3. The Assembly considers that the deliberate creation of an artificial environmental crisis must be regarded as "environmental aggression" and seen as a hostile act by one State towards another aimed at creating environmental disaster areas and making normal life impossible for the population concerned.

4. It deplores the fact that the occupation by Armenia of Nagorno-Karabakh and other adjacent areas of Azerbaijan creates similar humanitarian and environmental problems for the citizens of Azerbaijan living in the Lower Karabakh valley.

5. The Assembly recalls that, in their statement of 20 May 2014, the OSCE Minsk Group Co-Chairs expressed their hope that the sides would reach an agreement to jointly manage these water resources for the benefit of the region.

6. It notes that the lack of regular maintenance work for over twenty years on the Sarsang reservoir, located in one of the areas of Azerbaijan occupied by Armenia, poses a danger to the whole border region. The Assembly emphasises that the state of disrepair of the Sarsang dam could result in a major disaster with great loss of human life and possibly a fresh humanitarian crisis.

7. In view of this urgent humanitarian problem, the Assembly requests:

7.1. the immediate withdrawal of Armenian armed forces from the region concerned, thus allowing:

7.1.1. access by independent engineers and hydrologists to carry out a detailed on-the-spot survey;

7.1.2. global management, throughout the catchment area, of the use and upkeep of the Sarsang water resources;

7.1.3. international supervision of the irrigation canals, the state of the Sarsang and Madagiz dams, the schedule of water releases during the autumn and winter, and aquifer overexploitation;

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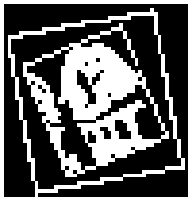
1. *Assembly debate* on 26 January 2016 (3rd Sitting) (see Doc. 13931, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Milica Marković). *Text adopted by the Assembly* on 26 January 2016 (3rd Sitting).

7.2. the Armenian authorities to cease using water resources as tools of political influence or an instrument of pressure benefiting only one of the parties to the conflict.

8. The Assembly firmly condemns the lack of co-operation of the Armenian parliamentary delegation and the Armenian authorities during the preparation of the report on this issue. The Assembly regards such behaviour as incompatible with the obligations and commitments of a country which is a full member of the Council of Europe. The Assembly will consider what measures to take in this case and in any similar cases which may arise during the terms of office of its parliamentarians.

9. The Assembly calls on all sides concerned to step up their efforts to co-operate closely in the joint management of the resources of the Sarsang water reservoir, as such co-operation can constitute a confidence-building measure necessary for the solution of any conflict.

EUROPEAN UNION



EUROPEAN
UNIVERSITY
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EUROPEAN POLITICAL COOPERATION DOCUMENTATION BULLETIN

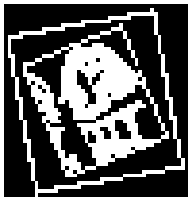
1993 = Vol. 9

Edited by
the European University Institute (Florence)
and
the Institut für Europäische Politik (Bonn)

93/147. Statement on Nagorno-Karabagh

Date of issue: 7 April 1993
Place of issue: Brussels, Copenhagen
Country of Presidency: Denmark
Status of document: Press statement

The Community and its Member States are seriously concerned about the latest degradation of the relations between the Republic of Armenia and the Republic of Azerbaijan on the Nagorno-Karabakh [Nagorno-Karabagh] conflict. The Community and its Member States regret the enlargement of the combat zone to Kelbajar and the Fizuli area. The Armenian Government is strongly urged to use its influence on the Nagorno-Karabakh [Nagorno-Karabagh] forces for an immediate withdrawal from the Azeri territory and to stop the fighting in the area. All parties are requested not to withdraw from the ongoing negotiations in the Minsk Group of the CSCE due to the recent events.



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EUROPEAN POLITICAL COOPERATION DOCUMENTATION BULLETIN

1993 = Vol. 9

Edited by
the European University Institute (Florence)
and
the Institut für Europäische Politik (Bonn)

93/448. Statement on Nagorno-Karabagh

Date of issue: 9 November 1993
Place of issue: Brussels
Country of Presidency: Belgium
Status of document: Press statement

The European Union condemns the breach of the cease-fire agreement reached on 24 October 1993 in the region of Nagorno-Karabakh [Nagorno-Karabagh] and **calls upon all forces to withdraw from the recently occupied territories. The European Union reiterates the importance it attaches to the territorial integrity and sovereignty of the Republic of Azerbaijan, in accordance with the principles of the CSCE.**

The European Union is particularly concerned at the fate of tens of thousands of civilians who are fleeing the fighting. Receiving and protecting these refugees must be a priority for the international community. Moreover, the presence of these refugees increases the risk of the conflict be- coming an international one and threatens the stability of the whole region.

The European Union will continue its humanitarian aid to the affected population and would call upon all states in the region to facilitate the convoying of the aid.

The European Union reaffirms its total support for the efforts undertaken by the CSCE Minsk Group in order to find a lasting political solution to the conflict in Nagorno-Karabakh [Nagorno-Karabagh]. It prevails upon the parties to the conflict to restore the cease-fire broken on 24 October 1993.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.05.1995
COM(95) 205 final

COMMUNICATION FROM THE COMMISSION

TOWARDS A EUROPEAN UNION STRATEGY FOR RELATIONS WITH THE TRANSCAUCASIAN REPUBLICS

[…]

• In the case of Azerbaijan 20% of the national territory is under occupation, including a substantial swathe of land outside Nagorno-Karabagh itself. The government is struggling to cope with more than one million refugees and internally displaced persons. Human rights organizations have attributed blame for atrocities to both sides. The cease-fire has been periodically broken, with front-line skirmishing and (in March 1995) a flare-up in fighting on the north-west frontier.

[…]

COMMON POSITION
of
defined by the Council on the basis of Article J.2 of the Treaty on European Union on the objectives and priorities of the European Union towards Armenia, Azerbaijan and Georgia

(95/.../CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.2. thereof,

SETS OUT THIS COMMON POSITION:

A. The European Union will pursue the following objectives and priorities in its relations with the Republics of Armenia, Azerbaijan and Georgia:

I. to support the Republics' independence, sovereignty and territorial integrity, while contributing to the permanent resolution of the conflicts in the region;

2. with this end in mind, to institute dialogue with the three Republics, and with neighboring countries, with a view to the achievement of permanent political settlements, the repatriation of refugees and the reopening of communications in the Transcaucasus ; this in support of, and in close coordination with the work of the UN and OSCE. Regarding Nagorno-Karabagh, a European Union dimension could be added the peace-process going on within OSCE and in particular the Minsk Group, bearing in mind the incentives to improved cooperation in the region;

3. to support initiatives aimed at fostering cooperation and mutual confidence between the countries in the region;

4. to support the further development of democratic norms and institutions, the promotion of human rights and individual liberties and the rule of law within the three Republics, as well as the monitoring of electoral processes. In this respect, advice on legislation and practical assistance in establishing democratic institutions through contacts between officials, parliamentarians and non-governmental organizations, through Community and Member States' programmes, will be pursued.

5. to underline the importance of the European Community's role as a major provider of assistance to the three Republics, in order to promote the above objectives and the process of political and economic reform generally.

6. to take steps to assist the three Republics to pass through the difficult period of transition and eventually to help set the conditions for their sustained development, once the conflicts in the region have been resolved.

[…]

P7_TA(2010)0193

The need for an EU strategy for the South Caucasus

European Parliament resolution of 20 May 2010 on the need for an EU strategy for the South Caucasus (2009/2216(INI))

The European Parliament,

– having regard to its previous resolutions on the South Caucasus, including its resolution of 15 November 2007 on strengthening the European Neighbourhood Policy (ENP)1 and its resolutions of 17 January 2008 on a more effective EU policy for the South Caucasus2 and on a Black Sea Regional Policy Approach3,

[…]

D. whereas persons forcefully displaced from the conflict zones in the South Caucasus are still denied the right to return to their homes; whereas the three countries have embarked on programmes for local integration of their refugees and internally displaced persons, however they still face numerous difficulties hindering their success; whereas refugees and internally displaced persons (IDPs) should not be used by the authorities concerned as political instruments in conflicts,
[…]

G. whereas the EU respects the principles of sovereignty and territorial integrity in its relations with the South Caucasus states,

[…]

8. **Is seriously concerned that hundreds of thousands of refugees and IDPs who fled their homes during or in connection with the Nagorno-Karabakh war remain displaced and denied their rights, including the right to return, property rights and the right to personal security; calls on all parties to unambiguously and unconditionally recognise these rights, the need for their prompt realization and for a prompt solution to this problem that respects the principles of international law; demands, in this regard, the withdrawal of Armenian forces from all occupied territories of Azerbaijan, accompanied by deployment of international forces to be organised with respect of the UN Charter in order to provide the necessary security guarantees in a period of transition, which will ensure the security of the population of Nagorno-Karabakh and allow the displaced persons to return to their homes and further conflicts caused by homelessness to be prevented;** calls on the Armenian and Azerbaijani authorities and leaders of relevant communities to demonstrate their commitment to the creation of peaceful inter-ethnic relations through practical preparations for the return of displaced persons; considers that the situation of the IDPs and refugees should be dealt with according to international standards, including with regard to the recent PACE Recommendation 1877(2009), 'Europe's forgotten people: protecting the human rights of long- term displaced persons';
[…]

10. Believes the position according to which Nagorno-Karabakh includes all occupied Azerbaijani lands surrounding Nagorno-Karabakh should rapidly be abandoned; notes that an interim status for Nagorno-Karabakh could offer a solution until the final status is determined and that it could create a transitional framework for peaceful coexistence and cooperation of Armenian and Azerbaijani populations in the region;
[…]

1 OJ C 282 E, 6.11.2008, p. 443.
2 OJ C 41 E, 19.2.2009, p.53.
3 OJ C 41 E, 19.2.2009, p. 64

P7_TA(2012)0128

Negotiations of the EU-Armenia Association Agreement

European Parliament resolution of 18 April 2012 containing the European Parliament's recommendations to the Council, the Commission and the European External Action Service on the negotiations of the EU-Armenia Association Agreement (2011/2315(INI))

The European Parliament,

[…]

F. whereas the unresolved Nagorno-Karabakh conflict is undermining the stability and development of Armenia and the South Caucasus region; whereas in its Joint Communication on 'A new response to a changing neighbourhood' the EU stated its ambition to engage more proactively in conflict resolution in the South Caucasus and to step up its involvement by both supporting the existing negotiation formats and proposing new initiatives; whereas the EU Special Representative for the South Caucasus has an important role to play in contributing to a peaceful conflict settlement in the region;

G. whereas the occupation of territories belonging to a third country is a violation of international law and is contrary to the founding principles of the European Neighbourhood Policy, thereby jeopardising the whole Eastern Partnership project;

H. whereas deeply concerning reports exist of illegal activities exercised by Armenian troops on the occupied Azerbaijani territories, namely regular military manoeuvres, renewal of military hardware and personnel and the deepening of defensive echelons;

[…]

1. Addresses the following recommendations to the Council, the Commission and the European External Action Service: they should

[…]

b) ensure that the negotiations on the EU-Azerbaijan and EU-Armenia Association Agreements, in line with the demands made in Parliament's Resolution on the need for an EU strategy for the South Caucasus of 20 May 2010 and with all the OSCE Minsk Group Basic Principles enshrined in the 'Aquila' joint statement of 10 July 2009, are linked to credible commitments to making substantial progress towards the resolution of the Nagorno-Karabakh conflict, including, for example, confidence-building measures such as general demilitarisation, the withdrawal of snipers from the line of contact, **the withdrawal of Armenian forces from occupied territories surrounding Nagorno-Karabakh and their return to Azerbaijani control**, and a mechanism for active incident-prevention and the investigation of cease-fire violations along the line of contact, the right of all internally displaced persons and refugees to return to their home settlements and properties and international security guarantees that would include a genuine multinational peacekeeping operation in order to create suitable agreed conditions for the future legally-binding free expression of will concerning the final status of Nagorno- Karabakh; […]

r) […] call on Armenia to stop sending regular army conscripts to serve in Nagorno-Karabakh;

[…]

z) note in this regard the need to investigate concerning reports of a settlement-building policy implemented by the Armenian authorities to increase the Armenian population in the occupied territories of Nagorno-Karabakh;
[…]

P7_TA(2013)0446

European Neighbourhood Policy, working towards a stronger partnership: EP's position on the 2012 progress reports

European Parliament resolution of 23 October 2013 on the European Neighbourhood Policy: towards a strengthening of the partnership. Position of the European Parliament on the 2012 reports (2013/2621(RSP))

The European Parliament,

– having regard to the Commission Communications of 11 March 2003 on 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' (COM(2003)0104), of 12 May 2004 entitled 'European Neighbourhood Policy – Strategy Paper' (COM(2004)0373), of 4 December 2006 on 'Strengthening the European Neighbourhood Policy' (COM(2006)0726), of 5 December 2007 on 'A Strong European Neighbourhood Policy' (COM(2007)0774), of 3 December 2008 on 'Eastern Partnership' (COM(2008)0823), of 20 May 2008 entitled 'Barcelona Process: Union for the Mediterranean' (COM(2008)0319), of 12 May 2010 on 'Taking Stock of the European Neighbourhood Policy' (COM(2010)0207) and of 24 May 2011 on 'A dialogue for migration, mobility and security with the southern Mediterranean countries' (COM(2011)0292),

[…]

Eastern Partnership

[…]

16. Recalls its position that the **occupation by one country of the Eastern Partnership of the territory of another violates the fundamental principles and objectives of the Eastern Partnership and that the resolution of the Nagorno-Karabakh conflict should comply with UN Security Council resolutions 822, 853, 874 and 884 of 1993** and the Organisation for Security and Cooperation in Europe (OSCE) Minsk Group Basic Principles, enshrined in the L'Aquila joint statement of 10 July 2009;

[…]

European Parliament
2019-2024

TEXTS ADOPTED
Provisional edition

P9_TA-PROV(2020)0167

Eastern Partnership in the run-up to the June 2020 Summit

European Parliament recommendation of 19 June 2020 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on the Eastern Partnership, in the run-up to the June 2020 Summit (2019/2209(INI))

The European Parliament,

[...]

M. whereas the independence, sovereignty and territorial integrity of the EaP countries are still infringed by unresolved regional conflicts, external aggression and the ongoing occupation of the territories of some of those countries, which undermine the human rights situation, represent a barrier to enhancing the prosperity, stability and growth of the EaP and compromise EU action, thus endangering the whole EaP project; whereas in the majority of these conflicts Russia is playing an active role as an aggressor, through its hybrid warfare, illegal occupation and annexation policy, cyberattacks, propaganda and disinformation, which threaten European security as a whole;

[...]

O. whereas the European Parliament condemns the violation of the sovereignty and territorial integrity of the EaP countries, does not recognise forcible changes in their borders and attempted annexation of their territories, and rejects the use of force or the threat of force, sharing the EU's commitment to supporting a peaceful conflict resolution via diplomatic means and in accordance with the norms and principles of international law, the UN Charter and the Helsinki Final Act, namely in the conflicts to which Russia is a party;

[...]

1. Recommends that the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy:

[...]

bm) reiterate the EU's commitment to the sovereignty, territorial integrity and political independence of the EaP countries within their internationally recognised borders, and support their efforts to fully enforce those principles; underline the importance of the unity and solidarity of the Member States in this regard;

(bn) strongly condemn the continued violations of fundamental principles and norms of international law in the EaP region, notably destabilisation, invasion, the occupation and annexation of territories of several EaP countries by the Russian Federation and its refusal to comply with the decisions of international tribunals and courts; establish a more coordinated policy towards the Russian Federation among the EU Member States, in particular in terms of engagement on issues concerning the EaP countries;

(bo) call for the immediate withdrawal of foreign troops from all occupied territories and for an end to military hostilities, which unnecessarily claim the lives of civilians and soldiers while hampering socio-economic development, thus enabling hundreds of thousands of internally displaced people (IDPs) to return to their homelands;

(bp) develop a more active role for the EU, represented by the Vice-President of the European Commission / High Representative of the Union for Foreign Affairs and Security Policy, in the peaceful resolution of the ongoing conflicts and in the prevention of any future conflicts in its Eastern neighbourhood, while acknowledging the agreed negotiating formats and processes, such as the Geneva International Discussions, the OSCE Minsk Group, the Normandy Format and the 5 + 2 Talks; appoint an EU Special Envoy for Crimea and the Donbas region;

[...]

(br) reaffirm its support for the efforts of the co-Chairs of the OSCE Minsk Group to resolve the Nagorno-Karabakh conflict and for their 2009 Basic Principles, with a view to achieving a solution based on the norms and principles of international law, the UN Charter and the OSCE 1975 Helsinki Final Act; encourage all sides to intensify dialogue and to refrain from inflammatory rhetoric that would further jeopardise any prospects for settlement;

[...]

NORTH ATLANTIC TREATY ORGANIZATION

Statement

issued at the Meeting of the North Atlantic Cooperation Council
Athens, Greece 11 June 1993

1. We, the Foreign Ministers and Representatives of the member countries of the North Atlantic Co-operation Council have met today in Athens to continue our consultations on pressing security matters and regional conflicts.

[…]

3. We place great value on our consultations on regional security issues. Regional tensions, conflicts and ethnic violence represent a danger to the current process of democratic transition in Europe. [illegible]

The plan for a CSCE Conference on Nagorno-Karabakh in Minsk continues to offer the best chance of finding a lasting solution to that conflict and of establishing good neighbourly relations between Armenia and Azerbaijan. [illegible] which must be implemented fully and without delay by all countries and parties to the conflict.We call for the immediate cessation of hostilities, the withdrawal of all o ccupying forces from the Kelbadzhar and other recently occupied districts of Azerbaijan, unimpeded access for international humanitarian relief efforts, the creation of the necessary conditions for the return of displaced civilians to their homes and resumption of negotiations.We support the initiative of the Chairman of the CSCE Minsk Group, aimed at the implementation of a peace plan within the framework of the Minsk process, and urge the parties to accept it.

[...]

M-1(94)003

Declaration E \the Heads of State and Government

participating in the meeting of the North Atlantic Council ("The Brussels Summit Declaration")

Brussels, Belgium 11 January 1994

1. We, the Heads of State and Government of the member countries of the North Atlantic Alliance, have gathered in Brussels to renew our Alliance in light of the historic transformations affecting the entire continent of Europe.

[…]

21. The situation in Southern Caucasus continues to be of special concern. :H FRQGHPQ WK IRUFH IRU WHUULWRULDO JDLQV 5HVSHFW IRU WKH WH RI $UPHQLD $]HUEDLMDQ DQG *HRUJLD LV HVVHQWLD FRRSHUDWLRQ LQ WKH UHJLRQ We call upon all states to join international the United Nations and the CSCE aimed at solving existing problems.

[…]

BRUSSELS SUMMIT DECLARATION

Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11-12 July 2018

1. We, the Heads of State and Government of the 29 member nations of the North Atlantic Alliance, have gathered in Brussels at a time when the security of our nations and the rules-based international order are being challenged. NATO will continue to strive for peace, security, and stability in the whole of the Euro-Atlantic area. We are united in our commitment to the Washington Treaty, the purposes and principles of the Charter of the United Nations (UN), and the vital transatlantic bond. We are determined to protect and defend our indivisible security, our freedom, and our common values, including individual liberty, human rights, democracy, and the rule of law. NATO remains the foundation for strong collective defence and the essential transatlantic forum for security consultations and decisions among Allies. The Alliance will continue to pursue a 360-degree approach to security and to fulfil effectively all three core tasks as set out in the Strategic Concept: collective defence, crisis management, and cooperative security. NATO is a defensive Alliance. NATO's greatest responsibility is to protect and defend our territory and our populations against attack. Any attack against one Ally will be regarded as an attack against us all, as set out in Article 5 of the Washington Treaty. We will continue to stand together and act together, on the basis of solidarity, shared purpose, and fair burden-sharing.

[...]

67. We continue to support the right of all our partners to make independent and sovereign choices on foreign and security policy, free from external pressure and coercion. We remain committed in our support for the territorial integrity, independence, and sovereignty of Armenia, Azerbaijan, Georgia, and the Republic of Moldova. In this context, we continue to support efforts towards a peaceful settlement of the conflicts in the South Caucasus, as well as in the Republic of Moldova, based upon these principles and the norms of international law, the UN Charter, and the Helsinki Final Act. We urge all parties to engage constructively and with reinforced political will in peaceful conflict resolution, within the established negotiation frameworks.

COMMONWEALTH OF INDEPENDENT STATES

Original: Russian

Unofficial translation

Declaration

on the respect for sovereignty, territorial integrity and inviolability of the borders of the CIS Member States

Heads of Member States of the Commonwealth of Independent States, […]

([S U H V V L Q J deep concern over armed conflicts of different natures, […]

$ F N Q R Z O H G J L Q J W K H V R Y H U H L J Q W \ W H U U L W R U \ R I L Q W H U V L R O D E L O L W \ R I W K H
D Q G F R Q G H P Q L Q J D F T X L V L W L R Q R I W H U U L W R U \ D Q G D F W L
V W D W H V […]

Declare that the CIS Member States:

1. $ I I L U P W K H L P S O H P H Q W D W L R Q J R I W K H U L W R U L D O Q R W \ W K H U L W R U L D O
   L Q Y L R O D E L O L W \ R I 6 W D W H E R U G H U V L Q W K H L U P X W
2. (Q V X U H that states will maintain friendly relations and U H I U D L Q from applying military, political, economic, and any other kinds of pressure, including blockade, and
   I U R P V X S S R U W L Q J D Q G X V L Q J V H S D U D W L V P D L P H G D J
   O L W L F D O L Q G H S H Q G H Q F H R I D Q \ & , 6 0 H P E H U 6 W D W H
3. 3 U R F O D L P W K H X V H R I I R U F H W R D F T X L U H W H U U L W R U L D O
   S D W L R Q R I W H U U L W R U \ E L Q W H U Q D W L R Q D O V X E M H F W L Q W
   O H J D O V W D W X V

Original: Russian

Unofficial translation

Bishkek Protocol

Participants of the meeting held in May 4-5 in Bishkek on the initiative of the CIS Inter-Parliamentary Assembly, Parliament of the Kyrgyz Republic, Federal Congress and Ministry of Foreign Affairs of the Russian Federation:

Express determination to assist in all possible ways to the cessation of armed conflict in and around Nagorno-Karabakh, which does not only cause irretrievable losses to Azerbaijani and Armenian people, but also significantly affects the interests of other countries in the region and seriously complicates the international situation;

Supporting WKH $SULO'HFODUDWLRQ &,6 &RXQFLORWHV **express** readiness to fully support the efforts by heads and representatives of executive power on cessation of the armed conflict and liquidation of its consequences by reaching an appropriate agreement as soon as possible;

Advocate a naturally active role of the Commonwealth and Inter-Parliamentary Assembly in cessation of the conflict, LQ UHDOL]DWLRQ RI WKHUHXSRQ SULQFLSOHV JRD ILUVW RI DOO WKH 81 6HFXULW\ &RXQFLO UHVROXWLRQV

Call upon the conflicting sides to come to common senses: cease to fire at the midnight of May 8 to 9, guided by the February 18, 1994 Protocol (including the part on allocating international observers), and work intensively to confirm this as soon as possible by signing a reliable, legally binding agreement envisaging a mechanism, ensuring the non-resumption of military and hostile activities, withdrawal of troops from occupied territories and restoration of communication, return of refugees;

Agree to suggest Parliaments of the CIS member-states to discuss the initiative by Chairman of Council of the Inter-Parliamentary Assembly V. Shumeyko and Head of the Assembly's Peacemaking Group on Nagorno-Karabakh M. Sherimkulov on creating a CIS peacemaking force;

Consider appropriate to continue such meetings for peaceful resolution of the armed conflict;

Express gratitude to the people and leadership of Kyrgyzstan for creating excellent working conditions, cordiality and hospitality.

Entered into force on 12 May 1994

Original: Russian

Unofficial translation

Memorandum
on the maintenance of peace and stability
in the Commonwealth of Independent States

Member states of the Commonwealth of Independent States declare the following:

[…]

2. The States signatories to this Memorandum intend to [illegible] in accordance with their national legislation, [illegible] on their territories by organisations, groups or individuals [illegible] as well as external assistance against the polity of the Sates which signed present Memorandum.

3. [illegible] They will resolve all territorial and boundary disputes by peaceful means only. […]

5. States will refrain from any direct or indirect interference to the domestic affairs of other Member States which signed present Memorandum. […]

7. The States parties, in accordance with their national legislation and international norms, will undertake measures to [illegible]

8. The states undertake [illegible] The States will not allow them to use the territory and communications of other Member States, and will not provide them with economic, financial, military and other assistance.

[…]

Almaty, 10 February 1995

ECONOMIC COOPERATION ORGANIZATION

Antalya Communiqué

for

24th Meeting of the ECO Council of Ministers (COM)

(Antalya, Republic of Turkey, November 9, 2019)

We, the Foreign Ministers/Heads of Delegation[1] of the Member States of the Economic Cooperation Organization, gathered in Antalya on November 09, 2019 to participate in the 24th Meeting of the ECO Council of Ministers under the chairmanship of H.E. Mr. Mevlüt Çavuşoğlu, Minister of Foreign Affairs of the Republic of Turkey, while**:**

[...]

39. **Reiterate** concerns about the existing unresolved conflicts in the ECO region, including Armenia – Azerbaijan conflict, which hinder the economic growth and realization of the full economic potential of the Region and impede the development of economy cooperation on regional as well as broader level, and stress the importance of making increased efforts for the earliest resolution of these conflicts based on the norms and principles of international law, in particular, the principles of respect to sovereignty and territorial integrity;

COOPERATION COUNCIL OF TURKIC SPEAKING STATES

DECLARATION OF THE SEVENTH SUMMIT OF
THE COOPERATION COUNCIL OF TURKIC SPEAKING STATES
Baku, Azerbaijan

The Council of Heads of State of the Cooperation Council of Turkic Speaking States (hereinafter referred to as the Turkic Council) met on 15 October 2019 in Baku, Azerbaijan on the theme of "Supporting the Small and Medium-sized Enterprises (SMEs)". The meeting presided over by H.E. Ilham Aliyev, President of the Republic of Azerbaijan, and was attended by H.E. Nursultan Nazarbayev, First President of the Republic of Kazakhstan-Elbasy and Honorary Chairman of the Turkic Council, H.E. Sooronbai Zheenbekov, President of the Kyrgyz Republic, H.E. Recep Tayyip Erdoğan, President of the Republic of Turkey, H.E. Shavkat Mirziyoyev, President of the Republic of Uzbekistan and H.E. Viktor Orban, Prime Minister of Hungary. H.E. Purli Agamyradov, Deputy Chairman of the Cabinet of Ministers of Turkmenistan also attended the meeting upon the invitation of H.E. Ilham Aliyev, President of the Republic of Azerbaijan.

The Heads of States of the Turkic Council,

[…]

42. Reiterate the strongest support for the earliest settlement of the Armenia-Azerbaijan Nagorno-Karabakh conflict, on the basis of the sovereignty, territorial integrity and inviolability of the internationally recognized borders of the Republic of Azerbaijan;

[…]

ORGANIZATION FOR DEMOCRACY AND ECONOMIC DEVELOPMENT

JOINT DECLARATION
OF THE HEADS OF STATE OF THE ORGANIZATION
FOR DEMOCRACY AND ECONOMIC DEVELOPMENT – GUAM ON THE ISSUE OF CONFLICT SETTLEMENT

The Heads of State of the Republic of Azerbaijan, Georgia, the Republic of Moldova and

Ukraine,

Guided by the purposes and principles, enshrined in the Charter of the United Nations, universally recognized norms and principles of international law, provisions of the fundamental documents of the Organization for Security and Co-operation in Europe, the Yalta Charter and the Chisinau and the Kyiv Declarations of GUAM,

Proceeding from adherence to democratic values and aspirations advance further on the way to European and Euroatlantic integration,

Emphasizing the ever growing role of regional cooperation based on mutual respect of the sovereign rights of the states in Pan-European integration processes,

Stressing that such cooperation facilitates advancement of democracy, strengthening of regional and international security and deepening of economic and commercial ties,

Reaffirming the necessity to respect the sovereignty, territorial integrity and internationally recognized borders of states, as one of the pillars of maintenance of international security,

Reaffirming also the necessity to develop democracy and respect of human rights and fundamental freedoms, including persons belonging to national or ethnic minorities, with the purposes of maintaining peace and security, strengthening the spirit of tolerance, ascertaining values of cultural diversity and peaceful co-existence of various ethnic communities within the internationally recognized borders of states,

Recognizing that unresolved conflicts and illegal military presence on the territory of the Republic of Azerbaijan, Georgia and the Republic of Moldova undermine the sovereignty, territorial integrity and political independence of these states, impede implementation of full- scale democratic reforms and achievement of sustainable development, jeopardize regional security, negatively impact pan-European integration processes and challenge the entire international community,

Expressing deep concern with regard to increasing security threats emerging from conflict zones, including international terrorism, aggressive separatism, extremism, organized crime and other related dangerous phenomena,

Being deeply concerned of continuing people's sufferings resulting from conflicts and their destructive consequences,

Drawing attention of the international community to the need of conflict-affected states for assistance in restoration of the infrastructure destroyed by military action,

Reaffirming that the root causes of conflicts are multi-faceted by their character and therefore, require comprehensive, complex and stepwise approach to their settlement,

Acknowledging the necessity to intensify conflict settlement efforts and calling upon the states and international and regional arrangements and institutions to further facilitate, within their competence, the processes of settlement of conflicts in the GUAM area,

1. **Declare** that settlement of conflicts on the territories of the GUAM States shall be carried out exclusively on the basis of **respect to sovereignty, territorial integrity and inviolability of internationally recognized borders** of these states, and is one of the priority objectives of cooperation within GUAM.
2. **Stress that the territory of a state may not be a subject of acquisition or military occupation, resulting from the threat or use of force in breach of the relevant norms of international law. No territorial acquisitions and the resulting self-declared entities may be recognized as legal under any circumstances whatsoever.**
3. **Remind** in this regard about the obligation of states of non-interference with the affairs of any other state and non-exertion of military, political, economic or any other pressure thereupon.
4. **Underscore** the lack of prospects and malignancy of separatism and disintegration, the incompatibility of the use of force and the practice of ethnic cleansing and territorial seizures with the universal and European values, the principles and ideals of peace, democracy, stability and regional cooperation.
5. **Stress** in this context the importance of consolidation of efforts of the GUAM States and the international community to settle conflicts on their territories by means of re-integration of uncontrolled territories into the states that they are part of, return of forcibly displaced population to the areas of permanent residency and ensuring peaceful coexistence of various ethnic groups within the internationally recognized borders of the states, development of civil society, restoration of destroyed infrastructure on these territories, and also, use of communications to the benefit of all parties.
6. **Especially** emphasize the importance of demilitarization of conflict zones and establishment of security in these zones with the help of multinational peacemaking forces deployed therein under UN or OSCE auspices for providing conditions for return of population and peaceful coexistence of ethnic communities.
7. **Believe** that the status of self-rule for the communities constituting the population of uncontrolled territories that will create the necessary conditions for effective exercise of their rights to equal participation in administration of state affairs, including through formation of legitimate regional authorities at all levels, can be determined exclusively within the legal and democratic process.
8. **Welcome** the efforts of international community and stress the importance of providing support to GUAM States in the development and implementation of a comprehensive and consistent strategy for conflict settlement based on the above mentioned principles, including short-term and long-term measures aimed at the achievement and maintenance of lasting peace, security and sustainable development.
9. **Entrust** the Council of Ministers of Foreign Affairs with the task to develop concrete measures and steps with the purpose of implementation of provisions of this Declaration.

Kyiv, 23 May 2006