

THE RIGHT TO SELF-DETERMINATION: THE NAGORNO-KARABAKH CONFLICT RECONSIDERED

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Abstract:

This study examines the validity of the claim for the right to self-determination of the Armenian administration of Nagorno-Karabakh. The Nagorno-Karabakh case under international law from the point of view of the right to self-determination is discussed here. It is argued that the Armenian population of Nagorno-Karabakh is not entitled to form their own state or to unite with Armenia, since either will mean secession from Azerbaijan, unless Azerbaijan gives its consent. However, this study suggests that self rule by the population of Karabakh within Azerbaijan must be accepted for the peaceful solution of the conflict.

Keywords:

Self-determination, Armenia, Azerbaijan, the Nagorno-Karabakh Conflict, the Caucasus, Minorities, International law.

INTRODUCTION

The failure to resolve the conflict over the mountainous territory of Nagorno-Karabakh remains the most serious problem in the south Caucasus, blighting the peaceful development of the whole region. Almost nine years after Armenians and Azerbaijanis signed the ceasefire agreement that halted the war in 1994, and ten years after the first United Nations resolution on the conflict on April 30 1993 the dispute is no nearer resolution.

One reason it remains unsettled is that one party to the conflict managed to defeat the other party militarily. As a result, the Armenian side as a victorious one that expelled the Azerbaijanis of Nagorno-Karabakh and the land between Nagorno-Karabakh insists on the proposition that either the Armenian administration of Nagorno-Karabakh must be recognized as an independent state by Azerbaijan or the former *oblast* must be united with Armenia. The

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other side, Azarbaijan, claims that Nagorno-Karabakh is a part of Azerbaijani territory and demands that the occupation of the Azerbaijani territories, both in Nagorno-Karabakh and the surrounding areas, must end. Both sides seek the help of international law in their respective claims; while the former resorts to the right to self-determination, the latter argues in terms of the principle of the respect for territorial integrity and *uti possidetis*.

This study attempts to assess the validity of the claim for the right to self-determination of the Armenian administration of Nagorno-Karabakh. Firstly, the conflict in Nagorno-Karabakh and the right to self-determination will be examined. Then, the Nagorno-Karabakh case under international law from the point of view of the right to self-determination will be discussed.

THE CONFLICT IN NAGORNO-KARABAKH¹

Three Transcaucasian countries of Georgia, Azerbaijan and Armenia became independent on 26, 27 and 30 May 1918 respectively. Nagorno-Karabakh was under the Azerbaijani control. The independence of the Transcaucasian republics did not live long. Baku was occupied on 27 April 1920 by the Soviet forces and next day Azerbaijan became the first Soviet Socialist Republic of Transcaucasia. The Red Army occupied Yerevan and Armenia also became a Soviet Socialist Republic on 1 December 1920. As a result of the sovietization of Armenia and Azerbaijan, the Nagorno-Karabakh conflict was transformed from an international (inter-state) issue to an internal matter of the Soviet Union.² For the solution of the Nagorno-Karabakh conflict the Caucasian Bureau of the Communist Party delivered the following decision on 5 July 1921:

Proceeding from the necessity for national peace among Muslims and Armenians and of the economic ties between upper (Nagorno) and lower Karabakh, of its permanent ties with Azerbaijan, mountainous

¹ For an excellent assessment of the Armenian-Azerbaijani Conflict over Nagorno-Karabakh see, Svante Cornell, 'Undeclared War: The Nagorno-Karabakh Conflict Reconsidered', *Journal of South Asian and Middle Eastern Studies*, Vol. 20, No. 4 (1997).

² Michael P. Croissant, *The Armenia-Azerbaijan Conflict, Causes and Implications* (Westport, London: Praeger, 1998) p. 18. Historically both Azerbaijanis and Armenians have claimed sovereignty over Karabakh.

(Nagorno) Karabakh is to remain within the borders of the Azerbaijan SSR, receiving wide regional autonomy with the administrative center at Shusha, becoming an autonomous region.³

The autonomy mentioned above was materialized by the creation of the Autonomous Oblast of Nagorno-Karabakh in 1923 with the authority to administer its own internal affairs in the realm of culture and education; and communist party and state organs were also created.⁴ The same year, the capital of Nagorno-Karabakh was moved from Shusha to Khankend which was later named Stepanakert. The name of the *oblast* was changed in 1937 to the Nagorno-Karabakh Autonomous Oblast.

During the Soviet era, except the period of Gorbachev's last years, the scale of the conflict on Nagorno-Karabakh was quite low, if any. The issue was taken up in 1964 by a petition with the signatures of 2,500 Karabakh Armenians to Moscow. The petition plead for Nagorno-Karabakh's incorporation into Armenian SSR.⁵ This was followed by a second petition signed by 13 prominent Karabakh Armenians in 1965.⁶ But, both petitions proved to no avail. The late 1980s witnessed more petitions and street demonstrations for the unification of Nagorno-Karabakh with Armenia. This could be seen as a result of Gorbachev's democratization policy.⁷ On 20 February 1988, the Soviet of Peoples Deputies of Nagorno-Karabakh passed a resolution requesting the *oblast's* transfer to the Armenian SSR. Three days later, the Central Committee of the Communist Party of the Soviet Union rejected the union between Armenia and Nagorno-Karabakh. The Supreme Soviet of the Armenian SSR responded on 15 June 1988 by passing a resolution calling for the USSR Supreme Soviet to approve the annexation of Nagorno-Karabakh by Armenia as demanded by 20 February 1988 resolution. On 12 July 1988, the Nagorno-Karabakh Autonomous Oblast's Deputies voted for unilateral secession from Azerbaijan which immediately

³ Quoted in Audrey L. Altstadt, *The Azerbaijani Turks: Power and Identity Under Russian Rule*, (Stanford: Hoover Institution Press, 1992), p. 118 and also in Croissant, *The Armenia-Azerbaijan...*, p. 19.

⁴ Audrey L. Altstadt, 'Nagorno-Karabakh: 'Apple of Discord'', *Central Asian Survey*, Vol. 7, No. 4 (1988), p. 67.

⁵ Gerad J. Libaridian (ed), *The Karabakh File: Documents and Facts on the Question of Mountainous Karabakh, 1918-1988*, (Cambridge, MA: The Zoryan Institute, 1988), pp. 42-46.

⁶ Croissant, *The Armenia-Azerbaijan...*, p. 20.

⁷ Kamer Kasim, 'The Nagorno-Karabakh Conflict From Its Inception to the Peace Process', *Armenian Studies*, Vol. 1, No. 2, 2001, p. 171.

The Nagorno-Karabakh Autonomous Oblast was restored, reinstating Azerbaijani rule over the region.

rejected the vote as illegal. However, again the attachment of the Nagorno-Karabakh Autonomous Oblast to Azerbaijan was reaffirmed by the Soviet Presidium six days later. The USSR Supreme Soviet Presidium, by a decree dated 12 January 1989, put the *oblast* under the direct control of Moscow. However, on 28 November 1989, the status of the Nagorno-Karabakh Autonomous Oblast was restored, reinstating Azerbaijani rule over the region. Violence against and the deportation of the Azeri population of Karabakh increased towards the end of 1989.⁸ In January 1990, Moscow sent troops and declared state of emergency in Azerbaijan, after a popular demonstration against inability of Azerbaijan and the USSR to stop the Armenian aggression. The Soviet's military involvement claimed the lives of more than a hundred Azeris.⁹ This came to be known as 'Black January'. In September 1991, Armenia and Azerbaijan became independent. Nagorno-Karabakh also declared independence. On 27 November 1991, the Azerbaijani Supreme Soviet annulled the autonomous legal status of the Nagorno-Karabakh Oblast. The end of the Soviet Union marked that the issue of Nagorno-Karabakh was transformed to an international (inter-state) conflict again after all those years.

Clashes between the Armenians and the Azerbaijanis continued in 1992 and 1993. Armenians captured the entire Nagorno-Karabakh and some of the surrounding Azerbaijani territory. Places like Shusha, Lachin, Kelbajar and Khojaly fell to the hands of the Armenians. The falling of Khojaly captured the attention of the world, as more than 1,000 were massacred at the hands of the Armenians.¹⁰ Although the Armenian officials denied the charges of massacre, it was well documented by the international media. Newsweek and the New York Times, for instance, presented the story of the burned and scalpted bodies of the Azerbaijanis under

⁸ Kasim, 'The Nagorno-Karabakh...', p. 172.

⁹ Bill Keller, 'Soviets Claim Control in Baku; Scores of Azerbaijanis Killed; Coup Averted, Gorbachev Says', *The New York Times*, 21 January 1990.

¹⁰ *Interfax*, 6 March 1992.

the headlines of 'Face of A Massacre' and 'Massacre by Armenians' respectively.¹¹

A cease-fire was agreed on 24 May 1994. The Armenians were pleased with the situation: They managed to take control of Nagorno-Karabakh, land corridors were opened between Armenia and Nagorno-Karabakh, 20 percent of Azerbaijani territory fell to the Armenian control, including the area between Armenia and Nagorno-Karabakh, and finally Azerbaijani population of the Armenian occupied region was driven out by Armenians, resulting in more than one million Azerbaijani refugees. As a result of the conflict in Nagorno-Karabakh 25,000 lost their lives. The only problem remained for the Armenians was the recognition of the legal status of *de facto* Armenian control over Nagorno-Karabakh.

THE RIGHT TO SELF-DETERMINATION

Historical Background to the Right to Self-Determination

Following the World War I Woodrow Wilson proclaimed the right to self-determination in respect of the peoples of the Austro-Hungarian, German, Russian and Ottoman empires. However, this right to self-determination was not fully given effect. Middle Eastern countries were denied their independence whereas the right to self-determination of those people in Eastern Europe and the Balkans has been recognized by the international community. Even the main constituent people of the Ottoman Empire, namely the Turks, was nearly deprived of enjoying their right to self-determination fully by the invading armies of the Allied Powers. Turks were only given a small plot of land in central Anatolia to establish their own national state with extremely limited sovereignty by the Sevres Treaty. Even the territories overwhelmingly populated by the Turks were promised to other nations, like eastern part of Anatolia to the Armenians.¹² However, the Turks rejected the arrangements made by the invading armies and waged a war of independence to free the whole Turkish nation from outsider domination. The Turkish Parliament proclaimed the union of all Turkish nation, giving real effect to the right of self-

¹¹ *Newsweek*, (16 March 1992) and *The New York Times*, 3 March 1992. For similar reports on the Khojaly massacre see 'Armenian Soldiers Massacre Hundreds of Fleeing Families' by Thomas Goltz in *the Sunday Times*, (1 March 1992), 'Massacre in Khojaly' *Time*, 16 March 1992 and 'Armenian Raid Leaves Azeris Dead or Fleeing' *The Washington Times*, 2 March 1992.

¹² Article 89 of the Sevres Treaty.

determination. The Turkish struggle for independence and the right of self-determination was set an example to other people under the colonial domination. The Caucasian peoples of Armenians, Azerbaijanis and Georgians also gained their independence after the Bolshevik Revolution. However, their independence lived short, after a few years of independence they joined the new Soviet Union.

Following the World War II, the disintegration of the overseas empires of the colonial powers has given impetus to those demanding self-determination for all peoples of colonial territories. Almost all colonial and alike territories have gained their independence. After the collapse of communism, on the one hand former Marxist regimes adopted the principles of market economy and liberal democracy. This coincided with new political arrangements made to reflect the will of their peoples. Socialist federal states of the USSR, Czechoslovakia and Yugoslavia dismantled on the basis of the constituent republics. With the exception of the latter, the emergence of full sovereign states after the post-Cold War was quite peaceful.

East Timor is the latest former colonial territory that became independent in 2002. Although the United Nations General Assembly accepted that the Palestinians are a people with right to self-determination, the Palestinian question has not been solved yet.¹³ While the Palestinian Authority has been its own way to independence and sovereignty, the 2002 Israeli occupation hampered the process.

Self-Determination as a Legal Right

Today self-determination is recognized as being a legal right in the colonial context. The right to self-determination finds expression in Articles 1(2) and 55 of the United Nations Charter, the common Article 1 of the two 1966 Covenants of Human Rights and a host of the General Assembly resolutions, including General Assembly Declaration on Principles of International Law.¹⁴ Chief amongst the latter is the Declaration on the Granting of Independence to Colonial Territories and Peoples which declares:

¹³ For example see UNGA Res. ES-7/2, GAOR, 7th Emergency Session, Supp. 1, p. 3 (1980).

¹⁴ UNGA Res. 2625 (XXV) of 1970.

1. The subjection of peoples to alien subjugation domination and exploitation constitutes a denial of fundamental rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.
2. 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;
3. ...
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected;
5. ...
6. *Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations,*
7. All states shall ...respect for the sovereign rights of all peoples and their territorial integrity.¹⁵ (Italics added)

Resolution 1514 proposes self-determination within existing borders (para. 6). In other words the principle of self-determination is subject to the principle of *uti possidetis*. This was made clear by the International Court of Justice when delimiting the boundary between Burkino Faso and Mali by stating:

At first sight this principle (*uti possidetis*) conflicts outright with another one, the right of peoples to self-determination. In fact, however, the course, to preserve what has been achieved by peoples who have struggled for their independence, and to avoid a disruption which would deprive the stability in order to survive, to develop and gradually to consolidate their

¹⁵ UNGA Res. 1540 of 1960.

independence in all fields, has induced African states judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination of peoples.¹⁶

Although the above judgment delivered with regard to decolonization in Africa, where colonial boundaries were drawn without taking into account the population of local peoples in most cases, if the principle of *uti possidetis* prevails in Africa, there is no reason to dissent the application of this to other parts of the world, especially to those parts that have had clearly defined territories with a stable population. After recognizing the principle of self-determination of peoples the Declaration on Principles of International Law declares that it is subject to the principle of territorial integrity by stating that

Nothing in the (Principles of International Law) 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...

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.¹⁷
(Italics added)

Similarly the Helsinki Final Act of the Conference on Security and Cooperation in Europe declared in 1975 that

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. (Italics added)

¹⁶ 'The Frontier Land Case', *ICJ Reports*, 1986, p. 554.

¹⁷ UNGA Res. 2625 (XXV) of 1970.

The Final Act further states

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. (Italics added)

The Conference became the Organization for Security and Co-operation in Europe (OSCE) later where both Armenia and Azerbaijan participate.

The narrow scope of the right to self-determination is that it is a right of people under colonial rule as stated by the above legal documents. However, there is also a trend that the right of peoples to self-determination could be invoked against racist regimes as made clear by the General Assembly resolutions recognizing the inhabitants of South Africa as a 'people' with a right to self-determination.¹⁸ After the constitutional changes made by South Africa and racism was abandoned, no racist state exist in the world. Article 1 (4) of the two 1977 Additional Protocols to the Geneva Conventions of 1949 supports the proposition that peoples under colonial rule or occupation and racist regimes are entitled to the right to self-determination by mentioning 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination' within the category of international armed conflicts where the laws of war are applicable.

The wider scope of the right to self-determination would include all peoples. However, the meaning of the term 'people' is far from clear. Peoples are defined according to the objective factor of

¹⁸ For example see UNGA Res. 33/24, GAOR, 33rd Session, Supp. 45, p. 137 (1978).

inhabiting a territorial unit. Eide mentions that 'people' refers to the population of a territory as a whole (demos) and not the separate ethnic groups based on language, religion and culture (ethnoses), which taken together to constitute the demos.¹⁹ Although there are attempts to define the people in ethnical terms, this is the most widespread and seems correct from the perspective of international law as confirmed by the territorial integrity clauses following almost all pronouncements on self-determination.²⁰ What is clear is that the terms 'people' and 'minority' denote different things. It is not accepted that there is a duty under international law to treat minorities as separate peoples.

The question of third party assistance to peoples struggling to attain self-determination is highly controversial and far from clear.²¹ There is no room to discuss it in detail here, nor it is relevant in the current context of Karabakh. What is clear is that third party military involvement in armed struggles which are not against colonial rule or racist regimes is clearly a breach of international law.²²

*Minorities in International Law*²³

Under international law, national minorities are given rights. Despite not defining the term 'national minority', the Framework Convention for the Protection of National Minorities which came to force in 1998 provides for the rights of national minorities. Both Azerbaijan and Armenia are parties to the Convention. Persons belonging to national minorities are equal before the law and equally protected by the law according to the Convention.²⁴ Similarly, any discrimination based on belonging to a national minority shall be prohibited.²⁵ The convention also guarantees the

¹⁹ Asbjorn Eide, 'The National Society, Peoples and Ethno-Nations: Semantic Confusions and Legal Consequences', *Nordic Journal of International Law*, Vol. 64, 1995, pp. 360-4.

²⁰ Gunter Lauwers and Stefaan Smis, 'New Dimensions of the Right to Self-Determination: A Study of the International Response to the Kosovo Crisis', *Nationalism & Ethnic Politics*, Vol. 6, No. 2, 2000, p. 57.

²¹ Malcolm N. Shaw, *International Law*, (Cambridge: Groutius Publications Ltd., 1991) Third Edition, pp. 700-701.

²² See the Nicaragua case.

²³ See for an excellent work on minority rights Patrick Thornberry, *International Law and the Rights of Minorities*, (Oxford: Clarendon Press, 1994).

²⁴ Article 4.

²⁵ Article 4.

freedom of religion of national minorities.²⁶ The use of the native language by the persons belonging to national minorities is also guaranteed by the Convention.²⁷ However, all the rights guaranteed by the Convention are subject to 'the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.'²⁸ The Convention also requires that the members of the national minorities 'shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.'²⁹

The principle of self-determination may not be successfully invoked by any and every dissident group seeking to assert their own brand of nationalism. On the question of political self-determination for minorities, such as the Scots in Britain, Basques in Spain, Romans in Hungary and Slovakia, in existing states there is no evidence in the United Nations and other state practice to suggest that the right to self-determination is applicable outside of the colonial or similar context as a matter of customary international law.³⁰ The same proposition also applies to majorities in non-democratic states, that is to say the right of self-determination does not include the majority within a state attempting to throw off a non-elected government nor it implies an equatiton with the concept of democracy. Nevertheless, with the increasing awareness of democracy and human rights all around world rights of minorities became an issue of international law.

THE NAGORNO-KARABAKH CASE UNDER INTERNATIONAL LAW

The international law does not recognize that every ethnic group within a state must be granted its own state or that self-determination requires independent statehood. It has already mentioned in this paper that Nagorno-Karabakh received wide regional autonomy and the Nagorno-Karabakh Autonomous Oblast was created. The resolution of the Soviet of Peoples Deputies of

²⁶ Articles 5,7,8.

²⁷ Articles 10 and 14.

²⁸ Article 21.

²⁹ Article 20.

³⁰ David J. Harris, *Cases and Materials on International Law*, (London: Sweet and Maxwell, 1991), Fourth Edition, pp. 124-125.

Nagorno-Karabakh requesting the oblast's transfer to the Armenian SSR in 1988 and the proclamation of independence by Nagorno-Karabakh in 1991 needs to be examined from the legal point of view within the framework of the right to self-determination.

It is said that the Article 70 of the Soviet Union's constitution affirms the right of peoples to self-determination. However, Article 78 of the Soviet Constitution provided that:

The territory of a union republic may not be altered without its consent. The boundaries between union republics may be altered by mutual agreement of the union republics concerned, subject to confirmation by the USSR.

What the Soviets understood from the 'right of peoples to self-determination' is clearly out of the boundaries of this study. Even it is assumed that self-determination meant the right to independence and secession, in the broadest sense, the Armenian SSR's decision to annex Nagorno-Karabakh as well as the decisions of the Nagorno-Karabakh Oblast on uniting with Armenia or being independent are contrary to the Soviet Constitution and, therefore, null. This is for two reasons: First Article 78 makes it clear that the boundaries of the republics cannot be changed without their consent and Azerbaijan, for obvious reasons, did not agree to this. Second even the republics gave their consent to any territorial change, this had to be approved by the USSR and as explained above in detail the Soviets always rejected the Armenian claims. It is true that, according to the Soviet Constitution of 1977, union republics had, in theory, right to secede from the Union. However, neither autonomous republics, which had constitutions, nor autonomous regions (oblasts), which had no constitutions, had the right to secede. It is clear that in addition to the Karabakh Armenians' decision to unite with Armenia or to become independent, the 1989 decision by the Armenia to annex Nagorno-Karabakh is unfounded under the USSR constitution and violates the territorial integrity of Azerbaijan. Although Armenia made it clear that it does not recognize the so-called Nagorno-Karabakh Republic, there is no indication that Armenia annulled its 1989 decision. Representatives from Nagorno-Karabakh are members of the Armenian Parliament. Even more absurd is that a Karabakh Armenian Robert Kocharian, who is also still an Azerbaijani citizen, serves its second term as the President of the Republic of Armenia. The incorporation of

Nagorno-Karabakh by Armenia is also evident in the fact that Armenians built new roads, on the Azerbaijani territory outside Nagorno-Karabakh, between Stapanakerd and Armenia and the currency of Armenia is being used as a legal tender in Nagorno-Karabakh. One reason for rejecting the application of the 'Nagorno-Karabakh Republic' by the Commonwealth of the Independent States (CIS) could be that the declaration of independence by Nagorno-Karabakh is not in accordance with the Constitution of the USSR. The CIS was formed by eleven former Soviet republics and declared that they will respect territorial integrity of states as requested by international law.

It is clear that the Armenian population of Nagorno-Karabakh could be defined as a minority, even a national minority. Azerbaijan is party to the Framework Convention for the Protection of National Minorities and the Constitution of the Republic of Azerbaijan provides that 'The human and civil rights and freedoms enumerated in this Constitution shall be exercised in accordance with international Agreements to which the Azerbaijan Republic party.'³¹ It is obvious that Azerbaijan is bound by the Framework Convention and rights prescribed by the Convention is applicable in Azerbaijan. The Azerbaijani Constitution further recognizes the equality of all citizens and declares that:

The state guarantees equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations. Rights and liberties of a person, citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging.³²

Under this provision discrimination on ethnicity is clearly prohibited. Similarly the Constitution also guarantees the freedom of religion.³³ Use of minority language is also permitted by the

³¹ Article 12. Two English texts of the Constitution are referred by this paper, namely the one provided by the Presidency and the other one provided by the Constitutional Court of Azerbaijan. Both can be found at <http://www.president.az/azerbaijan/const.htm#44> and <http://www.constitutional-court-az.org/const-contents.htm>, respectively.

³² Article 25.

³³ Article 18.

Constitution.³⁴ The Constitution further states that 'Everyone shall have the right to be raised and get an education, be engaged in creative activities in Native Language. No one can be deprived of the right to use Native Language'.³⁵ For the protection of minorities the Constitution speaks of 'National and Ethnic Identity' and provides that 'Every Person shall have the right to preserve national/ethnic identity. No one can be deprived of the right to change national/ethnic identity'.³⁶ However, the Constitution requires, as other States' constitutions do and even the Framework Convention itself, territorial integrity of Azerbaijan must be respected.³⁷

One of the purposes of the United Nations is 'to maintain international peace and security' and this was given to the responsibility of the Security Council whose decisions are binding upon all member states.³⁸ Initiatives taken by the Security Council are highly regarded since they inevitably reflect a consensus of opinions of the members of the whole world community. On 30 April 1993 the Security Council passed its Resolution 822, upon the invasion of Azerbaijani Kelbadjar district by Armenians, where it affirmed 'the respect for sovereignty and territorial integrity of all States in the region' and also 'the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory'. Azerbaijan supported Resolution 822 for its provision rejecting the forceful alteration of existing borders.³⁹

Territorial integrity of Azerbaijan was also reaffirmed by the resolutions 853, 874 and 884. Similarly, at the Lisbon summit of the OSCE in December 1996, every state, including Russia, but Armenia accepted a resolution confirming the territorial integrity of Azerbaijan.

In July 1993 the Armenians besieged and captured Agdam, a city of 150,000 outside the borders of Karabakh. On 29 July 1993 the United Nations Security Council passed Resolution 853 which:

³⁴ Articles 21 and 45.

³⁵ Article 45.

³⁶ Article 44.

³⁷ Article 11.

³⁸ Articles 1, 23, 24, 25 and 28 of the UN Charter.

³⁹ Croissant, *The Armenia-Azerbaijan...*, p. 89.

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.⁴⁰

In October the UN Security Council passed another resolution calling upon the parties to make effective and permanent cease-fire and to refrain from all violations of international humanitarian law.⁴¹ But the Armenians refused the call for ceasefire and launched attacks on Zangelan and Goradiz. These attacks and 'attacks on civilians and bombardments of the territory of the Azerbaijani Republic' were also condemned by the Security Council.⁴² A cease-fire which is in effect today was finally signed on 12 May 1994.

It could be drawn from the UN resolutions that territorial integrity of Azerbaijan should be maintained, refusing any right of secession of Karabakh Armenians, and the Nagorno-Karabakh conflict should be settled on the principle of the inviolability of international borders. This means that the members of the UN are not of the opinion that the right of self-determination of Karabakh Armenians gives them right to secession. This view was also supported by the world community, none of its member states has recognized the self-proclaimed Nagorno-Karabakh Republic.

It is clear that the use of force for the acquisition of territory cannot, and should not, be accepted and the current situation in Nagorno-Karabakh is an example of this as well as the violation of the principle of territorial sovereignty and integrity of Azerbaijan. It seems that the Armenian administration realized that it would not be possible to secure neither the recognition of Nagorno-Karabakh as a separate state nor its unification with Armenia.

⁴⁰ Res. 853.

⁴¹ Res. 874 of 14 October 1993.

⁴² Res. 884 of 12 November 1993.

In September 1997, Ter-Petrosian in a press conference dismissed the option of maintaining status quo, Armenian occupation of parts of Azerbaijan and hundreds of thousands of Azerbaijani refugees. He stated that 'It happened in Bosnia. The Serbs lost everything. I don't think that the maintenance of the status quo is a real option'.⁴³ He reportedly told the Armenians that they had to recognize that Karabakh would be formally part of Azerbaijan and Azerbaijanis had to recognize the rights of Armenians of Karabakh. However, Ter-Petrosian has had no opportunity to take an initiative to settle the dispute since then. As a result of the pressure, he had to resign from the office of presidency where Robert Kocharian, a hardliner, was elected in 1998.

Azerbaijan made it clear that it is ready to the resolution of the conflict by peaceful means on the basis of the principles of international law, among which are:

1. Territorial integrity of the Republic of Armenia and the Republic of Azerbaijan;
2. 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.⁴⁴

Since the Armenians of Karabakh have neither been under colonial rule nor Azerbaijan is a racist state, it is not possible to speak of Nagorno-Karabakh's right to self-determination, as being understood as a right to a separate state. However, as explained above self-determination does not necessarily mean independence. In this context, minority rights could be regarded as a part of self-rule. Azerbaijan appears to be ready to recognize Karabakh Armenians self-determination in this context. It could be said that the Karabakh conflict is not self-determination *v.* territorial integrity, it may be termed as secession *v.* territorial integrity.

The question of 'Karabakhis' should be faced by Armenians, since Nagorno-Karabakh has not been populated only by Armenians but also Azerbaijanis. According to 1989 census, it had a population of 188,000, of whom only 145,000 were Armenians,

⁴³ Quoted in David D. Laitin and Ronald G. Suny, 'Armenia and Azerbaijan: Thinking a Way out of Karabakh', *Middle East Policy*, Vol. 7, No. 1 (1999), p. 166.

⁴⁴ Foreign Policy Priorities of Azerbaijan at <http://www.usacc.org/azerbaijan/govt-foreign.htm>.

Armenians are expected to make their views clear on whether they are ready to recognize the rights of the non-Armenian population of Karabakh,

40,000 Azerbaijanis and 3,000 Russians.⁴⁵ In another word Armenians formed less than 73% of the total population. Azerbaijanis, either migrated or, more commonly, were expelled from Armenian populated lands, including from in and around Karabakh, to their 'home' republic. As pointed out

by Laitin and Suny, this happened most notably in the late 1980s and in the first three years after the breakup of the Soviet Union.⁴⁶ It is also known that Armenian migration to other countries continues. The current population is estimated less than it was in 1989, despite Armenian efforts to populate the region by Armenians. According to a United Nations High Commission for Refugees (UNCHR) report 'a lasting cease-fire or peace agreement is a prerequisite for displaced persons to return home'.⁴⁷ Armenians are expected to make their views clear on whether they are ready to recognize the rights of the non-Armenian population of Karabakh, which was more than a quarter of the total population in 1989.

CONCLUSION

This study assessed whether the Armenian population of Nagorno-Karabakh is entitled to form their own state or to unite with Armenia. Either will mean secession from Azerbaijan. One could safely propose that on the question of political self-determination for minorities in existing states there is no evidence in the United Nations and other state practice to suggest that the right to self-determination is applicable outside of the colonial or similar context as a matter of customary international law. This is true when self-determination is taken to mean necessarily right to independence. However, today self-determination could occur in the form of self rule in democratic societies. Azerbaijan made it

⁴⁵ This figure was also confirmed by the Global IDP (Internally Displaced Persons) Project of the Norwegian Refugee Council at www.db.idpproject.org.

⁴⁶ Laitin and Suny, 'Armenia and Azerbaijan...', p. 148.

⁴⁷ United Nations High Commission for Refugees (UNCHR), Background Paper on Refugees and Asylum Seekers from Armenia (1995) at www.unhcr.org.

clear that self rule by the population of Karabakh within Azerbaijan must be accepted for the peaceful solution of the conflict. This is in line with international law, as long as the rights of Karabakh Armenians and Azerbaijanis are recognized and a supportive environment for their practice is prepared.

Although it is claimed by Armenians that Karabakh has a population of 140,000 people all of whom are Armenians to buttress their claims for self-determination, estimates by international aid workers in Karabakh put the figure much lower, at perhaps half that.⁴⁸ It is not surprising when this is compared to the dramatic decrease in the population of Armenia since its independence. Although it is inhabited by a relatively tiny number of peoples, Nagorno-Karabakh is a place of inspiration for Armenian nationalism. Therefore, since an Armenian hardliner Robert Kocharian is elected for second term as the President of Armenia, there is no evidence to suggest that Armenian side drops its claim for independence or union with Armenia.⁴⁹

⁴⁸ Thomas de Waal, 'Myths and Realities of Karabakh War' Institute for War and Peace Reporting, *Caucasus Reporting Service*, No. 177, 1 May 2003.

⁴⁹ President Bush sent to Kocharian a letter where the election was criticized and found "falling short of OSCE standards" but the Armenian authorities portrayed US President George W. Bush's message as a letter of congratulation on Kocharian's reelection. *ANN/Groong -- RFE/RL Armenia Report*, 25 April 2003.