TRANSLATION / ÇEVİRİ

To cite this article: Akçay, Deniz. "The Relativity of Self-Determination Conceptions Regarding the Nagorno- Karabakh Conflict." *Review of Armenian Studies*, no. 41 (2020): 77-105.

Received: 29.05.2020

Accepted: 23.06.2020

THE RELATIVITY OF SELF-DETERMINATION CONCEPTIONS REGARDING THE NAGORNO-KARABAKH CONFLICT*

(DAĞLIK KARABAĞ UYUŞMAZLIĞINDA SELF-DETERMİNASYON TEZLERİNİN GÖRECELİĞİ)

Deniz AKÇAY**

Abstract: *The fact that Nagorno-Karabakh is under the sovereignty of the Republic of Azerbaijan is accepted undisputedly not only in the framework of the Alma-Ata Declaration but was also accepted during the examination of the memberships of Azerbaijan and Armenia to the United Nations. In addition, the four resolutions of the UN Security Council adopted in 1993, embracing the same approach, highlighted that the Nagorno-Karabakh conflict shall be resolved in accordance with the principles of territorial integrity and inviolability of borders of Azerbaijan.*

The Minsk Group, which was established within the OSCE in 1996, has focused on the self-determination formula since 1998 to submit recommendations on this issue. However, the implementation of the Resolution 1514(XV) on the granting of independence to colonial countries and peoples is legally impossible in this case, since Nagorno-Karabakh is under the sovereignty and within the territorial integrity of a State and it is not considered as a "colonial country".

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* This is the English translation of a research article in Turkish that was originally published in the *Ermeni Araştırmaları* journal. For the original Turkish article, please see: Akçay, Deniz. "Dağlık Karabağ Uyuşmazlığında Self-Determinasyon Tezlerinin Göreceliği." *Ermeni Araştırmaları*, Sayı 65 (2020): 101-130.

** ORCID iD: https://orcid.org/0000-0003-0709-8031
Lawyer, Doctorat d'Etat en Droit Public Nancy-FRANCE, Co-Agent of the Turkish Government, Retired Member of the Ministry of Foreign Affairs of the Republic of Turkey

Moreover, it is also impossible to implement the articles of the UN General Assembly Resolution 2625(XXV) regarding the self-determination in case of the non-existence of widespread human rights violations and oppressions.

On the other hand, the Chiragov judgement of the ECHR established that self-determination cannot not be introduced as a realistic settlement formula with regards to Nagorno-Karabakh, which is under the military, political, and economic influence of Armenia.

Keywords: *Territorial Integrity, Self-determination, the UN Security Council, the Resolution 2625(XXV), the Resolution 1514(XXV), the Chiragov judgement*

Öz: *Dağlık Karabağ'ın Azerbaycan Cumhuriyeti'nin egemenliği altında bulunduğu gerek Alma Ata Bildirisi çerçevesinde, gerek Azerbaycan ile Ermenistan'ın Birleşmiş Milletler'e üyeliklerinin incelenmesi kapsamında itirazsız kabul edilmiştir. BM Güvenlik Konseyi'nin 1993 yılında kabul ettiği dört karar da aynı yaklaşımı benimseyerek, Dağlık Karabağ uyuşmazlığının Azerbaycan'ın ülke bütünlüğü ve sınırlarının dokunulmazlığı ilkelerine uygun biçimde çözümlenmesi gerektiğini vurgulamıştır.*

Bu konuda, önerilerde bulunmak üzere, 1996'da AGİT çerçevesinde oluşturulan Minsk Grubu, 1998'den itibaren self-determinasyon formülü üzerine odaklanmıştır. Ancak, bir devletin egemenliği ve ülke bütünlüğü ile bağlantılı olan ve ayrıca, sömürge statüsünde olmayan Dağlık Karabağ açısından bir uyuşmazlıkta, BM Genel Kurulu'nun sömürge rejimlerinin sona erdirilmesine ilişkin 1514(XV) sayılı Bildirisi'nin uygulanması hukuken mümkün değildir.

Ayrıca, yaygın insan hakları ihlalleri ve baskılarının söz konusu olmadığı durumlarda, BM Genel Kurulu'nun 2625(XXV) sayılı Bildirisi'ndeki self-determinasyonla ilgili maddelerinin de uygulanması mümkün değildir.

Öte yandan, AİHM'nin Chiragov kararı da self-determinasyonun Ermenistan'ın askerî, siyasi ve ekonomik nüfuzu altında bulunan Dağlık Karabağ açısından gerçekçi bir çözüm oluşturamayacağını ortaya koymuştur.

Anahtar Kelimeler: *Ülke Bütünlüğü, Self-determinasyon, BM Güvenlik Konseyi, 2625(XXV) sayılı Bildiri, 1514(XXV) sayılı Bildiri, Chiragov Kararı*

A) Khojaly Massacre, The United Nations Membership, The UN Security Council Resolutions

The representatives of 11 Soviet Socialist Republics convened in Almaty, the capital of Kazakhstan, in December 1991 and declared that the Union of Soviet Socialist Republics (USSR - the Soviet Union) had ceased to exist[1]. Thus, the legal entity of the Soviet Union, which was established in 1921, came to an end in terms of international law.

The declaration published after the meeting did not include any statement, reservation, or limitation regarding the boundaries, rights, political and economic characteristics, or expectations of any former Soviet Republics in their new formation. On the contrary, it is explicitly underlined, in the third paragraph of the Preamble of the Declaration, that the 11 States would recognize and respect the territorial integrity and the inviolability of current boundaries of each other.[2]

With the disintegration of the Soviet Union in this way, the principle of *uti possidetis* of the classical international law was applied, and following a disintegration, the boundaries preceding the disintegration were meant to be preserved for each new state.[3]

Then, the process of recognition and membership to the United Nations (UN) of the countries, which gained their independence, was initiated.

In this respect, the membership applications of the Republic of Azerbaijan and the Republic of Armenia to the UN were examined in the first place by the UN Security Council in accordance with the established procedure. The Council accepted the applications of both countries without any reservation or condition and referred the UN General Assembly to make the final decision on the acceptance of membership applications.[4]

The UN General Assembly, in accordance with the established procedure, accepted the membership of both states without any reservation on 2 April 1992.[5]

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1 The Alma-Ata Declaration, December 21, 1991.

2 ".. recognizing and respecting each other's territorial integrity and the inviolability of the existing borders…"

3 The rule of *uti possidetis* was implemented mainly with regards to colonies in the past. In recent times, it was implemented by the Badinter Commission with regards to the countries established as a result of the disintegration of former Yugoslavia. "Commission Badinter", *Avis no.3 Revue Générale de Droit International Public*, 1992: 268-269.

4 UN Security Council Resolution 742 (February 14, 1992) with regards to Azerbaijan and UN Security Council Resolution 735 (January 29, 1992) with regards to Armenia.

5 UN General Assembly Resolution 46/230 (March 2, 1992) with regards to Azerbaijan and UN General Assembly Resolution 46/227 (March 2, 1992) with regards to Armenia. As is seen, the UN General Assembly, only one month after the Khojaly Massacre, and despite the ongoing war, accepted the membership of Armenia through a purely technical and procedural resolution.

On the other hand, the long-running military operations of Armenia towards the Nagorno Karabakh region of Azerbaijan intensified after two months of the disintegration of the Soviet Union and these aggressions turned into a massacre on 26-27 February 1992 in Khojaly. This massacre is described as genocide by certain states.[6] Meanwhile, the first of the four resolutions of the UN Security Council with regards to on-going Nagorno-Karabakh war could only be adopted by April 1993.[7]

With regards to the Nagorno-Karabakh conflict, which constitutes an aggression against the territorial integrity of Azerbaijan and moreover reaches dimensions threatening the regional peace in a wider perspective, the UN Security Council adopted four resolutions in 1993 aiming, on one hand, at establishing the conditions for a peaceful resolution based on the territorial integrity and inviolability of borders of Azerbaijan and, on the other hand, aiming at identifying the requirements for the resolution methods that were to be achieved within this framework especially through the four resolutions adopted in 1993.[8]

Among these resolutions, the Resolution 884 dated 12 November 1993 in particular, going beyond the call to a solution through peaceful means, reaffirmed the territorial integrity of Azerbaijan within the framework of the Nagorno-Karabakh conflict, which threatens the sovereign rights and territorial integrity of Azerbaijan, and also emphasized "… the inviolability of international borders and the inadmissibility of the use of force for acquisition of territory…"[9].

Although the abovementioned resolutions did not solve the Nagorno-Karabakh conflict, they reaffirmed that there is no intention to deviate from the basic principles of the Alma-Ata Declaration, nor from those assumed during the accession of Azerbaijan and Armenia to the UN.

A.1) The Minsk Group: The Relativization of the UN Principles

Some developments were observed with regard to the resolution of the Nagorno-Karabakh conflict, in the following years, giving the impression that

6 The countries which have described the events in Khojaly as genocide are Azerbaijan, Mexico, Pakistan, Colombia, Czechia, Bosnia and Herzegovina, Peru, Honduras, Sudan. Moreover, in the United States of America, the states of Massachusetts, Texas, New Jersey, Arkansas, Oklahoma, Tennessee, Pennsylvania, West Virginia, Connecticut, Florida, Arizona, Utah have described the Khojaly as massacre. (Source: Wikipedia).

7 UN Security Council Resolution 822 (April 30, 1993).

8 UN Security Council Resolution 822 (April 30, 1993), Resolution 853 (July 29, 1993), Resolution 877 (October 14, 1993), and Resolution 884 (November 12, 1993).

9 UN Security Council Resolution 844 (November 12, 1993).

the solution framework envisaged in the four resolutions of the UN Security Council (adopted in 1993) containing guarantees on the territorial integrity and inviolability of borders, might have dramatically lost its strictness and political actuality.

Within the scope of the Organization for Security and Cooperation in Europe (OSCE), a political dialogue platform was established in 1992, namely the Minsk Group, in order to create peaceful resolution methods and focus the dialogue between the two states on these resolution recommendations.

In the first version of this dialogue platform, which was formed at the Helsinki Meeting of the OSCE in 1992, there were three different membership categories consisting of the following countries:

- Parties of the conflict: Azerbaijan and Armenia,
- The United States, Russia, and France,
- Germany, Belarus, Italy, Finland, The Netherlands, Portugal, Sweden, Turkey.

However, the composition of the Group dramatically changed after the OSCE Budapest Summit held in 1994. From that date onwards, the US, Russia, and France were appointed as the Co-Chairs of the Group. This sub-group has assumed the role of making statements on behalf of the Minsk Group.

As is seen, a certain hierarchical order was established within the Group following the Budapest Summit and the sub-group of Co-Chairs has gained a more powerful hierarchical visibility through its political importance and weight. Ever since that time, the statements of the Group have been prepared by this sub-group.

In the establishment phase of the Minsk Group, generally, focus was given to the settlement of the Nagorno-Karabakh conflict through peaceful means, however, no particular scheme was envisaged to determine which principles and methods were to be followed in order to achieve this aim. As a matter of fact, beyond the call for the suspension of the hostilities and, generally, for settlement through negotiations, the Group does not have an explicit "mandate" of complying with the principles stipulated in the resolutions of the Security Council adopted in 1993.

Yet, having been established within the framework of the OSCE, the mandate of the Minsk Group would have been expected not to disregard, but rather to particularly stress the universal principles of the international law such as the territorial integrity and inviolability of borders (especially when the

preservation of the international peace is in question), and the resolutions of the UN bodies which developed concrete guidance in this field. The importance of such an approach, not only in the case of Nagorno-Karabakh conflict, but for the credibility of the UN system, should not be ignored.

In this framework, the statement of the European Council, dated 22 May 1992, condemns any action of a State against the territorial integrity of any other in order to achieve political objectives which are considered as a violation of the principles and commitments of the OSCE.[10]

It is observed that this tendency of distancing from the UN principles the Nagorno-Karabakh conflict is sought to be pursued in various documents issued by the OSCE as well.

Indeed, the OSCE Lisbon Summit Document adopted in 1996 radically drifted away from the basic UN principles defined by the resolutions of the Security Council adopted in 1993 regarding the settlement of the Nagorno-Karabakh conflict.

The main characteristics of the proposed "status" for the Nagorno-Karabakh were defined in the Document as follows:

> "…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;"[11]

Such a proposal, which would envisage *the highest degree of self-rule within Azerbaijan* for the "future" status of Nagorno-Karabakh, can be described as a misleading formula devoid of any legal ground in terms of international law for the following reasons:

1. First and foremost, "self-determination" and "self-rule" terms used in the text correspond, in international law, to a status that require different preconditions.

2. Moreover, there is no safeguard to the effect that, once the self-determination is granted, the self-rule will be formulated as an "administration" which would remain within the borders of Azerbaijan.

3. The "highest degree of self-rule" would inevitably bring a visibility to Nagorno-Karabakh that could be supported by other States. In such a

10 EC Press Statement, Brussels, 22 May 1992 ; Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union", *EJIL* 4, No. 1 (1993), p. 63.

11 OSCE Lisbon Document, 1996, Annex 1, p. 15.

> circumstance, there is no guarantee that the region in question would not, in the future, purport to acquire international legal personality.

In addition to the Lisbon Summit Document of 1996, the statement of the Minsk Group following the Madrid Meeting in 2007 refers to the Helsinki Final Act and the principles within that document, as well as self-determination.[12]

The Helsinki Final Act, because of its legal nature and the principles it contains, cannot be considered as having a topicality and, in particular, a legal impact that would attribute to it any leading priority in the settlement of the Nagorno-Karabakh conflict, the requisite principles of which were previously determined in the UN resolutions.

Although the e diplomatic importance of the Conference held in 1975 in Helsinki in the scope of softening the East-West polarization is undisputable, the binding nature of the Final Act is not certain.[13] It should not be disregarded that every single principle stipulated in the Document might have different legal conditions for implementation and even different legal values. Nevertheless, the Group has continued to refer to this document in 2019 as well.[14]

It is accepted today that the Helsinki Final Act is not binding, therefore, in terms of normativity, the principles mentioned in the statements of Minsk Group with regards to this topic cannot acquire a binding nature on the grounds that they were mentioned in this document.[15]

As it is stated by an author, the Document in question is not an international treaty, but a "program" aiming at the to the construction of a consensus which was reached to establish peace between the East/West blocs or, at least, soften the polarization between the camps to a certain degree.[16]

Therefore, the disregard and relativization of the UN principles concerning the Nagorno-Karabakh issue on the basis of the mentioned documents in the studies of the Minsk Group precludes the parameters of the conflict from the established legal framework and does not contribute to the peaceful resolution of the conflict.

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12 OSCE Minsk Group, Madrid Document (November 2007)

13 Peter van Dijk, "The implementation of the Final Act of Helsinki, The Creation of New Structures in the Involvement of Existing Ones," *Michigan Journal of International Law*, vol. 10 (1989), p. 114. As is seen, the author mentions the new structures, not the new norms.

14 "Press Statement by the Co-Chairs of the OSCE Minsk Group on the Upcoming Meeting of President Aliyev and Prime Minister Pashinyan," Moscow, Paris, Washington, March 9, 2019.

15 van Dijk, "The Implementation of the Final Act of Helsinki...," p. 114.

16 Jean-François Prevost, "Observations sur la Nature Juridique de l'Acte Final d'Helsinki," *AFDI*, 1975, especially p. 139 and 150.

A.2) The Minsk Group's Search for a Resolution: "Common State" Formula and Continuing Relativity

Two years after the OSCE Lisbon Summit of 1996 which had proposed the self-determination formula, the Minsk Group proposed a solution on Nagorno-Karabakh within the framework of a "Common State". [17]

As a matter of fact, it is thought that the "Common State" proposal should be evaluated as a variation of the self-determination formula which was put into the agenda of the Minsk Group through the Lisbon Document.

In our view, the following issues are of importance among the "principles" and "regulations" in the five-page formula of the "Common State":

- The Nagorno-Karabakh region which would be transformed into a "state" would exist within the borders of Azerbaijan.[18]

- Azerbaijan and Armenia would determine the respective areas of responsibility of Azerbaijan and Nagorno-Karabakh and decide the necessary transfer of authority in this respect through an agreement to be signed between them.

- Nagorno-Karabakh would have the rights to establish direct relations with third states and international organizations in the fields of trade, culture, science, sports, and humanitarian topics and to have representatives at them. Moreover, the political parties and social institutions in Nagorno-Karabakh could establish contacts with similar institutions in foreign countries.

- Nagorno-Karabakh would have the right to have representatives in the embassies and consulates of Azerbaijan in foreign countries.

In this proposal, which is tantamount to the creation of a state within a state rather than a real "Common State", there is no guarantee providing that in the future, the administration of Nagorno-Karabakh directly or indirectly using various occasions would not purport to join Armenia by organizing a referendum.

Since the Minsk Group no longer refers to this "proposal" that envisages the establishment of a state within a state, it must have been noticed somehow that it is not based on any known principle of international law and that this kind

17 Minsk Group Proposal ("common state deal", November 1998 (Unofficial Translation)).

18 The new entity proposed to be created is defined as "a state territorial formation in the form of a Republic".

of a "territorial assembly" would not be sustainable in the absence of "supportive initiatives of a national, international or regional will."

However, the principle of self-determination, which is insistently emphasized and framed by some other side principles, remains as an indispensable resolution parameter of the Minsk Group. Indeed, in the report of the United States Institute of Peace dated 1998, the notion of self-determination as supported by various side principles was also presented as an immutable tool and objective regarding the resolution of the conflict: "This matter of territorial integrity must be brought together with national self-determination and self-government".[19]

In other words, according to this proposal, securing the territorial integrity of Azerbaijan would only be possible if it is considered together with the national self-determination of Nagorno-Karabakh. Naturally, it can be stated that such an approach would relativize not only the resolutions of the UN Security Council adopted in 1993 but also the general principles of international law.

In addition, the term "national self-determination", which is the reference point of this approach, necessitates considering the population of Nagorno-Karabakh as a separate "nation". However, it is obvious that such a course would also be incorrect in terms of historical, political, and legal realities. As a matter of fact, neither the UN institutions, nor the related States, nor the Minsk Group has brought forward this kind of a definition.

A.3) The Framework Established by the UN General Assembly for the Settlement of the Nagorno Karabakh Issue: The Resolution 62/243 Dated 14 March 2008

The UN General Assembly, which evaluated these negative developments regarding the process of seeking a solution to the Nagorno-Karabakh conflict, adopted in 2008 a comprehensive resolution, mainly repeating to a great extent the principles contained in the Security Council resolutions of 1993, and enumerating the principles to be observed.

However, still not content, the General Assembly called attention to the negative developments and urged the immediate taking of certain measures[20]. In this framework, the following issues were especially emphasized:

19 Patricia Carley, "Nagorno-Karabakh, Searching for a Solution," *A United States Institute of Peace*, Roundtable Report, No. 34 (1998), p. 27.

20 UN General Assembly Resolution 62/243 (March 14, 2008).

- **In the second operative paragraph of the resolution**, the General Assembly demands Armenia to "immediately", "completely", and "unconditionally" withdraw its troops from the occupied territories of Azerbaijan.

- **In the fifth operative paragraph**, the resolution instructs that member states "shall not recognize" the occupation of the territories of Azerbaijan.

- **In the sixth operative paragraph** of the resolution, while expressing support for the international mediation of the Minsk Group, it is, however, underlined that the solution to be proposed by the Group shall be in compliance with the norms and principles of international law "stipulated above".

It is of decisive importance that, despite the inclination of the Minsk Group towards resolving the conflict through the implementation of self-determination principle since 1996, the self-determination principle is not mentioned in the resolution of the General Assembly.

Moreover, the demand of the General Assembly from Armenia to withdraw its forces from Nagorno-Karabakh should be seen as an instruction of a concrete and urgent measure.

On the other hand, the request of the General Assembly that no State recognize the occupation should also be seen as an instruction addressed not only to the related States but to all member States of the UN.

This resolution of the General Assembly puts forth that there exist no legitimate circumstances justifying the application of the principle of self-determination in the Nagorno-Karabakh conflict.

The issue is of great importance in terms of the conditions for the use of the right to self-determination as developed by the UN organs and the International Court of Justice (ICJ), which will be discussed below.

However, there is no official statement or evaluation of the Minsk Group regarding the Resolution 62/243 of the General Assembly dated 14 March 2008 and which identifies the framework for the settlement of the Nagorno-Karabakh conflict.

A.4) The Current Tendency of the Minsk Group Towards Settlement: The Statement Dated 9 March 2019

The statement of the Co-Chairs of the Minsk Group dated 9 March 2019, while mentioning the territorial integrity, contains certain remarks which raise doubts on how and under which process the said principle shall be implemented.[21]

It can be understood from the expressions used in the Group's statement that the principle of territorial integrity mentioned in the text, in the fact, is expected to be only partially implemented. According to the text, the territory to be returned to Azerbaijani control is not Nagorno-Karabakh, but the territories surrounding this region.

In addition, the text gives the impression that the mentioned act of "return" would not be a full adherence to the principle of territorial integrity, but a mere "temporary" revision of borders.

In the following parts of the text, an interim status is envisaged to ensure self-governance and security for Nagorno-Karabakh until the final resolution is achieved.

While the "interim status" projected in the statement of the Co-Chairs of the Minsk Group envisages "self-governance", the final settlement is tantamount to a self-determination of a dubious content and is not compatible with the vision of return to Azerbaijani control in the light of the Security Council resolutions.

Moreover, it is understood from the following parts of the same paragraph that the self-governance would not constitute final resolution, and the final status of Nagorno- Karabakh would be determined through a referendum.[22] In other words, it is obvious that both the resolutions of the Security Council dated 1993 and the resolution of the UN General Assembly dated 2008, which demands the return of occupied territories and also the non-recognition of territorial adjustments in Nagorno-Karabakh, are once again disregarded.

Through the statement of the Co-Chairs, it can be concluded that the Minsk Group is aiming at developing a conciliatory discourse for the prevention of conflict in the short term and inclining towards a resolution based on self-determination principle in Nagorno-Karabakh in the long term.

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21 "Press Statement by the Co-Chairs of the OSCE Minsk Group on Upcoming Meeting…"

22 "…future determination of the legal status of Nagorno-Karabakh through a legally binding expression of will…" ("Press Statement by the Co-Chairs of the OSCE Minsk Group on Upcoming Meeting…")

On the other hand, it is also interesting that the statement once again refers to the principles contained in the Helsinki Final Act. Even though it is accepted that the Act had a high political importance and great value during the mid-1970s when the antagonism between East and West was intense, it is evident that the said document has never acquired the authority of a binding "treaty".[23]

An undisputable understanding has been reached as to the legal clarity and applicability of the principle of self-determination in the light of the extensively comprehensive and detailed declarations and resolutions of the UN organs, as well as the jurisprudence of the International Court of Justice (ICJ). As such, taking into account the norms of the international law and the methods of interpretation, it is impossible to accept the claim that the "principles" of the Helsinki Final Act, which constitute a mere "catalogue", could become applicable through a simple reference.

Despite efforts of over more than twenty years to seek a peaceful solution, the Minsk Group, having deviated from the fundamental UN principles related to the matter and having focused its efforts on self-determination, can certainly not be praised for having established peace in the region. In fact, the Group was unable to prevent Armenia from instigating armed clashes known as the "Four Days War" on 2-5 April 2016.[24]

The statement issued by the Minsk Group two months after the aggression merely reiterated the Group's commitments for the resolution of the conflict through peaceful means.[25]

B) The Applicability of the Principle of Self-Determination to the Nagorno-Karabakh Conflict

Both the resolutions of the UN organs and the examinations and analyses of the ICJ in the framework of certain cases have transformed the principle of

23 Prevost, "Observations sur la Nature Juridique…," p. 152. The Act should be interpreted as the test of political will according to the author. Jordan Paust, "Legal Aspects of the Final Act of Helsinki." *Law and Contemporary Problems* 45 No: 1, p. 56, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3646&context=lcp ; Peter van Dijk, "The Final Act of Helsinki, basis for a Pan-European system?" the Netherlands Yearbook of International Law, 2009, p. 53-70.

24 Also see: Turgut Kerem Tuncel, "A Short Assessment Of The '4-Day War' in Karabakh." *Center for Eurasian Studies (AVİM)*, Commentary No: 2016/21, April 20, 2016. https://avim.org.tr/en/Yorum/A-SHORT-ASSESSMENT-OF-THE-4-DAY-WAR-IN-KARABAKH

25 Press Statement by the Minsk Group, June 3, 2016: "The Ministers reaffirmed their commitment to a peaceful resolution of the Nagorno-Karabakh conflict."

self-determination, which could previously be perceived as a term for political message or propaganda, into a term that can be applicable in certain and, especially, limited political and judicial situations.

The question of whether self-determination could be applicable to Nagorno-Karabakh should be evaluated in two stages:

1. Can the application of self-determination principle be imposed in terms of international law in a framework that has the characteristics of the Nagorno-Karabakh conflict?

2. Can it be argued that Nagorno-Karabakh has an independent and genuine will to sustain the self-determination to be granted to this region, in view of its inherent military, political, and economic conditions?

The answers would require, for the first question, to examine the principles developed in the field of international law for the application of the self-determination principle, and, for the second, to study the applicability of these conditions to the Nagorno- Karabakh conflict.

B.1) Requirements for the Applicability of the Self-Determination Principle in the International Law

In order to ascertain the conditions for the applicability of the self-determination principle, on the one hand, declarations of the UN organs related to the matter, and on the other, the relevant rulings of the ICJ should be analyzed.

B.1.1) Conditions and Limitations for the Applicability of the Declaration 1514(XV) of the General Assembly of the United Nations

The UN Declaration 1514(XV) dated 8 December 1960, which aims at putting an end to colonialism in the practice of international law, is still valid over sixty years after its adoption.

Thus, the advisory opinion of the ICJ dated 25 February 2019 sets forth that the article 73 of the UN Charter regarding the Non-Self-Governing Territories and, consequently, the Declaration 1514(XV) of the UN General Assembly can also have scope of application today.[26]

26 Legal Consequences of the separation of the Chagos Archipelago From Mauritius in 1965, ICJ, Advisory Opinion of 25 February 2019.

In this ruling, the ICJ indicated that the United Kingdom was under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.[27]

In addition, taking into account the UN Charter and resolution 1514(XV) of 14 December 1960 entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples", the ICJ found that the continued administration of the UK on the Chagos Archipelago constituted a "wrongful act".[28]

Moreover, three months after the ruling of the ICJ, the UN General Assembly demanded that the UK unconditionally end its colonial administration on Chagos Islands within six months through a resolution adopted in 22 May 2019.[29]

The Chagos Islands ruling of the ICJ related to the colonialism period cannot set a precedent for the application of self-determination principle in the framework of the resolution of the UN General Assembly issued 1514(XV) with regards to Nagorno-Karabakh, which has never been subjected to a colonial status.

Moreover, it should not be ignored that the sixth paragraph of the Declaration 1514(XV) introduces an explicit ban on the exploitation of actions taken in the framework of ending colonial rules for other purposes. According to this paragraph:

> "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."

In addition, not content with this stipulation, the Declaration, in its seventh and last paragraph, introduces a further instruction:

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27 Legal Consequences of the separation of the Chagos…, par. 182: "In response to Question b) of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, the Court concludes tha the United Kingdom, has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that Mauritius State must co-operate with the United Nations to complete the decolonization."

28 Legal Consequences of the separation of the Chagos…, par. 177.

29 UN General Assembly Resolution 73/295 (May 17, 2019): "Demands that the United Kingdom... withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months from the adoption of this resolution, thereby enabling Mauritius to complete the decolonization of its territory as rapidly as possible." This Resolution of the General Assembly was adopted through 116 votes in favor and six abstention votes. The votes of abstention were the US, Australia, Israel, Hungary, the Maldives, and the UK.

> "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."

It is also significant that the ICJ applied, in its advisory opinion, not any broad self-determination principle, but directly the Article 73 of the UN Charter and the UN Resolution 1514 (XV).

The ICJ has also previously adopted a similar approach in its advisory opinion dated 18 October 1975 upon the request from the UN General Assembly regarding the dispute between the Kingdom of Morocco and Mauritania on Western Sahara region.[30]

The ICJ conceded that both States had some connections and relations with Western Sahara region, however, it concluded that neither Morocco nor Mauritania had ties with the region in terms of territorial sovereignty. In this circumstance according to the ICJ, the colonial status of the Western Sahara region would not affect the application of the principle of self-determination.[31]

The principles enunciated in these two rulings of the ICJ were also emphasized in the advisory opinion dated 1971 in the case related to the continued presence of South Africa in Namibia in disregard of the UN General Assembly Resolution 2145 dated 1966 terminating the mandate of South Africa over Namibia. In its advisory opinion, the Court concluded that South Africa was under an obligation to immediately withdraw its administration from Namibia.[32]

The ruling of the ICJ can be considered to be decisively important for having been based on the necessity of implementing the UN General Assembly resolution.

B.1.2) Self-Determination and the UN General Assembly Resolution 2625(XXV)

The second important text on the applicability of the self-determination principle is the UN General Assembly Resolution 2625 titled "The Declaration

30 Western Sahara, Advisory Opinion, ICJ Reports, 1975, p. 12.

31 "Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514(XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the Territory." Western Sahara, Advisory Opinion, par. 162.

32 Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding the Security Council (276)1970, par. 173.

on Principles of International Law concerning Friendly Relations and Co-operation among States" that was adopted on 14 October 1970.

The Resolution aimed at identifying in a comprehensive manner the necessary principles that shall be followed by all members of the UN in a period when the former colonies were transformed into independent states.

The mentioned Resolution calls for the progressive development and codification of the principles that shall be complied by states in international arena, the refrainment from the use of force against the territorial integrity and political independence of States, the settlement of disputes by peaceful means, the cooperation of States in line with the UN Charter, equal rights and self-determination of peoples, the sovereign equality rights, the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

The Resolution 2625(XXV) is not a treaty in classical terms, however, it is accepted as encompassing the principles which should be implemented and complied within the international relations between sovereign States. According to an author, even though the principles in question are not binding, they can be accepted as having a "hortatory" nature in terms of their compliance.[33]

The part of the Declaration titled "The principle of equal rights and self-determination of peoples", which is one of the longest parts, despite its dramatic discourse, is quite narrow in scope when its actual content is considered.

Above all, the right to "self-determination of peoples" is limited by two preconditions in Resolution 2625(XXV):

a) To promote friendly relations and cooperation among States,

b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned

It is understood through these remarks in the Declaration that the main ideology of the right to self-determination is based on friendly relations and cooperation.

On the other hand, the main historical subject of the right to self-determination are peoples under colonies. Therefore, since no other category of people is singularized in the text of the Declaration, the right to self-determination of

33 Gaetano Arangio Ruiz, "The United Nations Declaration on Friendly Relations and the System of the Sources of International Law," *Sijthoff and Noordhoff,* 1979, p. 71.

the peoples who are not subjected to colonialism can be applicable only in certain exceptional circumstances.

In other words, the subject of the self-determination principle in the context and in the meaning of the Declaration is not just any people but, a certain people who can claim this right against a State only in the case of certain exceptional circumstances.[34]

Furthermore, detailed and specific limitations are introduced in the Resolution even in circumstances where the application of the right to self-determination may be considered. For instance:

> "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.
>
> 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."

As it can be observed, the Declaration introduces two limitations through a negative connotation on self-determination claims: On one hand the Declaration prevents the interpretation which might mean an approval of disintegration of an independent State through a "movement" claiming self-determination and on the other hand it imposes another obligation by underlining that the States shall not use the self-determination claims against each other to disrupt their national unity and territorial integrity.

These detailed preconditions and reservations reveal that the self-determination claims, other than those arising from disputes related to decolonization in the framework of the Resolution 1514(XV), can be taken into consideration only when there is severe and widespread violation of human rights and especially when the claims are not **brought forward** to disrupt one State's unity and territorial integrity.

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34 Ethnic minorities do not have right to self-determination contrary to "peoples", see: Dilaver Gassimov, "Le conflıt arméno-azerbaidjanais: L'impuissance ou l'indifférence de la communauté internationale?," *Guerres Mondiales et Conflits Contemporains* 2014/no. 24, p. 12 ; Félicien Lemaire, "La libre détermination des peuples, la vision du constitutionnaliste," *Civitas Europa* 2014/1 No. 32, p. 113-138.

The doctrine also describes the type of self-determination deemed applicable in "extreme cases of oppression" as "remedial self-determination".[35]

In one of her articles, Heidy Krüger calls attention to the necessity for the illegalities and oppressions to be "severe, massive and systematic" to give right to the claims of remedial self-determination.[36]

On the other hand Marc Weller, apart from disputes related to former colonies, proposes self-determination to be almost systematically applied in the separatist disputes.[37] This opinion of Weller can only be considered in the circumstances elaborated in the seventh paragraph regarding the right to self-determination of peoples of the Resolution 2625(XXV).

B.1.3) The Advisory Opinion of the ICJ on Kosovo dated 22 July 2010

The advisory opinion of the ICJ regarding the declaration of Provisional Institution of Self-Government of Kosovo from Serbia on 17 February 2008 can be described as "interesting" both in terms of judicial methodology and the conclusion it reaches, in view of the discussion on self-determination.[38]

The advisory opinion of the ICJ dated 22 July 2010 regarding the "unilateral" declaration of independence of Kosovo from Serbia can cause hesitations in terms of the interpretation method of the ICJ, as well as from the perspective of implementation of self-determination as specified in the UN General Assembly Resolution 2625(XXV).[39]

Although the UN General Assembly asked whether the declaration of "independence" by Kosovo had been "in accordance" with the international law, the ICJ, rather than listing concrete facts and legal rationale, came to a conclusion that the declaration of independence of Kosovo from Serbia was not in contravention to the international law, and merely stated that the international law does not contain any prohibiting rule on this matter.[40]

35 James Crawford, *The Creation of States in International Law* (Oxford University Press, 2007), p. 119 ; Heiko Krüger, "Nagorno–Karabakh, in Self-Determination and Secession in International Law," Ed. Christian Walter, Antje von Ungern-Stenberg, and Kaavus Abushov (Oxford University Press 2014), p. 422.

36 Krüger, "Nagorno–Karabakh, in Self-Determination and Secession…," p. 223.

37 Marc Weller, "Settling Self-Determination Conflicts: Recent Developments," *EJIL* Vol. 20, No.1 (2009), p. 163.

38 Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403.

39 "…the Court considers that general international law contains no applicable prohibition of declaration on of independence in respect of declaration of independence." Accordance with International Law of the Unilateral Declaration…, par. 84.

40 "… the Court considers that general international law contains no applicable prohibition of declaration of independence." Accordance with International Law of the Unilateral Declaration…, par. 84.

Instead, the ICJ could have come to a different conclusion by, at least, considering the UN Security Council Resolution 1244(1999) dated 10 June 1999 which listed the serious difficulties and critical problems faced by Kosovo.[41]

On the other hand, in the face of such a critical declaration of independence, which can be perceived as a precedent in the future, the ICJ should have considered especially the important and detailed stipulations on separatist movement contained in the UN General Assembly Resolution 2625 (XXV).

The Security Council Resolution 1244(1999) underlined that a "grave humanitarian situation" emerged and "acts of violence against the Kosovo population took place" in Kosovo, and recalled the statement made by the Secretary-General on 9 April 1999, expressing concern at the "humanitarian tragedy" taking place in Kosovo.[42]

The Resolution 1244(1999) does not, neither in its preamble nor in its operative paragraphs, contain such terms as "self-determination" or "independence" and the remarks which might be associated with the "political solution" mentioned in the text do not go beyond "self-governing" and "self-administration". Each one of these terms has different content and conditions of application, but none of them contain the declaration of independence. On the contrary, it should be conceded that the Resolution has limited the options among the settlement alternatives and it clearly enumerated and excluded the alternative of independence. In other words, the fact that the self-determination formula in the form of a declaration of independence has never been brought forward during the consideration of the Resolution 1244(199) which is of great importance concerning the future of Kosovo, has definitely not been examined in the ruling of the ICJ.

Moreover, Stefan Oeter emphasized that on the date Kosovo declared its independence, the Security Council Resolution 1244(1999), which determined the continuation of the sovereignty of the Federal Republic of Yugoslavia on Kosovo, was still in force and drew attention to the need for the Security Council to declare, explicitly or through interpretation, that the mentioned resolution has become obsolete.[43]

However, in the absence of such a statement and considering that the declaration of independence of Kosovo would constitute a "secession", the ICJ should have evaluated the declaration of independence in terms of its

41 UN Security Council Resolution 1244 (June 10, 1999).

42 UN Security Council Resolution 1244 (June 10, 1999).

43 Stefan Oeter, "Secession and the Role of the Security Council," *The ICJ*, 2012, p.124.

conformity with the conditions stipulated in the UN General Assembly Resolution 2625(XXV).

The ICJ, instead, registered the conformity of the unilateral declaration of independence with the international law, thus deviating from the criteria mentioned in the Resolution 1244(1999) and without analyzing the political and social situation in Kosovo.

According to Claire Crépet-Daigremont, who criticizes the superficial and mechanic approach of the ICJ, the ICJ should have examined the status of "action" on the declaration of independence in terms of international law.[44]

However, from a different point of view, it can also be stated that the decision of the ICJ does not totally exclude the Resolution 2625(XXV) mentioned above on the date of independence. According to the ICJ, it is acknowledged that the territorial integrity of the States would not be affected by the declaration of independence of Kosovo. The Court also indicates, making a reference to the Helsinki Final Act, that the scope of the principle of territorial integrity is confined to the sphere of relations between States.[45]

It is obvious that this argument leaves States defenseless vis-a-vis the separatist movements within their countries. However, the seventh paragraph of the Resolution 2625(XXV) related to self-determination does certainly not contain such limitation. The first paragraph of this part, which has two paragraphs, mentions "any action" which would dismember or impair the territorial integrity or political unity, **however, the second paragraph** stipulates that the States 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. Therefore, this writing reveals that the territorial integrity of the State might be threatened in two different cases.

This approach of the ICJ creates an impression that in the cases where the right to self-determination is used, the States would not benefit from the prohibition stipulated in the seventh paragraph of the part relating to self-determination of the Resolution. In other words, in such a situation, the principle of territorial integrity of the State could not be claimed by the suffering State against the separatist movement but it could only be invoked **against a State supporting this movement**. This approach would violate not only the Declaration but also the Article 2 of the UN Charter regulating the protection of territorial integrity of States.

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44 Claire Crepet-Daigremont, "Conformité au droit international de la déclaration unilatérale d'indépendence relative au Kosovo," *CIJ*, avis consultatif du 22 juillet 2010, Annuaire français du drot international, vol. 56 (2010), p. 241.

45 Crepet-Daigremont, "Conformité au droit international…," p. 80.

In conclusion, it can be said that, in a serious matter like a declaration of independence, which might lead to severe consequences, the ICJ, rather than analyzing the case in detail, pursued a minimalist approach by arguing that "if it is not prohibited, it is in conformity with the law" and, thus, did not adequately examine the relevant articles of the Resolution 2625(XXV) with regards to the principle of self-determination.

On the other hand, it can also be presumed that the ICJ did not find the implementation of the Resolution 2625(XXV) politically convenient with an apprehensiveness to bring into the fore, once more through judicial decision, the tragic incidents that took place in former Yugoslavia during the 1990s. Moreover, the ICJ might have confined itself to making a simple and mechanic interpretation with concerns over once more bringing up the fact that Serbia, which is a member of the Council of Europe since 2003 and also initiated its accession process to the EU, has committed in the past ethnic cleansing and, as determined with another decision of the ICJ, genocide in Srebrenica.[46]

B.2) The Validity of Self-Determination concerning Nagorno-Karabakh

B.2.1) Requirements Regarding Self-Determination

The self-determination principle is being proposed as the essential solution regarding the settlement of the Nagorno-Karabakh conflict in the periodical statements of the Minsk Group since its Lisbon meeting held in 1996. Although these statements include other solution proposals as well, these proposals are certainly not meant to be alternatives for self-determination and they only remain at the level of supplementary and supportive side clauses for self-determination.

Moreover, the statements in question do not contain any reference or evaluation which would suggest that the four resolutions of the Security Council adopted in 1993 which identified the territorial integrity and inviolability of the borders of Azerbaijan as the main resolution parameters have been taken into account.

However, no deviation or retreat was registered at the level of UN organs indicating that the outline of 1993 resolutions has been abandoned.

On the contrary, the abovementioned Resolution A/RES/62/243 of the UN General Assembly dated 14 March 2008 reveals that the principles enumerated

46 Hence, the European Commission started to examine the membership application of Serbia on 26 September 2010 two months after the decision of the ICJ and Serbia was officially recognized as a candidate country on 12 October 2011. The European Council also officially recognized the candidacy of Serbia on 1 March 2012 by considering a report issued by France, Italy, and Austria. However, had the ICJ given the Resolution 2625(XXV) as a rationale, then the human rights violations committed by Serbia in 1990's would have been introduced as a justification for the declaration of independence.

in the resolutions of the Security Council are not abandoned. In addition to its principal approach, as it is mentioned above, the General Assembly called upon the member States of the UN not to recognize the occupation of Nagorno-Karabakh and demanded the immediate, complete, and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan.

However, there is no statement of the Minsk Group that would suggest that the Group has been influenced by or at least has taken note of the UN resolutions.

Yet, for such a radical solution like the self-determination to be suggested as a solution framework, the presence of three conditions, in particular, should be confirmed:

First Condition: Nagorno-Karabakh is not a region that falls in the scope of the article 73 of the UN Charter on non-sovereign states and has never been in that category in the past. Therefore, the region would not come in the scope of implementation of the UN General Assembly Resolution 1514 (XV) on decolonization.

The abovementioned advisory opinions of the ICJ concerning Chagos Islands and Western Sahara are not applicable in Nagorno-Karabakh.

Second Condition: It cannot be claimed either that Nagorno-Karabakh would fall in the scope of implementation of the UN General Assembly Resolution 2625(XXV). There are no claims arguing that Azerbaijan committed severe and widespread human rights violations in this region. Similarly, the statements of the Minsk Group do not include either any finding or claim in this regard. Consequently, the abovementioned "remedial secession" claim could not be brought forward either.

Moreover, no similar claims were brought forward at the level of UN organs.

Third Condition: Self-determination demands or claims must be in accordance with the international law and especially with the principles stipulated in the UN Resolution 2625(XXV). They should be based on the grounds of real, unique, and independent will of people of the country or the region in question. It would be appropriate to examine the Chiragov judgement dated 2015 of the Grand Chamber of the European Court of Human Rights to identify whether these conditions are fulfilled with regards to Nagorno-Karabakh.[47]

47 Chiragov v. Armenia, (GC) Application no. 13216, 16 June 2015; for detailed examination of the opinion, see: Turgut Kerem Tuncel, "The Nagorno-Karabakh Issue From A Juridical Point of View: The Case of Chiragov and Others v. Armenia," *Center for Eurasian Studies (AVİM)*, Analysis No: 2015/13, June 26, 2015. https://avim.org.tr/en/Analiz/THE-NAGORNO-KARABAKH-ISSUE-FROM-A-JURIDICAL-POINT-OF-VIEW-THE-CASE-OF-CHIRAGOV-AND-OTHERS-V-ARMENIA

B.2.2) The "Veracity" of Self-Determination Arguments on Nagorno Karabakh in The Light of Chiragov Judgement

It would be appropriate to examine the self-determination formula, which is being focused on by the Minsk Group since 1996, regarding the resolution of the Nagorno-Karabakh conflict in the light of the Chiragov judgement of the Grand Chamber of the ECHR.

The application of Chiragov, which is an individual application, is related to the case of the applicants who were among the 750,000 to 800,000 Azerbaijani nationals who, according to Human Rights Watch, have been forced, during the military offensive of Armenia in the years 1988 to 1992, to leave the region, complaining that they were prevented from returning to their properties and unable to find access to an effective remedy to compensate the losses they had to suffer.

The ECHR, before investigating the merits of the application, pointed out that the incidents started before the start in 1992 of the full-scale war, upon the Joint Declaration of Supreme Soviet of the Armenian SSR and the Nagorno-Karabakh Regional Council adopted in 1989 that Armenia and Nagorno-Karabakh are "reunified".[48]

The judgement also indicated that the UN Security Council, in its resolutions adopted in 1993, described the military operation of Armenia in Nagorno-Karabakh as an "invasion" and "occupation".[49]

With regards to the merits of the application, the ECHR, first of all, meticulously investigated the competence of its jurisdiction "*ratione loci*" in terms of Article 1 of the European Convention of Human Rights regarding the incidents and violations claimed to have taken place in a region outside the borders of Armenia.

In this framework, the ECHR evaluated the military, political, and economic relations between Armenia and Nagorno-Karabakh.

The Military Influence of Armenia on Nagorno-Karabakh

The Chiragov judgement contains detailed explanations regarding the fact that Nagorno-Karabakh, which declared its "independence" on 2 September 1991, is under the influence of Armenia in the military field. Having dedicated three pages on this issue, the ECHR points out that the "military cooperation"

48 Chiragov v. Armenia, (GC) Application..., par. 172.

49 Chiragov v. Armenia, (GC) Application..., par. 173.

between the "Nagorno-Karabakh Republic" and Armenia is based on the "Agreement on Military Cooperation between the Government of the Republic of Armenia and the Republic of Nagorno-Karabakh".[50]

The preamble of the mentioned agreement, which is quoted in the ECHR, indicates that both "parties" have "mutual interest" to improve cooperation in the military field. In the framework of this "cooperation", the agreement envisages the establishment of the "army" military legislation, the logistic problems of armed forces, assignment of Armenian military personnel in the "army" of Nagorno-Karabakh, as well as developing military cooperation in other areas in this direction.[51]

The reference to this cooperation, which is examined in detail in the Chiragov judgement of the ECHR, in fact, originally had a procedural objective to identify whether the claims of applicants could be directed to Armenia or not, however, it shows also as an indication that the mentioned military rapprochement doctrine has attracted the attention of the Court.

For instance, Mathieu Petithomme underlines that Armenia is making the effort to present an appearance of a "state" and "nation" in Nagorno-Karabakh region, however, he also points out that this presentation, which is in truth a clientelist approach, aims at ensuring assertion of legitimacy in the international community.[52]

The Political Influence of Armenia on Nagorno-Karabakh

Under this title, the ECHR lists especially the presidents of the State of Armenia who were of Nagorno-Karabakh origin. The ECHR also attracts attention to the affirmations of the applicants stressing that the Armenian law is being implemented in Nagorno-Karabakh.[53]

The Economic Influence of Armenia on Nagorno-Karabakh

As it can be understood from data enumerated in the ECHR decision, the economic existence of Nagorno-Karabakh completely depends on Armenia

50 Chiragov v. Armenia, (GC) Application..., par. 74.

51 Chiragov v. Armenia, (GC) Application..., par. 74-78.

52 Mathieu Petithomme, "Etatisation et nationalisation du territoire contesté du Haut-Karabakh - Vivre et évoluer sans reconnaissnce internationale," *Revue d'Etudes Comparatives Est-Ouest* 14, No.42 (2011): 23.

53 Chiragov v. Armenia, (GC) Application..., par. 78-79.

and on the assistance provided by the third countries, the Armenians living in those countries, and especially the funds based in the US.[54]

At the end, the ECHR concluded that Armenia has been violating the right to protection of property of the applicants. However, the importance of the Chiragov judgement goes beyond the determination of the violation of property rights; the judgement of the ECHR reveals that Armenia has been engaged in political, economic, and especially grand scale military operations, which is considered as "intervention" in terms of international law in the region belonging to Azerbaijan.[55]

The Importance of the Chiragov Judgement in terms of Self-Determination Arguments

The Chiragov judgement underlines that the military, political, and economic activities of Armenia in Nagorno-Karabakh prove that the region is not in a position to "determine its own future by its own free will" or to practice self-determination. It is clear that assertion of self-determination would not be plausible in the face of the omnipresence of the interventions of a foreign state, especially in the military field, covering almost the totality of the public domain in that region.

The multi-faceted activities of Armenia in the region prove that Nagorno-Karabakh is unable to assume and execute a real self-determination. In other words, "the region" is deprived of a strong and authentic willpower that would enable the region to become the subject of self-determination.

On the other hand, the opinion of Pinto de Albuquerque (the Portuguese member of the ECHR) claiming, with a view to support the self-determination assertions, that widespread human rights violations were committed by Azerbaijan and thus the "remedial" self-determination should be granted to the region, did not have any reflection in the judgment of the ECHR.[56]

The Chiragov judgement proves that the organization and implementation of self-determination, which has been advocated for many years by the Minsk Group, in addition to being illegitimate from a legal point of view, is also inapplicable in the region for factual reasons due to the military, political, and economic influence of Armenia that dominates the region.

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54 Chiragov v. Armenia, (GC) Application..., par. 80-86.

55 "Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan," Report by the *Ministry of Foreign Affairs of the Republic of Azerbaijan*, 2016.

56 Chiragov v. Armenia, (GC) Application..., Dissenting Opinion of Judge Pinto de Abuquerque, especially paragraphs 39 and 59.

The other important legal contribution of the Chiragov judgement is that the ECHR did not endorse the views of the Portuguese judge claiming that widespread human rights violations relating to Nagorno-Karabakh were committed.

Therefore, it can also be stated that the judgement of the ECHR, which does not share the allegations of widespread human rights violations relating to Nagorno-Karabakh, has thus prevented this region to be included within the scope of application of the UN Resolution 2625 (XV) and has forestalled the formation of self-determination claims in the future.

CONCLUSION

A researcher, an "optimist" at the first glance, released an article in 2010 titled "Nagorno-Karabakh: Ever Closer to Settlement, Step by Step".[57] However, it is pointed out in the article that Armenia would not withdraw from the region until the status of Nagorno-Karabakh was identified. [58]

On the other hand, the Minsk Group has been focusing on the formula based on self-determination regarding the resolution of Nagorno-Karabakh conflict since 1998. However, this formula is not defendable in the case of the Nagorno-Karabakh conflict because of four reasons.

Firstly, the Almaty Declaration on the disintegration of the USSR (which gradually approved that Nagorno-Karabakh -which is the main reason of the conflict- belongs to Azerbaijan), evaluations made during the process of UN membership of Azerbaijan and later the four resolutions of the UN Security Council adopted in 1993 (requiring the settlement of the dispute on the basis of territorial integrity and inviolability of the borders of Azerbaijan), and the Resolution of the UN General Assembly (which reiterates and approves the same principles) reaffirmed in an absolute manner that the region is located in the area of the sovereignty and the territorial integrity of Azerbaijan.

Secondly, since Nagorno-Karabakh is not a country under colonial regime, it cannot be subjected to self-determination in the terms of the UN Resolution 1514(XVI) that was adopted to be applied to colonies.

Thirdly, the claims for Nagorno-Karabakh to be subjected to the self-determination in terms of the UN Resolution 2625(XXV) on Friendly Relations

57 Tim Potier, "Nagorno-Karabakh: Ever Closer to Settlement, Step by Step," *OSCE Yearbook 2009* (Baden: 2010).

58 Potier, "Nagorno-Karabakh…," p. 206: "The Armenian side would never agree to withdraw without the status question being resolved."

on the grounds that widespread human rights violations were committed did not find any reflection in the UN Resolutions, nor in the Chriagov judgement of the ECHR. Therefore, any "remedial" self- determination cannot be applicable in this region.

Fourthly, the Chiragov judgement of the ECHR also pointed out in a detailed manner that is not possible either for Nagorno-Karabakh to demand and implement self-determination as an independent subject in practice.

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