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Legitimization of Violence and State Dissolution in Nagorno-Karabakh: A Critical Legal Analysis

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Introduction

As the disputed region of Nagorno-Karabakh is said to exist no more, the echoes of a protracted conflict resonate with a grim finality. The start of the year 2024 marked the closure to an entity that, while subjected to resumed hostilities since 2020, suddenly vanished in a manner that caught many observers off guard.

This chapter[1] seeks to unpack the layers of this complex dissolution of a region that many believed would endure despite the odds. It provides a critical legal analysis of the Nagorno-Karabakh conflict, emphasizing how international legal interpretations and their applications have facilitated acts of violence and led to the dissolution of this contested state. It explores the paradoxical role of international law in simultaneously restricting and enabling violence, often justified under the pretexts of sovereignty and territorial integrity. This analysis critiques the mainstream acceptance of such actions, which obscures the often-neglected interplay between human rights and territorial integrity, and highlights how these frameworks sometimes fail to address complex human dimensions.

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Moreover, this chapter discusses the dynamics surrounding the recognition of contested states and the application of international humanitarian law in such conflict zones. It critiques the oversights in addressing human rights violations and war crimes, arguing that these omissions contribute to a selective historical narrative that legitimizes the suppression of the Nagorno-Karabakh entity. This effectively buries the true story of Nagorno-Karabakh, omitting significant human and cultural losses from global consciousness.

Furthermore, this chapter examines the delicate balance between self-determination and the sovereignty of states, alongside the legal underpinnings of self-defence in international conflicts. It also scrutinizes the interesting paradox whereby Azerbaijan, long arguing that the Nagorno-Karabakh Republic was non-existent, forced it to dissolve. Drawing on critical legal studies, this analysis challenges the conventional understanding that frames these actions within acceptable legal norms, revealing a darker, often overlooked side of international law that impacts real lives and geopolitical stability.

Background

The Nagorno-Karabakh conflict centres on a disputed region in the South Caucasus, to the east of Armenia, enclaved within the internationally recognized borders of Azerbaijan. This complex and protracted conflict has left deep scars in the region and remains a significant challenge for peace and stability in the South Caucasus. During the Soviet era, the Nagorno-Karabakh Autonomous Oblast (NKAO) was established and designated to the Azerbaijani Soviet Socialist Republic (SSR) in 1923, despite the region having a significant ethnic Armenian majority. This decision was part of the broader Soviet policy of nationalities under Joseph Stalin. This arrangement planted the seeds for future conflict, as the ethnic Armenians in the region feared marginalization.

As the Soviet Union neared its collapse in the late 1980s, the ethnic Armenians of Nagorno-Karabakh pursued independence, declaring themselves a separate entity to either unite with the Armenian SSR or achieve full sovereignty. This move led to heightened tensions and was met with opposition from the Azerbaijani SSR, marking the beginnings of what would become a civil war (Human Rights Watch 1991: 5). The Nagorno-Karabakh conflict thus initially involved mainly local ethnic Armenian forces and Azerbaijani forces. With the dissolution of the Soviet Union and the emergence of Armenia and Azerbaijan as independent states in 1991, the Nagorno-Karabakh conflict evolved into full-scale warfare as Armenia entered the theatre of war, supporting the Nagorno-Karabakh Armenians. This move was partly a response to the strategic and humanitarian needs of the ethnic Armenians in Nagorno-Karabakh, amid ongoing hostilities.

In 1994, local Armenian forces from Nagorno-Karabakh secured control over the region, as well as surrounding Azerbaijani territories, creating a

buffer zone around the enclave. This action was primarily conducted by the Nagorno-Karabakh Defence Army, comprised of ethnic Armenians from the region itself, although supported by volunteers and resources from Armenia. The conflict was characterized by fierce combat, significant casualties, and substantial displacement on both sides, with hundreds of thousands of people – approximately 600,000 Azerbaijanis (International Crisis Group 2012) and 300,000–350,000 Armenians (Human Rights Watch 1994) – forced to leave their homes due to the fighting.

A ceasefire on 12 May 1994, brokered by Russia (Bishkek Protocol 1994), left Nagorno-Karabakh *de facto* independent and in control of seven surrounding territories (OSCE 2011). This *status quo* was maintained through a fragile peace, with the OSCE Minsk Group (co-chaired by the United States, Russia, and France) attempting to mediate a long-term resolution. However, peace efforts were repeatedly undermined by outbreaks of violence, mutual distrust, and a lack of compromise, leading to sporadic escalations throughout the years.

On 27 September 2020, the conflict reignited when Azerbaijan, backed by Turkey, launched a large-scale military offensive to reclaim territories lost in the early 1990s. After six weeks of heavy fighting, a Russia-brokered ceasefire was signed and came into effect on 10 November 2020 (President of the Republic of Azerbaijan et al 2020), which resulted in concessions of Armenian-controlled territory as well parts of Nagorno-Karabakh itself. The agreement also stipulated the deployment of Russian peacekeepers, further complicating the regional power dynamics.

On 19 September 2023, Azerbaijan launched its final military assault, quickly seizing full control of the rest of Nagorno-Karabakh. Over 100,000 ethnic Armenians (UNHCR 2023) were then forced to flee (Klonowiecka-Milart and Paylan 2023) Nagorno-Karabakh to Armenia, following a nearly ten-month blockade by Azerbaijan that led to a dire humanitarian crisis (OHCHR 2023) and widespread starvation which some experts deemed as amounting to genocide (for example, Moreno Ocampo 2023). The United Nations estimates as few as 50 Armenians remain in the region (UN 2023). The Nagorno-Karabakh conflict is now said to have ended on 1 January 2024, with the *de facto* Nagorno-Karabakh Republic considered to have ceased to exist (Uvarchev 2023).

The four UN Security Council resolutions

The UN Security Council (UNSC) passed four resolutions regarding the Nagorno-Karabakh conflict in 1993, during the most intense period of hostilities. Resolution 822 was adopted on 30 April 1993, after 'local Armenian forces' captured the town of Kelbajar, which lies outside the NKAO's borders but within Azerbaijan, creating a corridor linking Armenia

to Nagorno-Karabakh, and leading to a significant displacement of civilians (UNSC 1993a, Res. 822). Resolution 853 was adopted on 29 July 1993, following the capture of Agdam, another territory outside of NKAO borders (UNSC 1993b, Res. 853). Resolution 874 was adopted on 14 October 1993, in response to continuing hostilities and efforts to mediate a peaceful resolution to the conflict (UNSC 1993c, Res. 874). Resolution 884 was passed on 12 November 1993, after the capture of Zangelan and Horadiz in Azerbaijan, leading to further displacement of civilians (UNSC 1993d, Res. 884).

The Armenian and Azerbaijani interpretations of these resolutions have differed significantly, reflecting their respective national narratives. Perhaps the most important significant difference in interpretation is the Azerbaijani stance that the resolutions establish Armenia as an aggressor and occupier, alleging that the conflict began with Armenia invading and then occupying Azerbaijani territory. However, this simplifies the complex dynamics of the conflict where local ethnic Armenian forces sought independence or unification with Armenia due to longstanding ethnic and territorial issues.

The resolutions do call for the withdrawal of 'occupying forces' and often express concern about the occupation of territories (UNSC 1993a, Res. 822, para. 1; UNSC 1993b, Res. 853, para. 1; UNSC 1993d, Res. 884, paras. 1, 4; see also UNSC 1993c, Res. 874, para. 5). They do not, however, explicitly state that the Republic of Armenia is the occupying force. Rather, the resolutions refer to 'local Armenian forces' as a distinct group within Azerbaijan (UNSC 1993b, Res. 853, preamble), and call on 'the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny-Karabakh region of the Azerbaijani Republic with its resolution[s]' (UNSC 1993b, Res. 853, para. 9; see also UNSC 1993d, Res. 884, para. 2). This phrasing implies that the belligerent and occupying forces referred to therein are from Nagorno-Karabakh, not from the Republic of Armenia. By framing Armenia as the direct aggressor, Azerbaijan thus supports its narrative of territorial integrity and sovereignty being violated by another state, rather than addressing the internal separatist dynamics driven by the local Armenian population of Nagorno-Karabakh, ignoring the fact that the 12 May 1994 ceasefire agreement was signed by representatives of Armenia, Azerbaijan, *and* Nagorno-Karabakh (Bishkek Protocol 1994).

Azerbaijan's misinterpretations further stem from focusing on selective wording that supports the immediate withdrawal of 'occupying forces', while downplaying or ignoring parts that call for a negotiated peace, which considers the rights and security of the ethnic Armenian population in Nagorno-Karabakh. Such interpretations emphasize territorial integrity without equal consideration of self-determination and human rights stipulated in broader international law discussions, which the resolutions

do not dismiss. The resolutions aim to address the conflict without overtly taking a side by naming a specific aggressor, focusing instead on the actions taken by local forces in the region. Azerbaijani officials have nonetheless often cited these resolutions to argue almost exclusively that the international community does not recognize Nagorno-Karabakh as separate from Azerbaijan and that *any* Armenian presence on these lands is considered an occupation.

The Azerbaijani government has also viewed these resolutions as supporting its right to reclaim control over these areas, including through military means. However, they repeatedly call for settlement through OSCE Minsk Group's mediation and emphasize the importance of achieving a peaceful resolution. This insistence on a diplomatic approach highlights a fundamental aspect of the resolutions: that they aim to set a framework for peace and negotiation, not endorse military action as a means of conflict resolution.

The (mis)interpretation of international judgments

Effective control at the European Court of Human Rights

In a similar fashion to the four UNSC resolutions, Azerbaijan advocates erroneous interpretations of other legal instruments in support of the purported partial occupation of its territory by Armenia. Chief amongst these is the 2015 judgment of the European Court of Human Rights (ECtHR) in *Chiragov and Others v Armenia*, in which the Grand Chamber determined that 'Armenia … exercises effective control over Nagorno-Karabakh and the surrounding territories' and, accordingly, that 'the matters complained of … come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention' (para. 186). This judgment is often cited as purportedly establishing that Armenia occupied Nagorno-Karabakh.

However, the Grand Chamber took insufficient care to distinguish between the 'effective control' standard of the ECtHR to assess the extent of a state's extraterritorial jurisdiction under Article 1 of the European Convention on Human Rights (ECHR) (1950), on the one hand, and of international humanitarian law to determine situations of occupation, on the other. In particular, the 'effective control' test employed by the ECtHR is markedly less demanding.[2] By contrast, the 'effective control' test employed to attribute

[2] In *Catan and Others v Moldova and Russia* (ECHR 2012), the ECtHR Grand Chamber observed that 'the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law' (para. 115). Similarly, in *Georgia v Russia (II)* (ECtHR 2021), the Grand Chamber confirmed that 'the term "effective control" [within the meaning of Article 1 ECHR] is broader and covers situations that do not necessarily amount to a situation of "occupation" for the purposes of international

state responsibility under international humanitarian law is considered the appropriate standard for the determination of whether a state is occupying the territory of another (see, for example, ICJ 2024, *Palestine* Advisory Opinion, para. 90; ICJ 2004, *Wall* Advisory Opinion, para. 78; ICJ 2005, *Armed Activities*, paras 173–176; ICJ 1986, para. 115; ICJ 2007, *Bosnian Genocide*, paras 399–406). The ECtHR did not (nor did it need to) determine whether Armenia was, at the time relevant to the alleged violations of the ECHR, *occupying* Nagorno-Karabakh as defined under international humanitarian law.[3] Rather, the application of the far less demanding 'effective control' test was all that was necessary in order to establish extraterritorial Article 1 jurisdiction in *Chiragov*. Azerbaijan seizes upon this regrettable ambiguity, drawing a false equivalency between these standards.

Unblocking the Lachin corridor at the International Court of Justice

Another example of Azerbaijan's erroneous interpretations of international legal instruments involves the indication of provisional measures by the International Court of Justice (ICJ), especially concerning the blockade of the Lachin corridor. In 2023, the ICJ ordered Azerbaijan to ensure unimpeded movement along the corridor, a lifeline for the ethnic Armenian population in Nagorno-Karabakh (ICJ 2023, *Armenia v Azerbaijan*, para. 62). Despite this clear directive, Azerbaijani officials, including the agent of Azerbaijan before the ICJ and the Azerbaijani minister of foreign affairs, inaccurately claimed the ICJ's decision aligned with their stance on managing the protests blocking the Lachin corridor and continued to assert that no restrictions were placed there, contradicting the ICJ's findings of significant disruptions (Paylan 2023).

Azerbaijan's public statements and subsequent inaction evince a deliberate misreading and non-compliance with the ICJ's orders. By maintaining the blockade and blatantly misinterpreting a clear instruction, Azerbaijan deepened the crisis, compelling the Armenians of Nagorno-Karabakh to flee their homes under eventual bombardment and severe duress.

humanitarian law' (para. 196). Most recently, in *Ukraine v Russia (re Crimea)* (ECtHR 2024), the Grand Chamber found that even once 'effective control', within the meaning of Art. 1 is established, further factual evidence of control is required in order to establish a situation of belligerent occupation (par. 918). The ECtHR applied these principles to Nagorno-Karabakh explicitly in *Christian Religious Organization of Jehovah's Witnesses in the NKR v* Armenia (ECtHR 2022, para. 48).

[3] A '[t]erritory is considered occupied when it is actually placed under the authority of the hostile army' (Hague Regulations 1907, Art. 42). While the ECtHR did briefly recall potentially applicable norms of international humanitarian law (*Chiragov*, 2015, paras 96–97), it did not apply these rules in assessing the alleged human rights violations under the ECHR.

This scenario unfolded with little effective intervention from the international community. Notably, the UNSC, tasked with maintaining international peace and security, failed to enforce the ICJ's order. This allowed the situation to further deteriorate, which signals a troubling disregard for international judicial mechanisms, emboldening unilateral actions that contribute to ethnic displacements.

The (mis)application of international law

The principle of sovereignty, central to the understanding of international relations and law, has been the most contentious in the context of Nagorno-Karabakh. The dissolution of the Soviet Union activated a strong push for sovereignty and self-determination by the majority Armenian population in Nagorno-Karabakh, leading to a declaration of independence and secession that was not recognized by Azerbaijan or the broader international community. The principle of sovereignty and territorial integrity, by contrast, has been the cornerstone of Azerbaijan's legal and diplomatic, and ultimately military, efforts to reclaim control over Nagorno-Karabakh. Internationally, this principle is intended to prevent states from infringing on the territorial sovereignty of other states. However, in the case of internal conflict, such as that in Nagorno-Karabakh, territorial integrity is often cited to delegitimize secessionist movements.

The international community's adherence to a conservative interpretation of sovereignty that prioritizes state territorial integrity over the rights or aspirations of internal groups resulted in not a single UN member state (not even Armenia) ever recognizing Nagorno-Karabakh as an independent entity. In his 1994 analysis on the tension between a state-centric reading of self-determination and a revisionist reading thereof focused on peoples not yet endowed with statehood, Martti Koskenniemi noted that limiting the right to self-determination to contexts of decolonization has always seemed somehow arbitrary (Koskenniemi 1994: 242).[4] His analysis thus supports the position that self-determination must factor into any discussion of the Nagorno-Karabakh conflict, especially given that, having ignited in 1988, the conflict predates the independence of both Azerbaijan and Armenia, and

[4] The International Court of Justice has appeared sympathetic to this interpretation, framing self-determination as having 'developed in such a way as to create a right to independence for the peoples of non-self-governing territories and *peoples subject to alien subjugation, domination and exploitation*' (ICJ 2010, *Kosovo* Advisory Opinion, para. 79). Moreover, in its *Chagos* Advisory Opinion (ICJ 2019), the ICJ noted that, while the question before it was confined to self-determination in the decolonial context, 'the right to self-determination, as a fundamental human right, has a broad scope of application' beyond this specific area (para. 144).

the strong federal structure of the former Soviet Union does not necessarily lead to the assumption that it had to naturally dissolve into its SSRs. In this respect, Koskenniemi more specifically noted:

> The application of the *uti possidetis* principle in the determination of post-colonial boundaries lived always somewhat uneasily with the official ideology of decolonization as a restoration of authentic communities destroyed by alien rule. Can international lawyers now do better? How should we deal with the Armenian enclave in mountainous Karabagh in Azebeidzhan [*sic*]? (Koskenniemi 1994: 243)

Ultimately, the international community's choice to deal with Nagorno-Karabakh by adopting the conservative approach leading to non-recognition left Nagorno-Karabakh in a very vulnerable position. Moreover, the failure to adopt a human rights-based approach in addressing the Nagorno-Karabakh conflict has arguably contributed significantly to its perpetuation and the tragic ethnic cleansing witnessed in 2023. The longstanding consideration of sovereignty and territorial integrity as sacrosanct principles of international law and relations has overshadowed or sidelined crucial human rights considerations that are equally enshrined in the UN Charter. In the case of Nagorno-Karabakh, this has meant that the rights and securities of the ethnic Armenians have typically been acknowledged only as an afterthought in international discussions and resolutions. For instance, statements by major global actors regarding the behaviour of Azerbaijan post-2020 consistently emphasized the importance of respecting sovereignty and territorial integrity first, before finally addressing human rights abuses (for example, Council of the European Union 2023). This approach can be seen as contributing to an environment where aggressive actions are tolerated if they do not overtly transgress these 'higher' state-centric norms.

This skewed prioritization fails to address the root causes of such conflicts. By demoting the importance of human rights and self-determination, the international community left the Armenians of Nagorno-Karabakh with little recourse to peaceful advocacy for their rights and conditions that respect their identity and history. Moreover, the typical international response, which rigidly adheres to the principles of non-interference and State sovereignty, risks enabling States to manipulate these principles to justify or obscure their aggressive policies. This has been particularly evident in Azerbaijan's utilization of force under the pretext of reclaiming its territories, a justification seemingly endorsed by international inertia towards a rights-based resolution framework.

This skewed prioritization also fails to consider the tenets of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (UNGA 1970, Res. 2625 [XXV]). The seventh

paragraph of the Declaration under the heading 'The principle of equal rights and self-determination of peoples' (the so-called 'safeguard clause'), provides that:

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

The ICJ has repeatedly held the declaration is reflective of customary international law (for example, ICJ 1986, *Military and Paramilitary Activities*, para. 191; ICJ 2005, *Armed Activities*, para. 162; ICJ 2010, *Kosovo* Advisory Opinion, para. 80), and also of 'normative character under customary international law' with respect to the law of self-determination (ICJ 2019, *Chagos* Advisory Opinion 2019, para. 155; see also *Western Sahara* 1975, para. 58; ICJ *Wall* Advisory Opinion, para. 88; ICJ 2010, *Kosovo* Advisory Opinion, para. 80; Kohen 2020: 133). Significantly, the declaration goes further than the UN Charter 'in that it makes self-determination not only a foundational component but also a sufficiently concrete principle from which rights and obligations can be directly derived' (Abi-Saab 2020: 19). Accordingly, the safeguard clause effectively conditions a state's enjoyment of territorial integrity as a legal right on its compliance with the principle of equal rights and self-determination of peoples.

The application and misapplication of these principles in the context of Nagorno-Karabakh raise significant questions about the efficacy and fairness of international law. It may be argued that a rigid application of territorial integrity overlooks the nuances of self-determination and the historical contexts of disputed regions. This can lead to a perpetuation of conflict, as the underlying grievances and aspirations of the relevant populations are not adequately addressed. Azerbaijan has thus consistently portrayed its conflict with Nagorno-Karabakh's Armenian population as part of a broader irredentist conflict with Armenia. According to this view, there is no genuine independence movement in Nagorno-Karabakh; it is merely the result of external meddling. From the Azerbaijani perspective, the Nagorno-Karabakh Republic is merely a puppet state, comparable to the 'people's republics' in eastern Ukraine established by Russia, serving as a tool for annexation.[5]

[5] Discussed further in Miklasová, Chapter 4 of this volume.

As a result, the Nagorno-Karabakh conflict is further complicated by the potential for confusion or conflation with other regional conflicts involving Russian interference. In Ukraine, Russia has claimed to be supporting the self-determination of ethnic Russians and other minorities, but many international observers view these actions as pretexts for expanding Russian influence and control, thereby undermining the genuine application of self-determination in international law.

The case of Nagorno-Karabakh, by contrast, represents a genuine struggle for self-determination by the ethnic Armenian population, who have long expressed a clear and consistent will to determine their own political status and have sought to achieve this through established democratic processes, such as referendums. This movement arose from historical grievances and a deep-seated desire for autonomy, distinct from any aggressive foreign policy aims by an external state. The confusion or conflation of Russia's actions with those in Nagorno-Karabakh has misinterpreted the latter's aspirations as similar acts of aggression. This misunderstanding has diluted the unique aspects of the Nagorno-Karabakh situation, which in turn has led to international responses and policies that failed to recognize those unique aspects.

The (il)legality of the use of force by Azerbaijan

In the immediate aftermath of the 2020 Nagorno-Karabakh war, a spirited debate arose regarding the legitimacy of Azerbaijan's military actions starting on 27 September 2020, particularly its claim of self-defence (Permanent Representative of Azerbaijan to the UN 2020), to 'recover' Nagorno-Karabakh. Some experts assert that Azerbaijan's actions were justified, positing that an occupation resulting directly from an initial armed attack constitutes a 'continuing armed attack', thereby preserving the attacked state's enduring right to self-defence, regardless of the time elapsed (for example, Akande and Tzanakopoulos 2020; 2021). Conversely, other scholars argue that Azerbaijan's military engagement was not warranted, maintaining that the right to self-defence ceases to apply in situations where there is an established territorial *status quo*, marked by an extended period of non-combat and the peaceful governance of the disputed area (for example, Ruys and Rodríguez Silvestre 2020; 2021a; 2021b; Knoll-Tudor and Mueller 2020).

The debate over Azerbaijan's use of force in the 2020 Nagorno-Karabakh war revolved around the following legal question: Is it permissible under international law for a state to use armed force to reclaim territory that has been unlawfully occupied by another state, even if the latter has governed the territory peacefully for an extended period of time? This issue, not extensively explored in scholarly literature, accepts that, absent a UNSC

authorization, the only lawful basis under the *jus ad bellum* (the law governing the use of force) for a state to recover occupied territory is the right of self-defence as articulated in Article 51 of the UN Charter (Ruys and Rodríguez Silvestre 2021a: 1288). It is also agreed that any exercise of this right must meet the criteria of immediacy, necessity, and proportionality (Kretzmer 2013: 242).

Illegal

Addressing this question, Ruys and Rodríguez Silvestre (2021a) argue against the legitimacy of invoking the right of self-defence to reclaim territory that has been occupied, irrespective of the circumstances of acquisition, where a territorial *status quo* has been established, marked by a long period without conflict and peaceful administration by the occupying state, as in the case of Nagorno-Karabakh (1287–1289, 1294). They assert that such a scenario fails to meet the immediacy requirement – often considered part of necessity – which mandates a close temporal connection between an armed attack and the defensive response (1288–1289). They also reference the principle prohibiting the use of force in territorial disputes, suggesting that it counters any entitlement to use force under self-defence in cases of longstanding, peacefully administered occupations (1292–1293). In their analysis, a state loses its right to self-defence if it does not act promptly after a new territorial *status quo* emerges, advocating that maintaining the *status quo* better serves the objective of prohibiting the use of force (1296–1297).

According to Knoll-Tudor and Mueller (2020), '[a]ny other result would challenge the overall architecture of peace preservation'. They argue:

> The massive use of force since 27 September [2020] could not be justified under a putative right to self-defence, as Azerbaijan claimed somewhat tongue-in-cheek, given problems in the areas of immediacy, necessity and proportionality. […] Likewise, Baku could not justify its 'war of liberation' with reference to the four Security Council resolutions of 1993. In these four resolutions […], the Council had urged those involved to cease the armed activities, to effectively enforce the cease-fire agreements, and to continue to seek a 'negotiated settlement of the conflict'. Of course, almost 30 years had lapsed without sensible progress having been made in terms of the settlement of the conflict, despite the work of the OSCE's Minsk Group. But this, in itself, should not – and could not – imply that Azerbaijan had a right to resort to self-help and impose its position by recourse to violence. A valid claim over the land does not justify the use of force.

These views are supported by earlier analyses that suggest once hostilities have ended and there has been a significant period without conflict, states are not permitted to restart hostilities – including in cases of unlawful occupation – unless a new legal justification emerges under the *jus ad bellum*, such as a UNSC authorization or a fresh armed attack (for example, Yiallourides et al 2018, paras 152, 157–158, 161, and references cited therein). Another scholar advocating for setting a time limit on the right to self-defence, even in scenarios involving occupation, has noted:

> In most cases, irredentist demands for lost territory or claims for restoration of the status quo ante are based on attacks that occurred many years, even decades, ago. To extend self-defence to such cases is to stretch the notion of defence far beyond its essential sense of a response to an attack or immediate threat of attack. (Schachter 1985: 292)

Legal

By contrast, Akande and Tzanakopoulos (2021) argue in favour of Azerbaijan's legitimacy of invoking the right of self-defence to reclaim Nagorno-Karabakh, contending that an occupation resulting directly from an unlawful armed attack constitutes a continuing armed attack, thus preserving the attacked state's right to self-defence indefinitely (1299–1307). They differentiate between territorial disputes and situations where occupation results from an armed attack (1301–1302), suggesting that, where years pass between the initial armed attack and the later use of force by the victim state to recover its unlawfully occupied territory, that may suggest that there is no other reasonable means of bringing the unlawful occupation to an end, rendering the use of force to recover the lost territory necessary (1305–1306). In their view, time disadvantages the aggressor rather than providing them with benefits (1299, 1306).

Although Akande and Tzanakopoulos do not stand alone in the constitutive elements of their position,[6] a review of the literature suggests that theirs forms the minority opinion. This is significant in determining who is, in fact, is the aggressor and thereby the wrongful party in this latest phase of the conflict. Questions of guilt, responsibility and reparations for loss of life and property all tie into who 'started it'.

[6] For instance, Dinstein (2005) posits that the suspension of hostilities, such as through a truce or ceasefire, should not be confused with their termination, and that a ceasefire violation is thus irrelevant to the determination of armed attack and self-defence (47–48, 54–55). Similarly, Longobardo (2018: 121) argues that unlawful occupation is not subject to the immediacy principle because it allegedly constitutes a continuing armed attack.

Consequences

Soon after the September 2023 final assault ended with the Armenians of Nagorno-Karabakh being forced to leave, Azerbaijani President Ilham Aliyev (2023b) stated: 'Many reiterated there is no military solution to this conflict. We have shown that there is. And we have shown it again recently. This topic is now closed! The subject of the Karabakh conflict is closed once and for all!' Aliyev now regularly boasts the use of military force to get what he wants (for example, Aliyev 2023c). As shown above, however, the international legal framework still unequivocally condemns the settlement of international disputes by force, a principle enshrined in the UN Charter.

As the Ethiopia–Eritrea Claims Commission (2009) found, 'the practice of States and the writings of eminent publicists show that self-defence cannot be invoked to settle territorial disputes' (para. 10). This precedent is directly applicable to the Nagorno-Karabakh situation given that Azerbaijan invoked the right of self-defence to restore its territorial integrity in launching the 2020 Nagorno-Karabakh War (see Permanent Representative of Azerbaijan to the UN 2020). The Commission further noted that 'border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is *allegedly occupied unlawfully* would create a large and dangerous hole in a fundamental rule of international law' (Ethiopia–Eritrea Claims Commission 2009, para. 10, emphasis added).

Both sides of the debate start from the premise that Armenia was an occupying state. But the characterization of whether Armenia's involvement in the Nagorno-Karabakh conflict can be described not only as an 'occupation' but also an 'illegal' one is complex and depends on the perspective and legal criteria being applied. Armenia has historically emphasized the self-defence efforts of the Nagorno-Karabakh Armenians against Azerbaijani persecution, while Azerbaijan has accused Armenia of aggression and occupation from the early stages of the conflict. The position of Akande and Tzanakopoulos (2020; 2021) that 'occupation that is a direct consequence of an armed attack by another state is a "continuing armed attack"' in the context of the Nagorno-Karabakh conflict touts the Azerbaijani stance that the conflict started with Armenia attacking Azerbaijan first. However, the authors fail to provide any support or reference for such a factual premise.

The Nagorno-Karabakh conflict is widely recognized as having begun on 20 February 1988, when the NKAO independently proclaimed its intention to separate from the Azerbaijani SSR and join the Armenian SSR (for example, De Waal 2005: 14). The violence that ensued between Azerbaijani and local Armenian forces has been described by Human Rights Watch (1991: 5) as having escalated 'to a point approaching civil war'. It was not until 1991 that a newly independent Armenia entered the conflict, after extreme acts of persecutory violence had been committed

against Armenians throughout the Azerbaijani SSR (Derrida et al 1990). The conflict then escalated significantly in 1992 when Armenia's support for Nagorno-Karabakh Armenians became more direct and substantial.

Armenia's involvement in the war thus evolved over time. That the conflict ceased in 1994 with Armenians in control of the former NKAO and several surrounding territories bordering Armenia for the next 26 years is not contestable. The conclusion that such control amounted to occupation, especially of the surrounding territories, is not unreasonable. But to claim that such control or occupation originated from an Armenian invasion to conquer Azerbaijani territory is not only baseless but also recklessly disregards the nuanced historical context and unfairly biases the narrative.

Akande and Tzanakopoulos (2021: 1306) also take issue with the passage of time, arguing that '[s]urely, when something lasts for a quarter of a century, then its "temporary" character can be called into question', in line with the Azerbaijani position that 26 years of peace negotiations was too long to wait thus justifying its resort to the use of force. Such an observation, again, ignores that a peaceful resolution of disputes will surely take more time than a militarily forced one. It took 27 years for Greece and (now North) Macedonia to resolve their dispute, and that was just over a name. If it were Armenia's intention to render the situation in and around Nagorno-Karabakh permanent, then it would have officially recognized Nagorno-Karabakh's independence. It did not. Instead, Armenia sought to reach an appropriate compromise short of Azerbaijan's maximalist demands that would provide a status for Nagorno-Karabakh's ethnic Armenian population to guarantee their rights and security. Akande and Tzanakopoulos' position appears to suggest that there is a time limit for that.

The results of supporting Azerbaijan's position and failing to hold it accountable for resorting to the use of force in 2020 are now clear. The international community was unable to prevent the ethnic cleansing of Nagorno-Karabakh, which Azerbaijan continued to justify in the name of sovereignty, territorial integrity, and acting in purported self-defence (for example, Suleymanov 2023), while holding no apparent regard for the lives or basic human rights of the Armenian population. Despite Azerbaijan's actions in 2023 having been met with worldwide condemnation, including by the European Parliament (2023) and members of the UNSC (2023), the lack of more robust consequences for Azerbaijan's breaches of international law, including the use of force to obliterate the dispute over the status of Nagorno-Karabakh, not only undermines the international legal order but also sets a dangerous precedent for repeat behaviour.

Indeed, Aliyev's success in using force to take Nagorno-Karabakh has emboldened him to now lay claim to Armenia proper, including Yerevan (for example, Aliyev 2024), as historic Azerbaijani land, dubbing it 'Western Azerbaijan' (Aliyev 2023a). Aliyev has been invading Armenia since May 2021 (see Macron 2021), with a major offensive in September 2022 having

resulted in further war crimes (for example, Human Rights Watch 2022) and, according to the Armenian government, the occupation of over 200 square kilometres of Armenian sovereign territory (Armenpress 2023). Aliyev's actions in Nagorno-Karabakh having gone unpunished, there are now clear signs that Azerbaijan is gearing up for full-scale war and forcing Armenia to hand over more territory (Avetisyan 2024; Gavin 2024).

The forced dissolution of Nagorno-Karabakh as recognition thereof

On 1 January 2024, the Nagorno-Karabakh Republic is said to have officially ceased to exist (see Urvachev 2023). The final president of the self-proclaimed republic, Samvel Shahramanyan, ordered its dissolution through a decree dated 28 September 2023. This decree was a condition of the ceasefire agreement that concluded Azerbaijan's rapid military operation to subdue the Nagorno-Karabakh Republic, which occurred on 19–20 September 2023.

The forced dissolution of the Nagorno-Karabakh Republic presents a paradoxical yet pivotal moment in the history of the conflict, highlighting an inconsistency in Azerbaijan's longstanding policies and international legal positions. For years, Azerbaijan steadfastly denied the existence of Nagorno-Karabakh as a separate entity, dismissing its declarations of independence and self-governance as illegitimate. Yet, the circumstances surrounding the dissolution of Nagorno-Karabakh reveal a tacit acknowledgment of its entity status, fundamentally contradicting Azerbaijan's previous stance.

The final assault on Nagorno-Karabakh by Azerbaijani forces culminated not merely in a military victory but in a political act that inadvertently recognized the very existence of the Nagorno-Karabakh Republic. The coerced signing of the dissolution decree by the Nagorno-Karabakh authorities was procured under extreme duress and threats of further violence, challenging the legality of such actions under international law, specifically the Vienna Convention on the Law of Treaties (VCLT) (1969). According to Article 52 of the VCLT, any treaty that is procured by the threat or use of force is void. Since going into exile, President Shahramanyan has accordingly reneged on the validity of the decree ordering the dissolution of Nagorno-Karabakh, declaring it null and void (France 24 2023).

This introduces a legal anomaly where the act of dissolution itself, while intended to erase Nagorno-Karabakh from political maps, simultaneously legitimizes its existence as a contractual party capable of engaging in and being coerced into international agreements. Furthermore, this act of forced dissolution under duress raises significant concerns about the genuine acknowledgment of Nagorno-Karabakh's sovereign capabilities. By necessitating a formal agreement to dissolve, Azerbaijan may have

unintentionally affirmed the government of Nagorno-Karabakh's authority to represent its people and to engage in treaty acts – a right typically reserved for recognized sovereign entities. This acknowledgment, whether intentional or not, pivots from Azerbaijan's longstanding narrative that Nagorno-Karabakh was merely a rebellious region within its territorial boundaries without any legitimate autonomous or governmental structure.

This development exposes the complex interplay between *de facto* state functions and international recognition. The international community, while largely supporting Azerbaijan's territorial claims, has not addressed the implications of such a dissolution under coercive conditions. This oversight may set a precarious precedent where the dissolution of an entity under duress is viewed as a legitimate means of conflict resolution, potentially encouraging similar strategies in other protracted conflicts worldwide.

The paradox of Nagorno-Karabakh's forced dissolution as a form of recognition by Azerbaijan offers a unique case study in the inconsistencies of international responses to self-determination, sovereignty, and state dissolution. It prompts a re-evaluation of how entities under duress are treated under international law and the moral and legal obligations of the international community to safeguard the rights and dignities of such entities and their populations.

The case of Nagorno-Karabakh and its ultimate demise thus challenges the global legal framework to better accommodate the realities of entities that exist at the margins of statehood and international law, ensuring that their rights and statuses are not overshadowed by the geopolitical agendas of more powerful states.

Conclusion

The case of Nagorno-Karabakh exemplifies the ways in which international law can be manipulated to serve national agendas, and sheds light on a critical paradox in the international legal framework, where the principles of sovereignty and self-determination are often in conflict. The scales, however, tend to tip towards the principles of sovereignty and territorial integrity, often at the detriment of the legitimate aspirations of distinct ethnic groups. This bias is evident in the selective engagement of international actors and in the rigid interpretations of international laws, which, in this case, facilitated the erosion of a community's hope for recognized autonomy and contributed to the demise of its *de facto* state entity.

The resolution of the Nagorno-Karabakh conflict, particularly through Azerbaijan's forceful reclamation of the territory and the subsequent coerced dissolution of the Nagorno-Karabakh Republic, illuminates a disconcerting readiness to accept a 'might is right' approach to the settlement of territorial disputes. Moreover, the handling of the Nagorno-Karabakh situation reveals

a broader issue of international law potentially being manipulated to validate aggressive state actions under the guise of legal norms, thus sidelining the crucial aspects of human rights and ethnic identity.

Reflecting on these developments, the international legal framework requires substantial reform to better balance the principles of sovereignty, territorial integrity, and self-determination and to protect the rights and identities of peoples and minority populations against dominant geopolitical agendas. Moreover, the legal rationale used to justify such actions – namely the principle of territorial integrity – often overshadows crucial considerations of human rights and historical context, which should also hold significant weight in international discourse. The Nagorno-Karabakh conflict thus stands as a lesson on the often overlooked dark underbelly of current international legal norms, and showcases the urgent necessity for more nuanced and equitable approaches.

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