

Nagorno-Karabakh (Artsakh) conflict, between the right of self-determination and that of the territorial integrity.

Yeghia Tashjian

Outline

1-Introduction (historical background)

2-The principles of self-determination and territorial integrity within international law

3- Which principle is applicable in Nagorno-Karabakh and why?

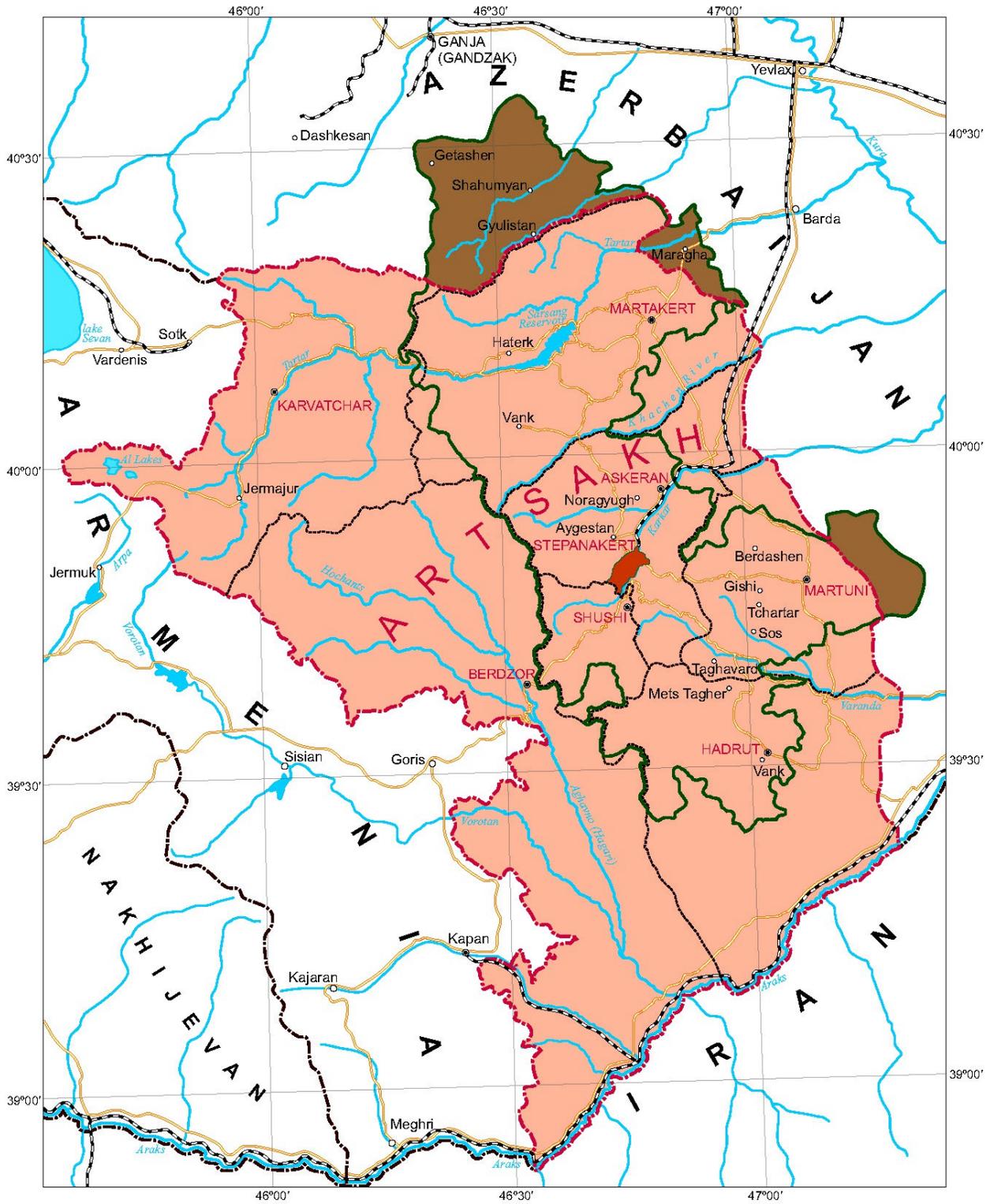
3a- What are the positions of Azerbaijan regarding this issue?

3b- Why territorial integrity failed?

4- Conclusion

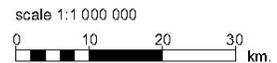
1-Introduction (historical background)

NAGORNO-KARABAKH REPUBLIC (ARTSAKH)



--- Present borders of NKR
 According to article 142 of the Constitution of the NKR, "Till the restoration of the state territorial integrity of the Nagorno-Karabakh Republic and the adjustment of its borders public authority is exercised on the territory under factual jurisdiction of the Nagorno-Karabakh Republic".

— Borders of NKR according to the Declaration of Independence of 2 September 1991
 Territories of NKR under the de facto control of Azerbaijan
 - - - - - Administrative borders within NKR





“It is for the people to determine the destiny of the territory, and not the territory the destiny of the people”. Judge Hardy Dillard (I.C.J.), Oct. 16, 1975

The Nagorno-Karabakh conflict is one of the most bloody and large-scale conflicts in the post-Soviet region. This is an old conflict with its own genesis and is considered to be a real obstacle for the development of relations between Armenia and Azerbaijan. As an international issue the problem of Nagorno-Karabakh first came into the scene in 1918. After the collapse of the Russian empire Armenia and Azerbaijan faced the problem of border delimitation. Based on the declaration made by Soviet Azerbaijan as well as the repeatedly expressed will of the Nagorno-Karabakh people, in June 1921 Nagorno-Karabakh was declared the inseparable part of Soviet Armenia, and on December 1, 1920, the

Azerbaijani Revolutionary Committee claimed: *“The Azerbaijani proletarian government, receiving word from the revolted peasants of Armenia that a Soviet Socialist Republic is established there, salutes the victory of our neighboring brothers. From this day on the former borders between Armenia and Azerbaijan are declared non-existent. Mountainous Karabakh, Zanzezour and Nakhitchevan are recognized as inseparable parts of the Armenian Socialist Republic”*[1]. Hence Soviet Azerbaijan recognized the region as an inseparable part of Armenia. But under Stalin’s rule on July 5, 1921 Nagorno-Karabakh was included into the territory of Azerbaijani Soviet Socialistic Republic as an autonomous Oblast. Nagorno-Karabakh conflict began in 1988, when in response to the self-determination claims of NK population the Azeri authorities organized massacres and ethnic cleansing of the Armenian population on the entire territory of Azerbaijan, particularly in Sumgait, Baku and Kirovabad.

On December 10, 1991 NK population declared the establishment of the Nagorno-Karabakh Republic (NKR) by a referendum, 98%, which fully complies with both international law norms and the letter and spirit of the USSR laws of that time. Thus, on the territory of the former Azerbaijani SSR two equal state formations were created – Nagorno-Karabakh Republic and the Republic of Azerbaijan.

In Nagorno-Karabakh and surrounding areas populated by Armenians the policy pursued by Azerbaijani authorities turned into overt aggression and large scale military actions against the Republic of Nagorno-Karabakh, which resulted in tens of thousands dead and caused considerable material damage. As a result of the war Azerbaijan occupied the whole region of Shahumyan, and the eastern parts of Martakert and Martuni regions of Nagorno-Karabakh. Neighboring districts went under the control of Nagorno-Karabakh armed forces, which played a role of a security buffer to block the further firing from the Azeri side towards Nagorno-Karabakh settlements[2]. In May, 1994 Azerbaijan, Nagorno-Karabakh and Armenia signed a ceasefire, which, despite violations, is still effective. Conflict settlement negotiations are held in the framework of the OSCE Minsk Group.[3]



Till now the conflict haven't been finished since the two states Armenia and Azerbaijan claim different international law principles, the former supports the right of self-determination while the later sees the territorial integrity as a solution. The second part of the paper will analyze the two principles from the international point of view while the third part will claim which principle is suitable to solve the conflict and why?

2-The principles of self-determination and territorial integrity within international law

The principles of self-determination and territorial integrity are the fundamental norms of international law and none of them overcomes the other. The principle of territorial integrity refers to the member states of the UN, and the principle of self-determination refers to the right of the nations. So these two principles deal with entirely different issues and cannot be compared within the same frame.

The principle of territorial integrity or the right of self-determination, often changes depending on political situations. For example, it was obvious that during the cold war the principle of inviolability of borders a territorial integrity was sacred issue in international relations. At those times, the world was divided into two opposite blocks, led by the USA and USSR. Each party was afraid that any change in the world based on the right to self-determination could change the balance of power. The situation changed after the Cold war, the collapse of the USSR. The sense of the new situation was quite interestingly formulated by American scientists M. Galperin and D. Sheffer: *“The end of the Cold war made the whole international community face a number of demands by the nations for self-determination. All the principles that were quite clear and applied during confrontation with the Soviet Union disappeared, and it was no longer possible to claim that all existing states should remain indivisible and that no changes should occur in international borders”*[4].

The principle of national self-determination recognizes the right of the community of free people or nation to have their free and high-level political entity. Azeri experts paint the Karabakh conflict as an illegal capture of the territory by a neighboring state and as an attempt to pose it as self-determination.

As German lawyer O. Lukhterkhandt mentioned *“when unbearable forms of discrimination are applied against the national minority, then the right for self-determination in the form of secession*

is more important than the sovereignty of the state”[5]. In this context, the right of Azerbaijan for sovereignty has no comparison with the right of self-determination (the right for secession), as Azerbaijan itself had just become independent from the USSR applying the “right for self-determination”, and besides, had applied acts of discrimination against the national minorities under its sovereignty. Hence due to the right to self-determination, the Armenian ethnic group of Nagorno-Karabakh has the right either to form its own state or to unite with the Republic of Armenia. In addition, according to the conclusions of the international conference of the UNESCO in 1998 in Barcelona: “The peace application of the right of nations for self-determination is considered to be the most important support to prevent and solve the conflicts”[6].

The principle of self-determination is a right, but not a duty, of nations. This right can be realized in different ways. Realizing their right for self-determination, the nations are not obliged to establish their own state. The right to self-determination doesn’t mean that the nation should strive to establish an independent state or a state uniting the whole nation.

The principle of equality and self-determination of the nation’s states:

- *All nations have the right to freely define their political status and realize their economic, social and cultural development*
- *All states have to respect this principle*
- *All states have to separately or jointly promote the realization of the right to self-determination*
- *All states have to refrain from any actions depriving the nations from the right to self-determination, freedom and independence*
- *In their fight for independence, the nations are free to use all methods necessary for it*
- *It is not allowed to subject the nation to a foreign leadership [7]*

Therefore, the right of nations to freely, without any outside interference, define their political status and realize their economic, social and cultural development, implies the duty of the states not only to respect this right but also to either separately or jointly promote the realization of the right to self-determination. So, in this context, the support shown to Nagorno-Karabakh by the Armenian side by no means violates the existing principle of international law as it was just providing support to the people of Nagorno-Karabakh in the realization of its internationally recognized right to self-determination because Azerbaijan violated internationally recognized principle of respect for human rights, which states:

- *All states have to respect the fundamental rights and freedoms of all people living on their territories*

- *The states have to prohibit human discrimination not depending from their sex, race, language, religion*
- *The states have to promote the universal recognition of human fundamental rights and freedoms and must collaborate with one another to achieve this goal [8]*

The international law of recent years testifies to the formation of definite principles for conflict settlement. Referendums have already been organized in East Timor, Eritrea, Quebec, the Farer isles, Gibraltar, West Sahara, New Caledonia, South Sudan, and Chernogoria. One more important principle has been formulated by the international community: The country may lose its internationally-recognized right for any territory (sometimes even without a will) in case it fails to realize efficient government based on the principles of democracy, respect for human rights, ethnic world and regional stability. In fact, these principles have become the new principles of international law.

As mentioned by K. Parker, who has researched the conflicts of Asia (Birma, Kashmir, Tibet, and Sri Lanka) and the possibilities for these nations to be granted the right to self-determination, the self-determination includes the following standards

The prehistory of independence and self-governance on disputed territory

- *Different culture*
- *Strive and capacity for self-governance*
- *Unbearable existence*
- *Historical right*
- *Ethnical component of the population*
- *Will of the nation*
- *Responsibility for consequences [9]*

All these facts exist in the Nagorno-Karabakh conflict (continuous violation of human rights, historical existence of the Karabakh people on the territory of Nagorno-Karabakh, the will of the Karabakh people, expressed via referendum on December 1991 in the presence of international observers).

In this context, the example of Quebec is also interesting. Canada was not afraid to organize a referendum in Quebec. As a result of the referendum organized on October 1995, 50.6% voted



against, while 49.4% for independence. This case testifies that within civil relations, when the right to self-determination is respected, the nation might not even vote for independence.

The principle of territorial integrity prohibits both the occupation of a state by another state and the keep by force a nation within the territories of another state. From this point of

view, the establishment of the Nagorno-Karabakh Republic is totally legal, as it hasn't been a violation of territorial integrity but only the realization of the other principle of international law, the right to self-determination.

Hence, the right of the nations to self-determination, as one of the main legal concepts of international community, is self-valuable independently from the political dynamics, characterizing any phase of the development of international community. While Azerbaijan claims that Armenian forces are occupying 20% of its territory and violated its territorial integrity, so which one of these principles (self-determination and territorial integrity) is applicable in Nagorno-Karabakh and why?

3- Which principle is applicable in Nagorno-Karabakh and why?

The notions of "self-determination" and "territorial integrity" are often used as regard to the Nagorno-Karabakh conflict. Unfortunately, these legal terms are largely misused mostly due to political motives.

-What are the positions of Azerbaijan regarding this issue?

On December 1, 1989, the Supreme Soviet of Armenia adopted a resolution on the unification of NK with Armenia. Such resolution "violates Azerbaijan's territorial integrity". According to Azerbaijani officials, "the principle of granting autonomous Status to the national minorities in the former USSR did not have any logical basis and their creation had more political aims rooted in imperialistic rule, that desire for protection of minorities' rights. One of the major principles of the Commonwealth of Independent States Treaty is the inviolability of the borders of the constituent sovereign states, which is territorial integrity.

However, the Armenian population in NK held a referendum, declared the establishments of the NKR as an independent state and appealed to the Commonwealth for membership. This separatist

action contradicts the principles of the treaty, signed by eleven sovereign Republics and the Helsinki Final Act. Antonio Cassese, a prominent expert on international law and the problems of self-determination, describes this issue in his article, Self Determination of Peoples: *“The right of self-determination, I have said, belongs to ‘national’ peoples in a multinational state like the federated republics of the USSR. The ethnic minorities in unitary states who are not ‘peoples’ for the purposes of Article 1, national peoples, federated in a Sovereign state and enjoying distinct Constitutional status, enjoy the right of external self-determination. This includes the right to independence, which the central sovereign, if a part to the Covenant, is bound to honor.”***[10]**

-Why territorial integrity failed?

Let us claim at once that there is no principle of “preservation of territorial integrity” in international law. The fourth clause of Article 2 of Charter of the United Nations (UN) declares only the following: *“All Members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations”***[11]**. This clause does not have anything to do with the “preservation of territorial integrity”, that is, the inviolability of the territory of any state.

Nagorno-Karabakh has never been the part of the independent Azerbaijan of 1918-1920. It has been forcefully included into Soviet Azerbaijan by a partial body of Russia, a third country, which had no legal right or authority to do that. It is difficult to say what is implied by the “borders of the Republic of Azerbaijan,” if the Republic of Azerbaijan of our days is the successor of the Azerbaijan Democratic Republic of 1918-1920 (which had no recognized borders), but not AzSSR. Azerbaijan didn't refer to any borders in its declaration about independence. Since 1991 the principle of territorial integrity in its well-know sense cannot be applied to Azerbaijan as internationally recognized multilateral agreements and treaties were acting in regard to Azerbaijan's borders at the moment of its proclamation excluding the comprehension of the Karabakh problem within the internal issues of Azerbaijan.

In addition Azerbaijan claims that the resolution of the conflict is being carried out based on the Helsinki Final Act of the CSCE of 1975, which is based on the territorial integrity. But unfortunately the Helsinki Final Act is a political document. It's a legally non-binding agreement**[12]**. It's not a legal document since it's not registered at the UN Treaty Registry, which is a mandatory condition for “every treaty and every international agreement” (Article 102 of the UN Charter)**[13]**.

Furthermore, Azeri officials claim *“In December, 1991, the union republics recognized the independence of one another and the inviolability of their existing borders in agreement on the established of the CIS”*. But if we read the whole article it also states: *“The high contracting parties recognize and respect one another's territorial integrity and the inviolability of existing borders within the Commonwealth. They guarantee openness of the borders, freedom of movement for citizens and transmission of information within Commonwealth”***[14]**. Actually yes, it states that the parties should recognize each others borders, but the same article also stresses on the guarantee of

the openness of the borders. It is clear that the “territorial integrity and inviolability of borders is based on the openness of borders and freedom of movement for citizens”. So did Azerbaijan carry out its obligations upon acceding to the CIS? The Armenia-Azerbaijan border was closed the later in 24th of September, 1993 and there is no free movement for citizens. In not fulfilling its obligations, can Azerbaijan have any legal basis to expect for only one part of the every same treaty to be obligatory? Of course it’s not. Hence we can conclude that the Azeri claims of the so called territorial integrity can’t be applied in NK case, therefore the legal solution is the self-determination.

4- Conclusion

The deep research of the principles of territorial integrity and self-determination in the context of Nagorno-Karabakh regulation, allows to conclude that: Nagorno-Karabakh Republic was established in full accordance with international law and the USSR Constitution obtaining an international and legal base for the protection of its sovereignty, and for applying the principle of “territorial integrity” in the frame of its own borders.

Azerbaijan continues violating the principles fixed in the fundamental documents of international law keeping in blockade its neighbors, NKR and Armenia, as well as the principle of peace settlement by continuous statements about possible military regulations of the Nagorno-Karabakh conflict. Azerbaijan doesn’t have a control over Nagorno-Karabakh anymore. NKR is a sovereign and independent state. Azerbaijan applied violation against Nagorno-Karabakh people, the citizens of Azerbaijan, losing its moral right “to protect its citizens” of Nagorno-Karabakh and to consider the territory of NK the part of it. NKR is a de-facto political reality. NKR has already proved its capacity to conduct elections on its territory, defend its borders and rule its nation. The nation of Karabakh applied its right to define its own political, economic, social and cultural development.

The key to regulation of the conflict is a direct dialogue between NKR and Azerbaijan, and not only between Armenia and Azerbaijan. The conflict parties and the involvement of NKR into the negotiation process should be mutually recognized favoring to the success of negotiations. Nagorno-Karabakh and Azerbaijan should have equal international and legal personality as well as responsibility for their own actions. The final recognition of the democratic and viable Nagorno-Karabakh Republic by the international community fits with the modern realities. Within these realities the recognition of the state independence of NKR by international community is inevitable.

End notes :

[1] Arushanyan A., Legal aspects of Nagorno-Karabagh issue// Conflicts’ transformation and the ways for peace establishment in the South Caucasus (in Russian), Yerevan 2003, pp 56

[2] <http://www.mfa.am/en/artsakh/>

[3] http://www.un.org/russian/documents/instruments/docs_ru.asp?year=1970

[4] <http://www.ca-c.org/datarus/karabakh.rus/oo.titul.rus.shtml>

[5] Anush Hayrapetyan, The Correlation of the principles of the international law in the context of Nagorno-Karabagh Conflict Resolution, 2009

[6] <http://www.globalaffairs.ru/articles/6214.html>

[7] <http://sumgait.info/caucasus-conflicts/nagorno-karabakh-facts/nagorno-karabakh-facts-1.html>

[8] <http://www.apn.ru/publications/article19291.html>

[9] Manasyan A., The Karabagh Conflict: the resources of legal approach, p94

[10] Jeyhun Mollazade, The legal Aspects of THE Karabakh Conflict, 1993

[11] Restatement of the Law (3rd).The Foreign Relations Law of the United States, The American Law Institute, Washington,1987; v. 2, p.389

[12] Daniel Thureer, Soft Law, in Encyclopedia of Public International Law, R. Berhardt (ed.), volume 4 (2000), p.455.

[13] Ibid.

[14] Ara Papian, Head of the Modus Vivendi Centre.*Comments on Reactions to my Commentary*, 30 March, 2011

August 2011