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

The situation in the occupied territories of Azerbaijan

Security Council
Seventy-fourth year

Identical letters dated 20 September 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council

It is with deep concern that I inform you of a series of recent inflammatory statements by the political leadership of Armenia, which makes the prospects of achieving long-awaited progress in the negotiated settlement of the Armenia-Azerbaijan conflict even more elusive.

In early August, Armenia's Prime Minister, Nikol Pashinyan, declared the sovereign territory of Azerbaijan – the Nagorno-Karabakh region – part of Armenia, in complete disregard of international law and the relevant Security Council resolutions. That statement was preceded by similar pronouncements made by other senior members of the Government of Armenia, such as those on not returning "an inch of land" to Azerbaijan and threatening "a new war for new territories".

In his speech of 27 August 2019, the Prime Minister of Armenia recalled his country's outdated and invalid claim that the Nagorno-Karabakh autonomous oblast withdrew from Soviet Azerbaijan on the same basis as that on which Azerbaijan itself broke off from the Soviet Union. A few days later, on 2 September 2019, he congratulated the unlawful puppet regime established by Armenia in the occupied territories of Azerbaijan on the anniversary of "independent statehood".

Apart from being tantamount to declaring Armenia's unilateral withdrawal from the peace process, such statements and misinterpretations are fundamentally flawed. The key facts, based on legal documents, decisions of the Security Council, determinations of the International Court of Justice, judgments of the European Court of Human Rights and opinions of authoritative scholars, completely refute Armenia's false assertions.

First, as is well known, the critical period for the purposes of the legitimate inheritance of territorial frontiers (the principle of *uti possidetis*) is the period

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immediately preceding independence. The International Court of Justice has made this very clear by stating: "The essence of this principle [*uti possidetis*] lies in its primary aim of securing respect for the territorial boundaries *at the moment when independence is achieved*".[1]

What matters, from the point of view of international law, is the frontier "which existed at the moment of independence".[2] Therefore, the applicable law in such situations is the constitutional law of the former or predecessor State. In this sense, the position as far as Azerbaijan (including the Nagorno-Karabakh region) and Armenia are concerned is clear.

The status of Nagorny Karabakh as an autonomous oblast within the Soviet Socialist Republic of Azerbaijan (Azerbaijan SSR) was stipulated in the Constitution of the Union of the Soviet Socialist Republics (USSR) of 1977 and was governed by the Law on the Nagorno-Karabakh Autonomous Oblast, adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981.

According to article 78 of the Constitution of the USSR, the territory of a Union Republic could not be altered without its consent, while the borders between the Union Republics could be altered by mutual agreement of the Republics concerned, subject to approval by the USSR.

On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of any attempts aimed at either unification of the Nagorno-Karabakh region with Armenia or its secession from Azerbaijan without Azerbaijan's consent was confirmed at the highest constitutional level. Besides the decisions taken by Azerbaijan, such attempts were invalidated by the bodies of the USSR with the primary relevant authority, such as the Supreme Soviet, the Presidium of the Supreme Soviet, the State Council or the Committee of the Constitutional Oversight.

Yerevan's reference to the Law of the USSR on the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR of 3 April 1990 is also without foundation. As is well known, under article 72 of the Constitution of the USSR, only Union Republics, not their autonomous units or any other integral parts, had the right to freely secede from the USSR. Nevertheless, although the formal purpose of the Law was to regulate mutual relations within the framework of the USSR by establishing specific guidelines to be followed by Union Republics in the event of their secession from the USSR, the true intention behind that Act, hastily adopted shortly before the Soviet Union ceased to exist, was to create serious barriers to the path of secession of Union Republics and thus prevent the dissolution of the USSR. It is therefore curious to hear this Law being invoked against a background of claims to application of the right to self-determination, since that is precisely what the Act had limited.

According to the said Law, the secession of a Union Republic from the USSR could be regarded valid only after the fulfilment of complicated and multistage procedures and, finally, the approval by the Congress of the USSR People's Deputies. However, during the short period from the adoption of the Law until the formal dissolution of the USSR, none of the Union Republics resorted to the secession procedure stipulated in it. In other words, the Law in question, groundlessly referred to by Armenia, had no legal effect whatsoever and expired before being operationalized.

As one distinguished scholar pointed out, "[t]he Law [of 3 April 1990] made the whole process of possible secession from the Soviet Union so cumbersome and

[1] *I.C.J. Reports 1986*, p. 554, p. 566 (emphasis added); *I.C.J. Reports 1992*, p. 351, pp. 386–387.
[2] *I.C.J. Reports 1986*, p. 570.

complicated that one may wonder whether it ultimately constituted a true application of self-determination or was rather intended to pose a set of insurmountable hurdles to the implementation of that principle".[3] He further noted that "[t]he process of independence by the twelve republics therefore *occurred outside the realm of law, both international and municipal*" and "was precipitated by the political crisis at the centre of the Soviet Union and the correlative increase in the strength of centrifugal forces".[4]

Evidently, the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the Nagorno-Karabakh region. The factual basis for the operation of the legal principle of *uti possidetis* is beyond dispute in this case. Of particular interest are the following two examples.

The European Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union, adopted by the European Community and its member States on 16 December 1991, provided for a common policy on recognition with regard to the States emerging from the former Yugoslavia and the former USSR in particular, which required, inter alia, "respect for the inviolability of *all* frontiers which can only be changed by peaceful means and by common agreement".[5] No doubt, since the context was the coming to independence of a range of new States out of former federal States, the Guidelines constitute a valuable affirmation of the principle of *uti possidetis*.

Furthermore, almost from their very inception as independent States, Armenia and Azerbaijan committed themselves – like other parties to the Alma-Ata Declaration of 21 December 1991 – to "Recognizing and respecting each other's territorial integrity and the inviolability of existing borders".[6] The 1993 Charter of the Commonwealth of Independent States (CIS), to which both Armenia and Azerbaijan are parties, stresses, in article 3, the principle of "inviolability of State frontiers, recognition of existing frontiers and renouncement of illegal acquisition of territories".[7] Indubitably, a firm stand was taken by all the States members of the CIS to retain their former administrative (intra-State) borders as their inter-State frontiers following the dissolution of the USSR.[8]

Secondly, the situation following the independence of Azerbaijan and actions of Armenia is also clear. Any attempt by Armenia to encourage, procure or sustain the secession of Nagorny Karabakh is simply unlawful in international law as amounting to a violation of the principle of respect for the territorial integrity of States and imports the responsibility of that State. Armenia's speculations with regard to the principle of self-determination have nothing in common with that principle, as it is

[3] Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge, United Kingdom, Cambridge University Press, 1995), pp. 264–265.
[4] Ibid., p. 266 (emphasis in original).
[5] *International Law Reports,* vol. 92 (1993), p. 174 (emphasis added).
[6] Declaration of Alma Ata, 1991, *International Legal Materials*, vol. 31 (1992), pp. 147–148.
[7] Commonwealth of Independent States: Charter, 1993, *International Legal Materials*, vol. 34 (1995), p. 1279, p. 1283.
[8] See Steven R. Ratner, "Drawing a Better Line: *Uti Possidetis* and the Borders of New States", *American Journal of International Law*, vol. 90 (1996), p. 590, p. 597.

set forth in the Charter of the United Nations, the 1975 CSCE Helsinki Final Act and other international documents.[9]

The Security Council explicitly referred, in its resolutions 853 (1993), 874 (1993) and 884 (1993), adopted in response to the capture and occupation of the territories of Azerbaijan, to "the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic", while "*Reaffirming* the sovereignty and territorial integrity of the Azerbaijani Republic", as well as "the inviolability of international borders". Similar language had been used earlier, in resolution 822 (1993).

The resolutions of the Security Council provide authoritative clarification as to the committed acts, the violated obligations and the duties to put an end to the illegal situation thus created. They qualified Armenia's actions as the unlawful use of force and invalidated its claims over the territories of Azerbaijan once and for all. The numerous decisions and documents adopted by other international organizations are framed along the same lines. Thus, in its declaration made in connection with the capture and occupation of the territories of Azerbaijan, the Minsk Group of the Conference on Security and Cooperation in Europe, which is mandated to promote a resolution of the conflict and facilitate negotiations to that end, stated in particular that "no acquisition of territory by force can be recognized, and the occupation of territory cannot be used to obtain international recognition or to impose a change of legal status".[10]

In its judgment of 16 June 2015 in the case of *Chiragov and others v. Armenia*, the Grand Chamber of the European Court of Human Rights rejected the Government of Armenia's submission that the land possessed by the applicants, who were six Azerbaijani nationals forcibly displaced from the occupied Lachyn district of Azerbaijan, was allocated to other individuals "in accordance with the laws of the 'NKR'". In this connection, the Court reiterated its admissibility decision of 14 December 2011, concluding that "the 'NKR' is not recognised as a State under international law by any countries or international organisations" and, "[a]gainst this background, the invoked laws cannot be considered legally valid for the purposes of the Convention and the applicants cannot be deemed to have lost their alleged rights to the land in question by virtue of these laws …".[11]

It follows from this that Armenia's claims to the "independent statehood" of Nagorny Karabakh are unsustainable in international law and thus null and void ab initio. Needless to say, the whole foundation of the international legal order would collapse if such claims had succeeded. In effect, by attempting to advertise and promote the illegal regime that it has set up in the occupied territories of Azerbaijan, Armenia patently demonstrates its total disregard for the position of the international community and its unwillingness to comply with the Charter of the United Nations and the generally accepted norms and principles of international law.

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[9] See, for example, the following reports: Yoram Dinstein, "Report on the legal consequences of the armed aggression by the Republic of Armenia against the Republic of Azerbaijan", United Nations, A/63/662-S/2008/812; Malcolm N. Shaw, "Report on the fundamental norm of the territorial integrity of States and the right to self-determination in the light of Armenia's revisionist claims", United Nations, A/63/664-S/2008/823; Malcolm N. Shaw, "Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory", United Nations, A/63/692-S/2009/51; Malcolm N. Shaw, "Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility", United Nations, A/66/787-S/2012/289; Alain Pellet, "Legal opinion on third party obligations with respect to illegal economic and other activities in the occupied territories of Azerbaijan", United Nations, A/71/880-S/2017/316.

[10] United Nations, S/26718, enclosure I.

[11] Grand Chamber of the European Court of Human Rights, *Chiragov and others v. Armenia*, Application No. 13216/05, Judgment (Merits), 16 June 2015, p. 55, para. 148; p. 67, para. 182.

The primary objective of the ongoing peace process, the mandate of which is based on the Security Council resolutions, is to ensure the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan, the restoration of the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders and the return of the forcibly displaced persons to their homes and properties. The achievement of that objective is a must, not a compromise. It is equally inevitable and pressing, as the unlawful use of force and the resulting military occupation and ethnic cleansing of the territories of Azerbaijan do not represent a solution and will never bring peace, reconciliation and stability.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*)Yashar **Aliyev**
Ambassador
Permanent Representative