

NAGORNO-KARABAKH: BASIS AND REALITY OF SOVIET-ERA LEGAL AND ECONOMIC CLAIMS USED TO JUSTIFY THE ARMENIA-AZERBAIJAN WAR

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Abstract

The Armenia-Azerbaijan conflict over the Nagorno-Karabakh (NK) region of Azerbaijan, which in its modern form has continued for 20 years, is a complicated case study of multi-vector and multi-layered claims, mostly from the Soviet times, ranging from history, economy, and legal status, used to justify the military occupation (along with seven adjacent regions). The article illustrates that some of the weaker claims were dropped altogether, whilst others were continually mixed with additional charges to make them “stick”. Despite solid legal, historic and moral grounds, Azerbaijan has been lagging in clarifying and explaining the fictitious charges of NK’s supposed transfer to Azerbaijan’s suzerainty in 1920s, the legal status of NK itself, its economic and financial well-being, and the impossibility to apply the 3 April 1990 Soviet Law on Succession to the NK case whether for the purposes of justifying its independence or attachment to Armenia. Despite all the challenges and blame shared by all sides, NK and adjacent currently occupied territories are recognized as part of Azerbaijan, with the latter retaining all rights, including military, to return it under its full sovereignty.

Keywords: Azerbaijan, Armenia, Soviet Union, USSR, Nagorno-Karabakh, conflict, separatism

Introduction

One of the biggest challenges in the Armenia-Azerbaijan conflict over the Nagorno-Karabakh (NK) region of Azerbaijan, that made it so difficult for outside observers and even experts to grasp, is a barrage of multi-level finger pointing and claims, some even predating military action, which after being repeated for years, become mainstream and accepted. In light of a recent flurry of statements and articles that repeat those clichés, in major part perpetuated due to the nature of the Internet and greater interest to the NK issue (be it due to Baku-Ceyhan pipeline, Kosovo independence or stand off with Iran), it warrants a more scrupulous elaboration of these claims.¹

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The primary distortions regarding the Karabakh region of Azerbaijan under our scrutiny in this article are the following: 1) that NK is an “ethnic Armenian enclave” and is simply “surrounded by Azeri territory”, 2) that Stalin supposedly “gave” NK to Azerbaijan, 3) that the 1993 United Nations Security Council (UN SC) resolutions have nothing to do with the Republic of Armenia and are addressed only to some vague “local Armenian forces”, 4) that the economy of NK region was deliberately neglected by Soviet Azerbaijani authorities, and this, apparently, left no choice other than for military action, 5) that there are only three parties to the conflict -- that is the Republic of Azerbaijan, Republic of Armenia, and Armenian NK community (the unrecognized “NKR”), and, 6) that the Armenian secessionists of NK, with full support of Armenia, declared their “independence” in, allegedly, full accordance of then Soviet laws, particularly the April 1990 law on succession from USSR, and thus the so-called “NKR” is, the logic goes, *de jure* “independent”. Let us review all these points in that order.

Brief history and current belonging of the NK region: official international opinion

Karabakh region (NK) is a historically Azerbaijani territory – according to the 2001 U.S. State Department NK fact sheet, “In the late 18th century, several khanates [Azerbaijani kingdoms – A.B.], including Karabakh, emerged in the South Caucasus to challenge the waning influence of the Ottoman Empire. After the Russian Empire eventually took control over the region in 1813, Azerbaijani Turks began to emigrate from Karabakh while the Armenian population of mountainous (nagorno) Karabakh grew.”² (For the demographics of the Karabakh region, see Table I) The *de jure* belonging of the currently Armenian occupied region to Azerbaijan is recognized by all relevant international bodies and organizations, including the United Nations Security Council (e.g., specifically and directly in resolutions 853, 874 and 884³ passed in 1993, at the height of the conflict), UN General Assembly (49/13⁴ and 57/298⁵), Organization for Security and Cooperation in Europe (OSCE)⁶, Organization of Islamic Conference (OIC)⁷, Parliamentary Assembly of the Council of

¹ Some of the analysis was previously done in: Baguirov, Adil, Myths Related to the Nagorno-Karabakh Conflict, in: Azerbaijan International magazine, Media Watch, Vol. 6.1, (Spring 1998),

http://www.azer.com/aiweb/categories/magazine/61_folder/61_articles/61_mediawatch.html

² U.S. Department of State, History of the Nagorno-Karabakh Conflict, (March 30, 2001),

http://www.azer.com/aiweb/categories/karabakh/karabakh_current/keywest_history.html

³ For the full list of all UN Security Council resolutions passed in 1993, see:

<http://www.un.org/Docs/scres/1993/scres93.htm>

⁴ UN General Assembly Resolution 49/13, forty-ninth session, agenda item 27, (November 25, 1994),

<http://www.un.org/gopher-data/ga/recs/49/9460075e.txt>

⁵ UN General Assembly Resolution 57/298, fifty-seventh session, agenda item 22 (I), (February 6, 2003),

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/57/298&Lang=E>

⁶ OSCE Lisbon Summit Final Documents, DOC.S/1/96, (3 December 1996), p. 15,

<http://www.osce.org/item/4049.html>

⁷ OIC Secretary General's Report On The Aggression of The Republic of Armenia Against The Republic of Azerbaijan, OIC/ICFM-33/POL/SG.REP.7, (2006),

<http://www.oic-oci.org/baku2006/english/SG-report/SGREP-33ICFM-AZERBAIJAN-REV.doc>;

The Aggression of The Republic of Armenia Against The Republic of Azerbaijan, The Thirty-third Session of the Islamic Conference of Foreign Ministers, Session of Harmony of Rights, Freedoms, and Justice, Baku, (19-21 June 2006), <http://www.un.int/azerbaijan/oic.php> and

http://www.oic2006baku.gov.az/eng/resolutions/armenian_aggression.shtml

Europe (e.g., PACE Doc. 10364, Report of the Political Affairs Committee, 29 November 2004⁸, and PACE Resolution 1416 (2005)⁹), the U.S. State Department (e.g., NK Conflict Fact Sheets in 2001 and 2005¹⁰), UK Government¹¹, Russian Ministry of Foreign Affairs¹², and many other states.

Table I: Demographics of the Nagorno-Karabakh region since earliest available Russian census of 1823 till last Soviet census of 1989/1990¹³

Year	Armenian	Azerbaijani	Russian	Notes
1810	2,500	9,500	N/A	Karabakh was still a khanate at the time (abolished in 1822).
1823	9%	91%	N/A	At the time Nagorno-Karabakh was not an autonomous oblast, instead was split into several <i>uezd</i> (districts). When listing “N/A” in
1832	35%	N/A	N/A	

⁸ Atkinson, David, United Kingdom, European Democrat Group, (Rapporteur), The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, Parliamentary Assembly of the Council of Europe (PACE), (29 November 2004), <http://assembly.coe.int/Documents/WorkingDocs/doc04/EDOC10364.htm>

⁹ PACE Resolution 1416: The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference adopted by the Parliamentary Assembly of the Council of Europe, (25 January 2005), <http://assembly.coe.int/Documents/AdoptedText/TA05/ERES1416.htm>

¹⁰ U.S. Department of State, The United States and the Conflict Over Nagorno-Karabakh, Fact Sheet, Bureau of European and Eurasian Affairs, Washington, DC, February 7, 2005, <http://www.state.gov/p/eur/rls/fs/41401.htm>

¹¹ UK Government, UK and Azerbaijan 'reaffirm declaration of friendship and co-operation', (15 December 2004), <http://www.number-10.gov.uk/output/page6776.asp>

¹² MFA of Russian Federation, Комментарий Департамента информации и печати МИД России в связи с прошедшими недавно в Нагорном Карабахе “парламентскими выборами”, Департамента информации и печати МИД России, Doc. 1417-22-06-2005, (June 22, 2005),

http://www.mid.ru/Brp_4.nsf/arh/FE4FBA95FEBDC55FC32570280048D43B?OpenDocument

¹³ Population statistics is based on the figures from the following sources, in order of appearance:

Cornell, Svante, “Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus”, Surrey, England: RoutledgeCurzon Press, (2001), p. 68, and Присоединение Восточной Армении к России, Ереван, 1972, с. 562;

Cornell, *ibid.* Also see: Swietochowski, Tadeusz, “Russia and Azerbaijan, a Borderland in Transition”, New York: Columbia University Press, (1995), p. 11, and Сборник сведений о Кавказе, т. 7, Тифлис, 1873;

Altstadt, Audrey, “The Azerbaijani Turks: power and identity under the Russian rule”, Stanford: Hoover Institution Press, (1992), p. 30, table 3.1, Imperial Census of 1897;

Джамал, Сахиб, Карабахская Хроника (реконструкция этнической истории Карабаха по архивным материалам (1805-1905 гг.)), in: IRS journal, №7, (2003), http://www.irs-az.com/gen/n7/n7_11.htm

Novannisian, Richard, The Armeno-Azerbaijani Conflict over Mountainous Karabagh, 1918-1919, in: The Armenian Review, Vol. 24, 2-94, (Summer 1971), p. 5;

Ibid., p. 4-5, footnote 4;

Soviet population census of 1926 (in Russian), Wikipedia, http://ru.wikipedia.org/wiki/Всесоюзная_перепись_населения_СССР_1926_года (accessed October 2007);

De Waal, Thomas. “Black Garden: Armenia and Azerbaijan through Peace and War”. New York: New York University Press, (2003), p. 130;

Численность и состав населения СССР (по данным переписи населения 1979 года), М., Финансы и статистика, 1985;

Human Rights Watch, “Seven Years of Conflict in Nagorno-Karabakh”, printed in USA by Human Rights Watch / Helsinki, (December 1994), p. xiii, ISBN 1-56432-142-8, citing: Natsional'nyi Sostav Naseleniya SSSR, po dannym Vsesoyuznyi Perepisi Naseleniya 1989 g., Moskva, "Finansy i Statistika";

Yunusov, Arif, Armenian-Azerbaijani Conflict: Demographic and Migratory Aspects, in: Central Asia and Caucasus Journal, #16, (1998), http://www.ca-c.org/journal/16-1998/st_10_junusov.shtml

				case of Azerbaijanis, they represented overwhelming majority of the remainder population. Russian, Greek, Assyrian, Ukrainian, German and other population represented less than 2% at all times.
1871	29,200 (24%)	87,800 (73%)	N/A	
1897	109,250 (39.5%)	164,098 (59.5%)	2,605 (1%)	At the time of when it was not an autonomous oblast but 4 <i>uezds</i> ; last official Russian Imperial census.
1897	1,987 hereditary nobles	5,033 hereditary nobles	N/A	One of the population categories from the 1897 census – hereditary nobles, which factually shows how many nobles were native, for generations, to Shusha <i>uezd</i> and city.
1916	nearly 70%	N/A	N/A	At the time Nagorno-Karabakh was not an autonomous oblast, instead was part of the larger Karabakh region. When listing “N/A” in case of Azerbaijanis, they represented overwhelming majority of the remainder population, Russian, Greek, Assyrian and others represented less than 2% at all times. Both 1916 and 1919 figures are from Armenian sources, Russian and Azerbaijani numbers differ significantly.
1919	165,000	59,000	7,000	
1926	111,700 (89,5%)	12,600 (10,06%)	596	First official Soviet census
1979	123,076 (75,9%)	37,264 (23%)	1,265 (0,8%)	Last Soviet census before the outbreak of war
1989	145,500 (76,9%)	40,688 (21,5%)	1,99 (1%)	Last Soviet census; a re-count was ordered in October 1990 which showed the number of Azerbaijanis higher, at 46,000 (24%), plus 1,000 of other minorities.

Thus, it is inappropriate to describe NK as some “ethnic Armenian enclave” (which in itself is due to ethnic cleansing of all its Azerbaijani population in 1988-1994) that is “completely surrounded by Azeri territory”, as it gives the incorrect impression of NK being if not independent, then at least not being Azerbaijani. In essence, the NK region, which is part of Azerbaijan, is surrounded by more of Azerbaijani territory, such as the seven regions and parts of other regions which are also currently occupied by Armenia, and also by, in the words of then U.S. Assistant Secretary of State Ambassador Elizabeth Jones, “criminal secessionists”.¹⁴

¹⁴ ANCA Press Release, ANCA criticizes State Department statement describing the Nagorno Karabagh republic as "criminal secessionists". Incendiary Remarks by Assistant Secretary of State Jones Undermine the

Legal status of NK before and after Sovietization in 1920

NK was not “part of Armenia until 1923” or “part of Azerbaijan since 1920’s” and was not “ceded” to Azerbaijan by Soviet dictator Joseph Stalin, as many Western authors and news reports repeat to this day. Archival documents and expert determinations, such as the above-mentioned 2001 U.S. Department of State fact sheet, prove beyond any doubt that NK was never part of Armenia and instead, was part of Azerbaijan. However, the most important document in this context is the July 5, 1921 plenum of Kavbureau CC RCP(b) decree (Caucasus Bureau of the Central Committee of the Russian Communist Party of the Bolsheviks), in which Stalin, along with several Armenian members, such as A.Nazaretyan and A.Myasnikyan, decided on “**leaving**” (or “retaining”; the term in original Russian that was used in the document: *оставить* (*ostavit*)) NK within Azerbaijan and not “**transferring**” (or ceding; in Russian: *отдать* (*otdat*)) it to anyone: “Nagorno-Karabakh to leave within the borders of Azerbaijan SSR”.¹⁵

Thus, when you “retain” or “leave” something somewhere, it obviously means that it was there in the first place (that is, Karabakh belonged to Azerbaijan since before the Sovietization). Due to unfortunate mistranslations and manipulations of the key terminology from Russian into English from these official Soviet documents pertaining to the history of Karabakh region, too many, to be even mentioned here, veteran journalists and political scientists have fallen into the trap of perpetuating the regrettable clichés and mistakes.

Other scholarly references proving that Karabakh was Azerbaijan’s even before Stalin are attested, for example, by Prof. Audrey Altstadt: “Early in 1920, the Peace Conference recognized Azerbaijan’s claim to Karabagh”.¹⁶

Anastas Mikoyan, a powerful ethnically Armenian Soviet official and right-hand of Stalin, in his report to the chairman of CC RCP(b) Vladimir Lenin on 22 May 1919, wrote: “Dashnaks – agents of the Armenian government, are trying to attach [or connect, in Russian: *приoединениya* – A.B.] Karabakh to Armenia. But for the population of Karabakh that would mean to lose their source of life in Baku and link up with Irevan [current Yerevan – A.B.]. With which [meaning Irevan/Yerevan – A.B.] they were never and in no way linked together”.¹⁷

Then, in August of 1920, in the letter by the chairman of Azerbaijan Revolutionary Committee (Azrevcom), Nariman Narimanov, and such Armenian members of the body as abovementioned A.Mikoyan and A.Narjanyan, addressed to the Commissar (Minister) of Foreign Affairs in Moscow, G.Chicherin, and to G.Ordzhonikidze, another powerful Bolshevik and senior member of the Caucasus Bureau of the CC RCP(b), in Vladikavkaz, wrote: “As to the supposedly disputed Zangezour and Karabakh, already part of Soviet

Karabagh Peace Process, Washington D.C., (January 18, 2005),
http://www.anca.org/press_releases/press_releases.php?prid=698

¹⁵ Russian State Archive of Socio-Political History (Moscow), f.64, op. 2, d.1, p.118, 121-122. A facsimile of the actual archival copy from the Azerbaijani State History archive is at the disposal of this author.

¹⁶ Altstadt, Audrey. "Azerbaijan Turks: Power and identity under Russian Rule", Stanford: Hoover Institution Press, (1992), p. 102.

¹⁷ Central Party Archive of the Institute of Marxism-Leninism of the CC CPSU (Moscow), f. 461, op. 1, report #45252, p. 1. Note that all archival references are given by their original, Soviet names of the archives, which have since changed.

Azerbaijan, we categorically declare, that these lands must indisputably remain as part of Azerbaijan henceforth”.¹⁸

Moreover, to be certain, it would be impossible to include any Armenian lands into Azerbaijan during the Soviet times, due to the overwhelming presence and domination on the part of ethnic Armenians in the Soviet leadership, starting with the right-hand of Stalin and long-time apparatchik Anastas Mikoyan (1895-1978). Also, Azerbaijan was the only Soviet republic, where the top leaders of the republic, the Chairman of the Central Committee of the Communist Party of Azerbaijan, were not only exclusively Russian or that of the titular (main) ethnicity, but even included three ethnic Armenians, such as the above-mentioned A.Mikoyan (28 April 1920 – December 1920), Levon I. Mirzoyan (January 1926 – August 1929), and Ruben G. Rubenov (Mkryityan) (January 1933 – December 1933). It should be noted that all of them were leaders in the Stalin era. Needless to say, that after all these archival reverences and facts, and considering who was at the helm of Azerbaijan in those turbulent times, allegations about Stalin giving anything to Azerbaijan, especially at the expense of Armenia, are at very least not credible. To be sure, the opposite was being done, where chunks of Azerbaijan were chipped away and transferred to Armenia, starting with Zangezour region in 1920-21, parts of Qazakh in 1920's and even 1982, and some villages of Naxcivan in 1920's and 1930.

United Nations Security Council Resolutions

The four UN Security Council (UNSC) resolutions passed in 1993, are specifically addressed to the Republic of Armenia, and also mention the imprecise “local Armenian forces”, which some pundits choose to interpret as simply addressed to, and implying only, the separatist Armenian community of the NK region. However, such interpretation would be contrary to fundamentals of geography and political science.

To begin with, the UNSC resolution 884 (12 November 1993) states: “Expressing its serious concern that a continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region,” thus of course both recognizing NK region as part of Azerbaijan and specifically mentioning Armenia as a party.

It then continues with the following statement: “Calls upon the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic with resolutions 822 (1993), 853 (1993) and 874 (1993), and to ensure that the forces involved are not provided with the means to extend their military campaign further”. Aside from once again reaffirming that NK region is a legitimate part of Azerbaijan (and thus partially countering the false impression, outlined above, that NK region could be *de jure* “independent”), and Armenia is a party to the conflict, it requests that the latter stops its military supply and assistance to any Armenian forces on the territory of Azerbaijan, something Armenia ignores to this day, according to the annual U.S. State Department findings: “[t]he fact that Armenia continues to station troops and CFE limited equipment on the territory of Azerbaijan without Azerbaijani permission... [A]rmenia is not a

¹⁸ Central State Archive of October revolution of Azerbaijan SSR (Baku), f. 410, op. 2, d. 69, pp. 181-187.

significant exporter of conventional weapons, but has provided substantial support, including materiel, to separatists in the Nagorno-Karabakh region of Azerbaijan”.¹⁹

Yet most important is what follows after this line and shows with greater clarity what the international law stipulates: “Demands from the parties concerned the immediate cessation of armed hostilities and hostile acts, the unilateral withdrawal of occupying forces from the Zangelan district and the city of Goradiz, and the withdrawal of occupying forces from other recently occupied areas of the Azerbaijani Republic in accordance with the "Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)" (S/26522, appendix) as amended by the CSCE Minsk Group meeting in Vienna of 2 to 8 November 1993”.

Thus, UNSC clearly demands that all “parties concerned” cease hostilities and unilaterally withdraw “occupying forces” from regions which are not even part of NK region and where ethnic Armenian population barely constitutes even 1% of total (according to the figures of the last Soviet census in 1989). Of course, since all fighting is going on inside Azerbaijan and in districts outside NK, the responsibility for occupation and hostilities can lay only on Armenia and all Armenian forces.

Then, in the resolutions the UNSC clearly, “Urges again all States in the region to refrain from any hostile acts and from any interference or intervention, which would lead to the widening of the conflict and undermine peace and security in the region”. Since the Armenian community of NK is not a “State”, only Armenia and Azerbaijan are among those directly named in the UN SC resolution as fighting parties (there is no mention of other bordering states, specifically, Georgia, Russia, Iran, and Turkey), it means this statement is clearly aimed at the Republic of Armenia. All other relevant UNSC resolutions on the conflict, which have a status of international law, are similar in their demands, but, alas, all but ignored by Armenia to this day.

Last, but not least, in its very first resolution on the conflict, UN SC 822 (30 April 1993), the SC is, “Expressing its serious concern at the deterioration of the relations between the Republic of Armenia and the Republic of Azerbaijan,” and immediately after that follows up with: “Noting with alarm the escalation of hostilities and, in particular, the latest invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces”. What is interesting with this statement is that the “local Armenian forces” are never precisely defined or somehow identified, instead, only Republic of Armenia as the sole Armenian party is clearly defined and presented. Moreover, Kelbadjar district is located between Armenia and the NK region, and shares a nearly twice longer border with Armenia. On the top of that, Armenia as the warring party against Azerbaijan is well documented and stated since, most notably in several U.S. Department of State, as well as U.S. Presidential Memorandums (e.g., in two 1998 such documents signed by then President Clinton²⁰). Also, no one but Armenia occupies such parts of Azerbaijan, which have no direct link to NK region, as Kerki village in

¹⁹ U.S. Department of State, Criteria For U.S. Assistance Under Section 498a(A) Of The Foreign Assistance Act. Armenia. U.S. Government Assistance to and Cooperative Activities with Eurasia - FY 2003, Released by the Bureau of European and Eurasian Affairs, (January 2004), <http://www.state.gov/p/eur/rls/rpt/c13148.htm>

²⁰ U.S. Presidential Determination (PD) No. 99-8 of December 8, 1998, and PD No. 98-11 of January 26, 1998, Memorandum for the Secretary of State, Re: "Assistance Program for the New Independent States of the Former Soviet Union", The White House, Washington D.C., (1998).

Naxcivan, and Asagi Askipara, Yuxari Askipara, Guscu Ayrim and Barxudarly villages of the Qazax region of Azerbaijan.

Economic situation in NKAO

Regarding the early claims that the economy of NK region was supposedly deliberately neglected by Soviet Azerbaijani authorities, to both “punish” and “root out” Armenians, and this, allegedly, left no choice than for Armenian separatism and military action. Ironically, this argument did not stand the test of time and has been disproved by the fact, that the economic situation of the remaining Armenians in the occupied territories today is hardly better than it was before the war. This is not only the consensus of foreign journalists visiting the occupied territories, but also of the OSCE fact-finding mission in February 2005.²¹

However, authoritative ethnically Armenian Soviet economists maintained in a March 1988 government meeting, which was at the start of the conflict, that the economy of NK autonomous region, if taken separately, was actually better overall than in both Azerbaijan and Armenia, and even all of USSR. In fact, from the point of economic development the NK region in Azerbaijan was second only to Absheron region and its city Baku, the capital, and ahead of other nearly 60 regions of the country. The meeting was chaired by academician Tigran S. Khachaturov, a prominent Armenian economist sent from Moscow, and the following ethnic Armenian high-level officials of Azerbaijan SSR reported: A.Ayriyan, Minister of Timber and Wood-processing of Azerbaijan, L.Davidyan, deputy head of the Department of Construction and Urban Management of the Azerbaijan CPCC, and A. Pogosova, deputy department chief, State Planning Committee (Gosplan).²²

Mr. Davidyan reported that: “During recent 5-year plans, regarding the activation of housing, preschool institutions, and public-health facilities, the indicators for the specific capital investments for the autonomous oblast were considerably higher than the average for the republic and for its regions.” Mrs. Pogosova, for her part, reported: “In past years, transportation and communication means developed dynamically in the oblast. A railroad line with all the management necessary for operation was activated in the city of Stepanakert [Khankendi – A.B.]. Accelerated development, as compared with the republic as a whole, occurred in motor vehicles: there are 26.3 motor vehicles per 1000 inhabitants of the oblast, as compared with the average of 17.5 for the republic as a whole”.²³

Before the Armenian aggression, in 1988-89 academic year there were 136 secondary schools, in which the teaching language was Armenian (16,120 students), and 13 inter-ethnic schools (7,045 students) in NK region of Azerbaijan. There were altogether 181 Armenian secondary schools (20,712 students) and 29 inter-ethnic schools (12,766 students) in Azerbaijan in the academic year 1988-1989. In the town of Khankendi (formerly Stepanakert) there was a State Pedagogical Institute with over 2,130 students, mainly

²¹ Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), Website of the European Parliament, (28 February 2005),

http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dsca20050413_08/dsca20050413_08en.pdf

²² “Expert Contrasts Armenia, Azerbaijan Development”, FBIS-translated item WA182000106, Baku, “BAKINSKIY RABOCHIY” newspaper, in Russian, (11 March 1988), pp. 2-3.

²³ Ibid.

Armenians, annually attending its Armenian, Azerbaijani and Russian departments. In addition, there were dozens of technical colleges and vocational training schools in NKAO working in the Armenian and Russian languages.²⁴

The meeting chaired by academician Khachaturov produced the following table (**Table II**), showing NK edging out, overall, Azerbaijan, Armenia and even all of USSR. It becomes obvious that NK region was not only living better than most Soviet people, but received disproportionately more than its economic output, a fact that remains true to this day.

Table II: Comparable Indicators of Social Development as of 1988²⁵

Items	Azerbaijan SSR	NKAO	USSR	Armenia SSR
1. Number of hospital beds per 10,000 persons	97.7	101.7	130.1	86.2
2. Number of physicians of all specialties per 10,000 persons	38.4	29.1	42.7	38.6
3. Number of middle-level medical workers per 10,000 persons	93.5	122.7	114.7	93.5
4. Number of public libraries per 10,000 persons	6	13	4.8	4.1
5. Number of clubs per 10,000 persons	5	15	4.8	3.8
6. Number of movie projectors [movie theaters] per 10,000 persons	3	11.2	5.4	2.9
7. Number of children served by preschool institutions (in percentages of size of population of the corresponding age)	20	35	57	39
8. Number of students attending first shift (in percentages of overall number of students)	74.3	92.5	78.2	87.8
9. Housing fund per inhabitant (square meters)	10.9	14.6	14.9	13.7
including:				
in urban localities	12.2	14.6	14.3	13.1
in rural localities	9.2	14.6	16.1	15.0

Principal vs. Interested parties in NK war: the “Baker Rules”

In regards to the number of parties in the NK conflict, they were specified and cemented already in 1992, in no small part thanks to the U.S. position and specifically, its Secretary of

²⁴ Council of Europe, ACFC/SR (2002) 1, Report Submitted By Azerbaijan Pursuant To Article 25, Paragraph 1 Of The Framework Convention For The Protection Of National Minorities, (received on 4 June 2002), <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/2002/azerbaijan.htm>

²⁵ Table reproduced from: "Expert Contrasts Armenia, Azerbaijan Development", FBIS-translated item WA182000106, Baku, “BAKINSKIY RABOCHIY” newspaper, in Russian, (11 March 1988), pp. 2-3.

State at the time, James Baker, as then U.S. CSCE/OSCE top negotiator on the NK conflict, Ambassador John Maresca, writes in his numerous scholarly articles on the conflict.²⁶ It was Secretary Baker who intervened with the Armenian and Azerbaijani foreign ministers to reach an agreement on how Karabakh region was to be represented in the OSCE-sponsored negotiations. The rules, to which all parties agreed and which the OSCE Minsk Group adheres to even today, were simple: in NK conflict, there are two “principal parties” – the Republic of Armenia and Republic of Azerbaijan, and two “interested parties” -- the Armenian community of NK and Azerbaijani community of NK. That is the Azerbaijani community of Karabakh was a legally recognized “interested party” to the conflict and thus attends the meetings and signed the May 1994 cease-fire agreement. Since then, these simple and effective rules became known as the “Baker Rules”.

The 1990 Soviet law on succession

On the top of the already confusing legal aspects and history of NK region due to oft-repeated references to Stalin, mistranslations and distortions regarding the supposed transfer of NK region to Azerbaijan, there is another legal claim, that the unrecognized separatist “NKR” is, allegedly, a legitimate and independent state, since it succeeded from the USSR in accordance with the 3 April 1990 law.²⁷ Several Western sources, such as Congressman Frank Pallone (D-NJ), the Co-chair of the Caucus on Armenian Issues of the U.S. House of Representatives, and ironically, himself a former practicing lawyer, and NGO’s, such as a center affiliated with the New England Law School, have been repeating these flawed claims.²⁸

To begin with, that Soviet law, “On the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR” of 3 April 1990, was as its date shows, passed in the waning days of the USSR, when the NK and other post-Soviet conflicts already started, Baltic republics declared independence, Russia wanted to go alone its separate way, and USSR was clearly on the fast track to disintegration. To prevent this, President and Secretary General of the Communist Party of USSR Mikhail Gorbachev and his supporters came up with several ways to make it nearly impossible for the Soviet Union Republics (there were 15 of them, including Azerbaijan SSR and Armenia SSR) to become independent. The solution implemented in the form of the 3 April 1990 law – “[w]as drafted and adopted in a hurry, without open debates and discussions, without consultations with the republics, without previous publication of the draft...”²⁹ -- was very Stalinesque in both its essence and purpose

²⁶ Maresca, John J, “Resolving the Conflict Over Nagorno-Karabakh: Lost Opportunities for International Conflict Resolution”, In Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds) *Managing Global Chaos: Sources of and Responses to International Conflict*, p. 260. Washington D.C.: United States Institute of Peace Press, (1996)

²⁷ “Law on Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR (3 April 1990)”, in Hurst Hannum (ed.), *Documents on Autonomy and Minority Rights*, pp. 753-760, London: Martinus Nijhoff Press, (1993)

²⁸ “A Blueprint for Resolving the Nagorno-Karabagh Crisis,” New England Center for International Law and Policy and the Public International Law and Policy Group, (June 2000), <http://www.nesl.edu/center/pubs/nagorno.pdf>

²⁹ Kučinskis, Linas, *Lithuania's Independence: The Litmus Test For Democracy In The U.S.S.R.*, in: *Lithuanian Quarterly Journal Of Arts And Sciences (Lituanus)*, Volume 37, No.3, (Fall 1991), ISSN 0024-5089, http://www.lituanus.org/1991_3/91_3_01.htm

– to give the never-before held rights of secession to autonomous regions (oblast'), such as NK in Azerbaijan, and thus coerce those Union Republics (e.g., Azerbaijan, Georgia and Moldova) from attempting to secede and become independent from USSR.³⁰

However, the main problem with the new, hurriedly adopted, law was not just its intention, but its illegality. First of all, the supreme law in USSR at the time was the 1977 Soviet Constitution (in this article we used the official English translation by the Soviet State Novosti Press Agency Publishing House).³¹ The new law on secession, as is clear from Article 1 of its text, is supposedly based on the Article 72 of the USSR Constitution. Yet, Article 72 of the Soviet Constitution stated only the following: “Each Union Republic shall retain the right freely to secede from the USSR”.³² As we can see, there is not a single word about autonomous republics (such as Abkhazia) or autonomous regions (such as South Ossetia and Nagorno Karabakh), only about the rights of 15 Union Republics (which the preceding Article 71 defines) – the republics that actually put the “U” (for “Union”) in the “USSR”. Moreover, the new law was clearly in total violation of the Article 78 of the USSR Constitution, which stipulated that: “The territory of a Union Republic may not be altered without its consent. The boundaries between Union Republics may be altered by mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics.”

Furthermore, Article 79 stated: “A Union Republic shall determine its division into territories, regions, areas, and districts, and decide other matters relating to its administrative and territorial structure”, and finally, in Article 81, a promise was made: “The sovereign rights of Union Republics shall be safeguarded by the USSR”. It becomes obvious, that the 3 April 1990 law contradicts all of the above articles of the supreme law of the country, the Soviet Constitution, specifically, articles 72, 78 and 79, and thus the law was unconstitutional.

Moreover, where the Soviet Constitution did discuss autonomous regions (areas), in articles 86-88, it only said the following: “Article 86. An Autonomous Region is a constituent part of a Union Republic or Territory. The Law on an Autonomous Region, upon submission by the Soviet of People's Deputies of the Autonomous Region concerned, shall be adopted by the Supreme Soviet of the Union Republic.” Then Article 87 defined all the autonomous regions in USSR, of which there were eight. Finally, “Article 88. An autonomous Area is a constituent part of a Territory or Region. The Law on an Autonomous Area shall be adopted by the Supreme Soviet of the Union Republic concerned”.

³⁰ The official Azerbaijani position is found here: Ministry of Foreign Affairs of the Republic of Azerbaijan, “Legal aspects of the Nagorno-Karabakh conflict”, accessed November 2007, http://www.mfa.gov.az/eng/armenian_agresion/legal/index.shtml

The official Armenian view is here: Nagorno Karabagh A White Paper, The Armenian Center for National and International Studies, Yerevan, Armenia. Publication sponsored by the Armenian Assembly of America, Washington, D.C., (March 1997), http://www.ArmeniaForeignMinistry.com/fr/nk/white_paper.html

³¹ Constitution (Fundamental Law) Of The Union Of Soviet Socialist Republics, Adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR Ninth Convocation On October 7, 1977. Translation by official Novosti Press Agency Publishing House, Moscow, (1985) (split into 7 parts by Bucknell University, consisting of 174 articles), <http://www.departments.bucknell.edu/russian/const/1977toc.html>

³² Ibid. Articles 70-88 can be read here: <http://www.departments.bucknell.edu/russian/const/77cons03.html>

In addition to the before mentioned points exposing the unconstitutionality of the 1990 law and discrediting its Stalinesque essence, the law itself contains provisions which the Armenian community of NK clearly either did not follow or violated, such as in Articles 6 and 7, which stipulate that any referendum in an autonomous region (such as NK – A.B.) must not only provide all residents the right to vote (which was violated, as the entire population of some 46,000 Azerbaijanis [1990 census], was either already ethnically cleansed from their homes or denied voting rights), but also send the results of the referendum for approval to the Supreme Soviet of the Union Republic (in this case the Supreme Soviet of Azerbaijan SSR in Baku), which would then make its determination and recommendations, and send it up to Moscow for further deliberations. Obviously, this never happened, partially because not a single union republic followed these procedures due to USSR's unexpected and unilateral dissolution by the Belovezhskaya Pushcha (Belovezh forest) agreements of the Russian, Ukrainian and Belarus presidents and the formation of the Commonwealth of the Independent States (CIS) in its place.

Finally, Article 3 of the 1990 law, which Armenians frequently site in their quest for “NKR” legitimacy, used a vague stipulation, which was grossly misunderstood. Specifically, it said: “The people of the autonomous republics [such as Abkhazia – A.B.] and autonomous formations [formations such as NK or South Ossetia are meant – A.B.] are reserved the right of an independent decision of a question on whether to remain in the USSR or in the seceding union republic, as well as on putting up the question on their legal status [‘gosudarstvenno pravovoy status’ in Russian – A.B.]”. Hence, this convoluted and vague provision of an unconstitutional and in itself contradictory law simply gives NK region the choice of either seceding from USSR while remaining part of Azerbaijan, or staying in USSR if the Union Republic decides to secede anyway. This determination is also concurred by the Council of Europe background paper prepared by the Directorate General of Political Affairs.³³

The secondary part of Article 3 of the 1990 law, where it says: “as well as on putting up the question on their legal status”, does not imply the right to independence, but simply refers to a possibility of raising the issue of upgrading its status from an autonomous oblast (region) to that of an autonomous republic. What Soviet Russian legal experts and drafters of the law meant by the “question on their legal status” clause, becomes very apparent in the case of Tatarstan (a sovereign Republic that is a constituent part of Russian Federation), reviewed by the Constitutional Court of Russia (the highest judicial authority of the land) on 13 March 1992, which used precisely the same stipulations to strike down many provisions for greater autonomy of the Tatars and bring Tatarstan's laws in accordance with the Russian Constitution.³⁴ The importance of this legal decision is great, considering the date (1992), place (Moscow) and individuals involved (Soviet-era constitutional experts and judges).

³³ Parliamentary Assembly of the Council of Europe, Background paper on the Nagorno-Karabakh conflict, prepared by the Directorate General of Political Affairs for the seminar ‘Youth and conflict resolution’, Strasbourg, (31 March – 2 April 2003), http://www.coe.int/t/e/com/files/events/2003-04-Youth-conflicts/Nagorno_conflict.asp

³⁴ ПОСТАНОВЛЕНИЕ от 13 марта 1992 г. N 3-П. "По делу о проверке конституционности Декларации о государственном суверенитете Татарской ССР от 30 августа 1990 года, Закона Татарской ССР от 18 апреля 1991 года "Об изменениях и дополнениях Конституции (Основного Закона) Татарской ССР", Закона Татарской ССР от 29 ноября 1991 года "О референдуме Татарской ССР", постановления Верховного Совета Республики Татарстан от 21 февраля 1992 года "О проведении референдума Республики Татарстан по вопросу о государственном статусе Республики Татарстан", http://www.ksrf.ru/doc/postanrtf/p3_92.rtf and also here: <http://www.eurolawco.ru/publ/ccrf31.html>

The Chechen insurgents have also tried to use this and other Soviet-era laws and declarations for their independence claims, which were all, of course, rejected by the central Russian authorities.³⁵

It should be noted that despite the obvious, if not unintended, threat to Russia's territorial integrity stemming from the 1990 law(s), some of the ultra-nationalist Duma members, such as the Rodina (Homeland) fraction (since merged into the "Fair Russia" party) and its leader, then Member of the Duma, Mr. Dmitry Rogozin, have introduced a bill in 2005, invoking the law and attempting to simplify the process of becoming part of Russian Federation for all four break-away regions of the FSU republics, such as NK, Abkhazia, South Ossetia, and Transnistria. However, the bill has been blocked by the ruling majority and did not pass during its first reading on March 11, 2005.³⁶ This is not surprising, considering the fact that the Russian government and judiciary have never interpreted or meant to interpret the 3 April 1990 law, along with many other haphazard laws hurriedly passed in 1990, the way separatists try to do post-factum.

In short, the 3 April 1990 was simultaneously unconstitutional, illegal, contradictory, Stalinesque and neither applied nor was applied to NK, and does not legitimize continued occupation of Azerbaijani regions, such as Karabakh, and certainly does not recognize the independence of the "NKR". The position of the international community and most importantly of the five permanent members of the UN Security Council has been the same for all this time – Nagorno Karabakh is a constituent part of the Republic of Azerbaijan.

Conclusion

The Karabakh region as a whole, and its mountainous part (NK), has been a historic part of Azerbaijan and populated by a majority Azerbaijani population for the past several centuries. The Armenian-speaking population became majority only in the 20th century, after an out migration of the Muslim (primarily Azerbaijani Turkic) population and settlement of ethnic Armenians from primarily the Iranian Empire in the 19th century in the mountainous part of

³⁵ See, for example, the statements, articles and declarations in Russian of pro-independence Chechen activists: А. Закаев, Я. Чагаев, "Некоторые замечания к вопросу о легитимности Чеченской независимости", Чеченпресс, 17.08.04, <http://www.chechenpress.info/events/2005/04/29/30.shtml> ; Идигов, Ахъяд, Председатель Парламента ЧР-Ичкерия (1993-1997 гг.), Отдел политической информации Chechenews.com, (06.09.2006), <http://www.chechenews.com/events/2006/09/06/02.shtml> ; Бадалов, Руслан, председатель регионального общественного движения Чеченский комитет национального спасения, "У нас уже есть одна Конституция. Другой не надо", in: Время МН, N 43 (дайджест публикаций центральной прессы N 51 (589), 21 марта 2003 года), <http://www.hro.org/editions/press/0303/21/21030336.htm>. Then, compare with a retort from a pro-Federal Chechen expert: Султыгов, Абдул-Хаким, "Правовые проблемы чеченского национально-государственного самоопределения", in: Елена Боннэр, Дмитрий Фурман и Юрий Самодуров (eds) Чечня и Россия - заложники друг у друга, Общественный центр имени Андрея Сахарова, (22 October 1999), Москва, http://www.sakharov-center.ru/chs/chrus17_1.htm

³⁶ For some more background info, see these articles in Russian: Госдума не разрешила иностранным автономиям самовольно переходить в состав России, (11.03.2005), <http://www.vcj.ru/rus/news/2005/03/11/subject/> and: Ratiani, Natali. "Родина" расширяет границы. Дмитрий Рогозин Хочет Присоединить К России Немного Бывшей Советской Родины, in: Газета "Известия", (10.03.2005), <http://www.rodina-duma.ru/press/?page=17> and <http://www.vibori.ru/news/2005/3/11.htm>

the region. Despite intense lobbying and attempts to transfer NK to Armenian jurisdiction, the region was retained as part of Soviet Azerbaijan in the 1920s. However, a time-bomb was put in place by arbitrary delimitation of the mountainous Karabakh to include a maximum of Armenian-populated villages, and exclude Azerbaijani ones, hence creating an “Armenian enclave” with a special autonomous status of an *oblast’* (NKAO) – which while being lower than the status of the Autonomous Republic and Union Republic, favored the Armenian irredentism and separatist claims. Despite better quality of life and standards of living that on average in either Azerbaijan, Armenia or USSR as a whole, claims of economic deprivation and mistreatment were alleged early on, with swift reaction of central Soviet authorities, pressuring Azerbaijan to increase financial subsidies of NKAO even further, at the expense of truly depressed and overlooked regions of the republic. Despite continued Armenian efforts to show NK as being part of Azerbaijan only in Soviet times and succeeding in full conformity with the laws of the time, particularly the 3 April 1990 Law on Succession, the United Nations Security Council, along with all other relevant international organizations, recognized NK and all other currently Armenian-occupied regions as integral part of the independent Republic of Azerbaijan. The international community has also implicated and recognized Republic of Armenia as not only a supporter of local Armenian separatists, but as a country occupying territories of a neighboring state, but has not applied or approved any sanctions. Additionally, the international community, in what has been termed as the “Baker Rules”, has recognized only the Republic of Armenia and Republic of Azerbaijan as the “principal parties” to the NK conflict, whilst the two ethnic communities, including the self-proclaimed and unrecognized “NKR”, were recognized only as the “interested parties”.