

THE IMPLICATIONS OF THE 1993 U.N. SECURITY COUNCIL ACTION FOR THE SETTLEMENT OF THE ARMENIA-AZERBAIJAN CONFLICT

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Abstract

The article revisits the four resolutions adopted in 1993 by the U.N. Security Council on the conflict between Armenia and Azerbaijan. It analyses the terminology used in these resolutions viewed within the overall context in which these resolutions were adopted. It is the premise of this article that these resolutions were the result of a complex web of interrelated factors, which had a decisive impact on the Security Council actions in relation to the conflict. These resolutions reflect the delicate balance between the obligation of the U.N. Security Council to abide by the principles and norms of international law enshrined in the U.N. Charter and to address situations threatening international peace and security in an unbiased way, as well as safeguarding the interests of the permanent members of the Council. Although the resolutions fell short of pointing finger, they implicitly pointed to the interstate nature of the conflict, singled out the principles and norms of international law applicable to this conflict, recalled the inadmissibility of violating those norms, and outlined the principles that should provide the overall framework and guidance for the mediation efforts for the conflict settlement pursued in the context of the OSCE Minsk process.

Keywords: Armenia-Azerbaijan conflict, Nagorny Karabakh, UN Security Council resolutions, territorial integrity, OSCE Minsk Process

Introduction

In 1993 the United Nations Security Council adopted four resolutions on the conflict between Armenia and Azerbaijan.¹ There are few other cases in which the Security Council adopted four resolutions on a particular conflict in a single year, which in itself can be regarded as the acknowledgement of the gravity of the situation. These resolutions are probably the most cited and referred to documents in the context of the conflict between Armenia and Azerbaijan. And this is not a surprise, as the resolutions adopted by the Security Council are the most authoritative decisions of this body empowered by the U.N. Member States through the U.N. Charter to maintain international peace and security.

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¹ S/RES/822 (April 30, 1993), S/RES/853 (July 29, 1993), S/RES/874 (October 14, 1993) and S/RES/884 (November 12, 1993). For simplicity in the article I will refer only to the consecutive numbers of these resolutions (i.e. 822, 853, 874, and 884). All U.N. documents are available publicly at www.un.org/documents/.

Although, the texts of the above-mentioned resolutions are well known, especially to those who are familiar with the background of one of the most violent armed conflicts on the territory of the former Soviet Union, few attempts were made to explore in detail the terminology used in these resolutions and the overall context in which these resolutions were adopted. Yet these resolutions were the result of the complex web of interrelated factors, which had a decisive impact on the Security Council's action in relation to the conflict.

Hence, the purpose of this article is to reconsider the wording of the resolutions in order to analyze the reasons these resolutions were so framed and to elaborate on the implications of the Security Council actions for the conflict settlement process.

Since there is no codified and generally accepted rules of interpretation of the Security Council resolutions, this article combines two methods: one that focuses narrowly on the ordinary or plain textual meaning of the terms of the resolutions, and a second method that interprets the text of the resolutions in the overall context, taking into account the object and purpose of the resolutions as well as the overall political background.²

In this context, the factors affecting the daily practice of the Security Council, in particular the complex decision-making process and the role of the permanent members of the Council in this regard, are vitally important. Two aspects will be specifically mentioned in the following sections. First, the U.N. Charter requires that the Security Council in its daily practice must assess problems likely to threaten the international peace and security based on the principles and norms of international law enshrined in the U.N. Charter to determine which of the arguments presented by the parties to a dispute correspond to the factual situation. Therefore, international law provides an overall framework for the Security Council actions. In this regard, an analysis of the terminology used in these resolutions from the perspective of their meaning within international law is crucial for understanding the actual meaning embedded in the adopted texts. Second, the "veto" power of the permanent members of the Security Council continues to give them unprecedented leverage on the Security Council action and allows them to shape decisions in a way that will not harm their interests.

It is equally important to bear in mind that the resolutions were adopted as a response to the dramatic events unfolding in the conflict zone and therefore can be regarded as an assessment by the Security Council of the situation on the ground and as recognition of the facts by this authoritative organ of the United Nations. This article will specifically focus on the way the Security Council addressed the reports from the region on Armenia's involvement in the conflict. Today, with the continued presence of Armenia's regular troops in the occupied territories of Azerbaijan,³ and with Armenia's president Serzh Sarkisyan and his defense minister Seyran Ohanyan's routine visits to these territories for

² See Michael C. Wood, "The Interpretation of Security Council Resolutions", *Max Planck Yearbook of United Nations Law*, 2:73, (1998), http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood_2.pdf (accessed July 17, 2009).

³ For example, in the aftermath of the Presidential elections in Armenia in March 1998, the OSCE/ODIHR Election Observation Mission in Armenia released its Final Report in which it expressed extreme concern "that one of the mobile boxes has crossed the national borders of the Republic of Armenia to collect votes of Armenian soldiers posted abroad (Kelbajar)", thus confirming the deployment of Armenian troops in the Kelbadjar district of Azerbaijan, which was occupied in April 1993. See "OSCE/ODIHR Final Report on the Presidential Elections in Armenia," issued on April 9, 1998, p. 8. Available at: http://www.osce.org/documents/odihr/1998/04/1215_en.pdf (accessed October 29, 2009).

inspecting troops stationed there⁴ and attending military exercises, the direct military involvement of Armenia in the conflict is not questioned and widely recognized by the international community.⁵ However, back in 1993 for at least several permanent members of the Security Council, the military intervention of Armenia was an inconvenient truth, which several members of the Security Council were reluctant to accept.

The following sections will identify factors that may have shaped the stance of the Council's permanent members and will discuss the repercussions this had for the overall tone of the adopted resolutions and the terminology that was used to frame the texts.

With a view to reconstructing the scene as was seen at that time from the U.N. Headquarters in New York, reference will be made to the reports of the U.N. Secretary-General and the Chairman of the Minsk Conference of the Conference for Security and Cooperation in Europe (CSCE)⁶ on dealing with the conflict, which were submitted to the Security Council based on the fact-finding missions' inquiries. Since the Security Council was also furnished with information on the developments in the conflict zone by regional States, I will consult the correspondence communicated to the Security Council from both Azerbaijan and Armenia, as well as from other states involved in the situation. The verbatim records of the proceedings of the relevant Security Council meetings and the *Repertoire of the Practice of the Security Council*,⁷ serving as an institutional memory of the practice of the Security Council and the Yearbook of the United Nations⁸ which is considered to be a comprehensive and authoritative reference publication about the work of the United Nations, will be consulted with a view to revealing the atmosphere prevailing in the Security Council at that time and to shedding light on the positions of the Council members towards the conflict. These sources are also useful for recreating the chronology of the actions taken by the Security Council with regard to the conflict between Armenia and Azerbaijan.

The Security Council resolutions were not adopted in a vacuum. The conflict drew the attention of the international community, and the developments in the conflict zone quickly became a matter of public knowledge as reflected in the news reports of the leading foreign media outlets, as well as the statements issued by the major international organizations and individual states. Hence, a short reference will be made to the background information based on the news reports, the official documents distributed in the United Nations, and the statements by the relevant international organizations in order to provide the general context of the conflict. For the sake of presenting an objective and unbiased account of the

⁴ The last such visit occurred in October 2009. Information on this visit and related photographs is available on the official web page of the President of the Republic of Armenia, <http://president.am/events/news/eng/?day=22&month=10&year=2009&id=766> (accessed October 26, 2009).

⁵ See, for example, the report entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference" (Doc. 10364) prepared by the Rapporteur of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, Mr. David Atkinson, in November 2004, and the subsequent resolution 1416 adopted by PACE on January 25, 2005. Available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1416.htm>, (accessed October 29, 2009).

⁶ Since 1994 – OSCE (Organization for Security and Cooperation in Europe).

⁷ See *Repertoire of the Practice of the Security Council*, Supplements 1989-1992 (ST/PSCA/1/Add. 11) and 1993-1995 (ST/PSCA/1/Add. 12). Items 19 and 9 respectively related to the conflict between Armenia and Azerbaijan. Available at <http://www.un.org/Depts/dpa/repertoire> (accessed June 10, 2009).

⁸ See Yearbook of the United Nations, 1992-1994, Department of Public Information, New-York. All issues are available at <http://unyearbook.un.org/index.html> (accessed June 10, 2009).

key events of the conflict, this article will refer mainly to the books, articles, and reports on the conflict written by independent scholars and observers who are not from either Armenia or Azerbaijan.

When appropriate, I will elaborate on the meaning of the principles and norms of international law singled out by the Security Council in its resolutions, and identify the obligations of individual states that derive from these norms. I will conclude by dwelling upon the implications of the Security Council action for the current conflict settlement process.

The U.N. Charter as a framework for the Security Council's action

The primary purpose of the United Nations and its central organ the Security Council as stated in the first Article of Chapter one of the U.N. Charter is “to bring about by peaceful means, and in conformity with the principles of justice *and international law* adjustment or settlement of international disputes [...]”⁹ Thus, the U.N. Charter establishes international law as a clear-cut framework for the Security Council within which to address a particular situation threatening international peace and security. Higgins, analyzing the place of international law in the decisions adopted by the Security Council, noted that it is for the Security Council to decide which of the legal propositions presented by the parties to the dispute happened to accord with the facts of the case.¹⁰ She also recognized the right of the Security Council to “make authoritative and binding interpretations of Members’ legal obligations under the Charter.”¹¹

At the same time, because of the “veto” power reserved for the permanent members of the Security Council by the founders of the United Nations, there are voices constantly challenging the legitimacy of the collective authority of the Council on the grounds that the proceedings in this organ are dominated by the powerful few and, hence, the Council is merely an instrument in the hands of the major powers for advancing their interests, rather than a mechanism of maintaining international peace and security – a core mission prescribed in the Charter.¹² Under the circumstances, being guided in its daily practice by the principles and norms of international law is an indispensable precondition and a source of legitimacy for the Security Council in the eyes of the U.N. Member States. Due to the legitimacy vested in the Security Council, its resolutions should be regarded as authoritative decisions of the United Nations to be reckoned with. According to Higgins, “the application of legal rules to particular circumstances forms part of the United Nations practice and, over a period of time, becomes part of the stream of authoritative decisions which are looked to as a source of law.”¹³

⁹ Charter of the United Nations and Statute of the International Court of Justice, U.N. Department of Public Information, DPI/511, United Nations, New York, 2006, [my emphasis].

¹⁰ Rosalyn Higgins, “The Place of International Law in the Settlement of Disputes by the Security Council”, *The American Journal of International Law*, vol. 64:1 (1970): 4, <http://links.jstor.org/sici?sici=0002-9300%28197001%2964%3A1%3C1%3ATPOILI%3E2.0.CO%3B2-7> (accessed March 17, 2009).

¹¹ *Ibid.*, p. 6.

¹² See David D. Caron, “The Legitimacy of the Collective Authority of the Security Council”, *The American Journal of International Law*, vol. 87:4 (1993): 552-588, <http://links.jstor.org/sici?sici=0002-9300%28199310%2987%3A4%3C552%3ATLOTCA%3E2.0.CO%3B2-E> (accessed April 20, 2009).

¹³ Rosalyn Higgins, “The Place of International Law in the Settlement of Disputes by the Security

An analysis of the practice of the Security Council reveals that the decisions taken by this U.N. organ often reflect the delicate balance between the obligation of the Security Council to address situations threatening international peace and security based on the established facts and abiding by the principles and norms of international law enshrined in the U.N. Charter, and, on the other hand, safeguarding of interests of the permanent members of the Council. Such quest for “middle ground” to accommodate the interests of all permanent members while remaining in the realm of the legal framework set by the U.N. Charter over the years has now become an institutional constraint. Thus, in critical moments the Council can be preoccupied more with hammering out the “convenient” text of its resolutions rather than scrupulously exploring the merits of a particular case. Throughout its history the Security Council has established a certain pattern: It avoids explicitly blaming those perpetuating illegal acts (an especially relevant strategy in cases where the permanent members have a particular interest in the matter) while trying to maintain international peace and security through outlining measures believed to prevent further exacerbation of the situation and, potentially, the resolution of a conflict. From this perspective, due to the complex decision-making process in the Security Council, the recommendations and decisions adopted by this central body of the United Nations can be qualified as the art of the possible. The process of the adoption of the resolutions related to the Armenia-Azerbaijan conflict and the terminology used in their texts reinforces this pattern.

1991: Internal conflict becomes international

The conflict between Armenia and Azerbaijan has a complex nature with elements of ethnicity, identity, and historical narratives closely interconnected with the territorial claims. This article is far from being an attempt to provide a detailed historical account of the conflict. An extensive literature exists on this topic.¹⁴ It should be mentioned though that the conflict between Armenia and Azerbaijan triggered by the Armenian claims to the Nagorny Karabakh region of Azerbaijan was left simmering throughout the Soviet period only to erupt with renewed intensity in 1988, when Moscow’s central authority over the periphery of the U.S.S.R. decreased and gave new impetus to the Armenian separatist tendencies in the Nagorny Karabakh¹⁵ Autonomous Oblast (NKAO) of the then-Soviet Socialist Republic (SSR) of Azerbaijan. These tendencies quickly materialized into the secessionist movement, which was actively supported by the neighboring Soviet Socialist Republic of Armenia, with the first instances of sporadic violence at the end of 1987. The unilateral attempts of the local authorities in NKAO to secede from Azerbaijan¹⁶ in

Council”, *The American Journal of International Law*, vol. 64:1 (1970): 6, <http://links.jstor.org/sici?sici=0002-9300%28197001%2964%3A1%3C1%3ATPOILI%3E2.0.CO%3B2-7> (accessed March 17, 2009).

¹⁴ For a detailed account of the conflict, see Svante Cornell (ed.) *Small Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus* (London: Curzon Press, 2000); Thomas Goltz, *Azerbaijan Diary* (New York: M.E. Sharpe, 1998); and Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York & London: NYU Press, 2004).

¹⁵ The term “Nagorny Karabakh” is a Russian translation of the original name of the geographic area in Azerbaijani language – Dağlıq Qarabağ (pronounced Daghlygh Garabagh), which literally means “mountainous Garabagh.” In order to avoid confusion, the term “Nagorny Karabakh” referred to in the U.N. documents will be used here. For the similar purposes the names of the geographic locations will be used as they are referred to in the U.N. terminology.

¹⁶ On February 20, 1988, the representatives of the Armenian community at the session of the Soviet of People’s Deputies of the NKAO adopted a decision to petition to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR for the transfer of the NKAO from the Azerbaijan SSR to the Armenia SSR. On

contravention of the national and the Union legislation prompted the authorities of Azerbaijan to abolish the autonomy of the Nagorny Karabakh region.¹⁷

The critical dates of the conflict are September 21 and October 18, 1991, when the Armenian SSR and the Azerbaijani SSR declared their independence, respectively. Since then, what in pure legal terms could be regarded as an internal conflict between Union Republics (when the two Republics were formally an integral part of the Soviet Union) turned into an armed conflict between the two sovereign neighboring states.¹⁸ By the end of 1991 tensions spiraled gradually into the military phase, when isolated armed attacks by the Armenian informal paramilitary groups¹⁹ across the border into Azerbaijan and in the former NKAO took the form of planned combat operations. With the creation of both the State Defense Committee in Armenia (1991) and then the Armenian Ministry of Defense in January 1992, the separate armed detachments of Armenia transformed into national army units, which coordinated their combat activities with the illegal Armenian paramilitary forces within the former NKAO.²⁰

Since February 1992 the number of the armed attacks from the territory of Armenia on the border villages in Azerbaijan, as well as artillery bombardments from Armenian territory along the perimeter of the international border, increased drastically. The notorious attack on the town of Khojaly on February 25-26 was the first instance of overt involvement of the regular Armenian forces together with the 366th infantry regiment of the former Soviet Army stationed in the area, as a result of which hundreds of civilians were dead and many more were wounded.²¹ Another critical date in the escalation of conflict was May 17, 1992, when the Lachin district of Azerbaijan bordering Armenia was attacked and subsequently occupied.²² The seizure of this district was crucial for the Armenian armed forces, as the strategic road passing through this district was the only way in which military personnel, as well as arms and military equipment – which were reportedly air-lifted to Armenia from Beirut²³ and elsewhere – could be transported into the Nagorny Karabakh region. From now on, the conflict quickly escalated into a full-fledged war.

December 1, 1989, the Supreme Soviet of the Armenia SSR adopted a resolution on the re-unification of the Armenia SSR and Nagorny Karabakh. On September 2, 1991, the joint session of the Nagorny Karabakh regional and Shaumian district Soviet of People's Deputies declared the establishment of the "Nagorny Karabakh Republic" within the administrative frontiers of the NKAO and Shaumian district of Azerbaijan.

¹⁷ This autonomy existed until November 26, 1991, when the Supreme Soviet of Azerbaijan adopted Law "On Abolition of the Nagorny Karabakh Autonomous Oblast of the Republic of Azerbaijan".

¹⁸ Elizabeth Fuller, "Nagorno-Karabakh: Internal Conflict Becomes International", RFE/RL Research Report, (March 13, 1992).

¹⁹ Elizabeth Fuller, "Paramilitary Forces Dominate Fighting in Transcaucasus", RFE/RL Research Report, Vol.2:25 (June 18, 1993).

²⁰ The fact of the coordination of activities between the State Defence Committee of Armenia and the paramilitary structures in Nagorny Karabakh was confirmed by the Ministry of Defence of Armenia on its official web page at <http://www.mil.am/eng/index.php?page=25> (accessed May 12, 2008).

²¹ Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London: NYU Press, 2004), 169-172; and Thomas Goltz, *Azerbaijan Diary* (New York: M.E. Sharpe, 1998), 117-129;

²² See Statement of the Ministry of Foreign Affairs of the Republic of Azerbaijan annexed to the letter of the Chargé d'Affaires of the Permanent Mission of Azerbaijan to the United Nations, U.N. Doc. S/23926 (May 14, 1992).

²³ Svante E. Cornell, "The Nagorny Karabakh Conflict Reconsidered", *Journal of South Asian and Middle Eastern Studies*, vol. 20:4 (1997): 8.

Appearing on the radar screen of the U.N. Security Council

The conflict officially appeared on the radar screen of the U.N. Security Council only after both Armenia and Azerbaijan formally became members of the United Nations.²⁴ Since May 1992 the members of the Security Council, amid the reports coming from the region indicating the escalation of the conflict between the two neighboring countries,²⁵ engaged in series of consultations²⁶ followed by the statements of the President of the Council (which are ranked second in importance after the Security Council Resolutions).²⁷ In these carefully drafted statements the members of the Security Council expressed concern over the deterioration of the situation, called upon the parties to take all steps to bring the violence to an end, and to help to facilitate the provision of humanitarian assistance.²⁸ The members of the Security Council supported the efforts undertaken within the framework of the CSCE, aimed at assisting the parties in arriving at a peaceful settlement of the dispute, and decided to “consider further the role of the United Nations in Nagorny Karabakh at an appropriate time in the light of the development of the situation in the area.”²⁹

In their first statement on the conflict (May 12, 1992) the members of the Security Council found it necessary to recall the statements on the admission of Armenia and Azerbaijan, respectively, to the United Nations made on their behalf by the President of the Council,³⁰ in particular the reference to the Charter principles relating to the peaceful settlement of disputes and the non-use of force.³¹ Such a reference seems to indicate that the Security Council was aware of the involvement of the two neighboring states in the conflict, and sought to remind these states of their relevant obligations under the U.N. Charter.

The most important decision at this stage was that of the U.N. Secretary-General to send a fact-finding mission in March 1992 to assess the situation on the ground.³²

²⁴ Both Armenia and Azerbaijan became members of the United Nations on March 2, 1992.

²⁵ See letter dated March 13, 1992 from the Chargé d’Affaires of the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General, (U.N. Doc. A/47/122-S/23716); Letter dated March 27, 1992 from the Permanent Representative of Islamic Republic of Iran to the United Nations addressed to the Secretary-General U.N. Doc. S/23760; Letter dated May 10, 1992 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/23894.

²⁶ See U.N. doc. S/PV.3072, (May 12, 1992).

²⁷ See *Repertoire of the Practice of the Security Council*, Supplement 1989-1992 (ST/PSCA/1/Add. 11), Item 19 related to the Armenia-Azerbaijan conflict, <http://www.un.org/Depts/dpa/repertoire> (accessed June 10, 2009).

²⁸ See Statements by the President of the Security Council U.N. Doc. S/23904 (May 12, 1992); U.N. Doc. S/24493 (August 26, 1992); U.N. Doc. S/24721 (October 27, 1992); U.N. Doc. S/25199 (January 29, 1993); U.N. Doc. S/25539 (April 6, 1993).

²⁹ See Statement by the President of the Security Council UN Doc. S/24493 (August 26, 1992).

³⁰ See statements of the President of the Security Council on January 29, 1992 (U.N. Doc. S/23496) and on February 14, 1992 (U.N. Doc. S/23597) on the respective admissions of Armenia and Azerbaijan.

³¹ Statement by the President of the Security Council, U.N. Doc. S/23904 (May 12, 1992).

³² There were two other U.N. missions to the region from May 21-28 and July 4-10, 1992. See Report of the Secretary-General on the Work of the Organization, submitted to the U.N. General Assembly U.N. Doc. A/47/1 (September 11, 1992), 18.

The Security Council's decision to act in the aftermath of the armed attack of April 1993

Perhaps the critical point for the Security Council in regard to the conflict between Armenia and Azerbaijan was the invasion of the Kelbadjar district of the Republic of Azerbaijan.³³ Since the outbreak of the conflict, Armenia alleged that it was not involved in the conflict with Azerbaijan, referring to the Armenians in the Nagorny Karabakh region.³⁴ However, after the armed attack and subsequent invasion on April 2, 1993, of the Kelbadjar district, which is located outside of the administrative line of former NKAO, the international community began expressing serious doubts about Armenia's claims of non-involvement.³⁵

Overt military invasion from Armenia and violation of the international border prompted the Ministry of Foreign Affairs of Azerbaijan to register a strong protest with the Ministry of Foreign Affairs of Armenia.³⁶ The evidence made available to the Security Council by Azerbaijan confirmed that Kelbadjar district was invaded from at least two directions: from the territory of Vardenis district of Armenia bordering Azerbaijan, and from within the former NKAO.³⁷

The well-documented direct evidence (including military ID cards of Armenian servicemen, call-up papers to active service, passports, vacation cards, discharge tickets, petitions to confer regular military ranks and other documents) captured by the Azerbaijani Army units in the course of military actions³⁸ from December 1993 to February 1994, as well as the testimonies of the Armenian soldiers from the 555th separate motor rifle regiment (military unit No. 59016) of the Armed Forces of Armenia³⁹ captured during the combat operations, not only proved the supply of ammunitions and deployment of troops of the Republic of Armenia into the territory of Azerbaijan to engage in combat activities, but also indicated that the invasion of Kelbadjar and other districts of Azerbaijan was a pre-planned armed attack⁴⁰ aimed at acquiring the territory of another sovereign state.⁴¹ That

³³ See statement by the President of the Security Council, U.N. Doc. S/25539 (April 3, 1993).

³⁴ See letters from the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council, U.N. Doc. S/23896, (May 11, 1992); U.N. Doc. S/24656, (October 12, 1992); U.N. Doc. S/25510, (April 1, 1993).

³⁵ See Elizabeth Fuller, "Paramilitary Forces Dominate Fighting in Transcaucasus", RFE/RL Research Report, Vol.2:25 (June 18, 1993): 75; "Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh", Human Rights Watch Report, USA (1994), 67-73; Svante E. Cornell, "The Nagorno-Karabakh Conflict Reconsidered", *Journal of South Asian and Middle Eastern Studies*, vol. 20:4 (1997): 8; Thomas Goltz, *Azerbaijan Diary* (New York: M.E. Sharpe, 1998), 341; and Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London: NYU Press, 2004), 212.

³⁶ See "Note of the Ministry of Foreign Affairs of the Azerbaijani Republic" annexed to the letter from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/25488 (March 29, 1993).

³⁷ See Letters of the Chargé d'Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/108 (February 2, 1994) and U.N. Doc. S/1994/147 (February 14, 1994) (with annexed photocopies).

³⁸ See Letters of the Chargé d'Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/108 (February 2, 1994) and U.N. Doc. S/1994/147 (February 14, 1994) (with annexed photocopies).

³⁹ See Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh, Human Rights Watch Report, USA (1994).

⁴⁰ The Charter of the United Nations makes a clear distinction between the threat or use of force and an armed attack, the later being the gravest form of the use of force by a state against another sovereign state, invoking under Article 51 of the Charter the right to self-defence. This implies that an armed attack by definition is possible only in the context of interstate conflict.

the hostilities in and around the Nagorny Karabakh region were attacks was also obvious to the Security Council, which in its statement (August 18, 1993) demanded “a stop to all attacks and an immediate cessation of the hostilities and bombardments, which endanger peace and security in the region [...]”⁴² The Chairman of the Minsk Conference of the CSCE in his report addressed to the President of the Security Council also confirmed the fact of “armed attacks” on the city of Agdam, while underlining that the military situation was such that Agdam posed no serious military threat.⁴³

Of particular importance are the military maps captured by the Azerbaijani Army units during military operations, since they can serve as evidence of the planning, control, and direction of the combat operation by Armenia in the territories of Azerbaijan. The operational map of the commander of third motor-rifle battalion⁴⁴ of the third separate motor-rifle brigade of the Armed Forces of Armenia Maj. Barsegyan, had superscriptions of combat orders to seize the Kelbadjar district of Azerbaijan on April 1, 1993.⁴⁵ Another map signed by the Chief of Staff of the Armed Forces of the Republic of Armenia, Lt. Gen. Adresyan, contained a written operation order addressed to the commander of the 555th separate motor rifle regiment to retain captured territories.⁴⁶

Western news agencies reporting on the Kelbadjar offensive also reported on the direct involvement of Armenia. *The Independent* wrote on April 8 that “it is Armenia that invaded Azerbaijani territory.” *The Times* wrote on April 14 that “one thing is certain: the Kelbadjar region was attacked from Armenia itself, to the west, as well as from Nagorno-Karabakh to the east.” *The Washington Post* came to the same conclusion stating on April 28 that “the war involving the former Soviet Republics of Armenia and Azerbaijan has moved into a dangerous new phase [...]”, while the *Agence France Presse* wired on 22 April 22 that “Azerbaijan has suffered a series of setbacks in the war after Armenia carried out a major offensive early this month [...]”⁴⁷ These press reports indicate that the events received wide coverage in the world press and hence constitute a matter of public knowledge, which contribute to corroborating the existence of the facts on the ground.⁴⁸

⁴¹ For the detailed analysis of the use of force against the Republic of Azerbaijan qualified as an “armed attack” in international law terms, see Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan, U.N. Doc. A/63/662-S/2008/812, annexed to the letter dated December 22, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/669/16/PDF/N0866916.pdf?OpenElement> (accessed April 20, 2009).

⁴² See statement by the President of the Security Council, U.N. Doc. S/26326 (August 18, 1993).

⁴³ See Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993, annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993), 3.

⁴⁴ The map indicated that on the eve of the attack on Kelbadjar district the battalion was deployed in the settlement of Basargechar of the Republic of Armenia.

⁴⁵ See Letter of the Chargé d’Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/147 (February 14, 1994).

⁴⁶ Ibid. (The copies of the maps were made available to the U.N. Security Council).

⁴⁷ See letter dated April 30, 1993, from the Permanent Representative of Azerbaijan to the United Nations, addressed to the President of the Security Council, U.N. Doc. S/25701 (provides excerpts from the news reports).

⁴⁸ The International Court of Justice (ICJ) ruled on press reports as a source for establishing existence of the facts in its *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* case, *Merits Judgement*, Para. 62 and 63 (1986). All ICJ cases are available online at <http://www.icj-cij.org/>.

The direct evidence and the news reports from the ground, the assessment of the situation by the Chairman of the CSCE Minsk Conference in his report⁴⁹ and the statement dated July 27, 1993,⁵⁰ as well as the subsequent similar statement by the European Community,⁵¹ refuted the Armenian Government's argument that the military activities conducted by the Armenian forces were exclusively countermeasures carried out in self-defense.⁵²

On April 3, 1993, Turkey urgently requested the Security Council to consider the situation between Armenia and Azerbaijan, citing reports of a large-scale offensive by Armenian armed forces on Kelbadjar district of Azerbaijan.⁵³ The Council convened on April 6, and following consultations with the members of the Council, the President issued a statement. If before the Kelbadjar offensive the Security Council was rather cautious in its statements on the matter referring to "all the parties and others concerned" while appealing for an immediate cease-fire,⁵⁴ in the aftermath of the attack on Kelbadjar, the Council was unequivocal in its statement and expressed serious concern at the "deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan."⁵⁵

Pursuant to the request by the Security Council made in the above-mentioned statement to ascertain facts, the UN Secretary-General submitted a report to the Council containing an assessment of the situation on the ground. The report was particularly significant, because for the first time it indicated that the scale of the conflict exceeds an internal ethnic conflict. It observed, inter alia, that "reports of the use of heavy weaponry, such as T-72 tanks, Mi-24 helicopter gunships, and advanced fixed-wing aircraft, are particularly disturbing, and would seem to indicate the involvement of more than local ethnic forces."⁵⁶

The Security Council decided to remain seized of the matter and already on April 30, 1993, having considered the report of the Secretary-General and the letters submitted by the Permanent Representatives of Azerbaijan and Armenia as well as Denmark⁵⁷ and Turkey,⁵⁸ the Council unanimously adopted its first resolution 822.⁵⁹

⁴⁹ See above, note 43.

⁵⁰ See below, note 121.

⁵¹ See below, note 138.

⁵² See letters of the Permanent Representative of Armenia to the United Nations, addressed to the President of the Security Council: U.N. Doc. S/25776 (May 14, 1993); U.N. Doc. S/26036 (July 4, 1993); U.N. Doc. S/26044 (July 6, 1993); U.N. Doc. S/26135 (July 22, 1993); U.N. Doc. S/26154 (July 26, 1993); U.N. Doc. S/26328 (August 18, 1993); U.N. Doc. S/26394 (September 1, 1993); U.N. Doc. S/26409 (September 7, 1993).

⁵³ See U.N. Doc. S/25524 (April 3, 1993).

⁵⁴ See Statements by the President of the Security Council U.N. Doc. S/23904 (May 12, 1992); U.N. Doc. S/24493 (August 26, 1992); U.N. Doc. S/24721 (October 27, 1992); U.N. Doc. S/25199 (January 29, 1993).

⁵⁵ See statement by the President of the Security Council U.N. Doc. S/25539, (April 6, 1993).

⁵⁶ See Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny Karabakh, para.10, U.N. Doc. S/25600 (April 14, 1993).

⁵⁷ See Statement of the European Community dated April 7, 1993, annexed to the letter dated April 7, 1993, from the Permanent Representative of Denmark to the United Nations, addressed to the President of the Security Council U.N. Doc. S/25564 (April 7, 1993).

⁵⁸ See U.N. Doc. S/25660 (April 8, 1993) and U.N. Doc. S/25671 (April 27, 1993).

⁵⁹ For the voting records and the texts of the statements made after the adoption of the resolution, see Provisional Verbatim Record of 3205th meeting of the Security Council, U.N. Doc. S/PV.3205 (April 30, 1993).

Resolution 822: Resolving a dilemma between the undeniable and the unacceptable

Resolution 822, which was the first in series of resolutions adopted by the U.N. Security Council related to the conflict, is significant on several levels. First, the timing of the adoption of the resolution is noteworthy. As is seen from the above-mentioned chronology of the unfolding events on the ground, the Security Council decided to step in only after acquiring evidence indicating the escalation of the fighting into full-fledged combat operations, with involvement of heavy military equipment that caused widespread destruction and the loss of human life.⁶⁰

Secondly, and perhaps more importantly at this stage, it seems that based on the reports coming in from the region and its assessment of the situation, the Security Council had established that the conflict was international in nature and endangered regional peace and security. From this perspective, the wording of the first and subsequent resolutions is of particular importance in the light of the controversy around Armenia's direct involvement in the conflict and its continuous attempt to camouflage its direction and control over the military operations in the territory of Azerbaijan. Thus, the resolution expressed serious concern at the "deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan," clearly indicating Armenia's role in the conflict.⁶¹ More importantly, the document reaffirmed the "respect for sovereignty and territorial integrity of all the states in the region," and "the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory."⁶² The reference to these fundamental principles of international law would have been needless unless the Security Council would have established that there was a military confrontation between the neighboring states and that the use of force threatened the territorial integrity of a given state. If the text of this resolution is compared to the one adopted by the Security Council regarding the conflict in Abkhazia in neighboring Georgia, then the applicability of these principles by the Council seems to be case-specific. In that case, in recognition of the fact that the conflict in Georgia was essentially an internal ethnic conflict, the Security Council did not find it appropriate to refer specifically to the principles of the inviolability of international borders and inadmissibility of the use of force for the acquisition of territory.⁶³

Clearly, the Security Council reaffirms the inadmissibility of the use of force for the acquisition of territory in the context of interstate conflict. In order to sustain this argument, the text of resolution 242, which was adopted by the Security Council on November 22, 1967, in the wake of the Six-Day War between Israel and Egypt, Jordan, and Syria, provides an example. In that resolution the Council framed its position along the same lines, emphasizing the "inadmissibility of the acquisition of the territory by war."⁶⁴

⁶⁰ See Provisional Verbatim Record of the statements of the members of the Security Council, made at the 3205th meeting of the Security Council, U.N. Doc. S/PV.3205 (April 30, 1993), 11.

⁶¹ See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble.

⁶² See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble.

⁶³ See U.N. Doc. S/RES/849 (1993), July 9, 1993; U.N. Doc. S/RES/854 (1993), August 6, 1993; U.N. Doc. S/RES/858 (1993), August 24, 1993; U.N. Doc. S/RES/1781 (2007) October 15, 2007; U.N. Doc. S/RES/1808 (2008), April 15, 2008.

⁶⁴ See U.N. Doc. S/RES/242, November 22, 1967.

While reaffirming this important principle, the Security Council was guided by one of the core principles of international law enshrined in Article 2 (4) of the U.N. Charter, which declares that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state [...]”. The prohibition of the threat or use of force is one of the consequential principles generated by the fundamental norm of territorial integrity of states, and is meant to protect the international boundaries of independent states.⁶⁵ The principle of non-use of force enshrined in a number of international instruments of both international and regional nature⁶⁶ is not only a rule of customary international law (i.e. binding for all states), but is also accepted as a peremptory norm *jus cogens*.⁶⁷ Hence, by making such reference to this fundamental principle of international law, the Security Council made it clear that no territorial acquisition resulting from the use of force shall be recognized as lawful as a result of the military activities.

As resolution 822 indicates, the main preoccupations of the Security Council were to stop the fighting and to prevent further escalation of the conflict. The Council demanded “the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire [...]”. The Council was specifically concerned with the situation in Kelbadjar district of Azerbaijan, which is reflected in both the preamble of the resolution, where the Security Council noted with alarm the “invasion of Kelbadjar district of the Republic of Azerbaijan by local Armenian forces,” and in the first paragraph in which the Council demanded the “immediate withdrawal of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan.”⁶⁸ The Council also requested that the Secretary-General “assess the situation in the region, in particular in the Kelbadjar district of Azerbaijan.”⁶⁹

The resolution shows that the Security Council has unequivocally established that there was an *invasion* of Kelbadjar district and that there was the *occupation* of territory of a sovereign state. As far as the term “occupation” is concerned, two aspects are noteworthy. First, according to Article 42 of the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land (1907) (hereinafter as the “Hague Regulations”), the occupation in international law terms is possible only in the context of interstate conflict when at least a part of the territory of a sovereign state is “actually placed under the authority of the hostile army,”⁷⁰ i.e. when it is subject to the belligerent occupation by the army of another state. In fact, it is widely accepted that “there can be no

⁶⁵ For a more detailed account of these principles, see Report on the Fundamental Norm of the Territorial Integrity of States and Right to Self-determination in the Light of Armenia’s Revisionist Claims, U.N. Doc. A/63/664-S/2008/823, annexed to the letter dated December 26, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/670/89/PDF/N0867089.pdf?OpenElement> (accessed April 20, 2009).

⁶⁶ See, for example, “The Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN” adopted by the U.N. General Assembly resolution 2625 (XXV) on October 24, 1970; The “Draft Declaration on Rights and Duties of States” annexed to the U.N. General Assembly resolution 375 (IV) adopted on 6 December 1949; Principle IV of the Declaration of Principles adopted by the CSCE in the Helsinki Final Act (1975).

⁶⁷ See Article 53 of the Vienna Convention on the Law of Treaties, May 22, 1969.

⁶⁸ See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble and para. 1.

⁶⁹ See U.N. Doc. S/RES/822 (1993), para. 4.

⁷⁰ See Article 42 of the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land (1907).

occupation in an international law sense of the concept as between contending forces in an internal conflict.”⁷¹

Second, the fact that the Security Council determined that the territories of Azerbaijan were “occupied,” as defined in the Hague Regulations and the Geneva Convention IV on the Protection of Civilians in Time of War (1949) (hereinafter as the “Geneva Convention IV”), and that “all parties are bound to comply with the principles and rules of international humanitarian law”⁷² implies that the rights and obligations of states identified in these international legal instruments apply to this particular conflict.⁷³

As far as the determination by the Security Council that the Kelbadjar district of the Republic of Azerbaijan was invaded by “local Armenian forces” is concerned, careful consideration of the terminology used in the resolution reveals one particular contradiction. The word “invasion” in international law terms is primarily applied in the context of international conflict, which can be clearly established from the consensus definition of aggression adopted by the U.N. General Assembly in 1974. The resolution states that the armed aggression against a sovereign state occurs as a result of “the *invasion* or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.”⁷⁴

Wood, elaborating on the general rules of interpretation of the Security Council resolutions, correctly noted that “the terms used in [resolutions], to the extent that they are standard, will presumably bear the same meaning in each resolution.”⁷⁵ Hence, the attribution of the word “invasion” by the Security Council to the context of interstate conflict can be clearly seen, if we compare this resolution with resolutions adopted in regard of other conflict situations. The most vivid example is arguably resolution 660 of August 2, 1990, and the subsequent resolutions on the armed attack by Iraq on Kuwait, in which the Security Council condemned Iraq’s *invasion* and *occupation* of Kuwait.⁷⁶

⁷¹ See the Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory, U.N. Doc. A/63/692-S/2009/51, annexed to the letter dated January 27, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009), 6. See also Report “Military Occupation of the Territory of Azerbaijan: a Legal Appraisal, U.N. Doc. A/62/491-S/2007/615, annexed to the letter dated October 8, 2007, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N07/558/52/PDF/N0755852.pdf?OpenElement> (accessed April 20, 2009).

⁷² See UN Doc. S/RES/822 (April 30, 1993), para. 3. The above-mentioned instruments are part of the body of treaties forming international humanitarian law.

⁷³ See the Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory, U.N. Doc. A/63/692-S/2009/51, annexed to the letter dated January 27, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009), 4-5.

⁷⁴ See Article 3(a) of the Definition of Aggression, General Assembly Resolution 3314 (XXIX) (1974), [my emphasis].

⁷⁵ See Michael C. Wood, “The Interpretation of Security Council Resolutions”, *Max Planck Yearbook of United Nations Law*, 2:73, (1998): 89, http://www.mpil.de/shared/data/pdf/pdfmpunybyb/wood_2.pdf (accessed: July 17, 2009).

⁷⁶ See UN Doc. S/RES/660 (August 2, 1990), [my emphasis].

Furthermore, the fact that the conflict was between Armenia and Azerbaijan was also recognized by the Minsk Group of the CSCE, which in its “Adjusted timetable of urgent steps to implement United Nations Security Council Resolutions 822 (1993) and 853 (1993),” dated September 28, 1993, defined the area of conflict as to include the territories on both sides of the international border between Armenia and Azerbaijan (including the segment of the international border between Armenia and the Nakhichevan province of Azerbaijan, which is hundreds of kilometers away from the Nagorny Karabakh region).⁷⁷

On the one hand, the wording of the resolution suggests that the Security Council was aware of the involvement of more than just local ethnic forces in the conflict. On the other hand, although the resolution attributes the invasion of Kelbadjar district to “local Armenian forces,” it omits the fact that the district was also attacked from the territory of Armenia.⁷⁸ This is in clear dissonance with the terms used in other paragraphs of the resolution, let alone the facts on the ground, which, as was mentioned above, were confirmed also by the independent foreign news reports.

The source of this obvious inconsistency can be found in the practice of adoption of the Security Council resolutions and the attitudes of several permanent members of the Security Council towards this particular conflict. Since no on-the-record debates were conducted in the Security Council preceding the adoption of the first and the subsequent resolutions, for the purpose of establishing the positions of the members of the Council, I have looked through the publicly available verbatim records of the proceedings of the meeting of the Security Council after the vote.

Although the rules of the Security Council require that at least nine of the fifteen members of the Council must vote affirmatively (including five concurring votes of the permanent members) for an action, in practice, due to this voting procedure, the decisions are dominated by the subgroup of two, three, or all five permanent members holding “veto” power.⁷⁹ This partially explains the widely held belief that on many occasions the resolutions of the Security Council are watered down in an effort to forge a unanimity that will satisfy the interests of the permanent members of the Council. From this perspective, the last thing a country involved in an armed conflict dealt with by the Security Council would want is to have permanent members of the Council to have an interest in the matter. Yet the conflict between Armenia and Azerbaijan is a case in point.⁸⁰ The attitude of at least three of the five permanent members (Russia, The United States, and France)⁸¹ towards the conflict between Armenia and Azerbaijan had a decisive influence on shaping

⁷⁷ See U.N. Doc. S/26522 (October 1, 1993); U.N. Doc. S/26718 (November 10, 1993); U.N. Doc. S/26732 (November 12, 1993).

⁷⁸ See above, note 61.

⁷⁹ For the analysis of the consequences of the domination in the Security Council by subgroup of permanent members see David D. Caron, “The Legitimacy of the Collective Authority of the Security Council”, *The American Journal of International Law*, vol. 87:4 (1993): 552-588, <http://links.jstor.org/sici?sici=0002-9300%28199310%2987%3A4%3C552%3ATLOTCA%3E2.0.CO%3B2-E> (accessed April 20, 2009). See also Frederic L. Kirgis, Jr., The Security Council's First Fifty Years, *The American Journal of International Law*, vol. 89:3 (1995): 506-539, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

⁸⁰ For example, the French representative in his statement in the aftermath of the adoption of the second resolution by the Security Council on the matter (S/RES/853) underlined that “[his] Government has long taken a special interest in this painful conflict [...]”. U.N. Doc. S/PV.3259 (July 29, 1993), at 6. The interest of Russia is elaborated in section VII of this article. For the factors affecting U.S. position towards the conflict see above, n. 79.

⁸¹ Since 1997 the three countries are Co-Chairs of the OSCE Minsk Group dealing with the conflict.

the attitude of the Security Council towards the conflict as was reflected in this and subsequent resolutions.⁸²

My analysis of the verbatim records of the Security Council's 3205th meeting, during which the draft resolution was discussed and subsequently passed, allows concluding that the proposal to add the word "local" before the phrase "Armenian forces" had a specific purpose behind it, rather than reflected the general knowledge of the factual situation on the ground, which was widely discussed in the couloirs of the United Nations during the off-the-record consultations among the members of the Security Council. Interestingly, the representative of the Russian Federation, Mr. Vorontsov, who apparently was one of the principal sponsors of the incorporation of the word "local" into the draft resolution,⁸³ in his statement after the voting on the resolution informed the Security Council that in the light of the escalation of the conflict the President of the Russian Federation Yeltsin "appealed to the Presidents of *Armenia and Azerbaijan for an immediate halt to all hostilities [...]*".⁸⁴ The French representative, Mr. Merimee, in his statement on behalf of the delegation of France did not hide his satisfaction that the resolution "strike[s] a reasonable balance between acknowledging that the tension exists between Armenia and Azerbaijan and recognizing the localized nature of the fighting."⁸⁵ It is noteworthy that both the Russian and the French Presidents in their joint statement on the conflict dated March 16, 1993, emphasized that "the non-use of force for political purposes and the peaceful settlement of disputes must remain the fundamental principles *guiding the conduct of democratic States*," recognizing implicitly that the conflict is of interstate character.⁸⁶

It is possible that with this "*jeu de mots*" the intention was to fence off Armenia from any legal responsibilities under international law,⁸⁷ and to prevent the issue of an "enforcement action" under Chapter VII to be brought to the agenda of the Security Council in the future had it not complied with the provisions of this resolution. The comparison of the assessment of the situation contained in the report drafted by the fact-finding mission and submitted to the Security Council by the Secretary-General two weeks before the voting with the final wording of the adopted resolution supports this supposition. The report in question in its assessment of the situation on the ground had clearly established that "the intensification of fighting in and around the Nagorny Karabakh, especially the recent attack against the Kelbadjar and Fizuli districts of Azerbaijan, poses a *serious threat to the maintenance of international peace and security in the entire Transcaucasus region*."⁸⁸

⁸² The domestic political considerations linked to the presence of large Armenian diasporas in these countries could have played a role in framing of the positions of these countries towards the conflict in which Armenia was involved. For the impact of the Armenian lobby on the domestic politics of states, see Heather S. Gregg, *Divided They Conquer: The Success of Armenian Ethnic Lobbies in the United States*, (The Rosemary Rogers Working Paper Series, Working paper #13, Massachusetts Institute of Technology, USA, August 2002).

⁸³ There is anecdotal evidence for this point.

⁸⁴ See above, note 60, p. 19, [my emphasis].

⁸⁵ See above, note 60, p. 11.

⁸⁶ See Annex to the letter dated March 31, 1993, from the Permanent Representatives of France and the Russian Federation to the United Nations addressed to the Secretary-General. U.N. Doc. S/25499 (March 31, 1993), [my emphasis].

⁸⁷ For the applicable responsibilities, see in particular Articles 4 to 8 and 11 of the International Law Commission's Articles on Responsibility of States for International Wrongful Acts, annexed to U.N. General Assembly resolution 56/83 adopted on December 12, 2001.

⁸⁸ See Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny Karabakh, U.N. Doc. S/25600 (April 14, 1993) para.10, p. 3, [my emphasis].

However, for some reason the Security Council chose to disregard the assessment of the Secretary-General, which was essentially based on the fact-finding mission visiting the conflict zone and, instead, pointed out in its first and subsequent resolutions that the situation “*endangers peace and security in the region.*”⁸⁹

The determination of the existence of a threat to international peace and security and identifying its seriousness is the first step the Security Council takes before deciding on action. Although the difference in practical terms between the existence of a situation posing a “threat” or “endangering” international peace and security is unclear,⁹⁰ in the U.N. Charter terms there is a difference in the meaning, which entails different implications. According to Article 39 of the Charter, the Security Council has to determine that there is a threat to the peace, breach of the peace or act of aggression and to identify how serious it is before recommending measures to maintain or restore international peace and security under Chapter VII. On the other hand, the phrase “endangering the maintenance of international peace and security” is referred to in Chapter VI, which does not entail immediate enforcement actions by the Security Council.⁹¹ It can be argued that by avoiding reference to the existence of a threat, the drafters of the resolutions intended to prevent any action under Chapter VII. This partially explains why there were no on-the-record public deliberations on the matter in the Security Council’s chamber. Instead, perhaps in an effort to avoid scrutiny by the U.N. Member States of the decisions, which were to be taken in this delicate conflict situation, the Security Council followed the pattern established during the early 1990s to work out the texts of resolutions in its closed consultation room, meeting in the normal chamber only to vote on the agreed upon resolutions.⁹²

The unwillingness of the several permanent members of the Security Council to explicitly mention Armenia’s role in the escalation of this conflict was already brought up as a possible reason for the cautious approach prevailing in the Council. However, it should be mentioned that the resolutions towards the Armenia-Azerbaijan conflict were adopted in 1993, i.e. in the early years after the end of the Cold War. The primary consequence of the decades of impasse in the Security Council during the Cold War period was that the reluctance to assess conflict situations in heavy terms and admitting the existence of a threat to international peace and security in the sense contemplated in Article 39 of the U.N. Charter was still there. This self-restraint was to a large extent necessary to preserve the strategic stability in the world through avoiding overt involvement by the major powers in regional conflicts that could trigger a larger East-West confrontation. Interestingly, with the end of the bloc confrontation, the practice of the Security Council has gradually changed, which was manifested in more resolutions under Chapter VII adopted on matters

⁸⁹ See U.N. Docs. S/RES/822 (1993); S/RES/853 (1993); S/RES/874 (1993) and S/RES/8884 (1993), [my emphasis].

⁹⁰ See Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan, U.N. Doc. A/63/662-S/2008/812, annexed to the letter dated December 22, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/669/16/PDF/N0866916.pdf?OpenElement> (accessed April 20, 2009), 21-22.

⁹¹ For the analysis of the practice of the Security Council see Frederic L. Kirgis, Jr., The Security Council's First Fifty Years, *The American Journal of International Law*, vol. 89:3 (1995): 511-514, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

⁹² See Frederic L. Kirgis, Jr., The Security Council's First Fifty Years, *The American Journal of International Law*, vol. 89:3 (1995): 518, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

where the existence of a threat to international peace and security was not explicitly obvious.⁹³ The factors identified above are not contradictory, but rather reinforce each other and indicate the impact of the institutional constraints of the Security Council on its daily practice.

Furthermore, the statements by other members of the Security Council in the aftermath of the voting on the first resolution show that the views held by the French and several other permanent members were not shared in the Council. For example, the representative of Djibouti, Mr. Olhaye, was more explicit than others and did not hide his disappointment with the attitude of several permanent members stating that “we all know only too well that the truth is that this is a conflict between Armenia and Azerbaijan,” and expressing hope that in the near future the Security Council will be in a position “to call a spade a spade.”⁹⁴

The representative of the United Kingdom, Mr. Richardson, also did not seem to have any delusions as to the root causes of the conflict, unequivocally stating that “the only realistic solution, given the United Nations and CSCE principles, is for continued Azerbaijani sovereignty over Nagorny Karabakh, with real autonomy for the local Armenian population.”⁹⁵ It is noteworthy that in his statement Mr. Richardson elaborated on the reasons why the Security Council decided to act at this moment and time. Speaking about the value of the resolution, he underlined that “it includes the essential elements of a draft statement [by the senior officials of the CSCE] which could not be agreed upon at [the] Prague [meeting] because of the opposition of one party.”⁹⁶

The representative of Hungary, Mr. Erdos, also pointed to the international nature of the conflict, stating that “the resolution reaffirms that the United Nations will not accept a policy of *faits accomplis*, threats to regional stability, the use of force for the acquisition of territory, and the violation of international borders.”⁹⁷ Likewise, the representative of Venezuela, Mr. Arria, reminded the Republic of Armenia and the Republic of Azerbaijan that they assumed obligations by signing the Charter of the United Nations, in particular showing “absolute respect for one another’s independence and territorial integrity and [renouncing] the use of force as a way of solving dispute.”⁹⁸

The President of the Security Council, Mr. Marker, in his capacity as the representative of Pakistan, expressed the belief that the adopted resolution “would lead to an expeditious withdrawal of all Armenian forces from the territory of Azerbaijan Republic,” and called upon the “concerned states to respect scrupulously the sovereignty and territorial integrity of all the states of the region,” and “to respect the inviolability of international borders of all States [...]”⁹⁹

Having recreated the overall atmosphere that prevailed in the Security Council on the eve and during the adoption of the first resolution, it is possible that the majority, if not all the members of the Security Council, did not suffer from a lack of information and had established the factual situation on the ground. Under these circumstances, the attribution

⁹³ Ibid., 511-514.

⁹⁴ See above, note 60, p. 7.

⁹⁵ See above, note 60, p. 13.

⁹⁶ See above, note 60, p. 13.

⁹⁷ See above, note 60, p. 14.

⁹⁸ See above, note 60, p. 17.

⁹⁹ See above, note 60, p. 21.

of the invasion of Kelbadjar district to “local Armenian forces,” while keeping all the elements pointing implicitly to the international nature of the conflict, was the result of an inevitable compromise forged among the members of the Security Council. The wording of the resolution reflected the effort of the members of the Council to solve a dilemma of reconciling the need to fulfill their obligations under the U.N. Charter and urgently address the issue impartially, taking into consideration the irrefutable evidence contained in the incoming reports from the conflict zone and, at the same time, safeguarding the interests of several of the Council’s permanent members, which in this case seemed to be avoiding direct reference to Armenia as perpetrator of the invasion and occupation of the territories of another sovereign State with all the consequences which this could entail.

The Security Council action in response to further escalation of the conflict

Perhaps it would have been possible to prevent further escalation of the conflict, as well as the destruction of civilian settlements and the mass exodus of the population from the occupied territories, had the Security Council adopted a resolution with an enforcement clause in it. There were proposals voiced in the Council during the proceedings, before the adoption of the fourth resolution 884 on the matter, to include in the text an expression of the Council’s intention to take further appropriate steps in case these resolutions continue to be defied.¹⁰⁰ In any case, although the first resolution is not without value in terms of providing together with the subsequent resolutions an overall legal framework for the ongoing peace negotiations, it did not prevent the conflict from further escalating into full-fledged war. The possible rationale behind the positions of at least several permanent members of the Security Council elaborated above explains why the subsequent resolutions adopted by the Council in response to the increasing violence and advancement of Armenian forces deeper into the territory of Azerbaijan by and large repeated the pattern and were watered down to certain extent. However, the other resolutions adopted in the course of 1993 introduced a number of new elements, which are important to explain so as to trace the evolution of the assessment of the situation by the Security Council.

Amid the escalation of the hostilities and intensifying armed attacks in the course of the four months, the Security Council adopted three more resolutions.¹⁰¹ The second resolution (853) openly acknowledged the existence of tensions between Armenia and Azerbaijan (in previous resolution the Council only expressed concern over deterioration of relations between the two countries).

Paragraphs 3, 4, 5, 8, and 12 of the resolution are of particular interest and should be analyzed together, since in these provisions the Security Council essentially outlined a step-by-step approach for the conflict settlement. Thus, in paragraph 3, the Council excluded any conditionality on the withdrawal of the occupying forces, explicitly demanding the “*immediate, complete and unconditional* withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of the Azerbaijani Republic.”¹⁰² With this unequivocal demand, the Security Council left no room for interpretation of the text of the resolution and *a priori* excluded any trade-off of the occupied territories for

¹⁰⁰ See U.N. Doc. PV.3313 (November 12, 1993), 5, (Pakistan).

¹⁰¹ See U.N. Doc. S/RES/853 (July 29, 1993); U.N. Doc. S/RES/874 (October 14, 1993); U.N. Doc. S/RES/884 (November 12, 1993).

¹⁰² See U.N. Doc. S/RES/853 (July 29, 1993), para. 3.

some sort of political gains at the negotiation table. The importance of this position by the Council is even more apparent, if compared with other cases, when ambiguity in the text of the resolutions of the Security Council resulted in endless interpretation and “chicken-and-egg” type debates over the terms of the conflict settlement. The classic case in point is resolution 242 (1967).¹⁰³ The ambiguous design of the resolution meant different things to the different parties involved. As a result, the Arab States referring to the resolution demanded immediate withdrawal of Israel from the occupied territories, while Israel, referring to the provisions of the same resolution, maintained that withdrawal is conditioned by the permanent peace agreement, security, and recognition of Israel by its Arab neighbors.¹⁰⁴

In paragraph 4 of resolution 853, the Security Council calls for the parties to reach and maintain durable cease-fire arrangements, whereas in paragraph 5, it “reiterates in the context of paragraphs 3 and 4 above its earlier calls for the restoration of economic, transport and energy links in the region”. In paragraph 8 the Council “urges the parties concerned to refrain from any action that will obstruct a peaceful solution to the conflict, and to pursue negotiations within the Minsk Group of the CSCE, as well as through direct contacts between them, towards a final settlement.”

The Security Council expressed its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic [...], and in paragraph 12 of the resolution requested the Secretary-General and relevant international agencies “to assist displaced persons to return to their homes.” It is noteworthy that the Council did not put any conditions on the return of the displaced population, suggesting that the return should start immediately as soon as the situation on the ground allowed for doing so. Thus, already at this stage, the Council clearly showed that it favors a phased approach in the settlement of this conflict as the only viable option, which would consist of the sequence of steps, which in its view need to be taken to remove the results of the conflict and foster a resolution, starting with withdrawal of occupying forces, establishment and maintenance of durable cease-fire arrangements, restoring communications in the region, return of the displaced population to their homes and continuing negotiations towards a final settlement.

Another noteworthy element, which was absent in the first resolution, was the coining by the Security Council of the term “Nagorny Karabakh region of the Azerbaijani Republic,” which was used in the subsequent resolutions of October and November 1993.¹⁰⁵ Armenia was continuously referring in its correspondence to the Security Council to the self-proclaimed “Nagorny Karabakh Republic,” implying that it was an independent “state” and was distributing documents on its behalf.¹⁰⁶ Azerbaijan categorically rejected any attempts to introduce into United Nations the usage of any concepts that would undermine its sovereignty and territorial integrity and registered its vigorous objection with the Security Council President¹⁰⁷ to the use of term “Nagorny Karabakh Republic” in the letters

¹⁰³ See U.N. Doc. S/RES/242 (November 22, 1967).

¹⁰⁴ *Ibid.*, para 1.

¹⁰⁵ See U.N. Doc. S/RES/853 (1993); U.N. Doc. S/RES/874 (1993); U.N. Doc. S/RES/884 (1993).

¹⁰⁶ See letters of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council. U.N. Doc. S/23896 (May 11, 1992); U.N. Doc. S/26036 (July 4, 1993); U.N. Doc. S/26154 (July 26, 1993); U.N. Doc. S/26393 (September 1, 1993); U.N. Doc. S/26409 (September 7, 1993).

¹⁰⁷ See letter of the Permanent Representative of Azerbaijan to the United Nations addressed to the President of Security Council. U.N. Doc. S/24771 (November 7, 1992).

circulated as a Security Council document at the request of Armenia.¹⁰⁸ By using the term the “Nagorny Karabakh region of the Azerbaijani Republic” in the operative paragraph¹⁰⁹ of the above-mentioned resolution, the Security Council decided which of the legal propositions presented by Armenia and Azerbaijan was in accord with international law and reaffirmed that the Nagorny Karabakh region was part of the territory of the Republic of Azerbaijan.

Furthermore, unlike resolution 822, in which the Security Council reaffirmed “the *respect* for sovereignty and territorial integrity of all States in the region,”¹¹⁰ in its second and subsequent resolutions the Council was more specific and reaffirmed “*the sovereignty and territorial integrity of the Azerbaijani Republic* and of all other States in the region.”¹¹¹ Removing of the word “respect” from the phrase put an additional emphasis on the recognition of the *sovereignty* of Azerbaijan over its territory, including the Nagorny Karabakh region.

This opinion of the Security Council essentially reflected the general view of the international community,¹¹² which, based on the principle *uti possidetis juris*, recognized the former administrative borders between the Union Republics of the former Soviet Union as the international boundaries of the newly independent States protected by international law.¹¹³ The Government of Armenia was alarmed with such a position of the Security Council and could not hide its irritation with the language of the resolutions.¹¹⁴

This assessment by the Security Council of the Nagorny Karabakh region as being a part of the territory of the Republic of Azerbaijan under international law was in line with other paragraphs of this and other resolutions in which the Council reaffirmed the inviolability of international borders and inadmissibility of the use of force for the acquisition of territory.¹¹⁵ The statements by the permanent members of the Security Council during the proceedings leading to the adoption of these resolutions indicate that the members of the

¹⁰⁸ See letter of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council. U.N. Doc. S/24751 (October 31, 1992).

¹⁰⁹ The operative paragraphs of the U.N. Security Council resolutions state the opinion of the Council, or the action to be taken, whereas the preamble clauses of the resolutions generally recite the considerations on the basis of which action is taken.

¹¹⁰ See U.N. Doc. S/RES/822 (April 30, 1993), [my emphasis].

¹¹¹ See U.N. Doc. S/RES/853 (July 29, 1993), [my emphasis].

¹¹² See, for example, the Declaration of the European Commission on “The Guidelines on Recognition of New States in Eastern Europe and the Soviet Union” adopted on December 16, 1991, at the Extraordinary European Political Cooperation Ministerial Meeting (Doc.4a/21), reproduced in *European Foreign Policy: Key Documents*, ed. Christopher Hill & Karen E. Smith (London & New York: Routledge, 2000), 282.

¹¹³ For the detailed review of this and other legal aspects of the conflict, see Tofiq Musayev, “From Territorial Claims to Belligerent Occupation: Legal Appraisal”, *Diplomatiya Alami* [“Diplomatic World”], Journal of the Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 18-19 (2008), available at <http://mfa.gov.az/images/stories/jurnal/18-19.pdf>; see also Report on the Fundamental Norm of the Territorial Integrity of States and Right to Self-determination in the Light of Armenia’s Revisionist Claims, U.N. Doc. A/63/664-S/2008/823, annexed to the letter dated December 26, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/670/89/PDF/N0867089.pdf?OpenElement> (accessed April 20, 2009).

¹¹⁴ See statements issued on August 2, 1993, and October 20, 1993, by the Ministry of Foreign Affairs of the Republic of Armenia annexed to the letters of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council U.N. Doc. S/26236 (August 4, 1993) and U.N. Doc. S/26612 (October 21, 1993).

¹¹⁵ See above, note 105.

Council were alarmed with the continuing military activities and seizure of additional territory by force. The members of the Security Council wanted to send a clear message that “the international community will no longer tolerate the continuation of bloodshed and the ever-more-dangerous escalation of the conflict.”¹¹⁶ It seems that in order to make their appeal to stop the hostilities more convincing, the members of the Security Council chose to reaffirm in the subsequent resolutions the futility of territorial acquisitions by force since, as was mentioned above, any occupation under international law would not lead to the automatic transfer of sovereignty over that particular territory or change of its legal status.

Interestingly, the nine members of the Minsk Conference¹¹⁷ spoke in similar terms in their statement endorsed by the Security Council,¹¹⁸ in which they stressed 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.”¹¹⁹

The Security Council went even further in its second resolution (reiterated in its forth resolution) and for the first time urged “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 [resolutions ...].”¹²⁰ The appearance of such explicit reference to the link between the Government of the Republic of Armenia and the separatist regime in Nagorny Karabakh region and the apparent influence of the former over the latter is noteworthy. The strong link between the Government of Armenia and the forces in the Nagorny Karabakh region was also obvious to the European Community, which in its statement of September 3, 1993, in line with the second resolution adopted by the Security Council, called on the Government of Armenia to “use its *decisive* influence over the Armenians of Nagorny Karabakh to see that they comply with the Security Council [resolutions ...].”¹²¹

The report of the Chairman of the Minsk Conference of the CSCE addressed to the President of the Security Council, which was discussed in the Security Council before the adoption of the second resolution, sheds light on the reasons the Security Council found it necessary at this point to refer to the Government of Armenia in its resolution.¹²² In this report, which was drafted in the aftermath of the armed attack and seizure of the city of Agdam located beyond the administrative line of the former NKAO, the Chairman of the Minsk Conference, Mr. Raffaelli, noted that the situation in the conflict zone changed dramatically and that further territories of the Azerbaijani Republic were occupied. While

¹¹⁶ See U.N. Doc. S/PV.3313 at 8 (November 12, 1993), (Russia); See also S/PV.3292 (October 14, 1993) at 4, (France); S/PV.3313 (November 12, 1993).

¹¹⁷ Germany, the United States of America, Belarus, France, Italy, Russian Federation, Sweden, Czech Republic, and Turkey.

¹¹⁸ See U.N. Doc. S/PV.3313 (November 12, 1993).

¹¹⁹ See “Declaration of Nine” Enclosure I to the letter dated November 9, 1993, of the Permanent Representative of Italy to the United Nations addressed to the President of Security Council, U.N. Doc. S/26718 (November 10, 1993);

¹²⁰ U.N. Doc. S/RES/853 (July 29, 1993), para. 9.

¹²¹ See Statement annexed to the Letter dated September 7, 1993, from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council U.N. Doc. S/26417 (September 15, 1993), [my emphasis].

¹²² See Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993, annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993).

noting in his report that the attitude of the leaders of the local Armenian community in Nagorny Karabakh is governed by military rather than diplomatic considerations, in his statement supported by the nine countries of the Minsk Conference issued earlier, he warned that “those who *encourage* the Armenian community of Nagorny Karabakh to continue the fighting and the encroachment on the surrounding territories share responsibility for the continuing loss of Armenian lives and the destruction of the *Armenian economy*.”¹²³ He came to conclusion that under the circumstances, political pressure by the international community is necessary to give impetus to the peace process and called for early action by the Security Council.¹²⁴ It is noticeable that the Chairman of the Minsk Conference, while noting that the forces in Nagorny Karabakh are encouraged by a third party, warned of the negative consequences of the continuing military operations for the economy of Armenia, implicitly acknowledging in this way that those who encourage further occupation of the territories of Azerbaijan were in Armenia.

Given the overall military context in which the Security Council adopted its second resolution and the reports from the CSCE indicating the existence of forces encouraging further military advances in the conflict zone, one can argue that by urging the Government of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny Karabakh region with its resolutions, the Security Council had established that the Government of Armenia was in a position to exert influence to have all occupying forces cease hostile acts and withdraw from the occupied territories of Azerbaijan (this is what it demanded in its resolutions). The Security Council was more specific in this regard, and in its statement of August 18, 1993, amid the intensification of the fighting in the Fizuli district of Azerbaijan demanded the immediate, complete, and unconditional withdrawal of occupying forces from the occupied areas of Azerbaijan and called “the Government of the Republic of Armenia to use its *unique* influence to this end.”¹²⁵

The Security Council in its resolution 853 of July 1993 urged “states to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory.”¹²⁶ But already in its fourth resolution in the wake of occupation of Zangelan district of the Republic of Azerbaijan and the attack on the city of Goradiz in the Fizuli district the Council went even further and specifically called “the Government of the Republic of Armenia to use its influence to [...] ensure that forces involved are not provided with the means to extend their military campaign further.”¹²⁷ The Security Council apparently was aware that due to the complex geography of the area of conflict, the only direction through which the forces in and around the Nagorny Karabakh region could be resupplied with ammunition was through the roads linking Armenia and the Nagorny Karabakh region passing through the Lachin and Kelbadjar districts, which were occupied by then and were under the Armenian control.

¹²³ See Appendix “Statement of the Chairman of the CSCE Minsk Conference on the offensive on and the reported seizure of the Azerbaijani city of Agdam”, at 5, to the Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993, annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993), [my emphasis].

¹²⁴ See above, note 119, p. 3.

¹²⁵ See U.N. Doc. S/26326 (August 18, 1993), [my emphasis].

¹²⁶ See U.N. Doc. S/RES/853 (1993), para. 10.

¹²⁷ U.N. Doc. S/RES/884 (November 12, 1993), para. 2.

At the same time, the authors of these resolutions wanted to balance the reports coming from the region pointing to the direct involvement of Armenia in the conflict by presenting the role of the Government of Armenia in a positive way.¹²⁸ By urging the Government of Armenia to *continue* to exert its influence, the Security Council seems to be convinced that this influence was taking place for a while. Yet, not only as a result of this influence by Armenia the fighting was halted, on the contrary, the conflict zone expanded even further with more territories of Azerbaijan falling under the occupation.¹²⁹ However, the important thing is that by stating that the Government of Armenia is in a position to exert continuous influence over the occupying forces it seems that the Security Council was under the impression that the advancing occupying forces were under the control of the Government of Armenia.¹³⁰

The determination of a potential of control by the *de jure* organs of a state over the course of the military actions allegedly carried out by the paramilitary forces on the territory of another sovereign state was used by the ICJ in its judgment in the Nicaragua case¹³¹ and elaborated further in the Bosnian Genocide case¹³² to attribute the illegal conduct by the paramilitary forces of an outside state, thus establishing said state's responsibility for this conduct under international law. Elaboration in detail of the question of the control by an outside state over the paramilitary forces carrying out military activities in the territory of another state is beyond the scope of this article and requires separate consideration.¹³³

Further advance of the Armenian forces and the expansion of the conflict deeper into Azerbaijani territories and closer to the international borders of Azerbaijan with Iran and Turkey alarmed these regional countries. In the wake of the occupation of Djabrail and Kubatli districts and the real threat of the seizure of the Zangelan district of Azerbaijan, the Minister of Foreign Affairs of Iran, Ali Akbar Vilayati, in his letter addressed to the UN Secretary-General expressed his concern with the developments and called the United Nations to “take immediate and effective measures to implement Security Council Resolutions 822 (1993) and 853 (1993) and decisively compel the aggressive forces to

¹²⁸ The representative of Brazil in his statement after the voting on the resolution S/RES/853 echoed the arguments, which reportedly were put forward during the off-the-record consultations in the Security Council and described the influence of Armenia as “constructive.” U.N. Doc. S/PV.3259 (July 29, 1993), 13.

¹²⁹ The fact that the attacks by the Armenian armed units continued even at a time when there was a real progress in the negotiating process was recognized even by the Permanent Members of the Security Council. See Statement by the Russian representative Mr. Vorontsov after the vote on the resolution S/RES/853 U.N. Doc. S/P.3259 (July 29, 1993), 9-10.

¹³⁰ The fact that the Armenian forces on the ground responded instantaneously to the “appeals” of the Government of Armenia can be seen from the letters of the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council (although there is no reported evidence on the ground, nor can it be verified that the retreat of the Armenian forces from the previously occupied territory had actually taken place). See U.N. Docs. S/26394 (September 1, 1993) and S/26393 (September 1, 1993).

¹³¹ See above, note 48.

¹³² See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Judgment of February 26, 2007. All ICJ cases are available online at <http://www.icj-cij.org/>.

¹³³ For an extensive analysis of the issues of control by the state over the military activities of paramilitary forces, see Stefan Talmon, “The Various Control Tests in the Law of State Responsibility and the Responsibility of Outside Powers for Acts of Secessionist Entities”, Materials of the International Conference entitled “Basic Principles for the Settlement of the Conflicts on the Territories of the GUAM States”, Baku, April 15-16, 2008. Modified version of the article was published in *International and Comparative Law Quarterly*, vol. 58 (May 2009).

accept a cease-fire and *to withdraw to the internationally recognized borders.*”¹³⁴ This recognition of the fact that the attacks on the southwestern districts of Azerbaijan were mounted from the territory of Armenia is particularly noteworthy, since Iran from the beginning of the conflict was pursuing a neutral policy, and, second, the geographic proximity of the fighting allowed Iran to monitor the events right across its border with Azerbaijan.

Similarly, the Government of Turkey after the Kelbadjar offensive and especially with the occupation of other districts of Azerbaijan as well as the armed attacks on the Nakhichevan province, urged Armenia to stop aggression against Azerbaijan, to respect its commitments under the U.N. Charter, and made improvement of its relations with Armenia,¹³⁵ conditional upon the withdrawal of the Armenian forces from the occupied territories.¹³⁶

The Member States of the European Community also in response to the attacks of the Armenian armed forces against the south-western districts of Azerbaijan¹³⁷ issued a statement on September 3, 1993, in which they called on these forces to fully respect the Security Council resolutions and withdraw from the regions of Kelbadjar, Agdam, Fizuli, and Djebrazil, emphasizing that the “member States have no evidence that Azerbaijan would be capable of initiating major attacks from these regions.”¹³⁸ Indeed, the sequence of the occupation of the territories of Azerbaijan suggests that the advances of the Armenian armed forces resembled more pre-planned military operations rather than sporadic spillover of fighting into the neighboring areas.¹³⁹

Interestingly, Russia, which after its retreat from the South Caucasus in the wake of the demise of the Soviet Union, thought to make a comeback through offering to the parties a peace plan on its own terms, perceived the mediation efforts of Iran and especially of Turkey as attempts to expand their influence into the region.¹⁴⁰ The coincidence of the intensification of the fighting and further advances of the Armenian armed forces deeper into the territory of Azerbaijan with the reluctance of Azerbaijan to accept the terms of the proposed Russian deal¹⁴¹ is striking and reveals the geopolitical dimension of the conflict.¹⁴²

¹³⁴ See letter dated August 30, 1993, from the Chargé d’Affaires ad interim of the Permanent Mission of the Islamic Republic of Iran addressed to the Secretary-General, U.N. Doc. S/26387 (August 31, 1993), [my emphasis].

¹³⁵ In April 1993, protesting the attack and occupation of Kelbadjar district, Turkey cut diplomatic relations with Armenia and suspended the shipment of goods through its territory, which complicated already strained relations between these two countries.

¹³⁶ See letters dated April 5, 1993, and April 27, 1993, of the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council, U.N. Docs. S/25524 (April 5, 1993) and U.N. Doc. S/25671 (April 27, 1993).

¹³⁷ See letter dated August 23, 1993, of the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/26345 (August 24, 1993).

¹³⁸ See letter dated September 7, 1993, of the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council, U.N. Doc. S/26417 (September 15, 1993).

¹³⁹ The occupation of the Lachin (May 18, 1992) and Kelbadjar (April 2, 1993) districts created a land connection between the Nagorny Karabakh region of Azerbaijan and Armenia, which was crucial for resupplying arms and ammunitions, while the seizure of Agdam (July 23, 1993) and Fizuli (August 23, 1993) districts cut off the northwestern districts from the rest of Azerbaijan, thus paving the way for the occupation of the Djabrail (August 23, 1993), Gubatly (August 31, 1993), and Zangelan (October 23, 1993) districts.

¹⁴⁰ See Elizabeth Fuller, *Russia, Turkey, Iran, and the Karabakh Mediation Process*, RFE/RL Research Report, vol.3:8 (February 25, 1994).

¹⁴¹ The Russian-sponsored plan envisaged the signing of a cease-fire and the deployment of the CIS (essentially Russian) peacekeeping forces to the region. For more on this, see Svante Cornell (ed.) *Small*

Under the circumstances, in the course of the three months the Security Council adopted two more resolutions (874 and 884). The Security Council seems to be convinced that the southwestern districts of Azerbaijan were also attacked from the territory of Armenia and in its fourth resolution (884) in the paragraph concerning the occupation of the Zangelan district condemned the “attacks on civilians and *bombardments of the territory of the Azerbaijani Republic*.”¹⁴³ The evolution in the assessment of the situation by the Council is even more revealing, if compared with its previous resolutions, in which the Security Council spoke in general terms and condemned “bombardments of inhabited areas.”¹⁴⁴

The third resolution (874), unlike the two previous ones, mentions the role of the Russian Federation in establishing the cease-fire while urging the states in the region “to refrain from any hostile acts and from any interference or intervention which could lead to the widening of the conflict and undermine peace and security in the region.”¹⁴⁵ Although no states were singled out, given the frustration of Russia with various international mediation efforts, the primary sponsor of this paragraph was, arguably, Russia, which under the pretext of preventing a possible spillover of the conflict into neighboring regions wanted to put the weight of the Security Council behind its efforts to rebuff the possible involvement of Turkey and, to a lesser extent, that of Iran. In this regard, the distinction, which the Security Council made in this resolution between the terms interference and intervention, is particularly noteworthy.

In its fourth resolution (884) the Security Council, while reiterating its previous demands to cease armed hostilities, make the cease-fire effective and permanent, and demanding unilateral withdrawal of occupying forces from the Zangelan district and from other occupied areas of Azerbaijan, again expressed its concern at the displacement of a large number of civilians in the Republic of Azerbaijan and requested the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist displaced persons to return to their homes.¹⁴⁶

The resolution 853 and subsequent resolutions 874 and 884 are particularly noteworthy. In these resolutions the Security Council used its authority under Article 34 and determined that the continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, as well as the ongoing tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region. Such a determination is a prerequisite for invoking the relevant provisions of Chapter VI, particularly Article 33(2), Article 36, and Article 37(2), which give the Council the authority to recommend terms of settlement of the conflict. By making such determination on the situation, the Council indicated that it was acting under these provisions.

The fact that the Security Council did not specifically mention in these resolutions that it was acting under Chapter VII diminishes neither the power of the Council to express its

Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus (London: Curzon Press, 2000), 99-102.

¹⁴² See Thomas Goltz, Letter from Eurasia: The Hidden Russian Hand, *Foreign Policy*, CEIP, No. 92, (Fall 1993); Elizabeth Fuller, Karabakh Mediation Process: Grachev versus the CSCE?, RFE/RL Research Report, vol.3:23 (June 10, 1994); and Elizabeth Fuller, Nagorno-Karabakh: Internal Conflict Becomes International, RFE/RL Research Report, (March 13, 1992).

¹⁴³ See U.N. Doc. S/RES/884 (1993), para. 1, [my emphasis].

¹⁴⁴ See U.N. Doc. S/RES/853 (1993), para. 2.

¹⁴⁵ See U.N. Doc. S/RES/874 (1993) and S/RES/884 (1993), paras. 10 and 6 respectively.

¹⁴⁶ See U.N. Doc. S/RES/884 (1993).

authoritative position towards the conflict nor the value of the recommendations of the terms of the settlement that in its assessment would restore international peace and security. What is essential is that the Council is empowered through these Articles to consider the merits of the conflict situation and reach a conclusion, which, as Kirgis pointed out, would have “normative consequences.”¹⁴⁷ And this is what the Security Council did. The text of the adopted resolutions indicate that the Security Council made it clear that it would not accept any *fait accompli* situations arising as a result of the use of force for the acquisition of territory. The determination by the Council of the fact of the occupation of the territories of Azerbaijan and the qualification of the occupation as illegal under international law by definition requires that the perpetrator of this illegal act is obliged to end this occupation immediately and unconditionally. In other words, the obligation to put an end to an internationally wrongful act derives not only from principles and norms of international law¹⁴⁸ but also from the acts of application of these norms through, inter alia, the UN Security Council resolutions. The existence of the fact of the occupation also obliges all states not to recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.

Furthermore, the resolutions adopted by the Security Council are binding on the basis of Article 25 of the U.N. Charter, which states that “the Members of the United Nations agree to accept and to carry out the decisions of the Security Council in accordance with the present Charter.” This understanding of the meaning of Article 25 is reflected in the interpretation by the authoritative Venice Commission of the Council of Europe in the recommendations contained in the resolutions adopted by the Security Council¹⁴⁹ in the wake of the escalation of the armed conflict in Georgia in August 2008.¹⁵⁰

Conclusion: The implications of the U.N. Security Council action for the settlement of the conflict

The analysis of the terminology used in the four resolutions of the Security Council and the statements by its President viewed within the overall context of the unfolding events on the ground, as well as the attitudes of several of the permanent members of the Council towards the conflict, confirmed the supposition made in the introduction part of this article that the adopted resolutions were the result of a complex web of interrelated factors. The decision-making process of the Security Council, which transformed over the decades into an institutional constraint, the special interests of at least several permanent members of the Council, on the one hand, as well as the obligation to abide by the U.N. Charter in its daily practice, had a decisive impact on the Security Council’s actions in relation to the conflict between Armenia and Azerbaijan.

The resolutions did not prevent further escalation of the conflict. By May 1994, when a cease-fire was brokered, the Nagorny Karabakh region and surrounding seven

¹⁴⁷ See Frederic L. Kirgis, Jr., “The Security Council’s First Fifty Years”, *The American Journal of International Law*, vol.89:3, (1995): 519, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

¹⁴⁸ See Article 3 of the International Law Commission’s Articles on Responsibility of States for International Wrongful Acts, annexed to U.N. General Assembly resolution 56/83 adopted on December 12, 2001.

¹⁴⁹ See U.N. Doc. S/RES/1839 (2008) (October 9, 2008); U.N. Doc. S/RES/1866 (2009) (February 13, 2008).

¹⁵⁰ See Opinion No. 516/2009 on “The Law on Occupied Territories of Georgia” approved by the Georgian Parliament on October 28, 2008, adopted in March 2009 on the 78th plenary session of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe.

administrative districts, which constitute almost one-fifth of the territory of Azerbaijan, were occupied by the Armenian forces. Approximately one of every eight persons in Azerbaijan became an internally displaced person or refugee, tens of thousands of people were killed, wounded or injured, and about 5,000 citizens are missing. The peaceful negotiations between Armenia and Azerbaijan with the mediation of the Co-Chairs of the OSCE Minsk Group conducted for over fifteen years have yet to yield results.

Nevertheless, the gravity of the situation threatening international peace and security prevented the Security Council from adopting more watered-down and neutral resolutions, which was often the case when at least several permanent members of the Council had particular vested interests in a conflict situation. Although the Security Council followed the established pattern and fell short of pointing the finger, guided by the obligation to preserve objectivity and abide by the U.N. Charter, the Council determined that the territories of Azerbaijan were under occupation as a result of military activities. This determination put in motion the international legal instruments that were specifically designed to address the situations emerging from belligerent occupation, to protect these territories, and to ensure that their legal status remains unaffected by the occupation pending their return to the sovereign. Thus, the law on occupation, which is essentially framed by the 1907 Hague Regulations and the Geneva Convention IV, implies that occupation is considered temporary by international law and, hence, no transfer of sovereignty over the occupied territory to the occupier is possible.

Furthermore, the law on occupation puts clear-cut obligations on the occupying power in regard of the occupied territory. Among them are the obligations not to change the existing legal system and to respect the existing institutions. The law on occupation also prohibits the acts of pillage, looting and the exploitation of resources, the destruction by the occupying power of any real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities. Of particular importance is Article 49 of Geneva Convention IV, which prohibits the establishment of settlements in the occupied territories consisting of the population of the occupying power or of persons encouraged by the occupying power with the intention of changing the demographic composition in these territories.¹⁵¹

Hence this recognition of the fact by the Security Council allowed Azerbaijan to keep the situation in the occupied territories under the scrutiny of the international community.¹⁵² In 2005 in response to the concerns regarding the illegal settlements in the occupied territories

¹⁵¹ See the Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory, U.N. Doc. A/63/692-S/2009/51, annexed to the letter dated January 27, 2008, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009).

¹⁵² On October 29, 2004, the U.N. General Assembly decided to include the item entitled “The situation in the occupied territories of Azerbaijan” to the agenda of its 59th session. The issue of the situation in the occupied territories of Azerbaijan has also been included on the agenda of the subsequent sessions of the U.N. General Assembly. On March 14, 2008, the General Assembly adopted at its 62nd session resolution A/RES/62/243 on the situation in the occupied territories of Azerbaijan, in which the General Assembly expressed concern that the armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, and reaffirmed, inter alia, its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders.

raised by Azerbaijan before the U.N. General Assembly,¹⁵³ the OSCE dispatched a fact-finding mission to assess the situation on the ground.¹⁵⁴ In 2006, alarmed by the reports¹⁵⁵ of the wide-scale fires in the occupied territories of Azerbaijan, the U.N. General Assembly adopted a resolution entitled “The situation in the occupied territories of Azerbaijan,” as proposed by Azerbaijan, which stressed the necessity of the urgent conduct of an environmental operation and called for an assessment of the short-term and long-term impact of the fires on the environment of the region and its rehabilitation.¹⁵⁶ As a follow-up, another OSCE fact-finding mission was conducted in the occupied territories in October 2006.¹⁵⁷

Furthermore, the Security Council resolutions provided a rather clear appraisal of the situation on the ground and identified the principles and norms of international law applicable to this conflict while emphasizing the inadmissibility of violating those norms. By pointing to internationally wrongful acts in the context of this conflict, the Security Council established the obligations of the perpetrator of those acts as well as the rights of the victim.

While reiterating its full support for the peace process being pursued within the framework of the OSCE, the Security Council through its resolutions established the overall legal framework for the conflict settlement in the context of the Minsk process and outlined the principles that should provide guidance for the mediation efforts to find a just and lasting solution to the conflict. In particular, the resolutions reaffirmed the sovereignty and territorial integrity of the Republic of Azerbaijan, stressed the inadmissibility of the use of force for the acquisition of territory, demanded immediate, complete and unconditional withdrawal of the Armenian forces from all the occupied territories, called for the restoration of economic, transport and energy links in the region, and called for assisting the displaced persons to return to their homes. It is noteworthy that in the aftermath of the Budapest summit of the CSCE (1994), which decided to intensify CSCE action in relation to the conflict, the Security Council returned to this matter and issued a statement¹⁵⁸ in which it reaffirmed all its relevant resolutions on the principles of sovereignty and territorial integrity as well as the inviolability of international borders and stressed the

¹⁵³ See Information on the transfer of population into the occupied territories of Azerbaijan, annexed to the letter dated November 11, 2004, from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/59/568, (November 11, 2004).

¹⁵⁴ Based on the findings of the OSCE Fact-Finding Mission carried out from January 30 to February 5, 2005, the OSCE Minsk Group Co-Chairmen in their recommendations have emphasized the inadmissibility of changes in the demographic composition of the region and urged appropriate international agencies to conduct needs assessment for resettlement of the population located in the occupied territories and return of the internally displaced persons to their places of permanent residence. For the details, see Letter dated March 18, 2005, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Annex II: *Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorny Karabakh*, U.N. Doc. A/59/747-S/2005/187, (March 21, 2005).

¹⁵⁵ See Letter dated July 28, 2006, from the Minister for Foreign Affairs of the Republic of Azerbaijan, annexed to the letter dated July 28, 2006, from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, U.N. Doc. A/60/963.

¹⁵⁶ See U.N. Doc. A/RES/60/285 (September 7, 2006).

¹⁵⁷ For details see letter dated December 20, 2006, from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General. Annex: *OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorny Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities*. U.N. Doc A/61/696.

¹⁵⁸ See Statement by the President of the Security Council, U.N. Doc. S/PRST/1995/21 (April 26, 1995).

urgency of concluding a political agreement on the cessation of the armed conflict on the basis of the relevant principles of the Charter of the United Nations and of the OSCE.

The step-by-step approach to the settlement of the conflict suggested by the U.N. Security Council through its resolutions is of practical relevance to the current peace negotiations conducted in the framework of the OSCE. The phased settlement model built into these resolutions and advocated for by Azerbaijan for the past decade is increasingly accepted not only by the international community but also by Armenia as the only viable strategy to break the stalemate in the resolution of this protracted conflict. The Joint Declaration¹⁵⁹ signed in Moscow on November 2, 2008, by the Presidents of Azerbaijan, Armenia, and the Russian Federation – the first ever document signed between Armenia and Azerbaijan since the cease-fire of 1994 – reflect the acceptance by the parties of the step-by-step approach to the settlement of the conflict on the basis of the principles and norms of international law and the decisions and documents adopted in this framework.

¹⁵⁹ For the English version of the text of the Joint Declaration, see annex to the letter dated November 10, 2008, from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2008/702, (November 11, 2008).