

The Nagorno-Karabakh Conflict

Heiko Krüger

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A Legal Analysis

 Springer

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List of abbreviations

APuZ	Aus Politik und Zeitgeschichte (German journal)
Art.	Article
BSEC	Organization of the Black Sea Economic Cooperation
BT-Drucks.	Printed matter of the German Bundestag
Cf.	Compare
CIS	Commonwealth of Independent States
Cl.	Clause
CRIA	Caucasian Review of International Affairs
CSCCE	Conference for Security and Co-operation in Europe
ECOSOC	Economic and Social Council (ECOSOC) of the United Nations
ed.	Editor
EJIL	European Journal of International Law
EPIL	Encyclopaedia of Public International Law
GDR	German Democratic Republic
GUAM	Organization for Democracy and Economic Development
ICJ	International Court of Justice
ICLQ	International & Comparative Law Quarterly
lit.	littera (letter)
no.	Number
OAU	Organization of African Unity
OSCE	Organization for Democracy and Cooperation in Europe
para.	Paragraph

UN	United Nations
UN-ECOSOC	United Nations Economic and Social Council
VCLT	Vienna Convention on the Law of Treaties 1980
VJIL	Virginia Journal of International Law
vol.	Volume

Introduction

The Caucasus region, situated on a natural isthmus between the Black Sea and the Caspian Sea, has long been a border zone and a melting pot for a diverse range of cultures and peoples. As the intersection between Europe and Asia, and also between Russia and the Ottoman and Persian Empires, it has featured in the strategic plans of numerous great powers over the centuries. Given its abundance of natural resources, the ready-made raw material transport routes to Europe and its enduring position on the edge of Russia, nothing has changed to the present day.

The tremendous development opportunities of the Caucasian region are being tarnished by unresolved territorial conflicts that put a continual and regionally balanced growth, sustained democratisation and long-term stability at risk. These conflicts, which all erupted with the dissolution of the Soviet Union, include the separatist movements in Abkhazia, Chechnya, Nagorno-Karabakh and South Ossetia. The war over South Ossetia, which erupted between Russia and Georgia in August 2008, spelt out the explosive potential still inherent in these conflicts.

The conflict over Nagorno-Karabakh has claimed the highest number of victims. An estimated 25,000 Armenian and Azerbaijani casualties and over a million refugees are the tragic toll of a conflict over the affiliation of a mountainous area of some 4,400 square kilometres. The conflict began in 1988 with mass demonstrations for the region of Nagorno-Karabakh, part of the Soviet Republic of Azerbaijan, to be annexed to the Soviet Republic of Armenia. In 1992 the emerging civil and rebel war became a war between the young republics of Armenia and Azerbaijan.

The weapons have been silent since 1994, although the most intensive phase of the conflict has been followed by a cooling-off phase. To this day young recruits from the hostile parties face each other in the trenches along the armistice line. The occupied territory still comprises Nagorno-Karabakh and seven surrounding administrative districts. Despite years of international attempts at mediation, the presidents of Armenia and Azerbaijan, both under considerable political pressure at home, have been unable to reach a resolution. Whilst Azerbaijan asserts that Nagorno-Karabakh is an integral part of its territory, Armenia, contrary to all indications, does not regard itself as a party to the conflict. The official line is that it merely supports the separatist endeavours of Armenians living in Nagorno-Karabakh. These Karabakh Armenians for their part refer to the right to self-determination of peoples and reject any type of incorporation in Azerbaijan.

The Republic of Armenia and the international Armenian diaspora were helping to establish quasi-state administration structures on the territory of Nagorno-Karabakh. The profound military, political and budgetary links between Armenia

and Nagorno-Karabakh suggest the *de facto* existence of a loose federation. To date the international community has not recognised Nagorno-Karabakh either as an independent state or as a part of Armenia. International organisations and third countries have repeatedly underlined the view that Nagorno-Karabakh still belongs to Azerbaijan and that troops should be withdrawn from the occupied areas.¹

However, there is speculation that the international community underscores the Azerbaijani claim for opportunistic reasons alone.² International organisations and third countries are seen to be playing a double-handed game which, as in previous centuries, is concerned with securing strategic spheres of influence and natural resources in the Caucasus region and in burgeoning Azerbaijan in particular. Irrespective of the intention behind such speculation, there nonetheless remains a serious question as to how the secession endeavours of Nagorno-Karabakh, its territorial status and the involvement of Armenia should be assessed in legal terms. Is the legal view of the international community correct, irrespective of the political interests in the region, or is the view an incorrect perception that pursues political objectives alone?

This treatise shall attempt to understand this issue. The aim is a detailed examination of the key legal aspects of the Karabakh conflict, taking into account international documentation of recent years. This is firstly concerned with the lawfulness or unlawfulness of the secession of Nagorno-Karabakh under Soviet law and international law (Chapter A) and secondly with the conduct of the Republic of Armenia over the course of the conflict (Chapter B).

A number of factual and legal issues pertaining to the foundations of modern international law require resolution. Central to this is the principle of territorial integrity and the tenet of self-determination of peoples. Their relationship reflects the conflict experienced by the world of states navigating a course through security, stability, claims to power and the philosophical concept of a people's right to self-determination that emerged some decades ago.

¹ The sovereignty and territorial integrity of Azerbaijan was confirmed in UN General Assembly resolution GA/10693 (2008); UN Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993); Council of Europe Parliamentary Assembly resolution 1416 (2005) and Council of Europe Committee of Ministers recommendation 1690 (2005). See also OSCE, 1996 Lisbon Summit 2-3 December 1996, statement of the OSCE-Chairman in office.

² Cf. Luchterhandt, Republik Armenien, Karabach und Europa – endlose Frustration?, lecture at American University of Armenia on 24 March 1999, <http://www.deutsch-armenische-gesellschaft.de/dag/vorr.htm>; Asenbauer, Zum Selbstbestimmungsrecht des Armenischen Volkes von Berg-Karabach, 1993, p. 145.