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Opinion – International Law versus Realpolitik in the Nagorno-Karabakh Conflict

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VAHAGN AVEDIAN, MAR 2 2021

The Nagorno-Karabakh war in 2020 ended with thousands of lost lives, emptying half the region of its native Armenian population. Contrary to what some might think, the November 9 ceasefire agreement is not a final peace agreement and the conflict is far from over. Although the agreement implements some of the terms in the peace proposal drafted by the Organization for Security and Co-operation in Europe (OSCE) Minsk Group, the fundamental questions about the region's final status and the future of its native Armenian population remain unanswered, and the threat of a total ethnic cleansing stays significantly high.

Against historical claims that date back to antiquity, a line of argument is that the conflict is a modern creation. Following a resolution of the Communist Politburo in Caucasus on July 4 1921, Nagorno-Karabakh was to be incorporated into the Armenian SSR (Soviet Socialist Republic), a decision based on its overwhelmingly 94% Armenian population. Inexplicably enough, the decision was reversed the very next day to incorporate the enclave into the Azerbaijani SSR. Today, there is widespread consensus among scholars that this was part of Josef Stalin's policy of "divide and rule", spreading fifth column pockets in different Soviet republics as means to keep the local leadership on a tight leash. These autonomous enclaves (Nagorno-Karabakh, South Ossetia, Abkhazia et al.) became ticking bombs which would explode upon the disintegration of Moscow's authoritarian rule.

On February 20 1988, the People's Soviet (parliament) of Karabakh, in accordance with international law and Soviet Union's Constitution, voted 110-17 in favor of transferring the region from the Azerbaijani SSR to the Armenian SSR. In response, Baku deployed military forces to subjugate the separatist movement. As the Karabakh population took arms to defend themselves and Armenia stepped in to guarantee the safety of its compatriots, the spiral of violence led to the devastating war of 1990-94, leaving most of Karabakh, along with an equal size of Azerbaijani adjacent territories as security buffer, under Armenian control. It is this occupation as a violation of international law which needs contextualization.

First, the fourth item in the Helsinki Final Act (1975), the Charter of the OSCE, is about respecting the territorial integrity of states. Inter alia, it mentions, that states must "refrain from making each other's territory the object of military occupation [...] in contravention of international law." The latter part is indeed quite relevant, acting as an amendment reserving the right for ,e.g.. humanitarian intervention.

Secondly, the eighth item in the Helsinki Final Act describes the peoples' right to self-determination. It establishes, among others, that "all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference.". There is little ambiguity in this wording, which de facto empowers the people of Nagorno-Karabakh to freely determine their external political status, as they did on February 20 1988.

It should be pointed out that the ten basic principles in the Helsinki Final Act have no order of precedence between themselves and are equal before international law. This fact notwithstanding, the political and military power of a state often overrides peoples' right to self-determination. In other words, it is sheer political pragmatism and power, not international law, which decides conflict outcomes.

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Until the parliamentary decision of February 20 1988, there was no plan of military uprising, invasion or occupation to annex the territory of Azerbaijan. It was a peaceful democratic expression of will in full accordance with international law. The mere fact that no state, including Armenia, has recognized the self-proclaimed independent republic of Artsakh (the Armenian name of Nagorno-Karabakh) is a token of respect for international law and the ongoing mediation by the OSCE Minsk Group. The subsequent occupation was a direct result of Azerbaijan's use of force to subjugate Karabakh's people. The same iron fist was implemented in 2020 when Azerbaijan, supported by Turkey and thousands of Syrian mercenaries, waged a war to retake the area.

The war was also a result of the international community's and Minsk Group's failure to resolve the conflict peacefully. The so-called Madrid Principles of 2007, based on the Helsinki Final Act, could have delivered a peaceful solution many years in advance. The agreement invokes the restoration of Azerbaijan's territorial integrity (items 1 and 2), while guaranteeing Karabakh population's right to self-determination through "a legally binding expression of will," i.e. a referendum (item 4).

However, the implementation of the Madrid Principles failed since neither of the parties were willing to take the first step: Azerbaijan refused to agree on a referendum date, later vehemently rejecting the very notion of allowing the people to determine their *external* status, while Armenia refused to return any of the surrounding areas under its control before the resolution of the dispute. It is easy for the mediators to blame the parties for the lack of progress. After all, it is Armenia and Azerbaijan who should agree on the terms, not the mediators themselves. However, this is a simplistic and self-exonerating approach to the dilemma, especially on behalf of the Western world.

The deterioration of Moscow's diplomatic relations with the USA and the EU along with the latter's unsustainable policy towards South Caucasus, allowed Russia to assume a clear leading role in its "backyard." Had there been a political will to resolve the conflict based on international law, the OSCE could and should have stepped in more decisively, as the international community did in for example in Kosovo, perhaps the closest parallel to the Karabakh conflict. Stopping further bloodshed, the OSCE could, instead of prolonging a deadlocked mediation, resolve the conflict by arbitration through the enforcement of its own charter. It should deploy an international peace-keeping force, with the twofold aim of restoring the territorial integrity of Azerbaijan and setting a date for a referendum which guarantees Karabakh's population with the right to self-determination. Although the political reality has changed dramatically on the ground, the international norms enshrined in the Madrid Principles are still in force to be implemented, but only if there is a political will to back them up.

About the author:

Vahagn Avedian, PhD, is a peace and conflict researcher with focus on democracy and human rights. His book, *Knowledge and Acknowledgment in the Politics of Memory of the Armenian Genocide* (Routledge, 2019) includes a discussion about the Karabakh conflict within the context of the Armenian Genocide and its impact and legacy on the region. His forthcoming book, entitled *The Theory of Collective Reconciliation: A Trinity of Recognition, Responsibility and Reparation* (Routledge) explores the process of reconciliation through its components and their mutual dependencies and impacts.