Liberated Karabakh

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2

International Law and the Karabakh Question

Javid Gadirov

The conflict between Armenia and Azerbaijan over Karabakh has been going on for more than thirty years and has wrecked horror and destruction on hundreds of thousands of innocent individuals. The trilateral statement[1] that concluded its latest episode, the Second Karabakh War, will hopefully render resumption of hostilities pointless and unnecessary, provided that all sides act in good faith towards their obligations.

This chapter will consider some of the international legal consequences of the conflict, with a view to clarifying the legality of the use of armed force by both Armenia and Azerbaijan in the course of the Second Karabakh War, and to contextualize the respective legal positions of the parties to the conflict. There remain a few further legal consequences of the conflict, ranging from compensation for the use of natural resources and for environmental damage, destruction of cultural property, property redistributions, and individual responsibility for war crimes and crimes against humanity, to name some of the most obvious.

Ongoing litigation in international judicial and arbitral mechanisms may reveal some of these issues and address them from their respective perspectives, but the purpose of the current work is narrowed down to a set of issues that bear direct relevance to the legality of the use of armed force.

Firstly, this chapter will clarify the territorial claim to Karabakh at the time of the dissolution of the USSR, and then consider whether a part of it—the former Nagorno-Karabakh Autonomous Oblast (NKAO)—has a right to secede unilaterally from Azerbaijan and whether it constituted a state under international law in September 2020, the legal status of Armenia as a party to the conflict, and whether it has been committing an act of aggression and a continuing armed attack against Azerbaijan. The validity of the argument as to whether Azerbaijan has been exercising its right to self-defense when liberating Karabakh from occupation stands or falls largely on this last point. I will also consider the legal status of the occupying administration in Karabakh, i.e., examine whether it may act as a lawful administration and whether its acts are attributable to Armenia.

KARABAKH'S STATUS BEFORE AND AFTER THE USSR'S DISSOLUTION

It is somewhat trivial to observe that armed conflict between Armenia and Azerbaijan over Karabakh started as a civil war in the USSR, and became a full-scale international conflict with the advent of the independence of Azerbaijan and Armenia.[2] Yet August 1991 plays a critical role in the inquiry as to whether Karabakh, or rather the portion singled out by Soviet authorities as "Nagorno-Karabakh" (Mountainous or Upper Karabakh), was or was not a part of Azerbaijan when the Soviet Union ceased to exist as a subject of international law. This issue takes us back to the Constitution of the USSR that was in force at the time, since its provisions are relevant to the international law rule of *uti possidetis juris* that preserves the exiting boundaries of states that emerge as the result of the dissolution of 'mother' states and decolonization.[3]

This cornerstone legal principle holds that pre-independence or colonial borders are automatically upgraded to state borders upon independence or decolonization, and in the absence of an international treaty on border delimitation, *uti possidetis juris* is the rule of international law that is applied to determine the borders of Azerbaijan, even if merely delimited, based on the border of Azerbaijan SSR within the former USSR. The International Court of Justice (ICJ) held that *uti possidetis juris* "is a general principle, which is logically connected with the phenomenon of the obtaining of

independence, wherever it occurs;" that "its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power;" and that the "essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved."[4]

It is therefore of central importance whether Karabakh's territory is attributed to Azerbaijan under the USSR constitutional framework at the moment of Azerbaijan's independence.[5] Regardless of whether purported secession of the region with lesser autonomy than an SSR (such as Chechnya) is successful or not,[6] the question of the territorial integrity of Azerbaijan is considered from the vantage point of its territorial possessions as a part of the USSR.

An assessment of the exact date on which Azerbaijan became independent and the Soviet Union formally ceased to exist under international law may vary. One approach could be to consider the date of Azerbaijan's declaration of independence from the USSR on 30 August 1991[7] or Baku's adoption of the Constitutional Act on State Sovereignty on 18 October 1991.[8] Another approach could consist in taking the date of the formal dissolution of the USSR, such as the signing of the Belovezha Accord on 8 December 1991[9] or the adoption of the Alma-Ata Declaration on the establishment of the Commonwealth of Independent States on 21 December 1991, in which inter alia Azerbaijan and Armenia, as "independent states," indicate that they are "recognizing and respecting each other's territorial integrity and the inviolability of existing borders."[10]

Thus, no matter the date selected, in late 1991 Karabakh was an integral part of Azerbaijan SSR. According to the 1977 Soviet Constitution, Azerbaijan SSR was one of the USSR's 15 Union Republics[11] and had the right to secede freely from the USSR.[12] The borders of these Union Republics could not be changed without their consent, and any mutual agreement of the respective Union Republics on changing their borders was subject to approval by USSR authorities.[13] According to Article 87 of the USSR Constitution, "the Azerbaijan SSR includes the Nagorno-Karabakh Autonomous Oblast," for in the Soviet Union an autonomous oblast were clearly understood to be a part of a Union Republic or an autonomous kray.[14]

NKAO was carved out from the mountainous regions of Karabakh, where at that moment the ethnic-Armenian community constituted the majority. It was formally established on 7 July 1923 by a decision of the Azerbaijan Central Executive Committee and abolished by a law of the Republic of Azerbaijan on 26 November 1991.[15] Already prior to Azerbaijan's independence from the USSR, the authorities in Yerevan tried to transfer Karabakh to Armenian SSR, by adopting a resolution on 1 December 1989 "On the Reunification of the Armenian SSR and Nagorno-Karabakh." Yet, the Supreme Council of the USSR, by its decision of 10 January 1990, invalidated these and other acts of the Yerevan authorities to the same effect as being in direct contradiction to the Constitution of USSR.[16]

The attempt to transfer part of Karabakh to Armenia while Azerbaijan was still part of the Soviet Union has therefore failed, and Azerbaijan became an independent state with Karabakh as an integral part, which was recognized by the international community of states and international organizations. When on 14 March 2008 the UN General Assembly adopted a resolution entitled "The Situation in the Occupied Territories of Azerbaijan," it again reaffirmed respect for Azerbaijan's territorial integrity "within its internationally recognized borders," demanded "the immediate, complete, and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan [including] the Nagorno-Karabakh region of the Republic of Azerbaijan."[17]

Therefore, another tactic was chosen by the Armenian leadership, and this time the claim became that NKAO had now become the "Nagorno-Karabakh Republic" ("NKR") and that the independence of "NKR" should become a legal apology for the occupation of Karabakh.

DOES "NKR" HAVE A RIGHT TO SECEDE UNILATERALLY FROM AZERBAIJAN?

About three days after Azerbaijan declared its independence from USSR, on 2 September 1991 a group of Soviet deputies from NKAO and the Shaumyan rayon of Azerbaijan, alleging that the Azerbaijani government is conducting a policy of discrimination and "apartheid" towards the Armenian population, declared a "Nagorno-Karabakh Republic" that

claimed the territory of the former NKAO coupled with the Shaumyan rayon of Azerbaijan.[18]

One would be hard-pressed to provide a factual basis for a claim that the Republic of Azerbaijan (especially within 2 days of its independence) practiced a system of institutionalized discrimination against the Armenian population. But even if that would have been the case, does international law allow for this type of "remedial" secession? It is very difficult to find support for such a contention in the practice of UN member states, which tend to be very cautious about recognizing separatist entities. The ICJ declined to rule on this issue in its Advisory Opinion on Kosovo, citing a lack of minimal consensus about this matter among sovereign states, let alone an existence of any consistent and uniform practice that could generate a customary rule:

> Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which *radically different views* were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances […]. The Court considers that it is not necessary to resolve these questions in the present case.[19]

International practice since 2010 has also not been optimistic towards secessionists outside the colonial context. According to James Crawford, outside the colonial context, the dissolution of states (such as the USSR) differs from unilateral secession, as in the latter case the consent of the predecessor state is required "unless and until the seceding entity has firmly established control beyond hope of recall."[20] Crawford lists Nagorno-Karabakh's attempt at secession from Azerbaijan as unsuccessful, along with cases including Abkhazia, South Ossetia, Chechnya, Northern Cyprus, and Republika Srpska.[21]

States affected by separatist movements are reluctant to pronounce on the international legal validity of secession referendums and tend to regard the issue exclusively from point of view of national constitutions. Thus, the

Constitutional Court of Spain ruled in 2017 that the Catalonian law "on self-determination referendum" was contrary to the Constitution of Spain,[22] as did the Iraqi Supreme Court regarding the referendum in Iraqi Kurdistan.[23] The only exception is the Canadian Supreme Court, which considered the legality of Quebec's referendum not only from the perspective of the Canadian constitution, but also from the international legal standpoint.[24]

Nevertheless, it seems that there is no other roadmap for any sort of Armenian authority to present territorial claims to Azerbaijan apart from alleging the right to remedial secession—however unsubstantiated such a claim might be given the facts, however shaky may the acceptance of such a rule turn out to be, and regardless of the record of abuse such a rule entails—all of which may explain the reluctance of states to acknowledge this rule.

The reality is that, however, "NKR" had from the beginning of the conflict in the late 1980s until at least 9 November 2020 been under the strict control and direction of Armenia, which is therefore considered to be an occupying power under international law. "NKR," therefore, cannot be considered to be or to have been an independent entity that exercised any real control over the occupied territories under its de facto control in Karabakh, as confirmed by a few European Court of Human Rights (ECHR) judgments. There are multiple international legal consequences of such control that bear relevance to the issues below.

ARMENIA'S CONTINUING AGGRESSION

During the First Karabakh War, the UN Security Council adopted four resolutions[25] that, among other things, recognize Nagorno-Karabakh as a part of Azerbaijan, condemn the occupation of various districts and towns in Azerbaijan, and demand the withdrawal of "all occupying forces" from Azerbaijan. It avoided, however, ascribing responsibility for the occupation and the use of armed force directly to Armenia, mentioning instead either "local Armenian forces" or no particular agency at all. It seemed that Armenia could assert that the conflict is between Azerbaijan and "NKR" instead, with the possible involvement of third states such as Armenia or the Russian Federation.

In 2015, the ECHR issued a landmark judgement against Armenia that brought to legal light the occupation of Karabakh and "effective control" over "NKR" by Armenia. In the *Chiragov* case, the court held that Armenia was liable for breaches of international law on human rights grounds committed by "NKR" because

> Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR," that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the "NKR" and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno Karabakh and the surrounding territories.[26]

Thus it is this physical, "effective" control by Armenia that made the actions of "NKR" attributable to Armenia under international law governing the responsibility of states.[27] The puzzle, as it were, became complete. Armenia committed breaches of the fundamental rules of international law that prohibit aggressive war and was dodging responsibility for having done so. By directly deploying its armed forces in Azerbaijan,[28] but also through the "direction and control" of the "NKR" entity, Armenia committed a continuous breach of the international legal rule that prohibits the use of armed force against other states, which is reflected in Article 2.4 of the UN Charter and in international customary law.[29]

ARMENIA AS AN OCCUPYING POWER AND ITS LIABILITY

Another significant aspect of the *Chiragov* case was that it established the fact of occupation by Armenia of a part of Azerbaijan. Quoting again from the judgment:

> The requirement of actual authority is widely considered to be synonymous to that of effective control […]. Military occupation is considered to exist in a territory, or part of a territory, if the following elements can be demonstrated: the presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign.[30]

In the *Chiragov* case, therefore, the ECHR indicated that the rules of international humanitarian law, including the Fourth Geneva Convention,[31] are binding on Armenia as an occupying power, and that Armenia was prohibited from undertaking the forcible transfer and deportation of the population from the occupied territories, as well as to "deport or transfer parts of its own civilian population into the territory it occupies."[32]

As the International Court of Justice explained, it is the "physical control of a territory, and not sovereignty or legitimacy of title, [that] is the basis of State liability for acts affecting other States."[33] Thus Armenia has a duty not only to withdraw its forces from the occupied territories, it also incurs liability for violations of its international obligations regarding these territories as well as for any violations of the rights of its population.

The forcible alteration of the demographic composition of the occupied territories has further legal consequences. For one, the UN General Assembly not only recognizes Nagorno-Karabakh as a part of Azerbaijan,[34] but has also corroborated the extensive demographic alteration that took place during the occupation.[35] It is noteworthy that according to the International Court of Justice's opinion in the *Palestinian Wall* case, alterations to the demographic composition of the occupied territories also constitute a violation of the right to self-determination of the population of these same occupied territories.[36]

In a more gruesome aspect, the activities of the occupying administration in Karabakh did not only constitute deportations and transfers of population, but in some instances consisted of ethnic cleansing with ostensible genocidal elements. The Khojaly massacre is perhaps the most infamous of the acts of mass killing: it is in fact a particularly emblematic one, as it destroyed the largest Azerbaijani enclave in the former NKAO.[37] As the ICJ notes, a genocide takes place even "where the intent is to destroy the group within a geographically limited area," taking into account that the area is within the perpetrator's control.[38] Together with the destruction of cultural heritage and the virtually complete erasure of Azerbaijani towns, villages, and even cemeteries, the pattern of destruction of the Azerbaijani population of the former NKAO and other parts of Karabakh clearly emerges.

NON-RECOGNITION OF LEGAL CLAIMS ARISING FROM THE OCCUPATION

One of the legal consequences of the unlawful use of armed force by Armenia and its continued occupation of a part of Azerbaijan, as well as of ethnic cleansing and the forcible alteration of the demographic composition in Karabakh, is that third states and international organizations have a duty not to recognize the unlawful administration Yerevan maintains in the occupied territories. The general principle of law that "no right may be created by a wrong" (*ex injuria jus non oritur*) has found its expression in general rules of international law governing the legal responsibility of states and international organizations.

According to the International Law Commission, in cases of serious breaches of foundational norms of international law by states, "no State shall recognize as lawful a situation created by [such] breach […], nor render aid or assistance in maintaining that situation."[39] A similar duty is established regarding international organizations.[40]

The rule has customary character and was famously applied to the unlawful occupation of Namibia by South Africa. The ICJ held that not only South Africa had a duty to withdraw its administration from Namibia and incurred liability for violating its international obligations. It also held that third states, particularly UN member states, are "under obligation to recognize the illegality and invalidity" of South Africa's presence in Namibia, are under "obligation to refrain from lending any support or any form of assistance to" South Africa concerning the occupation, and are under an "obligation to abstain from entering into treaty relations with" South Africa when it acts on behalf of the population of its occupied territories.[41] In the *Palestinian Wall* opinion, the ICJ reconfirmed that "all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory."[42]

In its Kosovo opinion,[43] the ICJ referred to situations in which the UN Security Council called upon states not to recognize unlawfully created situations, such as the one that resulted from the formation of Southern Rhodesia's "illegal racist minority régime"[44] and calling on UN member states "not to entertain any diplomatic or other relations with it."[45] Following

the purported secession of the "Turkish Republic of Northern Cyprus" from the Republic of Cyprus, the Security Council also called upon states not to recognize it on the basis of an argument that it was created in breach of international law governing use of armed force.[46] In 1992, during the attempted secession of "Republika Srpska" from Bosnia and Herzegovina, the Security Council pointed out that "any entities unilaterally declared" in contravention to the territorial integrity of Bosnia and Herzegovina ought not to be recognized due to the practice of ethnic cleansings.[47]

A 2008 UN General Assembly resolution also confirmed the position that "no State shall 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."[48]

In the *Chiragov* case, the European Court of Human Rights rejected the argument made by Armenia that the property rights of the applicants were extinguished by a law of the "NKR," because this entity "is not recognized as a State under international law" and therefore its laws "cannot be considered legally valid."[49]

It appears that serious breaches of peremptory rules of international law by Armenia that brought about the creation of "NKR" establish an obligation for states and international organizations not to recognize as lawful any[50] acts of the "NKR" administration, as well as refrain from dealing with Armenia when it acts on behalf of "NKR" and other occupied territories of Azerbaijan. In particular, any laws, property redistributions, and contracts concerning the exploitation of natural resources that were concluded under the grant of licenses and the promulgated laws of the occupation administration may not be recognized under international law.

THE SECOND KARABAKH WAR: SELF-DEFENSE AGAINST A CONTINUING ARMED ATTACK

It is important to observe, first of all, that Azerbaijan used armed force not to acquire any title to Karabakh for the simple reason that it holds said lawful title by virtue of the aforementioned *uti possidetis*

juris principle. The sole purpose of the use of armed force was to reestablish control over its territories that were unlawfully occupied by Armenia as a consequence of Armenia's use of armed force, in breach of the foundational rule reflected in Article 2(4) of the UN Charter. In other words, Azerbaijan was not aiming at the unlawful annexation of Karabakh, whereas the continuing occupation and use of armed force by Armenia was justified by presenting territorial claims to Azerbaijan.

It is therefore central to Azerbaijan's claim that its response to the ongoing Armenian occupation of Karabakh constitutes an exercise of the inherent right to self-defense under the UN Charter. Article 51 of the UN Charter and a corresponding customary rule allow states to use armed force "if an armed attack occurs" pursuant to the "inherent right" of self-defense.

Did the ongoing occupation of Karabakh by Armenia (that was brought about by an unlawful use of armed force against Azerbaijan) constitute a continuous armed attack within the meaning of the UN Charter? And was the use of armed force a necessary and proportionate response to such an armed attack? I argue that the answer to both questions is positive. Even putting aside the more than 26 years time lapse between the Bishkek Protocol and the start of the Second Karabakh War was not at all peaceful, as Armenia often presents (suffice it here to mention the April 2016 war and the July 2020 clashes between Azerbaijan and Armenia outside Karabakh), the occupation of Karabakh by Armenia that followed from unlawful use of armed force can be considered as a continuous armed attack against Azerbaijan.

According to the terms of the "Definition of Aggression" adopted by the UN General Assembly in 1974, certain uses of armed force by states constitute an act of aggression, including, as stated in Article 3(a),

> 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.[51]

Armenia's occupation of Karabakh best fits a description of an occupation that resulted from, as per the definition above, an

"invasion or attack by the armed forces of a State of the territory of another State." Without any title to Karabakh, Armenia used armed force and occupied (as confirmed by the European Court of Human Rights) part of the territory of Azerbaijan. Moreover, this occupation was reinforced for decades, therefore making the armed attack a continuous one.

There is also the question of whether the "armed attack" under Article 51 of the UN Charter is synonymous with the UN General Assembly's resolution outlining its Definition of Aggression. As pointed by international law scholars, the International Court of Justice has adopted this approach in its case law.[52]

When discussing the existence of an "armed attack" in the *Nicaragua* case, for example, the ICJ not only remarked that the General Assembly's Definition of Aggression "may be taken to reflect customary international law," but also uses Article 3(g) of that definition as the basis for determining whether an "armed attack" within the meaning of Article 51 of the UN Charter took place.[53] In the *Armed Activities* case, the ICJ again used the Definition of Aggression to determine whether actions of the Democratic Republic of Congo constitute an "armed attack" that gave rise to the use of armed force in self-defence under the UN Charter.[54]

Under international customary law, self-defense against an armed attack must also be necessary and proportionate, whereas necessity is understood as "the requirement that no alternative response be possible."[55] Was there any alternative to end the occupation of Karabakh that resulted from the unlawful use of armed force by Armenia, and thus to repel the continuing armed attack? Throughout almost three decades, all peaceful alternatives had failed, and the suggested options by international mediators, such as the OSCE Minsk Group, had achieved no results—instead emboldening the aggressor to perceive the occupation as permanent. After the latest change of government in Yerevan, there were hopes that the new Armenian leadership would abandon territorial claims to Azerbaijan; instead, in summer 2019 the Armenian prime minister visited Karabakh and publicly stated that "Artsakh is Armenia. Period."[56]

In other words, even if the military provocation by Armenia on 27 September 2020 would not have taken place, the use of armed force by Azerbaijan in the Second Karabakh War would have constituted the necessary last resort to end the occupation that resulted from Armenian aggression. The passage of more than 26 years since the Bishkek Protocol ceasefire, together with public statements of the Armenian political leadership, show that Armenia did not regard the status quo as a kind of temporary demarcation but rather as a permanent occupation that would justify a territorial claim to Karabakh.

CONTINUOUS ARMED ATTACK

This chapter has argued that the occupation of Karabakh by Armenia constitutes a continuous armed attack against Azerbaijan according to international law. Azerbaijan and Armenia achieved independence within the boundaries of the respective SSRs, according to which Karabakh (including NKAO) was part of Azerbaijan SSR. Neither is there a basis for a claim that "NKR" was a state under international law before or after the Second Karabakh War, nor that international law affords it a right to secede unilaterally from Azerbaijan (or, for that matter, had such right under the USSR's constitutional arrangement). Furthermore, as confirmed by multiple decisions of the ECHR, "NKR" was in fact under the "effective control" and therefore occupation of Armenia. In fact, the trilateral statement that ended the Second Karabakh War once again confirmed that Armenia considers itself as a direct participant in an international armed conflict with Azerbaijan.

Against this background, Azerbaijan has an inherent right to use armed force in self-defense to liberate the Karabakh region from Armenia's occupation. Moreover, by the onset of the 2020 war, there was clearly no other possibility—no political or diplomatic solution—and no resort that was available as an alternative to such an exercise of the right to self-defense. Decades of occupation and the frustrations of peaceful negotiations that went nowhere due to assertions that the occupied territories belong to and must be united with Armenia show that no other alternative remained.

NOTES

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6. James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 403-411.
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13. USSR Constitution art. 73 and 78.
14. USSR Constitution art. 86 and 87.
15. "On the formation of the Autonomous Region of Nagorno-Karabakh Decree by Azerbaijan Central Executive Committee of the Soviets," July 7, 1923; "On Abolition of the Nagorno-Karabakh Autonomous Region of the Republic of Azerbaijan," Law of the Republic of Azerbaijan (1991), No.279, www.e-qanun.az/framework/6783).

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17. A/RES/62/243 (14 March 2008).
18. *Declaration Proclaiming the Nagorno-Karabakh Republic*, (September 1991), president.nkr.am/ru/nkr/nkr1.
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20. James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 391.
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24. Supreme Court of Canada, Reference Re. Secession of Quebec, [1998] 2 SCR 217.
25. S/RES/822 (30 April 1993); S/RES/853 (29 July 1993); S/RES/874 (14 October 1993); S/RES/884 (12 November 1993).
26. *Chiragov and Others v. Armenia*, Grand Chamber Judgement App. no. 13216/05, ECHR 186 (2015).
27. *Responsibility of States for Internationally Wrongful Acts,* International Law Commission (United Nations, 2001), art. 8, legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.
28. That Armenian regular armed forces serve in the occupied territories is not only acknowledged by the Armenian government but has been affirmed in such cases as *Muradyan v. Armenia*, ECHR Judgement App. no. 11275/07 (November 24, 2016) and *Zalyan and Others v. Armenia*, ECHR Judgement Apps. nos. 36894/04 and 3521/07. (March 17, 2016).
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30. *Chiragov and Others v. Armenia*, 96.
31. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War," August 12, 1949, *Fourth Geneva* Convention, 75 UNTS 287.
32. *Chiragov and Others v. Armenia*, 97.

33. International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, International Court of Justice, 16, 54 (1971).

34. A/RES/57/298 (6 February 2003).

35. A/RES/48/114 (23 March 1994): "Noting with alarm […] that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million."

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40. *Draft Articles on the Responsibility of International Organizations,* International Law Commission (United Nations, 2011), art. 42.2, legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf.

41. *Namibia* Advisory Opinion, 54-55.

42. *Palestinian Wall* Advisory Opinion, 200.

43. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, International Court of Justice, p. 403 (2010).

44. S/RES/216 (November 12, 1965).

45. S/RES/217 (November 20, 1965).

46. S/RES/541 (November 18, 1983).

47. S/RES/787 (November 16, 1992).

48. A/RES/62/243.

49. *Chiragov and Others v. Armenia*, 148

50. Certain exceptions exist. These include marriage, birth and death certificates, and other civil status registration documents, as per *Namibia* Advisory Opinion, International Court of Justice 56 (1970).

51. A/RES/3314 (14 December 1974).

52. Dapo Akande and Antonios Tzanakopoulos, "The International Court of Justice and the Concept of Aggression," in *The Crime of Aggression: A Commentary*, eds. Claus Kreß and Stefan Barriga (Cambridge: Cambridge University Press, 2016), 214-232.

53. *Nicaragua v. United States*, International Court of Justice, 102-103 (1986).

54. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, International Court of Justice 168, 222-223 (2005).

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