



BAHRUZ BALAYEV

THE RIGHT TO SELF-DETERMINATION IN THE SOUTH CAUCASUS

Nagorno Karabakh in Context



Chapter 2

Identification of Conflicting Claims and Claimants

The Republic of Armenia and the Self-Proclaimed Nagorno Karabakh Republic (NKR)

A majority of Armenians do not live in Armenian Republic itself. Before the dissolution of the USSR, Armenians were considered the biggest minorities of neighboring Georgia and Azerbaijan. Relations between these Armenian minorities and their host nations were uneasy. Because the Armenian identity remains very strong, Armenians in both Azerbaijan and Georgia felt excluded from even the most civic interpretations of these two nations' national conceptions. Unlike the Adjars in Georgia or the Lezgins in Azerbaijan, Armenians were not considered part of the majority nation and do not consider themselves as such.

The historical relationship between Armenians and Georgians has occasionally been characterized by weariness and suspicion but seldom by overt conflict—the brief war in 1918–1919 being the exception. By contrast, Armenians widely equate the Azerbaijanis with Turks,¹ a group widely perceived by Armenians as perpetrators of genocide against them. Armenians and Azerbaijanis fought wars in 1905–06 and 1918–20. As a result of these surviving historical antagonisms and myths, Armenian-Azerbaijani relations are incomparably more complicated than are Georgian-Armenian relations. With their compactly settled Armenian minorities near the present Armenian border, both Javakheti and Nagorno-Karabakh had been bones of contention between the short-lived Armeni-

an Democratic Republic and its neighbors, the Georgian and Azerbaijani Democratic Republics, between 1918 and 1920.²

In order to justify the territorial claims of Armenia towards Azerbaijan, the officials of the former frequently raise a proposition, according to which Nagorno Karabakh has never been within the jurisdiction of independent Azerbaijan. The following arguments underlie this assertion:³

In the period when independent Azerbaijan became part of the Soviet Union, Karabakh had not been within its jurisdiction, the evidence of which was the decision of the League of Nations that refused to recognize Azerbaijan because of its territorial claims to the Armenian populated Eastern Caucasus, including in particular Nagorno Karabakh, as well as the lack of effective state control over its supposed territory and inability to ground the legitimacy of the frontiers of this territory.

The legal cause for secession of Nagorno Karabakh from Azerbaijan in the process of disintegration of the USSR in 1991 and the establishment of the "Republic of Nagorno Karabakh". Thereby the special emphasis is placed on the provisions of the Law of the USSR "On the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR" of 3 April 1990, according to which in case of realization by the Union republic of the secession procedure provided for in this Law autonomous entities would acquire a right to decide independently the question of staying in the USSR or in the seceding republic, as well as to raise the question of their own state—legal status.

On the one hand Armenia supported Karabakh Armenians' secessionist claims and provided military and non-military supplies to them. On the other hand, Armenia claimed that it had no connection with Karabakh Armenians and Armenia did not supply arms to the Karabakh. Armenia denies its direct involvement in the conflict and states that it is only an "interested party".

Armenia also cites refusal by Azerbaijan to regard itself as a successor state to the USSR, and thus the lack of any reason to have pretensions to the frontiers of that period.⁴

It may be true that, in one sense, Karabakh is peripheral to the Armenian nation and its history. In fact, Nakhichevan was always more important to the Armenians historically than Karabakh ever was. Nevertheless, Nagorno Karabakh has attained a place of great importance in today's Armenia. Karabakh is now associated with the central theme in Armenian self-identity alongside with claims of genocide committed by

Ottoman Empire in 1915 against the Armenian nation. As a result, a sense has developed that Karabakh is the "front line" against the Turks, and if they lose this battle for Karabakh, Yerevan—and the Armenian nation itself—is in danger. Whatever Karabakh was historically, it is no longer peripheral to the Armenian psyche. For many Armenians, the victory over Azerbaijani troops in Nagorno Karabakh represents a kind of redemption after a very long period of defeat at the hands of the Turks, and this image has been extremely important in reaffirming their national identity and nationhood, particularly in the early period of independence.⁵

We can see some factors in the statements and laws accepted by the Armenian side which are set against the sovereignty principle. There are two phenomenons: self-secession and irredentism—that contradict this principle and the legality of which is hotly debated. Self-secession occurs when part of an independent state or non-self-governing territory separates itself from the whole in order to become independent state.⁶ Irredentism involves advocating the "acquisition of some region included in another country by reason of cultural, historical, ethnic, and racial or other ties."⁷ Therefore seceding elements seek not to become independent, but to be associated with or integrated into another state, usually because of an ethnic affinity with that state.⁸

From the beginning the idea was the unification of Nagorno Karabakh with the Republic of Armenia. The Armenian side changed its tactics in 1991 claiming self-determination. In fact, the ultimate goal which the Armenian side does not try to hide is to unify Nagorno Karabakh with Armenia. There are lots of facts confirming that irredentism is at the very heart of Armenian claims in this conflict as both Armenians in Karabakh and Armenia associate themselves with the same nation as they are. The appointment in 1993—at the very height of the conflict—of Serj Sarkissyan, previously "Nagorno Karabakh Republic's" (NKR) Defense Minister as Defense Minister of Armenia, the election in March 1998 of Robert Kocharyan who was previously NKR's President as a president of Armenia despite the fact that Kocharyan and Sarkissyan were technically Azerbaijan citizens, the resolution of the Armenian Parliament to annex Nagorno Karabakh in the very beginning of the conflict which has not been rescinded and technically is still on the books, Armenian participation in the conflict and many more arguments allow the conclusion that this conflict is essentially between the principles of territorial integrity and irredentism. Even the official approach of the Armenian government changed, but the resolution on incorporation of Nagor-

no Karabakh still exists. Armenian officials say that this resolution is not valid, but it was not annulled, and officially it is still on the books.

Historically, Armenia has been Russia's closest ally. Armenians have trusted Russia to protect them from Turkey.⁹ For this reason, Armenia has considered NATO and the Transatlantic Relation as a process mastered by their enemy, Turkey. Nevertheless, the current rapprochement between Russia and Turkey has eroded Armenian confidence in Moscow.

Another indicator of this change is the Armenian relationship with NATO. Yerevan has moved from absolute rejection to partial cooperation. Armenia, with Russia and Belarus used to be very reluctant to some NATO initiatives such as the Partnership for Peace (PfP) or Euro-Atlantic Partnership Council (EAPC). On the contrary, today Armenia has a more cooperative attitude towards NATO, signing the Individual Partnership Action Plan¹⁰ (IPAP) or participating at the NATO Cooperative Best Effort in 2003.¹¹ The west is slightly in sympathy with Armenia and even forgives it for cooperation with Iran, taking into consideration its geographical position.

In relation to the self-determination question in Georgia, Armenian President Serj Sarkissyan has stated that Armenia will not formally recognize Abkhazia and South Ossetia as independent states any time soon but reiterated his support for their residents' right to self-determination. He also said that Armenia will not recognize them for the same reason that it did not recognize Kosovo's independence and that Armenia cannot recognize another entity in the same situation as long as it has not recognized the Nagorno-Karabakh Republic. Tigran Balayan, Head of the Ministry of Foreign Affairs Press Office, said, "Armenia has always favored and continues to believe that any attempt for military solution to conflicts is futile. Such conflicts should be resolved on the basis of free expression of the will of the people".¹²

The self-proclaimed Nagorno-Karabakh officials now claim that The Republic of Armenia and the Republic of Azerbaijan cannot agree on the humanitarian and other aspects of the conflict over the territories that lie within the Nagorno Karabakh Republic (in particular, the Republic of Armenia cannot assume responsibility for the settlement of disputes between the Nagorno Karabakh Republic and the Republic of Azerbaijan, including the consequences of the conflict outside of the borders of Armenia).

After Kocharyan became President, Armenia demanded direct negotiation between Azerbaijan and Armenian leaders in Nagorno Karabakh.

The demand was unacceptable for Azerbaijan, since Azerbaijan did not recognize the Nagorno Karabakh administration and since the Azerbaijani population was driven out of Karabakh, the representation of the Azerbaijani population of Nagorno Karabakh would be a problem.

Armenia hasn't recognized the self-proclaimed NKR, and at present, is unlikely to do so. Its official position on status from 1991 to 1998 was that it would agree to whatever was peacefully negotiated by Azerbaijan and Nagorno-Karabakh. After the former Nagorno-Karabakh president, Kocharyan, replaced Ter-Petrosyan in Yerevan, Armenia essentially adopted Nagorno-Karabakh's position, rejecting any status implying subordination to Azerbaijan.¹³

Armenia tried to prove that she is actually not a party to the conflict that she has not participated in the military operations in Karabakh, and that she has suffered for nothing. Thus, Armenia is unlikely to recognize Karabakh, at least, in the present situation, in order not to antagonize the international community, by diminishing her area for maneuvering and risking to be sanctioned and internationally recognized as an explicit aggressor. Recognition would lead not only to disadvantage on the international political stage restricting her freedom of action, but also would significantly hamper both internationally and domestically her attempts to incorporate Karabakh into her own territory. Armenia officially explains the refraining of Armenian Republic from recognition of NKR as the basic compromise.¹⁴

Azerbaijan Republic

Azerbaijan has the image before the world of both a winner and a loser.¹⁵ If we look at the oil issue, Azerbaijan is a winner.¹⁶ It has large reserves of oil, suggesting that it is a soon-to-be prosperous state. However, with regard to the Nagorno Karabakh issue, Azerbaijan is quite emphatically the loser in a number of ways:

A great many lives have been lost.

About 20 percent of the country's territory is occupied, resulting in almost a million refugees living in squalid conditions in other parts of the country.¹⁷

The knowledge that Azerbaijan essentially lost the war has led the Azerbaijanis to be fearful of the possibility that the nation could disinte-

grate, beginning with the loss of Karabakh. Thus Azerbaijanis believe the future of its integrity as a people lies in the favorable resolution of the Nagorno Karabakh dispute. This feeling was intensified by the Azerbaijanis' relatively underdeveloped sense of nationhood in the beginning of the conflict.¹⁸

"The Azerbaijani nationalism is based on a famous poem that defined what an Azerbaijani is using three words: *Turklashtirmek*, *Islamilashtirmek*, *Avrupalashhtirmek*. We can translate these three words as: *Turkify*, *Islamicize*, *Europeanize*."¹⁹ Today there are two important elements in the Azerbaijani nationalism, Turkey and Europe. The most important pro-western party in Azerbaijan, the Musavat, has these two points as guidelines, Turkic-Kemalist heritage²⁰ and European identity. They have subordinated the Islamic element to the Western one because they fear the Iran influence.²¹

Azerbaijan deems its territory to be occupied primarily by Armenia. It considers Armenia the aggressor and rejects negotiation with Nagorno Karabakh Armenians. For Azerbaijan a solution must be realized through the OSCE Minsk Group and Nagorno Karabakh must remain a part of Azerbaijan.

Azerbaijan expressed its readiness to guarantee all the rights and freedoms to ethnic Armenians in Azerbaijan and repeatedly confirmed its position. Azerbaijan is also ready to grant Nagorno Karabakh region a high status of autonomy within the Republic of Azerbaijan.

It was always in favor of an international presence and observation in the conflict area to guarantee peace and stability in the region as long as it would be necessary. Azerbaijan also guarantees ethnic Armenians in Nagorno Karabakh secure passage from the so-called Lachin corridor which Armenia has occupied and intends to annex.

Baku has warned that the diplomatic recognition of NKR by Armenia will constitute a declaration of war.

Azerbaijan Republic found groundless all arguments of Republic of Armenia. According to the Azerbaijani side these arguments were formulated in the background of the strategy and three fundamental principles:

Impossibility of submission of Karabakh to Azerbaijan,
 Impossibility of enclave existence of Nagorno Karabakh, necessity of presence of overland border with Armenia and the international guarantees for creation of conditions of participation of Nagorno Karabakh in global progressive processes,
 Necessity of precise international guarantees of not restarting wars and safety of population of Nagorno Karabakh.²²

Regarding denial of Armenia's direct involvement Azerbaijan brings the facts that outweigh these denials. Many reports on the participation of Armenian regular army forces in the military operations in Karabakh have been made by both Azerbaijani eyewitnesses—IDP's from occupied lands in most cases—and international observers.²³ Also there are arms, war maps and other supplies from regular units of Armenian Army, captured during the fighting in Karabakh; artillery bombardment of various places of Azerbaijan from Armenia (e.g. Kazakh *rayon* [district] in the north-west bordering Georgia, Kelbajar occupied in 1993, Nakhichevan AR); armed assaults to Azerbaijani territories outside Mountainous Karabakh²⁴ (e.g. the same Kazakh, Kelbajar rayons, and the Nakhichevan exclave of Azerbaijan); the hundreds of Azerbaijani civilians and POWs captured in Karabakh and held in the jails in Yerevan, Spitak, Goris, and many other parts of Armenia and many more facts allow considering Armenia's military involvement in the conflict as obvious.

The Azerbaijani side, because of the above mentioned reasons, proclaims Armenia as a belligerent state: if control of territory is gained by military force, the occupation is considered belligerent.²⁵

Georgia

Being the third country in the Transcaucasia Georgia is also affected by the conflict. Mainly it affected the Georgian economy in the first years of the conflict. Georgia contains five compactly settled minorities, three of which were autonomous at independence; it presents an opportunity to compare developments among minorities with different status. Today, Georgia reminds one more than Azerbaijan of separated Germany of the cold war era, where one part of territory declared adherence to western values, another one became under control of the opposite bloc, and all the country became the theatre of a collision of interests.

Among its five compactly settled minorities, the Adjars, South Ossetians, and Abkhazians held autonomous areas since the 1920s, whereas the Armenians and Azerbaijanis never had any territorial autonomy. Between the late Soviet era and the present, armed conflict occurred in Abkhazia and South Ossetia. Adjara has maintained a high level of autonomy, involving an occasionally high level of *political* but not *armed* conflict with the government of Georgia.

Nowadays Georgia has very close political and economic relations with Armenia and Azerbaijan, considered strategic by them. The Geor-

gian-Azerbaijani relations are constantly qualified by leaders of the two states as friendly, based on traditionally friendly feelings of the two people. Also there is little political activity, let alone unrest or separatism, among Azerbaijanis in Georgia, who are concentrated in the southern and southeastern regions of Georgia. The Azerbaijanis live relatively scattered across southern and southeastern Georgia, in many areas cohabiting with Georgians, and occasionally, Armenians or Kurds.

Georgian-Armenian relations will be correctly considered as normal. However taking into consideration that both countries are Christian there are still some misunderstandings between these states because of the Armenian minorities in Georgia. The Armenian minority in the Javakheti region has occasionally expressed dissatisfaction with its situation, but has not seen any major ethnic mobilization. The main concentration of Armenians in Georgia is found in the province of Samtskhe-Javakheti, bordering Armenia. Ethnic Armenians form a compact majority there, in the Akhalkalaki and Ninotsminda districts,²⁶ numbering about 150,000. In many ways, the Javakheti Armenians exhibit numerous similarities with both the South Ossetians and the Armenians of Nagorno-Karabakh in Azerbaijan. The absence of conflict in Javakheti is associated with the lack of a strong and legitimate nationalist leadership, especially in comparison with South Ossetia, which had a comparable conflict potential.

However Georgia has very complicated relations with its northern neighbor the Russian Federation.²⁷ Georgia considers Russia as the main contributor to conflicts and supporter of separatism in its borders.

In relation to the Nagorno-Karabakh conflict, I can say that Georgia cannot support the secessionist claims of Nagorno Karabakh as it has its own problems with Abkhazia and South Ossetia. This will affect Georgia also. It can also become a precedent for Azerbaijani and Armenian minorities living in its territory. But it does not fully support Azerbaijan also because of its old ties with the Armenian people and religious issues (both Georgians and Armenians are Christians).

Another reason that the Nagorno-Karabakh conflict helps Georgia is economic profit. All regional contracts and economic issues pass through Georgia and particularly the contracts between Azerbaijan and Turkey. Another way is through Iran which is not in favor of the West. Thus this is the only way possible and it brings huge profits to the Georgian budget. The Baku-Tbilisi-Ceyhan pipeline project was cheaper to lay through Armenia (geographically) but its transit through Georgia was the only possible way (politically). The Baku-Tbilisi-Kars (Turkey) railroad

leaves Armenia outside of regional projects and will bring more profit to Georgia.²⁸

The United States is helping Georgia to become one of its most important allies in this new space: the Greater Middle East. The United States has two ways of cooperation: the bilateral way and the multilateral one. As far as bilateral cooperation is concerned, Washington started its cooperation with Tbilisi several years ago when the Department of Defense created several military training programs like GTEP. Several thousands of Georgian soldiers have been trained thanks to this initiative. The Soviet Union denied Georgia the possibility of attending its military academies for decades creating an anarchic situation in the country. For this reason the GTEP program is creating a serious and trained army in Georgia.²⁹

In this multilateral way Georgia is working very hard to become a member of NATO. In 1999, Eduard Shevardnadze stated that Georgia wanted to be a member of the Alliance.³⁰ Why does Georgia want to be a member of NATO? Georgia shares all the values of NATO. Georgia is a Christian nation³¹ Georgia believes in democracy and probably it is the only possibility they have to live in peace, dissuading Russia from interfering in their internal affairs.³² Georgia is the Caucasian candidate closest to NATO.³³ Georgia's membership in NATO will inevitably help other Caucasian countries in their path to integration. This would be the case of Azerbaijan but not so much the case of Armenia, because Armenia, at least at the moment, is not interested in being a member of NATO. For this reason Georgia can be considered the most important American bet in the Caucasus.³⁴ Russia publicly warned against Georgia's NATO bid in early 2008.

Regarding Iran, Georgia's ties were warm during Eduard Shevardnadze when he got some deals with Iran in the fields of energy and weapons.³⁵ Nevertheless, Mikhail Saakashvili has reinforced relations with the United States and with Israel³⁶ in order to be stronger *vis à vis* Russia.

Self-proclaimed Republic of Chechnya

The People of Chechnya claim their right for self-determination referring to various facts:

cle 3 of the Geneva Convention of 12 August 1949 (dealing with the victims of the armed conflicts of a non-international character, and Protocol II of the same Convention, which develops and supplements Article 3).⁴³ The Russian Army explained the brutality of this war as counter-terrorism acts. Chechen rebels were called terrorists by Russia. In the Declaration of 11 December 1999, in Helsinki:

The European Council does not question the right of Russia to preserve its territorial integrity nor its right to fight against terrorism. However, the fight against terrorism cannot, under any circumstances, warrant the destruction of cities, nor that they be emptied of their inhabitants, nor that a whole population be considered as terrorist.⁴⁴

The Convention of the Organization of the Islamic Conference (OIC) on Combating International Terrorism of 1999, Article 2(a) stipulates: "Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime."⁴⁵

However an attack during a secessionist struggle by the rebels on the government's military headquarters could fall within the scope of the Terrorist Bombing Convention of 1997.⁴⁶ Unlike in the African, Arab, and Islamic Conventions, there is no protected category of those fighting for self-determination. Article 19 (2): "The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention."⁴⁷ Should an armed conflict satisfy this definition, then secessionist fighters (the organized armed groups) would not fall within the scope of the Terrorist Bombing Convention. In a struggle short of armed conflict, suspected bombers from the secessionist side fall within the scope of the Convention and can be extradited or prosecuted abroad under the 'extradite or prosecute' provisions in the treaty.⁴⁸

Self-proclaimed Republic of South Ossetia and Self-proclaimed Republic of Abkhazia

Currently only four states recognize South Ossetia and Abkhazia as independent states (Russia, Nicaragua, Venezuela, Nauru). However the parent state—Georgia—considers both self-proclaimed states as puppet states of Russia and expects their annexation to it soon.

Even though both self-proclaimed states are trying to preserve their independence it is a fact of the day that they cannot exist without Russia's helping hand. This in its place means complete and obvious intrusion of one state—Russia—into the territorial integrity of another—Georgia. Secretary Rice noted, after the signing of the cease-fire in Georgia, that, "it's quite clear that Russia has become a party to this conflict."⁴⁹

In its acts Russia first sought to justify its intervention based on the concept of self-defense, as well as more controversial arguments based on the defense of nationals in other countries and the responsibility to protect. By referring to the right of self-defense, Russia justified its actions on one of the cornerstones of the UN system.⁵⁰ It also staked out a case for South Ossetia and Abkhazia's secessions based on its interpretation of the interrelations of sovereignty and the "will of the people."⁵¹ As Lavrov wrote: "The possession of sovereignty presupposes the duty of a state to refrain from any forcible action which deprives people living on its territory of their right to self-determination, freedom, and independence. By giving an order to bomb Tskhinval and planning to use force against Abkhazia, the Saakashvili regime trampled underfoot this norm of international law, enshrined in the 1970 UN Declaration, and itself undermined the territorial integrity of its state."⁵²

A secondary argument was that Russia was acting as a guarantor of peace in the region and had intervened to protect both South Ossetian civilians from the Georgian military and ethnic Georgians from South Ossetian reprisals.

At times, Russian officials also made comments justifying the intervention in order to protect Russian citizens in South Ossetia. Russia was mindful that there were twenty million ethnic Russians who, after the dissolution of the USSR, suddenly found themselves to be living in new states throughout the region, usually as an ethnic minority.⁵³ However it was later reported that before the 2008 war Russia was handing out Russian citizenship to everybody in these regions. Foreign Minister Lavrov wrote:

We cannot understand why those who are talking about the responsibility to protect and security of the person at every turn, forgot it when it came to the part of the former Soviet space where the authorities began to kill innocent people, appealing to sovereignty and territorial integrity. For us, the issue in South Ossetia was to protect our citizens directly on the borders of Russia, not in the Falkland Islands."⁵⁴

In the first paragraph of his January 16, 2009 address looking back on 2008, Russian Foreign Minister Sergey Lavrov said:

The year past was very complicated, at times dramatic, packed with major contradictory events which most gravely impacted the situation . . . [including] the unilateral—contrary to international law—recognition of Kosovo's independence; and, of course, Georgia's aggression against South Ossetia, which did not achieve its goals thanks only to the actions of Russia, which fully in line with our international obligations suppressed this illegal move."⁵⁵

Russian President Medvedev stated that "western countries rushed to recognize Kosovo's illegal declaration of independence from Serbia. We argued consistently that it would be impossible, after that, to tell the Abkhazians and Ossetians (and dozens of other groups around the world) that what was good for the Kosovo Albanians was not good for them. In international relations, you cannot have one rule for some and another rule for others."⁵⁶

In September 2009, Russian Permanent Representative to the United Nations, Vitaly Churkin when asked by journalists why Abkhazia and South Ossetia should be internationally recognized and Kosovo not, said that "the strongest argument is the fact that at the time when Kosovo's authorities made the Unilateral Declaration of Independence, nobody was threatening them or putting them in a position where they had to secede. On the contrary, Belgrade even went so far as to refrain from exerting any military or economic pressure on Pristina."⁵⁷

Russian Federation

Russia repeatedly declared that Transcaucasia has the vital strategic value for it, and will disagree with an establishment or strengthening of influence of any other country in this region. It has military bases in Arme-

nia and till recently in Georgia, and has concluded the Treaty on Friendship, Cooperation, and Mutual Aid with Armenia in 1997.⁵⁸ Military bases and the conflicts are the certain levers in the hands of Russia for maintenance of their presence and strategic interests in Transcaucasia.

For Russia, South Ossetia is of strategic importance because it is on the border of its volatile Northern Caucasus region. A senior Russian diplomat in Georgia told the Crisis Group, "North Ossetia was an island of stability. It was important for us to keep it that way. . . . Events in South Ossetia destabilized this, and this is why we reacted so strongly."⁵⁹ As the only Christian people in the North Caucasus, Russia has traditionally relied on the Ossetians as trustworthy allies.⁶⁰ Outside analysts have pointed out that the Georgian-South Ossetian war helped precipitate the 1992 outbreak of fighting between Ossetians and Ingush in the Russian Federation.⁶¹

In considering the present situation, there are four areas of particular interest in Transcaucasia: (a) the use of energy prices as a carrot or a stick; (b) the increased use of tariff barriers against Georgian goods; (c) economic assistance to the NKR, Abkhazia, South Ossetia; and (d) the shared economic interests of Russian and NKR, Abkhazian, Ossetian elites.

In May 1992, The Tashkent Collective Security Treaty was signed by Russia, Armenia, Uzbekistan, Kazakhstan, Kyrgyzstan, and Tajikistan. According to article 4 of the Treaty: "*If one of the participating states is subjected to aggression by any state or group of states, this will be perceived as aggression against all participating states to the Treaty*".⁶² Since Russia and Armenia were signatories to the treaty, Azerbaijan's or Turkey's attack on Armenia would be treated as an attack on Russia.

The Russians further antagonized the Azerbaijanis by sending a member of the Russian Parliament to Khankendi (Stepanakert) in occupied Nagorno Karabakh.⁶³

Russia came up in 1994 with the idea of a 'near abroad', which embraced all the former republics of the Soviet Union, and moreover, declared a kind of 'Russian Monroe Doctrine', claiming a right to intervene in this 'near abroad' whenever peace in the area and the interests of Russian minorities were at stake. The United States "had little choice but to tolerate the claim in as much as Clinton had asserted a similar right of intervention in, for instance, Haiti."⁶⁴

Russia is using the Armenia-Azerbaijan conflict as part of its long-time policy of "divide and conquer."⁶⁵ Russia operates two military bases

in Armenia, and the military alliance continues to expand. In fact, that relationship proved something of an embarrassment to the two countries when, in February 1997, it was revealed that the Russian Defense Ministry had supplied a considerable amount of military hardware to Armenia between 1994 and 1996, apparently in violation of the Conventional Armed Forces in Europe (CFE) Treaty. Since 1993, Armenia has received \$1 billion in arms shipments from Russia. These arms, including the most modern Russian tanks, armored personnel carriers, SCUD missiles and tons of ammunition, were shipped through Armenia to the site of the conflict inside Azerbaijan.⁶⁶

The *Washington Times* article suggested that Russia's military support for Armenia was aimed to force "pro-Western Azerbaijan and its strategic oil reserves into Russia's orbit"⁶⁷

Thus, as a result of continued illegal military transfers to Armenia, Russia violates Conventional Forces in Europe (CFE) Treaty.⁶⁸ Russia managed to conceal significant amounts of military equipment on the occupied territories of Azerbaijan, which, being under Armenian occupation, are clearly not subject to CFE inspections. It is also breached United Nations Security Council⁶⁹ and General Assembly resolutions⁷⁰, documents of the Commonwealth of the Independent States.⁷¹

Besides violating international norms, officials, who have been implementing the illegal supplies of arms and equipment to Armenia, violated the laws of the Russian Federation.⁷²

Azerbaijan, on the other hand, has steadfastly refused to allow Russia to operate any military bases on its territory, despite considerable Russian pressure. This combination of relationships has led some to question Russia's role as an objective player in this dispute.

It is a notable fact that Russia is particularly important, since it is the only regional state which can influence Armenia. Hardliners in Armenia want to continue the state of war and they consider Russia their ally in this policy. They rely on Russia's aim to keep western influence out of the Caucasus. Russia's pressure on the Armenian side for the settlement will force Armenia to make concession. Russia's position became more constructive after Azerbaijan started exporting its oil to West independently. It became clear when Russia supported the Key West talks (April 2001).

There are outside strategic concerns behind the Nagorno Karabakh, Abkhazian, and South Ossetian conflicts. In fact, Moscow has some clear essential aims in helping to create and keep alive these and other conflicts in the former Soviet Union, such as those in the Transnistria region

of Moldova, the Crimea in Ukraine, Ossetia and Abkhazia in Georgia. After fomenting such conflicts, Moscow is able to step in as a "guarantor of peace and stability" and thereby maintain its influence and control. Some observers contend that the Minsk Group⁷³ process has been flawed from the start because Russia was one of co-chairs. Russia, with its strategic (and ultimately imperial) aims, continues to be a negative force behind this conflict. In view of its explicit military support to Armenia, Russia cannot truly be seen as a disinterested observer to the conflict, interested only in finding a peaceful resolution.⁷⁴ In this case we can say that Russia is a conflict entrepreneur.⁷⁵

Besides the use of the army to either hamper the Azerbaijanis and Georgians or assist NKR, Abkhazia, and South Ossetia, the second main issue is that Russia has also used economic pressure and economic assistance as a carrot and stick. Economic pressure is generally not barred by international law.⁷⁶ However, such pressure on a state or assistance to separatists may make the third-party state liable under the law of state responsibility if its pressure would either frustrate Azerbaijan and Georgia's sovereign privileges or would breach one of the third-party state's pre-existing commitments to Azerbaijan and Georgia.

Georgia for a long time struggled for Russian forces to leave its territory. Nicholas Burns, the Department of State's Undersecretary for Political Affairs explained in December 2005 the U.S.'s decision to oppose a new CFE treaty while Russia maintained forces in Moldova and Georgia: A basic principle of the CFE (Conventional Forces Europe) Treaty is the right of sovereign states to decide whether to allow the stationing of foreign forces on their territory. . . . Moldova and Georgia have made their choice. The forces should depart and all OSCE member-states should respect that choice.⁷⁷

By this point the ongoing presence of the troops played a twofold purpose for the Russian Federation: (a) they were a bargaining chip that Russia used to extract concessions from the Georgians and (b) they protected the Abkhazia and South Ossetia.

The Russians have used issue-linkage as a negotiating style elsewhere in its periphery; for example Russia had argued that withdrawal of its troops from Georgia was contingent on the resolution of the South Ossetian separatist dispute.⁷⁸

Russia is a structural replica of the USSR itself. Like the Soviet Union, the RF is a federation in name only. In reality it is a centrally controlled party dictatorship, where the center's control had been in a state of decay since at least the 1970s.

According to the Russians, Chechnya became a subject of the Russian Federation at the end of 1991, when it was recognized as the successor state to the USSR. The Russian Federation: The USSR in the United Nations was succeeded from 24 December 1991 by the Russian Federation. From this date, the Russian Federation maintains full responsibility for the rights and obligations of the USSR under the Charter of the United Nations and multilateral treaties deposited with the Secretary General.

The Russian Federation claims that the Chechen claims on State sovereignty are invalid on the following grounds; According to the Article 15 of the Constitution of the Russian Federation:

(1) The constitution of the Russian federation has supreme legal force and is direct-acting and applies throughout the territory of the Russian Federation. *Laws and other legal enactments adopted in the Russian Federation must not contradict the constitution of the Russian Federation.*

(2) Bodies of state power, *bodies of local self-government*, officials, citizens and associations thereof are *obliged to observe* the constitution of the Russian Federation and the laws (emphasis added).

It follows that the 'Declaration on the State Sovereignty of the Chechen-Ingushi Republic' of 27 November 1990 has lost its legal force; Article 5(3) stipulates:

The federal structure of the Russian Federation is based on its state integrity, the unity of the system of state power, the delimitation of areas of responsibility and powers between bodies of state power of the Russian Federation and bodies of state power of the components of the Russian Federation, and the equality and self-determination of the peoples in the Russian Federation (emphasis added).

Coupled with Article 66(5), stating that the status of the subject of the federation can only be changed with a mutual agreement between the Russian Federation and the subject in question, and Article 80, authorizing the President to act as a 'guarantor of the Constitution', it becomes evident that all the proposed talks with the 'illegitimate' power structures of Chechnya are anti-constitutional and unlawful. Moreover the crisis should be regarded as a matter belonging to domestic jurisdiction.

Notwithstanding the fact that *the Tatarstan Case*⁷⁹ was adjudicated by the Constitutional Court on the basis of the previous Constitution, their case can be invoked to address present claims to external self-determination. The Court rejected the notion that the claim to self-

determination was legal and a legitimate ground for the act of unilateral secession by Chechnya. Moreover, the Court's decision was substantiated by numerous references to all the major international human rights instruments and standards. The Court has also dismissed the results of the popular referendum (with 61.4 per cent of the voters approving the proposed declaration on independence) and declared the very act 'unconstitutional'.

Today's Russia is trying to keep its federation subjects together. The Chechen case was an exception and also an example for those who wanted to secede. In March 1992, President Boris Yeltsin induced eighteen of the then twenty republics to sign the Russian Federation Treaty, which gave republics the right of 'independent participation' in foreign relations and economic affairs; Moscow would continue to handle issues relating to national defense, the budget, and the money supply. Tatarstan and Checheno-Ingushetia were the only two republics that refused to sign the Federation treaty; Tatarstan later, in February 1994, concluded a separate bilateral treaty with Moscow.

In a recent major statement on foreign policy, President Medvedev set out the guiding principles on foreign policy. This has come to be called the "Medvedev Doctrine." The first principle states: "Russia recognizes the primacy of the fundamental principles of international law, which define the relations between civilized peoples. We will build our relations with other countries within the framework of these principles and this concept of international law."⁸⁰

What should be kept in mind is that the Constitution of the Russian Federation, adopted by referendum on 12 December 1993, provides in Article 15, paragraph 4, that principles and rules of international law are not only part of national legislation but have precedence over it. Theoretically this means that the international community can exert both political and legal leverage to effectuate Russia's compliance with international human rights standards. Article 15(4): "*Generally recognized principles and norms of international law and international treaties of the Russian Federation are a constituent part of its legal system. If an international treaty of the Russian Federation establishes rules other than those stipulated by the law, the rules of the international treaty apply.*"

Now consider what Russian Foreign Minister Lavrov wrote in early 2009: "We will never agree to legal nihilism in world affairs, with the attitude towards international law as a 'draft pole' and as the 'fate of the weak' or with any attempts to 'cut corners' to the detriment of interna-

tional legality, which is the embodiment of the moral principle in relations among states. Indeed, international law is our ideology in international affairs." To use Fyodor Tyutchev's phrase, we want "once and for all to establish the triumph of law, of historical legality over the revolutionary mode of action."⁸¹

In South Ossetia Russia has used the language of international law to play to the audiences with which it is concerned: the public and leaders of the former Soviet states. The paradoxical result is that these leaders and public are now cheering on an interpretation of international law that actually puts them at greater risk of unilateral Russian intervention. But, rather than a threat, they see it as upholding international law and confronting the crony regime of the U.S.—a deft diplomatic move by Russia.

On the other hand even though Russian citizens live both in Abkhazia and South Ossetia, they are not ethnically Russians that the average Russian will go and fight for voluntarily and risk his life. Basically we see the strategic interest of the Russian state instead of Russian nationalism in the classical meaning of this word. However the Russian government says it is guaranteeing security at the request of South Ossetia and Abkhazia, which do not trust international observers.

Since August 2008, Russia has consolidated its position in Abkhazia and South Ossetia in the face of relatively little international criticism. It has not returned its military presence to pre-war levels and locations. It has prevented the Organization for Security and Cooperation in Europe (OSCE) from continuing pre-war activities in South Ossetia, including monitoring and implementation of a rehabilitation and reconstruction program. It has vetoed the UN mission that has been working in Abkhazia and blocked a renewed mandate for the OSCE mission to Georgia that has been active in South Ossetia.

On the international level, Russia has a right to veto in the UN Security Council. The West still does not rely on Russia even after the Cold War. There is still no harmony between Russia and the West. This contradiction between the West and Russia negatively influences solutions to conflicts in the South Caucasus. Criticism by Russia of NATO's expansion to the East, the operation of the bloc in the Balkans, the wars in Iraq, the Missile Defense Systems in Czech Republic and Poland, the positions of the U.S. and the EU in Kosovo, energy safety and diversification of transportation roads around Russia—all this deepened conflicts between post-Soviet Russia and West, added mistrust.

However Russia became active in NK negotiations in recent years. The new level of the negotiations between Azerbaijan and Armenian Presidents started after the signing of 2008 Maindorf declaration initiated by Moscow. For the following three years close to 10 meetings were held with direct participation of RF President Dmitry Medvedev and conflicting sides. Various options of NK conflict resolution were discussed in lieu of Madrid Principles that are based on the provisions of Helsinki Final Act of 1975.

The United States of America

The United States' policy towards Azerbaijan, Georgia, and Armenia affects regional politics. The region is important for the U.S. post-Cold War foreign policy due to its rich energy resources. The main U.S. objective is to guarantee the safe transportation of the energy resources to the world market and a regional conflict like the Nagorno Karabakh conflict threatened regional stability. Double standards in U.S. policy towards the South Caucasus are due to the differences between the Congress and the State Department.

In October 1992, the Congress passed the Freedom Support Act (Section 907), under the influence of the Armenian lobby, which prevented the U.S. government from sending humanitarian assistance to Azerbaijan. Section 907 blamed Azerbaijan for blockading the Armenian territory and offensive use of force against Armenia and Nagorno Karabakh. The U.S. Congress decision did not reflect the reality. Communication and commercial infrastructure including rail lines, roads, and pipelines broke down due to the conflict. Contrary to the claim of Azerbaijan's blockade of Armenia, 130 kilometers of the railway line, which comes from Azerbaijan and goes to Armenia passing through the Iranian border is under the occupation of Armenia.⁸² Azerbaijan has no access to the territories under Armenian occupation. The Congress' allegation of offensive use of force is also quite of odds with reality, since one-fifth of Azerbaijan's territory is under the Armenian occupation.⁸³ Despite the fact that the Congress passed the Freedom Support Act, the State Department tried to pursue a more balanced policy as, with its rich oil resources, Azerbaijan is the key state for the U.S. policy in the Caucasus.⁸⁴ In 1994, the Clinton administration proposed a bill to lift the Freedom Support Act's restriction on Azerbaijan. The bill faced strong opposition from pro-Armenian representatives and, interestingly, they demanded the

"Bahruz Balayev has undertaken to analyze and find solutions to the problems in the wake of the breakup of the USSR: the status of Nagorno Karabakh, a self-proclaimed (but unrecognized) Armenian enclave state within the former state, and former Soviet republic, of Azerbaijan. Usefully, he places the determination in the broader historical and political context of the South Caucasus (Caucasus). In the process, a fascinating picture emerges with different criteria for lawfulness of such endeavors based on the interests of the region.

—**Siegfried Wiessner**, director, Graduate Program in International Human Rights, St. Thomas University

The Right to Self-Determination in the South Caucasus: Nagorno Karabakh in Context, by Bahruz Balayev, explores the relationship in international law between the concept of self-determination and territorial integrity in the context of the Caucasus region. This study brings together the various self-determination movements of the Caucasus (Nagorno Karabakh, South Ossetia, Adjara, Abkhazia, and Chechnya) and provides a comparative analysis.

The August 2008 war in Georgia and Kosovo's proclamation of independence renewed the discussion over the right to self-determination in international law: Has the right to self-determination evolved since the solutions to the conflicts over self-determination are now determined in a new manner, or should it? Will the question of self-determination in different regions of the world be a spark for a new cold war? Unilateral declarations and the recognition of independence of South Ossetia, Abkhazia, and Kosovo could be the first sparks. These are the pressing questions because there are many self-determination and secession movements all over the world. *The Right to Self-Determination in the South Caucasus* is a unique tool for scholars, researchers, and the public in understanding South Caucasus regional conflicts from the New Haven School perspective.

BAHRUZ BALAYEV holds a JSD in Intercultural Human Rights from St. Thomas University School of Law.



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