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Cooperation between the United Nations and regional and other organizations: cooperation between the United Nations and the Organization for Security and Cooperation in Europe

Right of peoples to self-determination

Security Council
Fifty-ninth year

Letter dated 16 March 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to submit herewith for your consideration the memorandum on the legal aspects of the conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan (see annex).

I should be grateful if the present letter and its annex were distributed as a document of the General Assembly, under items 25, 58 (n) and 107 of the preliminary list of items to be included in the provisional agenda of its fifty-ninth session, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

* A/59/50 and Corr.1.

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Annex to the letter dated 16 March 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Russian]

Legal aspects of the conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan

It can be stated without exaggeration that the conflict in Nagorny Karabakh, which began at the end of the 1980s, has become one of the cruellest conflicts of the late twentieth century in terms of its consequences and duration. The results of this war are well known — tens of thousands of dead and injured, more than a million refugees and displaced persons, several thousand missing. Against a background of failed attempts to find, with the help of mediatory efforts by the international community, a formula for the settlement of the conflict that satisfies both sides, its main military outcome is the occupation of part of the territory of Azerbaijan and the discussions, continuing with varying levels of intensity, concerning the possible status of Nagorny Karabakh.

However, the causes of the conflict, which have their roots in the distant past, are far deeper and more complex than they may appear at first glance. Careful study of the sources of the confrontation will reveal, first and foremost, that the positions of the sides on virtually all the problems that they have in common are diametrically opposed. In particular, each side regards the other as the newcomer in Nagorny Karabakh and considers this territory to have belonged to it since olden days.

Nevertheless, the present analysis deliberately sidesteps many historical aspects of the confrontation, leaving this avenue of inquiry to scholars and historians. While it opts for a legal approach to the problem, it also takes account of the incontrovertible fact that even an unambiguous answer to the question of who first entered the now disputed territory could not seriously affect its legal status. Otherwise, it would be necessary endlessly to redraw existing borders throughout the world. We also wish to emphasize that this approach does not in any way signify that the arguments of one side are weak, nor is it aimed at avoiding future discussion of this and other issues.

There have been frequent attempts to present the conflict in question as the manifestation of contradictions between two principles of international law, namely, the principle of the territorial integrity of States and that of the right of peoples to self-determination. In fact, as the final outcome of the analysis shows, in the case under consideration, the opposition between these principles is artificial. This conclusion is based, first and foremost, on the rules of international law currently in force and the decisions of international organizations with respect to the conflict.

The main legal arguments of the Armenian side, which contests the status of Nagorny Karabakh as a territory of Azerbaijan, are based on assertions concerning the illegality of its transfer to Azerbaijan by Stalin in 1921, alleged discrimination against the Armenian population of Nagorny Karabakh, and the resultant legal grounds for the realization by it of its right of self-determination through secession. Obviously, this approach has two important aims: first, to arouse the sympathy of the international community by citing the “arbitrary decision of an unconstitutional and unauthorized party organ, the Caucasian Bureau of the Central Committee of the

Russian Communist Party (Bolsheviks)";[1] and, second, to secure, initially and as a minimum, understanding and tolerance towards de facto secession of Nagorny Karabakh from Azerbaijan, based on the supposed broad moral support of the public.

As is generally known, the independent Azerbaijani Democratic Republic ceased to exist on 28 April 1920, when, following its invasion by the Bolshevik Eleventh Red Army, the Azerbaijan Soviet Socialist Republic was proclaimed; it was subsequently incorporated in the Union of Soviet Socialist Republics (USSR). Owing to the territorial claims of the Armenian SSR with respect to the Azerbaijan SSR, the Caucasian Bureau did indeed take up the problem and, at a meeting held on 5 July 1921, decided to leave Nagorny Karabakh within the Azerbaijan SSR. At the same time, the Azerbaijan SSR proposed that Nagorny Karabakh should be granted broad autonomy. The following quotation from the operative part of the Caucasian Bureau decision demonstrates that the Bureau decided to leave Nagorny Karabakh within the Azerbaijan SSR, not to transfer it, as the Armenian side insists: "Proceeding from the need for national peace between Muslims and Armenians, the economic ties between upper and lower Karabakh and its constant ties with Azerbaijan, Nagorny Karabakh shall remain within the Azerbaijan SSR, while being granted broad regional autonomy ...[2]

The Decree on the formation of the autonomous region of Nagorny Karabakh was issued on 7 July 1923. It should be noted that the Azeri population living in the territory of Armenia at that time, which was no smaller in number and was compactly settled, was not granted similar rights. According to statistics, in 1918 the number of Azeris in the territory of what is now Armenia was 575,000. However, during the years of Soviet rule in Armenia, the ratio of Armenians to Azeris changed every year at the expense of the latter. A single-minded policy was pursued to that end until the last Azeri had left the territory of Armenia.

In his report entitled "Profiles in displacement: Azerbaijan", the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, gives the following assessment of the situation with respect to the dispute between the sides over Nagorny Karabakh: "Nagorny Karabakh is a region to which both Azerbaijan and Armenia claim historical ties stretching back centuries. However, the roots of the present conflict can be traced to the early twentieth century. After the Russian revolution, Azerbaijan and Armenia fought as newly independent States over Nagorny Karabakh. The Paris Peace Conference of 1919 recognized Azerbaijan's claim to the territory. After Azerbaijan and Armenia were incorporated in the Soviet Union, this territorial arrangement for Nagorny Karabakh was retained, while Armenia was awarded the district of Zangezur which had connected Azerbaijan to its westernmost region of Nakhichevan."[3]

It is important to note that the Armenian side's territorial claims were not limited to Nagorny Karabakh. Thus, in addition to Zangezur, as a result of back-room deal making in various years of the Soviet Union's existence, Dilizhan, Geicha, several villages in Nakhichevan and lands in the Kedabek and Kazakh districts of Azerbaijan were "peacefully" transferred to the Armenian SSR.

The allegations of discrimination against the Armenian population of Nagorny Karabakh do not stand up to scrutiny.

In accordance with article 86 of the Constitution of the USSR, an autonomous region was part of a Union Republic or Territory. Laws concerning the autonomous region were adopted by the Supreme Soviet of the Union Republic following their submission by the Soviet of People's Deputies of the autonomous region.[4]

Altogether there were eight autonomous regions in the USSR; they are listed in article 87 of the Constitution. Under the provisions of this article, the Nagorny Karabakh Autonomous Region was part of the Azerbaijan SSR.[5]

In accordance with the Constitution of the Azerbaijan SSR, the legal status of the Nagorny Karabakh Autonomous Region was governed by the Act "On the Nagorny Karabakh Autonomous Region", which was adopted by the Supreme Soviet of the Azerbaijan SSR following its submission by the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region. As a national territorial unit, the region enjoyed a form of administrative autonomy and, accordingly, had a number of rights, which, in practice, ensured that its population's specific needs were met. Under the Constitution of the former USSR (article 110 of the Constitution of the USSR and article 4 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region" — author), the region was represented by five deputies in the Council of Nationalities of the Supreme Soviet of the USSR. It was represented by 12 deputies in the Supreme Soviet of the Azerbaijan SSR.[6]

Furthermore, under article 113 of the Constitution of the Azerbaijan SSR and article 6 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", one of the vice-presidents of the Presidium of the Supreme Soviet of the Azerbaijan SSR was elected from the Nagorny Karabakh Autonomous Region.

The Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region — the government authority in the region — had a wide range of powers. It decided all local issues based on the interests of citizens living in the region and with reference to its national and other specific features. The Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region participated in the discussion of issues relating to the Republic as a whole and made suggestions on them, implemented the decisions of higher government authorities and guided the work of subordinate Soviets. Armenian was used in the work of all government, administrative and judicial bodies and the Procurator's Office, as well as in education, reflecting the language requirements of the majority of the region's population.[7]

In the period 1971 to 1985, 483 million roubles of capital investment were channelled into the development of the Nagorny Karabakh Autonomous Region, 2.8 times more than in the previous 15-year period. Over the preceding 20 years, the volume of per capita capital investment had increased nearly fourfold (226 roubles in 1981-1985 against 59 roubles in 1961-1965). Over the preceding 15 years, per capita housing construction had amounted to 3.64 square metres in Azerbaijan as a whole, whereas for the Nagorny Karabakh Autonomous Region the figure was 4.76 square metres. The number of hospital beds per 10,000 inhabitants was 15 per cent higher than in the rest of the Republic.[8]

Although the Nagorny Karabakh Autonomous Region ranked relatively high among the Republic's regions in terms of the number of pre-school places available, in the period 1971 to 1985 the increase in the number of places in children's institutions per 10,000 inhabitants in the region was 1.4 times the average for the

Republic. The same is true of the increase in the number of places per 10,000 inhabitants in schools providing general education, the Nagorny Karabakh Autonomous Region being ahead by a factor of 1.6.[9]

The fact that provision of housing, goods and services was superior to that in the Republic as a whole was typical of the social and cultural development of the region. Per capita living space in apartment buildings in the region was almost one third greater than the average for the Republic, while rural dwellers had 1.5 times more living space than peasants in the Republic as a whole. The population of the region had access to greater numbers of medium-level medical personnel (1.3 times more) and hospital beds (3 per cent more). There was a more extensive network of institutions providing cultural and information services (more than three times the number of cinemas and clubs and twice as many libraries), and there were 1.6 times more books and magazines per 100 readers. In schools, 7.7 per cent of children in the region attended the second and third sessions, compared with 25 per cent in the Republic as a whole; 37 per cent of children had places in permanent pre-school establishments (against 20 per cent in the Republic).[10]

In fact, the Nagorny Karabakh Autonomous Region was developing more rapidly than Azerbaijan as a whole. For example, whereas industrial output in the Republic increased threefold between 1970 and 1986, in the Nagorny Karabakh Autonomous Region it grew by a factor of 3.3 (the rate of growth there was 8.3 per cent higher). In 1986, 3.1 times more fixed capital assets were brought into use in the region than in 1970; in the Republic the figure was 2.5. As far as basic social development indicators were concerned, the Nagorny Karabakh Autonomous Region exceeded the average Republic-wide standard of living indicators in the Azerbaijan SSR. There was significant progress in the development of cultural establishments, both in the region and throughout the Republic.[11]

Five independent periodicals appeared in the Armenian language. Unlike other administrative territorial units of Azerbaijan located far from the capital of the Republic in mountainous areas, the region was equipped with technical infrastructure for receiving television and radio programmes.

As has been seen above, and as the existence and development of the Nagorny Karabakh Autonomous Region within Azerbaijan confirms, the form of autonomy that had evolved fully reflected the specific economic, social, cultural and national characteristics of the population and the way of life in the autonomous region.[12]

The present conflict between Armenia and Azerbaijan may be regarded as having begun on 20 February 1988, when the regional Soviet of the Nagorny Karabakh Autonomous Region adopted a decision to petition to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR for the transfer of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to the Armenian SSR.

The procedure for changing the borders of Union Republics was stipulated in the constitutions of the USSR and the Union Republics. Thus, under article 78 of the Constitution of the USSR, the territory of a Union Republic could not be changed without its consent. The borders between Union Republics could be changed by mutual agreement between the Republics concerned, subject to approval by the USSR.[13] This provision of the country's Basic Law was also incorporated in the Constitutions of the Azerbaijan SSR and the Armenian SSR.

In response to the decision of the regional Soviet of the Nagorny Karabakh Autonomous Region of 20 February 1988, on 15 June 1988 the Supreme Soviet of the Armenian SSR adopted a resolution agreeing to the incorporation of the Nagorny Karabakh Autonomous Region in the Armenian SSR and requesting the Supreme Soviet of the USSR to consider and approve the transfer of the region from the Azerbaijan SSR to the Armenian SSR.

In resolutions adopted on 13 and 17 June 1988, respectively, the Supreme Soviet of the Azerbaijan SSR and its Presidium, in turn, declared the transfer of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to the Armenian SSR to be unacceptable and impossible, based on article 78 of the Constitution of the USSR and article 70 of the Constitution of the Azerbaijan SSR.

It would seem, based on the provisions of the Constitution of the USSR and the Basic Laws of the Azerbaijan SSR and the Armenian SSR then in force, that the issue could have been considered closed, particularly since there were no serious grounds even for discussing the possibility of changing the borders between the Union Republics.

However, on 12 July 1988, the regional Soviet of the Nagorny Karabakh Autonomous Region adopted an illegal decision on the secession of the region from the Azerbaijan SSR. In addition to violating the relevant provisions of the Constitution of the USSR and the Basic Law of the Azerbaijan SSR, this decision also ran counter to article 42 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", under which the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region was able to adopt decisions within the limits of the powers granted to it by the legislation of the USSR and the Azerbaijan SSR. Furthermore, the article in question provided that the Presidium of the Supreme Soviet of the Azerbaijan SSR could annul decisions of regional Soviets if they were not in conformity with the law.[14]

In response, on 13 July 1988 the Presidium of the Supreme Soviet of the Azerbaijan SSR, guided by article 87 of the Constitution of the USSR, article 114 of the Constitution of the Azerbaijan SSR and article 42 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", adopted a resolution declaring the decision of the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region of 12 July 1988 on the unilateral secession of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to be illegal and without effect.

The so-called "Congress of plenipotentiary representatives of the population of the Nagorny Karabakh Autonomous Region", held on 16 August 1989, declared unambiguously that it refused to recognize the status of Nagorny Karabakh as an autonomous region of the Azerbaijan SSR. At the same time, the "Congress" proclaimed the region an "independent union territory", in which the Constitution of the Azerbaijan SSR and other laws of the Republic no longer applied. The "Congress" established a "national soviet", which was declared the sole people's authority in the Nagorny Karabakh Autonomous Region.

As was to be expected, the reaction of the Azerbaijani side was not slow in coming. Thus, on 27 August 1989, the Presidium of the Supreme Soviet of the Azerbaijan SSR adopted a resolution declaring the decision of the so-called

"Congress of plenipotentiary representatives of the population of the Nagorny Karabakh Autonomous Region" to be illegal.

Of course, the Armenian SSR also participated actively in the attempts to formalize through legislation the seizure of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR. In addition to the aforementioned resolution of the Supreme Soviet of the Armenian SSR of 20 February 1988, the highest legislative body of this Union Republic adopted many other anti-constitutional decisions, the best known of which is the resolution on the reunification of the Armenian SSR and Nagorny Karabakh, adopted on 1 December 1989. In this resolution, the Presidium of the Supreme Soviet of the Armenian SSR, the Council of Ministers of the Armenian SSR and the Presidium of the National Soviet of the Nagorny Karabakh Autonomous Region were instructed to take all measures flowing from the resolution to realize the practical merging of the political, economic and cultural structures of the Armenian SSR and Nagorny Karabakh into a single national and political system.

As has already been noted, one of the Armenian side's key arguments for the legality of the demand by Nagorny Karabakh to secede is the region's alleged illegal transfer to Azerbaijan by the decision of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks) of 5 July 1921. It was for precisely this reason that on 13 February 1990 the Supreme Soviet of the Armenian SSR adopted a resolution declaring that decision to be illegal.

Against the background of these and many other decisions of the Armenian Parliament on Nagorny Karabakh, which openly attempted to legalize the unilateral seizure of part of the territory of one Union Republic for the benefit of another and incite the creation of an unconstitutional entity in the territory of another State, the statements now being made by Erevan about the non-involvement of Armenia in the hostilities in the territory of Azerbaijan may cause surprise, to say the least.

Obviously, before Azerbaijan and Armenia gained independence and before the conflict in Nagorny Karabakh was taken up by international organizations, the USSR central authorities played the role of arbitrator. On several occasions, the highest legislative body of the former Soviet Union, the Supreme Soviet, considered and adopted decisions on the situation with respect to the crisis in Nagorny Karabakh. In all of these decisions, including the resolutions of 10 January and 3 March 1990, the Supreme Soviet of the USSR confirmed the sovereignty and territorial integrity of the Azerbaijan SSR and declared the aforementioned decision of the Supreme Soviet of the Armenian SSR to be unconstitutional. These decisions by the highest legislative body of the USSR may be regarded as the beginning of the subsequent complete shunning of Armenia's position on the question of Nagorny Karabakh in the international arena.

The next attempt to legalize the secession of Nagorny Karabakh was made on 2 September 1991, when the "Republic of Nagorny Karabakh" was proclaimed. In the Armenian side's opinion, the basis for the legality of this step is the Act of the former USSR of 3 April 1990 "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR", which gave autonomous entities and compactly settled nationalities the right to decide for themselves the question of their legal national status. The Armenian side is confident that the establishment of the "Republic of Nagorny Karabakh" was irreproachable from the point of view of standards of international law, since, in its opinion, on the date the

Azerbaijani Republic obtained its recognition, the Republic of Nagorny Karabakh no longer formed part of it.[15]

However, as a simple analysis of these arguments shows, there are serious doubts as to their "irreproachability" precisely from a legal point of view.

For example, the Act "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR" was based on article 72 of the Constitution of the former USSR, under which each Union Republic had the right to secede from the USSR. The purpose of the Act was thus to regulate mutual relations within the framework of the USSR by establishing a specific procedure to be followed by Union Republics in the event of their secession from the USSR. In particular, a decision by a Union Republic to secede had to be based on the will of the people of the Republic freely expressed through a referendum; a large part of the Act is devoted to the procedure for conducting such a referendum. Of course, article 3 of the Act merits special attention. It provided that a Union Republic containing autonomous republics, regions or areas had to conduct separate referendums in each autonomous entity. This preserved the right of the peoples of the autonomous republics and other autonomous entities to decide independently whether to remain within the USSR or the seceding Union Republic, as well as to raise the issue of their legal national status.

However, given that the Soviet Union had ceased to exist following the well-known Belovezh agreements, this Act was without legal effect, since no Union Republic, including Azerbaijan and Armenia, had used the procedure for secession stipulated in it. Only if Azerbaijan had attempted to secede from the USSR during its existence and had complied with the Act "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR", would the Nagorny Karabakh Autonomous Region have had the right to conduct a separate referendum to determine where it stood on the three possibilities: remaining within the USSR, seceding together with Azerbaijan, or raising the issue of its legal national status.

The attempt to link this Act and the Declaration on the Restoration of the State Independence of the Azerbaijani Republic, adopted by the Supreme Soviet of the Azerbaijan SSR on 30 August 1991, also fails to stand up to scrutiny. Clearly, this Declaration, which deals not with secession from the USSR but with the restoration of the State independence of 1918 to 1920, was adopted without reference to the procedure for secession stipulated in the Union Act. Thus, if one follows the letter and spirit of the Act of 3 April 1990 to their conclusion, the adoption of the Declaration could not serve, for the Nagorny Karabakh Autonomous Region, as a legal basis for raising the issue of its legal national status under the Act. Moreover, in accordance with the Act, the Declaration also produced no legal effects for the USSR. For paragraph 2 of the Resolution of the Supreme Soviet of the USSR of 3 April 1990 on the application of the Act of the USSR "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR" stated that "... any actions connected with the raising of the issue of the secession of a Union Republic from the USSR that run counter to the Act of the USSR 'On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR', whether taken before or after its entry into force, shall be without legal effect for both the USSR and the Union Republics".

When considering the issues relating to the Act of the USSR of 3 April 1990, one cannot help noticing another important detail, namely, the reasons for its adoption. Obviously, the need for such a law was dictated by the ever more frequent and insistent calls that were being made for Union Republics to secede from the USSR. On closer acquaintance with the text of this Act, it quite naturally occurs to one that the main purpose of its adoption was not to regulate the procedure for the separation of Union Republics from the USSR, rather it was an attempt to hinder the exercise by them of the right to free secession guaranteed in article 72 of the Constitution of the USSR. This idea is also suggested by the fact that, as well as providing for separate referendums for autonomous republics and other autonomous entities, the Act granted similar rights to national groups that were compactly settled in the territory of a Union Republic and formed the majority of the population in a specific place. It is not difficult to see how an attempt by a Union Republic to secede from the USSR would have ended, assuming it had complied with the procedure stipulated in the Act of 3 April 1990. It is therefore all the stranger to hear this Act being invoked by uncompromising champions of the unrestricted right of peoples to self-determination, since that is precisely what the Act limited.

Moreover, in the opinion of R. Mullerson, the tactic used by the Soviet leadership with the adoption of the controversial Act not only failed to solve the problem of the disintegration of the USSR, but also further exacerbated the situation. The majority of the population began to regard the minority (sometimes rightly, sometimes not) as Kremlin fifth columnists.[16]

In addition, pursuant to the Act of the Supreme Soviet of the Azerbaijani Republic of 26 November 1991, the Nagorny Karabakh Autonomous Region, as a national territorial unit, was abolished. The Decree of the Azerbaijani Central Executive Committee of 7 July 1923 on the formation of the autonomous region of Nagorny Karabakh and the Act of the Azerbaijan SSR of 16 June 1981 "On the Nagorny Karabakh Autonomous Region" were declared null and void. It is worth noting that this decision was motivated, in particular, by the fact that the creation of the Nagorny Karabakh Autonomous Region had contributed to the deepening of the ethnic discord between the Azerbaijani and Armenian peoples.

Thus, Nagorny Karabakh was and has remained part of Azerbaijan, both before and since independence.

On 8 July 1992, the Supreme Soviet of the Republic of Armenia adopted a resolution qualifying as unacceptable to the Republic of Armenia any international or internal document that referred to the "Republic of Nagorny Karabakh" as part of Azerbaijan. However, in international documents, Nagorny Karabakh is referred to as part of Azerbaijan more often than Erevan apparently expected when it adopted the aforementioned resolution. It is precisely this fact that dispels once and for all the illusion that the de jure status of Nagorny Karabakh may some day be changed at the expense of Azerbaijan.

The gaining of independence by Azerbaijan and Armenia, the simultaneous formalization of their participation in the Conference on Security and Cooperation in Europe (CSCE) on 30 January 1992 and their accession to the United Nations on 2 March 1992 mark a new stage in the theoretical debate between the sides, the results of which, while not entirely satisfactory to one side, put an end to the other's hopes of a favourable outcome once and for all.

Viewing the resolutions of the Security Council and the documents of the Organization on Security and Cooperation in Europe (OSCE) on the conflict in Nagorny Karabakh through the prism of the principles and rules of international law, it can be stated with certainty that there are no grounds whatsoever for citing, in this instance, the problem of the conflict that allegedly exists between the principles of territorial integrity and the right of peoples to self-determination. In any event, one forms the impression that, in the case under consideration, one of these principles is being artificially linked to the other.

In the Charter of the United Nations, there are two references to the principle of equal rights and self-determination of peoples. Thus, in accordance with Article 1, paragraph 2, of the Charter, one of the purposes of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. In Article 55 of the Charter, this principle is regarded as the basis of international economic and social cooperation. It is worth noting that, from the very beginning, the principle of equal rights and self-determination of peoples was understood in the Charter to mean the right to self-determination, not secession.

The principle of self-determination was developed and given a far broader interpretation with the adoption, on 14 December 1960, of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), article 2 of which states that: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".[17] At the same time, article 6 of the Declaration contains an important restrictive provision, in accordance with which "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".[18]

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted in 1966. Article 1 of each instrument contains analogous provisions on the right to self-determination: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[19] The inclusion of these provisions in the most important international instruments gave impetus to a broad discussion in the course of which this collective right came to be seen virtually as the basis of all other human rights, a development which could not but influence the actual political processes occurring in the world.

The next important stage in the development and interpretation of the principle of the right of peoples to self-determination was the adoption by the General Assembly in 1970 of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). The section on the principle of equal rights and self-determination of peoples states that "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".[20]

However, it also contains important restrictive provisions. First, it states that "every State has the duty to promote through joint and separate action universal

respect for and observance of human rights and fundamental freedoms in accordance with the Charter".[21]

Second, it provides a short but nevertheless fairly clear list of the modes of implementing the right to self-determination, such as "the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people".[22]

Third, the Declaration not only confirms the crucial requirement to refrain from any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States, but also specifies conditions that, if observed, essentially limit the right to self-determination itself, the realization of which may not entail the dismemberment of a State or the violation of the territorial integrity or political unity of a State. The most important of these conditions is the presence of a "government representing the whole people belonging to the territory without distinction as to race, creed or colour".[23]

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights (Vienna, 1993), reaffirms that all peoples have the right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. While it essentially reiterates earlier sources of international law on this issue, the Vienna Declaration does nevertheless make a fairly important contribution, in article 2, paragraph 2, to the discussion on the most complex and contradictory issue, namely, the subjects of the right to self-determination: "Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right".[24]

Article 2, paragraph 2, of the Vienna Declaration also reiterates an important restrictive provision from the Declaration on the Principles of International Law, whereby the right to self-determination must not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

In the opinion of Asbjørn Eide, member of the Subcommission on the Promotion and Protection of Human Rights, the word "peoples" in this provision means any population living in a Non-Self-Governing Territory or an occupied territory.[25]

As Eide noted in his report entitled "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities": "The controversy over the understanding of 'people' as beneficiaries of the 'right to self-determination' had, prior to the 1993 Vienna Declaration and Programme of Action,

become heightened. It had been further complicated by the increasingly numerous understandings sought to be given to the content of self-determination.

"In interpreting the quoted text from the Vienna Declaration in relation to groups living within the territory of sovereign States, the following observations can be made.

"The sovereign State should 'possess a Government representing the whole people belonging to the territory without distinction of any kind'.

"The word 'people' obviously means the whole people, the 'demos', not the separate 'ethnoses' or religious groups."[26]

In the opinion of R. Mullerson, it would be wrong to maintain, as is sometimes done, that minorities do not have the right to self-determination. It would be more correct to state that they realize the right to self-determination together with the rest of the population of the State concerned, as part of that population.[27]

The principle of self-determination of peoples is also referred to in CSCE/OSCE documents. For example, the Helsinki Final Act of 1975 states the following: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

"By virtue of the principle of equal rights and self-determination of peoples, 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, and to pursue as they wish their political, economic, social and cultural development.

"The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle."

In later documents, however, the participating States, bearing in mind the changed international situation and the existence of armed conflicts in their own territories, place greater emphasis on respecting the territorial integrity of States when defining the principle of self-determination. This approach is clearly apparent in the Charter of Paris for a New Europe of 1990 and in the document of the Moscow meeting of the Conference on the Human Dimension adopted in the following year. The Charter of Paris states the following: "We reaffirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States." In the document of the Moscow conference "the participating States underlined that, in accordance with the Final Act of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe, the equal rights of peoples and their right to self-determination are to be respected in conformity with the Charter of the United Nations and the relevant norms of international law, including those relating to territorial integrity of States".

Thus, with the exception of two cases: non-self-governing territories and territories under illegal occupation, as defined by the United Nations, the right to self-determination does not include the unilateral right to independence or secession.

It should be stressed, however, that the right to self-determination belongs to peoples living in territories which underwent foreign occupation after the adoption of the Charter of the United Nations in 1945. In relation to the question of the subjects of the right to self-determination, federations formed as a result of the voluntary unification of republics should also be included, when there are clear provisions in their respective constitutions indicating that the republics have the right to withdraw from such federations.[28] This point is very important when considering the conflict in and around Nagorny Karabakh, which, as is well known, does not fall under any of the criteria mentioned.

Nevertheless, despite the apparently fairly clear restriction under international law on the application of the right to self-determination, it should be recognized that the greatest problems may arise in the following two cases: rejection of pluralism, resulting from the implementation by a sovereign State of a rigid and discriminatory policy in relation to a national or ethnic minority living in its territory, and also the case of a minority which, incited by external forces, mainly the "mother country", refuses to remain within a larger formation, even when the sovereign State is prepared to take far-reaching steps to achieve pluralism.[29]

A typical situation arises in cases when a particular group which is living compactly in a certain geographical district or enclave within a State whose majority population belongs to another ethnic group claims that it is not a minority, but a people, and demands self-determination through secession or alteration of borders. It is up to such national or ethnic groups to demonstrate that they have the right to secession under international law. If this cannot be convincingly demonstrated to the international community, foreign States cannot have the right to encourage or support efforts to achieve self-determination.[30]

Asbjørn Eide believes that attention should be paid not only to the politics of the dominant majority of the population or the State, but also to the politics of minority groups. Some of them support ethnic nationalism just as ardently, if not even more so, than the majority population of the State in which they live. If they pursue a policy of ethnic nationalism, they are likely to demand self-determination and to seek so-called "cleansing", removing members of other ethnic groups living in their region in order to achieve a "pure" ethnic composition, or they may try to review borders so as to become part of a neighbouring State, the majority population of which belongs to the same ethnic group.[31]

Eide goes on to say that finding constructive solutions depends on all the parties involved. There is a widespread misconception that only Governments or the majority population are responsible for existing situations, and that they alone can make changes. However, even a superficial review of the current situation in the world shows the existence of a number of minorities which are pursuing an extremely provocative and violent policy. Sometimes they assume that, in the worst case, if their provocative actions lead to large-scale military conflict with the majority population, threatening the very basis of their existence, some external power will come to their assistance, either the "mother country" or some other external entity. This type of policy is dangerous.[32]

It is interesting that these views have a great deal of relevance to the situation in the Nagorny Karabakh conflict, with the only difference that Armenia's role as the "mother country" is crucial in the armed confrontation with Azerbaijan. Moreover, in its approach Armenia effectively leaves no room for pluralism. When

one considers the demand for independence for the Armenians of Nagorny Karabakh, with simultaneous "cleansing" of the territory of their own country, and also of that of Nagorny Karabakh itself, from Azerbaijanis, the natural conclusion is that Armenia regards the possibility of resolving the problem of self-determination at only two levels — through unilateral secession or through "ethnic cleansing".

In 1992, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted; article 8, paragraph 4 states that "nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States".[33]

As noted in the commentary to the Declaration, prepared by Asbjørn Eide, "the rights of persons belonging to minorities differ from the rights of peoples to self-determination. While the latter right is well established under international law, in particular common article 1 to the two International Covenants on Human Rights, the scope of the right and the meaning of the concepts of 'people' and 'self-determination' is still ambiguous and highly controversial. This point has no impact on the Minority Declaration, since there is no disagreement that rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights".[34]

The question of distinguishing between the rights of persons belonging to minorities and the right of peoples to self-determination is further developed in the commentary to article 8, paragraph 4 of the Declaration. In particular, the author stresses that "minority rights cannot serve as a basis for claims of secession or dismemberment of the State".[35]

This question is also addressed in General Comment No. 23 (50), adopted by the United Nations Human Rights Committee in 1994. The Committee, inter alia, noted that "in some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant". In this connection, the Committee stressed that "the Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol".[36]

Reflecting the growing concern of the international community about the unjustified, widely advocated tendency to interpret the right to self-determination as a right of any national or ethnic group to secession, the Secretary-General of the United Nations, in the "Agenda for Peace", observed that "if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become even more difficult to achieve … The sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for

peoples, both of great value and importance, must not be permitted to work against each other".[37]

The obligations of minorities in relation to the State and society have also been reflected in the Convention on the Protection of the Rights of Persons belonging to National Minorities, of the Commonwealth of Independent States (CIS), and the Framework Convention of the Council of Europe for the Protection of National Minorities, adopted in 1994 and 1995 respectively. Thus, under article 12 of the CIS Convention, no obligation of the Contracting Parties arising from the Convention may be interpreted as the basis for any activity or actions which are incompatible with the generally recognized principles and norms of international law, including the principles of respect for sovereign equality, territorial integrity and political independence of States.

Further, in exercising the rights set forth in the Convention, persons belonging to national minorities must comply with the legislation of the State of residence, and also respect the rights and freedoms of other persons.

Article 20 of the framework Convention of the Council of Europe states that "in the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities".

And in the next article: "Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".[38]

It is interesting that in the Council of Europe commentary to article 20 of the framework Convention, reference is made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.[39]

As to the correlation between the principles of the territorial integrity of States and the right of peoples to self-determination in the context of secession, there is a well-established view that the right to self-determination is secondary, on condition that the State observes the principle of equal rights and self-determination of the peoples and has a government which includes representatives of the entire population, without any distinctions on grounds of race, creed or skin colour.

The right to self-determination in the context of human rights is envisaged in General Recommendation XXI (48) adopted by the Committee on the Elimination of Racial Discrimination in 1996. The Committee, inter alia, considering that "the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations" draws the attention of Governments to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[40]

In the Committee's view, "in respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their

economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation".[41]

At the same time, the Committee expressed the view that "international law has not recognized a general right of peoples to unilaterally declare secession from a State".[42]

The Conference of independent experts and jurists from member countries of CIS, held in Moscow, reached almost the same conclusion on the problem of self-determination and secession in contemporary international law, noting, in particular, that the right to secession is not an essential element of the right to self-determination, and that it exists outside the framework of the right to self-determination. Moreover, the Conference emphatically held that the right to secession does not extend to national, ethnic, linguistic and religious minorities or any other groups of the population.

A somewhat different approach was taken by Y. Reshetov, a member of the Committee on the Elimination of Racial Discrimination, who in his draft Convention on the right of peoples to self-determination takes the view that the establishment of a sovereign and independent State by a national or ethnic group or its free association with an independent State, or integration with it, may be the result of peace agreements between various national or ethnic groups within a given State.

He goes on to observe that the right to secession by a national or ethnic group, and consequently, the establishment by that group of a sovereign and independent State or its free association with an independent state, or integration with it, may be enshrined in the constitutions of States and achieved in accordance with the relevant procedures of these States and with the norms of international law.

In his view, if a Government, on a non-discriminatory basis and while observing basic human rights and freedoms, allows all its population to participate in the political and public life of the State, any attempts to dismember the State and undermine its territorial integrity and political unity are illegal. At the same time, it is important to note that both the Conference of independent experts and jurists, and Y. A. Reshetov, reach the same conclusion, that a State established in violation of the principle of equal rights and self-determination of peoples must not be recognized as a subject of international law.

A similar approach is taken by M. Mahmoud, who observes that "a regime not fulfilling the right of self-determination is not legal and the thing it proclaims is not a state in the sense of modern international law, due to the lack of the element of legality and due to the lack of a legal territory on which the proclaimed state can exercise its sovereignty. This proclaimed so-called state is a "fabricated state".[43]

The question may arise as to what to do in the event that a group claims that a particular Government does not represent the entire population and is pursuing a discriminatory policy against that group.

In the opinion of A. Eide, "If members of a group living either compactly in an administrative unit of a State or dispersed within the territory of a sovereign State claim that the State is not possessed of a Government representing the whole people without distinction, this claim can be examined at the international level, either by the Committee on the Elimination of Racial Discrimination (CERD) in connection with its examination of the State's report, since discrimination in political rights on ethnic grounds is covered by the Convention on the Elimination of Racial Discrimination, article 5, or by the Human Rights Committee. If the State is a member of the Council of Europe, it could also be addressed under article 14 of the European Convention on Human Rights in conjunction with Protocol 1. In such cases, the remedy will have to be that the discrimination is brought to an end and that the Government is truly representative, by allowing for participation in the political process on a basis of equality of all members of the group.

"Only if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence. If it can be shown that the majority of the population is pursuing a policy of genocide against the group, this must be seen as very strong support for the claim of independence. The mere fact of there being ethnic violence between the majority and minority does not prove that there is an intent to destroy the group as such, in whole or in part. Even if there was, it would still have to be shown that the majority side was more responsible than the minority for the acts of violence taking place."[44]

This position is also shared by the author of the aforementioned draft Convention on the right of peoples to self-determination, which considers that a refusal by the Governments concerned to implement the recommendations of international organs in connection with the claims of national or ethnic groups that those Governments are not representative of all the peoples in their territory and do not allow their population to participate in the political and public life of the State may be considered proof of their unwillingness to grant that national or ethnic group the right to participate in the political and public life.

Nevertheless, it should be acknowledged that, at the present time, in the absence of a clear international legal basis for the consideration of the claims of national or ethnic groups, the recommendations of the human rights treaty bodies may serve only as a means of exerting the appropriate influence on a Government and not as a method of deciding territorial problems.

There is no doubt that when international organizations have considered and taken decisions on the Nagorny Karabakh conflict, they have taken into account primarily the aforementioned norms of international law on the right of peoples to self-determination and the rights of individuals belonging to minorities and the correlation between these rights and the principle of the territorial integrity of States.

The escalation of the armed conflict in 1993 led to the consideration of the problem by the United Nations Security Council, which adopted four resolutions:

822 (1993) of 30 April 1993; 853 (1993) of 29 July 1993; 874 (1993) of 14 October 1993; and 884 (1993) of 12 November 1993, which may be fully characterized as historical from the standpoint of their legal consequences. The reaffirmation in the resolutions of respect for the sovereignty and territorial integrity of the Azerbaijani Republic, taking into account the use of the wording "the Nagorny Karabakh region of the Azerbaijani Republic", which is also regularly included in the annual resolutions adopted by the United Nations General Assembly on Cooperation between the United Nations and the Organization for Security and Cooperation in Europe, makes all the preceding and subsequent disputes over which State Nagorny Karabakh is part of and the false illusions concerning the right of its population to self-determination in the context of secession completely senseless.

It may be stated with confidence that, taking into account the affirmation by the United Nations Security Council, in its resolutions concerning the Nagorny Karabakh conflict, of the inviolability of international frontiers, the inadmissibility of the use of force to acquire territory and the condemnation of the seizure of territory belonging to the Republic of Azerbaijan, the actions of the other side can only be regarded as a violation of the well-known provisions of the Charter of the United Nations.

The relevant decisions taken by CSCE/OSCE provide the legal foundation and the mechanism for the existing negotiating process for the settlement of the Nagorny Karabakh conflict on the basis of the aforementioned resolutions of the United Nations Security Council.

At the Helsinki Follow-up Meeting of the Council of CSCE in 1992, the Ministers for Foreign Affairs of the CSCE countries expressed deep concern about the continuing escalation of the armed conflict in and around Nagorny Karabakh and requested the Chairman-in-Office of the Council of CSCE to convene, as soon as possible, a conference on Nagorny Karabakh in Minsk under the auspices of CSCE.

At the Summit Meeting of CSCE held in the capital of Hungary in 1994, adherence to the relevant resolutions of the United Nations Security Council was reaffirmed and a decision was taken that CSCE should be more active in dealing with the Nagorny Karabakh conflict. At the same time, the Heads of State and Government requested the Chairman-in-Office of CSCE to appoint the co-chairmen of the Minsk Conference in order to create a unified and agreed basis for negotiations and to ensure full coordination of all mediation and negotiating activities. The Heads of State and Government also declared their political willingness to make available multinational CSCE peacekeeping forces after the parties had reached a political agreement on the cessation of the armed conflict.

However, from the standpoint of the theoretical discussion on the question of the applicability of the principle of the right of peoples to self-determination in the context of secession on the settlement of the Nagorny Karabakh conflict, the results of the OSCE Summit Meeting held in Lisbon in 1996 were very significant. Annexes 1 and 2 to the 1996 Lisbon document, containing the relevant statement of the Chairman-in-Office of OSCE and the statement of the delegation of Armenia in reply, merit special attention.

In his statement, the Chairman-in-Office of OSCE stated the following: "You all know that no progress has been achieved in the last two years to resolve the Nagorno-Karabakh conflict and the issue of the territorial integrity of the Republic

of Azerbaijan. I regret that the efforts of the Co-Chairmen of the Minsk Conference to reconcile the views of the parties on the principles for a settlement have been unsuccessful.

"Three principles which should form part of the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group. These principles are supported by all Member States of the Minsk Group. They are:

– territorial integrity of the Republic of Armenia and the Azerbaijan Republic;

– legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;

– guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

"I regret that one participating State could not accept this. These principles have the support of all other participating States.

"This statement will be included in the Lisbon Summit documents."[45]

In its statement in reply, the delegation of Armenia, expressing its disagreement with the aforementioned principles for a settlement, stated that "a solution of the problem can be found on the basis of international law and the principles laid down in the Helsinki Final Act, above all on the basis of the principle of self-determination".[46] Thus, the Armenian side, as usual, demonstrated that the opinion of the international community did not coincide with its own understanding and interpretation of the principles and standards of international law.

The position stated by Armenia at the Lisbon Summit, which did not allow for the cessation of the war that has lasted for many years, is not the only example of its disregard for the opinion of the majority.

Two years prior to the Lisbon Summit, Armenia was the only State which did not sign the Declaration on the maintenance of the sovereignty, territorial integrity and inviolability of the frontiers of States members of the Commonwealth of Independent States.

On the signing in 1995 by the Heads of State of CIS of the Memorandum on the maintenance of peace and stability in the Commonwealth of Independent States, Armenia declared that it did not accept paragraphs 7 and 8 of the document as applying to it. These paragraphs read as follows:

"7. The States members of the Commonwealth shall, in their territory and in accordance with their national legislation and international standards, take measures to put a stop to any manifestation of separatism, nationalism, chauvinism and fascism.

"They shall promote the dissemination of objective information about the social and political processes in the other States members of the Commonwealth.

"8. The States bind themselves not to support separatist movements and separatist regimes in the territory of other States members if they arise; not to establish political, economic and other relations with them; not to allow them to use

the territory and communications of other States members of the Commonwealth; and not to offer them economic, financial, military or other assistance."

A result of the subsequent advancement by Armenia of its own interpretation of the principle of the right of peoples to self-determination was its introduction within the Commonwealth of Independent States of a draft Declaration on equal rights and the right of peoples to self-determination, prepared, as anyone familiar with the text could easily see, on the basis of a specific problem — the Nagorny Karabakh conflict. Despite the recognition in the preamble to the draft that "the consistent implementation of the principle of equal rights and the right of peoples to self-determination have allowed all members of the Commonwealth to declare themselves Independent Sovereign States", in the operative part the sponsors, in essence contradicting themselves, included provisions concerning the right of each people to "raise the question of its self-determination up to the point of secession and the formation of an independent State, or secession with a view to becoming part of another State", and the obligation of a State to "take effective measures to prevent and put a stop to any violent actions to retain a people within the frontiers of that State". No comment is necessary also concerning the following article of the draft Declaration: "The violent retention of a people within a State, despite its expressed wish — a wish expressed also in the press and at public meetings or in referendums — is a direct violation of the fundamental purposes and principles of the Charter of the United Nations". Despite the substantive changes made to the text by the sponsors, the draft Declaration was unanimously rejected by experts of the CIS countries who met twice in Minsk to consider Armenia's proposal.

The issue of the conflict between Armenia and Azerbaijan was the subject of consideration also by the Council of Europe. In 1997, the Parliamentary Assembly of the Council of Europe adopted resolution 1119 (1997) "On conflicts in Transcaucasia", in which it declared that the political settlement of the conflict in Nagorny Karabakh should be the subject of negotiations between the parties taking into account, in particular, the principles of the inviolability of frontiers and the broad status of self-rule for Nagorny Karabakh.

Thus, even if one agreed with the aforementioned opinion that only if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence, as the results of the consideration of the Nagorny Karabakh conflict in international organizations show, the Armenian side has not succeeded in convincing the international community of the validity of its claims and proving that the other side bears the greater responsibility for the acts of violence.

It is, of course, quite natural that the question should arise as to how, in the end, the conflict can be settled. In order to answer this question, it is essential, first of all, to recognize that "The State should be the common home for all parts of its resident population under conditions of equality, with separate group identities being preserved for those who want it under conditions making it possible to develop those identities. Neither majorities nor minorities should be entitled to assert their identity in ways which deny the possibility for others to do the same, or which lead to discrimination against others in the common domain."[47]

The settlement of the conflict should therefore be based primarily on the restoration and strict maintenance of the territorial integrity of Azerbaijan and the preservation and encouragement of the identity of the Armenian minority living in its territory.

At the present time, there are various opinions as to whether groups are entitled to some measure of local self-government or autonomy within a State on the basis of the right to self-determination. In the case in question, it is important to bear in mind that, as indicated above, the rights of individuals belonging to minorities are individual rights, while the right of a people to self-determination is a collective right. Taking this into account, international law does not include specific mandatory provisions recognizing the right of individuals belonging to minorities to self-determination or autonomy.

In this connection, the discussion on the draft additional protocol to the European Convention on Human Rights recommended by the Parliamentary Assembly of the Council of Europe (recommendation 1201 (1993)) is interesting. Article 11 of the draft contains a provision stating that "in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state". In connection with the considerable differences of opinion in the approach to the subject matter of article 11 of the draft, the Venice Commission on Democracy through Law was asked for its opinion and the Commission emphasized in its commentaries, inter alia, that "international law cannot in principle impose on States any territorial settlement of a problem of minorities and that the State in principle is not required to afford minorities any form of decentralization".[48]

Nevertheless, there is no doubt that some forms of territorial division may in certain cases be a practical means of ensuring the existence of a national identity or ethnic group. On the basis of that approach, the Azerbaijani side has repeatedly and at the highest level expressed its willingness to confer on Nagorny Karabakh the highest degree of self-rule within Azerbaijan. This view was, in turn, as noted above, expressed in the statement of the Chairman-in-Office of OSCE at the Summit Meeting of the Organization in Lisbon.

There are in international practice sufficient examples of agreements of territorial division which could be used to work out the substantive part of the status of autonomy for Nagorny Karabakh. It would, of course, hardly be possible to copy one hundred per cent any one of the models existing in the world for the case in question. However, it appears that, in the event of agreement being reached on the main problem — the status of the territory in contention — the search for mutually acceptable ways of achieving a return to a peaceful life should not encounter serious obstacles. Obviously, attempts to impose any decision which is not consistent with respect for the principle of the territorial integrity of Azerbaijan will lead to still further delays in the settlement of the conflict and, accordingly, to the postponement for an indefinite period of time of the attainment of the social and economic well-being of the people of the region.

To sum up the analysis concerning one of the conflict situations in the world, it appears quite natural to conclude that the solution to the problem of minorities cannot, and must not, be the creation for each ethnic group of its own "pure" State

or semi-State. The main reason why this threat is inadmissible must be that States should not be divided, but should be strengthened and that the influence of international institutes in the universal defence and encouragement of human rights should be reinforced.

Notes

[1] Initial report of Armenia submitted under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/92/Add.2), p. 6.

[2] *K istorii obrazovania Nagorno-Karabakhskoy avtonomnoy oblasti Azerbaijanskoy SSR. Dokumenty i materialy. Iz protokola zasedania plenuma Kavbyuro TK RKP (B)* (On the history of the establishment of the Nagorny Karabakh Autonomous Region of the Azerbaijan SSR. Documents and materials. From the minutes of the plenum of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks)) (Baku, 1989), p. 92.

[3] Report of the Representative of the Secretary-General on Internally Displaced Persons Mr. Francis Deng entitled "Profiles in displacement: Azerbaijan" (E/CN.4/1999/79/Add.1), pp. 7-8.

[4] Constitution of the USSR, chap. 11 "The autonomous region and the autonomous area", art. 86. (Moscow, 1977), p. 13.

[5] Ibid., art. 87, p. 13.

[6] Second report of Azerbaijan submitted under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/350/Add.1), p. 7.

[7] Ibid.

[8] Ibid.

[9] Ibid., p. 8.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Constitution of the USSR, chap. 9 "Union of Soviet Socialist Republics", art. 78 (Moscow, 1977), p. 13.

[14] Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", chap. 2 "Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region", art. 42 (Baku, 1987), pp. 38-39.

[15] Initial report of Armenia submitted under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/1992/Add.2), p. 8.

[16] R. Mullerson, *Self-determination. Right to secession or entitlement to democracy?* (London and New York, 1994), p. 63.

[17] *Human Rights — A Compilation of International Instruments* (United Nations publication, Sales No. E.93.XIV.1 (Vol. I, Part 1)), p. 56.

[18] Ibid., p. 57.

[19] Ibid., pp. 8 and 20.

[20] *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 28* (A/8028), p. 123.

[21] Y. A. Reshetov, "Pravo na samoopredelenie i otdelenie" (The right to self-determination and secession), *Moskovsky zhurnal mezhdunarodnogo prava*, No. 1 (Moscow, 1994), p. 9.

[22] Ibid., pp. 9-10.

[23] Ibid., p. 11.

[24] Vienna Declaration and Programme of Action (A/CONF.157/23), p. 4.

[25] UniDem seminar on local self-government, territorial integrity and protection of minorities, Lausanne, 25-27 April 1996 (Council of Europe, 1996), p. 283.

[26] E/CN.4/Sub.2/1993/34, pp. 17-18.

[27] R. Mullerson, op. cit., p. 73.

[28] E/CN.4/Sub.2/1992/37.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] *Human Rights — A compilation of International Instruments* (United Nations publication, Sales No. E.93.XIV.1 (Vol. I, Part I)) p. 143.

[34] E/CN.4/Sub.2/AC.5/2000/WP.1, p. 3.

[35] Ibid., p. 18.

[36] CCPR/C/21/Rev.1/Add.5, p. 2.

[37] An agenda for peace. Cited in E/CN.4/Sub.2/1993/34, p. 18.

[38] Council of Europe document N (95) 010.

[39] Ibid., p. 27.

[40] A/51/18 — report of the Committee on the Elimination of Racial Discrimination, p. 125.

[41] Ibid.

[42] Ibid.

[43] Cited in Nii Lante Wallace-Brown. *Claims to statehood in international law*. New York, 1992. p. 69.

[44] E/CN.4/Sub.2/1993/34, para.84.

[45] OSCE Doc.S/1/96, p. 7.

[46] Ibid.

[47] E/CN.4/Sub.2/1993/34/Add.4, para.1.

[48] Annual report of the Venice Commission, 1996.