

Nagorno-Karabakh: War Fails to Resolve the Conflict

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Imagine Boris Johnson ordering the bombing of Edinburgh because the Scots voted for independence in a referendum, or the British Government declaring war against Northern Ireland because it wished to join the Republic of Ireland. Unlike the political dialogue and the search for legal remedies that dissatisfied nations of the United Kingdom utilise to resolve their conflicts, the Armenians of Nagorno-Karabakh, who have been natives of the territory for centuries, have been the target of years of demonisation in Azerbaijan for voting for independence in 1991 as the Soviet Union was collapsing. Karabakh was a ‘devolved statelet’ within the Soviet legal system. Ilham Aliyev, President of Azerbaijan, has on numerous occasions declared that ‘Karabakh is Azerbaijan’.¹ But one wonders: why would a leader of a country bomb its own people, a region of its own territory? The simple answer is that from a legal perspective Karabakh has never been part of the Republic of Azerbaijan.

On 27 September 2020, Azerbaijan—with substantial Turkish military involvement and thousands of mercenaries from Syria—attacked the disputed territory of Nagorno-Karabakh to ‘liberate’ it from the control of the self-declared Republic of Artsakh. By the end of a 44-day devastating war, the Armenians not only lost control of significant parts of Karabakh, but also the seven regions around Karabakh, which they had controlled since the first Karabakh war in the early 1990s, as a security buffer zone and as a bargaining chip in the negotiations process for final status.

After the recent ‘historic victory’, President Ilham Aliyev declared that ‘there is no Nagorno-Karabakh conflict anymore’. It was resolved militarily. Nevertheless, the conflict—the core of which has been Azerbaijan’s territorial integrity and the Karabakh Armenians right of self-determination—remains unresolved. A ceasefire agreement was signed on 9 November 2020 with Russian mediation (2,000 Russian peacekeepers have been deployed in Karabakh), but the absence of a final settlement or a peace treaty keeps this oldest conflict in the former Soviet Union unresolved for the foreseeable future.

1 Ilham Aliyev, ‘Speech at Plenary Session’ (Sixteenth Annual Meeting of Valdai International Discussion Club, Sochi, 3 October 2019) <<https://en.president.az/articles/34358>>.

Baku has portrayed the war as a ‘last resort’ response to decades-long Armenian intransigence to negotiate a settlement. Yet, since 1994, the only ‘status’ the Azerbaijani leadership was willing to grant to the Karabakh Armenians was ‘highest form of autonomy’—more or less similar to the status Karabakh had during Soviet times. Neither self-determination nor independence were ever on Baku’s agenda. Yet the legal and political developments that occurred towards the end of the Soviet Union are still relevant to the final political and legal solution of the Karabakh conflict.

On 30 August 1991, the Supreme Council of the Azerbaijan Soviet Socialist Republic (Azerbaijan SSR) declared independence by restoring the independent Republic of Azerbaijan that existed between 1918 and 1920, and declared the establishment of Soviet power in Baku as illegal. Two articles formulated in the Constitutional Act were significant: Article 2 stated that ‘The Azerbaijani Republic is the successor of the Azerbaijani Republic which existed from 28 May 1918 to 28 April 1920’; and Article 3 declared that ‘The treaty on the establishment of the USSR on 20 December 1922 is considered not valid in the part related to Azerbaijan from the moment of signing it’.² Furthermore, the law previously proclaimed the Azerbaijani nation’s sovereignty over the republic. Azeri was confirmed as the state language, and the republic’s land and natural resources were defined as ‘national wealth’ belonging to ‘the Azerbaijani people’.

By refusing to become the legal successor of Azerbaijan SSR, Baku freed itself from recognizing Nagorno-Karabakh as an Autonomous Region, a semi-state within the legal framework of the Soviet Union. Back in 1923, the Armenians of Nagorno-Karabakh were recognized as a legal entity within Azerbaijan SSR by becoming a state *unit* within a state, ie the Nagorno-Karabakh Autonomous Oblast. As such, legally speaking, in 1991 the ‘Mountainous Karabakh Republic’ was declared over territories that the Republic of Azerbaijan had no sovereignty over—in view of the fact that it had rejected the Soviet legal system, the very legal basis of its claim over Karabakh. The Armenians argue that Nagorno-Karabakh was

2 The Constitutional Act on the State Independence of the Republic of Azerbaijan 1991.

not part of the first republic of Azerbaijan between 1918 and 1920. Indeed, on 26 August 1919, the government of Azerbaijan and the Karabakh National Council had signed an interim agreement whereby the sides had agreed that the Paris Peace Conference would settle ‘the problem’ of Karabakh. This implied Azerbaijan’s recognition of Karabakh as a distinct ‘legal entity’.

Furthermore, from an international legal point of view, the League of Nations not only did not recognise the sovereignty of Azerbaijan over Karabakh in 1919–20, but also did not recognise Azerbaijan as a state—by rejecting its application (1 November 1920) for admission into the League—because its ‘frontiers appeared to be ill-defined’ and Azerbaijan ‘did not appear to fulfil all the conditions laid down in the Covenant [of the League of Nations], in particular, those concerning stability and territorial sovereignty’. In reviewing Azerbaijan’s application, the Fifth Sub-Committee of the League recommended not to admit Azerbaijan:

There are frontier disputes with Georgia and Armenia. Some agreements have been reached concerning the future settlements of the same, but they do not appear to be so far-reaching and definite as to justify the affirmation that the boundaries of the country have been definitely fixed.³

Sovietisation of the region had started just as the League was discussing the membership of Azerbaijan, Georgia, and Armenia. It is an historical irony that, over a century later, the international boundaries of the three Republics in the South Caucasus are yet to be ‘definitely fixed’ through bilateral or multilateral agreements.

In the early Soviet period, the sovietised government of Azerbaijan had announced in an official declaration, in November 1920, that Karabakh (along with Nakhichevan and Zangezur) were to be part of the Soviet Republic of Armenia.⁴ This was reaffirmed on 4 July 1921 by the Caucasian Bureau (Kavbureau) of the Revolutionary Committee of the Party at its plenary session in Tbilisi, which decided that Karabakh should remain part of Armenia SSR. However, on 5 July, Joseph Stalin reversed the decision of the Bureau and dictated otherwise. From a legal standpoint, it is argued that Stalin’s decision was illegal (at least on procedural grounds) as his decision was neither discussed nor voted on by the Bureau. Moreover, the legality of the decision of a ‘third party’—ie the Bolshevik Party, which had no jurisdiction to determine the status of a disputed territory at the time—remains questionable. Nevertheless, on 7 July 1923, Soviet Azerbaijan’s Central Executive Revolutionary Committee decided to incorporate Karabakh into

³ League of Nations, *The Records of the First Assembly. Meetings of the Committees 2* (Geneva, 1920) 219. See also League of Nations, ‘The Request of Azerbaidjan for Admission’ in *The Record of the First Assembly. Plenary Meetings (Meetings held from the 15th of November to the 18th of December 1920)* (Geneva, 1920) 642. Azerbaijan’s request for admission was rejected by 28 votes (28 against and 14 abstentions). None voted in favour. As for Georgia: 10 for, 13 against, 19 abstentions; Armenia: 8 for, 21 against, 13 abstentions (ibid 651, 633, and 579).

⁴ The declaration, signed by Nariman Narimanov, President of the Revolutionary Committee of Azerbaijan, was published in Pravda. Stalin himself called it ‘a historic act of world significance’ (2 Komunist, 2 December 1920; also published in Komunist (Yerevan), 7 December 1920). Earlier, on 11 January 1918, a ‘Decree of the Soviet Council of People’s Commissars on Self-Determination and Independence for “Turkish Armenia”’ was signed by Lenin, Stalin, and Bonch-Bruевич. See text in Basil Dmytryshyn and Frederick Cox, *The Soviet Union and the Middle East. A Documentary Record of Afghanistan, Iran and Turkey 1917–1985* (Kingston Press 1987) 463–464.

Azerbaijan. As such, the forced incorporation of Karabakh into Azerbaijan during the Soviet period remains a disputed legal issue in the negotiations for a peaceful settlement of the conflict.

While Azerbaijan takes the incorporation of Karabakh for granted, the Armenians dispute Azerbaijan’s legal claims vis a vis the political decision and its legal implications in the early Soviet era, and the legal procedures followed before the end of the Soviet Union in the late 1980s and early 1990s. When still under Soviet rule, on 20 February 1988 the Assembly (parliament) of the Nagorno-Karabakh Autonomous Oblast (NKAO) had passed a resolution for the transfer of Karabakh from Soviet Azerbaijan to Soviet Armenia, and appealed to the Supreme Soviet of the USSR, the highest legislative body in the ‘empire’, for confirmation. Armenians ‘believed their demand to uphold the Karabakh Armenians’ democratic choice and undo the territorial injustice inflicted by Stalin was in full harmony with the aims of *glasnost*’ and *perestroika*, and Gorbachev’s rejection of the Stalinist heritage’.

Azerbaijan SSR rejected the resolution, arguing that the ‘application jeopardises the mutual benefits of the republic’s Armenians and Azerbaijanis alike and contradicts the efforts made to enhance restructuring and strengthen friendship between nations’. In order to prevent further escalation of hostilities between the Azerbaijanis and Karabakh Armenians, on 20 January 1989, the Supreme Soviet of the USSR established a special authority in Karabakh—headed by Arkady Volsky—under the direct supervision of the Soviet government in Moscow, in effect removing Azerbaijan SSR’s political control over Karabakh. The special authority was abolished on 28 November by the USSR Supreme Soviet and replaced by the Baku-controlled ‘Republic Organisational Committee’ (Orgkom) on 15 January 1990. Subsequently, the Supreme Soviet of Azerbaijan, on 23 November 1991, passed a law abolishing the Nagorno-Karabakh Autonomous Oblast. This decision was deemed unconstitutional—along with Armenia SSR’s decision (1 December 1989) to reunify Karabakh with Armenia—by the USSR Constitutional Oversight Committee on 28 November.⁵

The first attempt made by Karabakh Armenians for legal ‘divorce’ from Azerbaijan SSR and ‘reunion’ with Armenia SSR had failed. A second attempt for legal remedy, this time for independence, was based on an all-Union law passed in 1990, which granted rights to autonomous entities and national settlements to independently decide their legal and administrative status in case the host (titular) republic exits the USSR.⁶ Thus, Karabakh declared independence from Azerbaijan on 2 September 1991 based on the same operative laws of the Soviet Union upon which Azerbaijan declared its own independence from the USSR. Significantly, the USSR Constitutional Oversight Committee did not annul or revoke NKAO’s declaration establishing the ‘Nagorno-Karabakh Republic’, as the decision was in compliance with USSR’s law (passed on 3 April 1990) on procedures of secession. Based on this law, Karabakh organised a referendum on 10 December 1991, in the presence of

⁵ For legal purposes, it should be noted that Azerbaijan’s law on abolishing NKAO was based on the 1978 Soviet-era Constitution (Principal Law) of Azerbaijan, art 10 para 2. But the 1978 Constitution had lost its force by the adoption (through referendum in November 1995) of a new Constitution of the Republic of Azerbaijan, which came into force on 27 November 1995, as well as on the basis of Article 4 of the Constitutional Act on the State Independence of the Republic of Azerbaijan (n 2).

⁶ *Law of the USSR Concerning the Procedure of Secession of a Soviet Republic from the Union of Soviet Socialist Republics* (Register of the Congress of the People’s Deputies of USSR and Supreme Soviet of USSR 13, 3 April 1990) 252.

international observers, by which the people of Karabakh expressed their will for independence. This provided legitimacy to Karabakh's independence in the legal context of the USSR, which was still in existence and internationally recognized. Some Azerbaijani scholars argue that 'the Autonomous Region of Nagorno-Karabakh did not have the right of secession on the basis of the Constitution of the former USSR and Azerbaijan', based on Article 78 of the 1977 USSR Constitution, which stipulates that 'the territory of Union Republics may be altered by mutual agreement of the Republics concerned' (ie Azerbaijan SSR and Armenia SSR). However, they do not mention that this was legally the case *only* until 1990—before the passing of the all-Union law on self-determination—and as long as a Union Republic remained within the USSR.

Following the collapse of the USSR, when in 1991 the international community recognised the three republics in the South Caucasus, the legal status of Karabakh was unresolved, just as it was unresolved in 1920. The crux of the conflict—even now after the second Karabakh war—is still the right to self-determination of Karabakh Armenians and Azerbaijan's territorial integrity. President Aliyev has declared that the conflict is 'resolved' once and for all by a 'victorious war'. Nevertheless, it remains to be seen whether peaceful coexistence with the Armenians will be possible without a lasting peace agreement.

During fieldwork research in 1995, I asked an elderly man what the most important aspect of Karabakh's independence was. He explained:

The most important thing for me today, even if I go hungry, is the fact that today I do not feel Armenian, I feel human. The Azerbaijanis used to constantly remind us that we are Armenian... 'You are Armenian, Armenian, Armenian'... and used to see us as second-class citizens. I am free of this heavy burden. I am a human being. I am an Armenian human being who is concerned about daily bread, about government, about borders, and how I can help the situation.