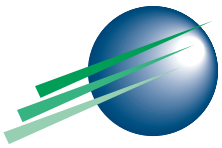

THE ARMENIAN CENTER FOR NATIONAL AND INTERNATIONAL STUDIES

INTERNATIONAL MEDIATION IN THEORY AND PRACTICE: LESSONS OF NAGORNO–KARABAKH

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Chapter 1

INTERNATIONAL MEDIATION: SUCCESS AND FAILURE IN THEORY.

"Diplomacy like jazz is an ongoing improvisation on the theme."

The concept of conflict is as old as humanity. Scenes of conflict are traced back to the Old Testament. Acts of conflict provided antique Greek and Roman poets with rich plots. Renaissance diplomacy was challenged by upsurge of international conflicts. Regional conflicts and national struggles were kept under careful control by the Cold War's system of world order, as well as were manipulated by protagonists to serve their goals. Conflict has been a driving force for major changes in the post–Cold War world order and up to today conflict remains at the core of politics, international and human relations, as well as any political and social interaction in general.

Nature and dimensions of a conflict vary from context to context. Various factors and circumstances prepare fertile soil for violence and make societies prone to warfare–for example, weak, corrupt, collapsed states, which are unable to properly manage religious, cultural, or ethnic differences; politically active communities that propagate hostile and divisive messages; repressive and illegitimate regimes, "rogue states", "spoiler" parties and extremists; acute discrimination against ethnic minorities and other social groups; political and economic legacies of colonialism and the Cold War; abrupt political and economic transitions; lack of resources, such as water, arable land, financial capital; large supplies of weapons and ammunition; long–standing grievances that are manipulated by political demagogue; suppressed will of a people; violation of fundamental human rights; some conflicts are over separation of nations, others are over integration of nations. However, the challenge any conflict entails has remained the same throughout history—every conflict demands resolution.

The end of the Cold War has transformed the world's security situation by posing new dilemmas. Threats to international security originate not only from interstate relations, but also from instability and conflicts within states that threat to spill over into international arena. Current international environment, lacking centralized authority and universally accepted norms, provides a favorable soil for conflict eruption and re–emergence.

Various methods and techniques have been tried to successfully manage and resolve conflicts.

as negotiation, mediation, conciliation, enquiry arbitration, judicial settlement or other peaceful means of their own choice.

Mediators assume various roles and responsibilities. For example, Kressel classifies the following roles: directive (promoting specific outcomes), non–directive (producing a favorable climate for mediation), and reflexive (discovering issues, facilitating better understanding).[2] Touval and Zartman differentiate between communication facilitation, formulation, and manipulation.[3] Princen distinguishes between principal mediators, who have interests in the contested issues and resources to bear, and neutral mediators, who have none of the above listed.[4] The roles that mediators accept and the goals they pursue are manifold, because the disputes and the conflicts, in which they involve, vary in intensity, escalation, dynamics, content and context, actors, circumstances and other details. This complicates attempts to subject mediation to systematic analysis. However, it is important to study mediation systematically if we want to improve its effectiveness and results.

Mediators act in a complex setting that reflects an intricate net of political, economic, social, cultural and even psychological dynamics. As conflicts vary in diversity of parameters, so do objectives and strategies of mediation from context to context. In commenting on the role of mediators, American practitioner Arthur Meyer noted that:

> The task of the mediator is not an easy one. The sea that he sails is only roughly charted, and its changing contours are not clearly discernible. He has no science of navigation, no fund inherited from the experience of others. He is a solitary artist recognizing at most of few guiding stars, and depending on his personal powers of divination.[5]

Mediation is a part of a more complicated process that involves numerous variables, and indeed becomes a variable itself in determining the final outcome of the more extensive process of conflict resolution. Consequently, it is very difficult to evaluate mediation in terms of success and failure. There is little consensus in the theory of mediation on what constitutes successful mediation. However, certain criteria to facilitate evaluation are suggested by scholars and practitioners who have attempted to subject mediation to systematic analysis.

For example, Bercovitch proposes two broad evaluative *criteria—subjective* and *objective*[6]—in assessing contribution and consequences of any form of international mediation.[7] *Subjective* criteria refer to parties' or mediators' perception that the goals of mediation have been achieved and the desired change has taken place. The goals of mediation or the desired change pertain to either the process of interaction or its outcome. From this perspective, a mediation is considered as successful if: 1) the parties express satisfaction with the process or outcome of mediation, or when either or both of these are perceived as fair, efficient, or effective; 2) the mediated outcome is seen as fair when the parties' expectations are met, or when allocation of scarce resources is consistent with the principles of equality, equity or need—(fairness); 3) international mediation emphasizes timeliness, minimizes costs and produces outcomes that maximize the benefits each party experiences—(efficiency); 4) the mediated outcome is effective, that is stable and realistic and offers opportunities to avoid similar disputes in the future—(effectiveness).

Objective criteria are used to examine behavior of parties upon termination of mediation and determine the extent of the change that had taken place. If parties continue to interact in the same dysfunctional manner, then mediation can be assessed as a failure. According to such evaluation,

mediation is considered as successful, if: 1) mediation efforts contribute to the cessation of violent behavior and opening of a dialogue between parties; 2) parties embrace a formal outcome that settles many of the issues in dispute and produces new and more productive interaction.

Susskind and Babbitt suggest five other conditions for successful mediation: 1) disputants must realize that they are unlikely to get what they want through unilateral action; 2) alternatives to agreement must involve unacceptable economic or political cost; 3) representatives of the disputing parties must have sufficient authority to speak for their members and commit to a course of action; 4) other international and regional interests with stake in the dispute must exert pressure for resolution; 5) a mediator must be available who is acceptable to all sides.[8]

According to Susskind and Babbitt, successful mediation should result in cessation of violence; agreements that allow each party to save face both internationally and domestically; good precedents in the eyes of the world community; arrangements that will ensure implementation of whatever agreements have been reached; and better relationships among the disputing parties.[9]

Kalevi Holsti argues that successful peace settlements are largely dependent upon their ability "to anticipate and devise means to cope with the issues of the future," and failure to do so "sets the stage for future eras of conflict and war."[10]

One of the characteristics of conflict termination, suggested by Mitchell, is that it is a *bilateral* process. "There have been many unilateral declarations of war, but none... of peace. It does take one party to make a war, but at least two to make a peace."[11] Mitchell discusses several circumstances in which the parties are willing to accept a third party's mediation: 1) when parties to the conflict decided either independently or tacitly that they wish to arrange for a compromise solution; 2) in circumstances where adversaries are uncertain about the likely future course of events. In this case balance of advantage does not significantly outweigh in one direction and therefore parties are uncertain about relative payoffs of continuing the conflict, as well as their future success; 3) circumstances where a long drawn–out conflict has led to mutually recognized exhaustion of resources and options; 4) circumstances where neither side is yet exhausted, but where both can recognize a stalemate; 5) when parties perceive that conditions exist that offer both some advantages, even if they fail to achieve all desired goals; 6) if parties' maximum concession levels (MCL) produce some realistic bargaining range, then assistance of an intermediary in exploring dimensions of this range will usually be recognized as helpful.

William Zartman has developed the concept of "ripeness" which he describes as a point at which the parties have reached a "mutually hurting stalemate." In other words, Zatman believes that unless the conflict is "ripe for resolution" and has reached the level of "hurting stalemate"—at which point neither party can win the conflict unilaterally, yet each side maintains the ability to hurt the other–there is not much that mediators can do. A mediator's task is to make parties view the mediated agreement as a way out of the stalemate, and as an alternative preferable to unilateral "win."

According to Zartman, there are four, not necessarily concurrent, conditions that indicate "ripeness" of the conflict: a) *hurting stalemate* to the conflict; b) *looming catastrophe*; c) valid representatives; d) a way out of the conflict.[12] Zartman explains that conflicts that cost little have

little reason for settlement, they "just simmer along, waiting for the moment when they can boil over."[13] Zartman suggests that the best moment for resolution would appear to be when the parties to the conflict are stalemated at a high level of intensity from which they cannot unilaterally escalate their way out.[14]

However, views differ on when a conflict is ripe for resolution. Some scholars and practitioners propose that unless parties to the conflict themselves decide to bring the conflict to an end and allow for a compromise, no positive solution can be reached. And when favorable stage for compromise is set, then conflicting parties try to invite a third party to go between to arrange formalities and legitimize their actions. Other experts on mediation support early intervention, before violence escalates, still others consider late intervention, when sides have exhausted military solutions and alternatives to peace, or as Stedman describes, when the fear of continuing the war is high and the fear of settlement is low.[15] Moreover, the involvement of mediators, great or regional powers, also influences the calculations of the ripeness.

The underlying concept of the word ripeness might imply that the ripe moment occurs once, as ripeness of fruit. However, in a conflict, ripe moment can be reached or even created several times, as well as "hurting stalemate" can arise at different phases. Thus, ripeness of a conflict rather implies an opportunity that can be used by a mediator to promote compromise.

Stein proposes other situations of ripeness of the conflict, when: 1) the parties have redefined their interests because of changes in leadership or constituency pressures, and are no longer content with the status quo; 2) old norms and patterns of behavior have been replaced with new norms facilitating possibilities for compromise and achievement of a durable settlement; 3) parties share perceptions about desirability of an accord; 4) parties have agreed on a common bridging process to settle differences; 5) a formula allowing for compromise and a negotiated end to hostilities is viable.[16]

Among other criteria that can affect the course of a peace process Hampson has emphasized the role of third party intervenors in facilitating dispute resolution; structural characteristics of conflict processes; changing dynamics of regional and/or systemic power relationships; the range of issues covered by peace settlement.[17]

According to Rubin, for international mediation—and indeed any other form of intervention in any conflict setting—to be effective, three things are required: a) disputant motivation to settle or resolve the conflict in question; b) mediator opportunity to get involved, and c) mediator skill.[18] There also must exist an opportunity, because if disputants decided to shun any possibility of intervention, there is not much a mediator can offer. Finally, to be effective, a mediator should to some extent possess conflict resolution skill. Rubin emphasizes the combination of *process skills* (e.g. ability to listen, to reframe issues, to intervene at the right and ripe moment, etc.), and *content skills* (in the form of understanding of particular issues in conflict, as well as their legal, political, or economic ramification and consequences).[19]

Richard Haass has developed a list of prerequisites for successful mediation that consists of: mutual desire for accord; formula with benefits for all parties; a negotiating process that is acceptable to all; leadership that is strong enough to maintain compromise.[20]

It is also suggested (e.g. Deutsche, Stephens, Mitchell, Webb) that conflicts are most amenable to resolution when issues (and parties) are well defined and are structured in a way that permits a confidence–building process to emerge over time. From a practitioner's perspective, Strobe Talbott proposed that all conflicts stand a better chance of resolution if parties to the dispute take full account of globalization and its sub–phenomenon, regionalization.[21]

Many experts (e.g. Job, Hampson, Mitchell) view conflict resolution from a long–term perspective, thus drawing a distinction between peacemaking and peacekeeping. They believe that just the end of the strife and armed confrontation is only a partial success, while really successful resolution that is durable is one that ensures support of certain institutions and structures that must be put in place in order to discourage parties from taking up arms again.[22] Patricia Weiss Fagen assesses success of conflict resolution in terms of enforcement, post–conflict/post–settlement peacekeeping and peace–building, as well as society's ability to make transition from war to peace, and restoration of civil order.[23]

Implementation period of a mediated agreement is very important. Similar to a recovery period after a complicated operation on a patient, which is very risky and fragile, time after a negotiated peace can be more chancy and threatening with violence than the period before the mediated agreement, especially given that not all formal agreements adequately resolve conflicts. Stephen Stedman lists several reasons for such a risk. He observes that signing a peace agreement does not necessarily mean that parties prefer peace to war, parties might choose to risk the benefits of peace for another try at war and total victory, because cheating is common in implementation, and rogue elements might continue to fight even if their leadership has signed a peace agreement.[24]

Creation of safe and secure environment in the aftermath of a conflict is essential for preventing reemergence of violence. Although largely dependent on a particular case, in general such a process will require a rapid introduction of security forces to separate adversaries; stabilizing presence; overseeing of disarmament plans; as well as undertaking simultaneous steps to restore legitimate political order and ensure legitimate leadership; maintaining representative governance, rule of law, and vigorous civil societies; proper functioning of police, judicial and penal systems; as well as resumption of normal economic activities.

Although the discussed approaches encompass multiple variables, contexts and situations, they cannot be exhaustive in accurately estimating success and failure of mediation efforts, yet there are valuable as they permit systematic analysis. It is hard to make a checklist of conditions for successful outcome for several objective reasons. For example, notions of success and failure are relative. When engaging into a conflict, mediators set and pursue various goals. They intend to change or affect various aspects of the conflict–its intensity, dynamics of interactions and behavior of conflicting parties, structure, decision–making patterns, and many other characteristics. Thus, mediators anticipate different outcomes and judge success or failure in terms of criteria that are important to them.

Also, there are degrees to success and failure. There exist various expectations and anticipations. For example, some parties, or mediators are satisfied with achieved interim cease–fire, while others anticipate a permanent resolution of the conflict, excluding the possibility of its re–eruption (minimalist vs. maximalist approach). In this respect, durability is an important factor that

presupposes search for temporary vs. permanent resolutions. Furthermore, conflict management can succeed on one stage and fail on another–phasal success vs. comprehensive.

Important in the process of mediation are also mediators' resources and tools of leverage. Rothschild identifies the following means of leverage: purchase (rewards), insurance (guarantees), legitimacy (recognition of claims and status of the sides).[25] Raven emphasizes resources such as reward, coercion, legitimacy, expertise, and information.[26] When analyzing importance of mediators' leverage, Greenberg, Baron, and McGuinness discuss how mediators can affect subjective, objective and normative environments.[27] They have observed that a mediator can affect objective environment by providing peacekeeping, side payments, rewards, military or political retaliation against aggressors. A mediator can demonstrate normative leverage by conferring legitimacy on a particular party that had not previously been included in the peace process–or illegitimacy on a party that had been once included. A mediator can influence the subjective environment by altering parties' perceptions of an issue, or each other by problem solving or actively working to build trust.

Mediators' legitimizing role—the extent to which mediation can legitimize parties, opposition, non–governmental groups, etc.—is very important. Mediators' thorough awareness of changes of parties' tactics and events that take place among the parties is critical. Not only mediators' informativeness, but also public awareness of facts, and the role of press and media as of expressing or presenting opinions, judgments, viewpoints are significant in affecting parties' further steps.

Central is also under whose auspices is mediation carried out—the United Nations, the OSCE, other regional and international organizations; whether mediation is unilateral or multilateral, official or unofficial, secret or public; how did fact–finding occur; what type of advocacy was implemented–legal, military, or other? Sequence of applied tools is important–for example, whether mediators started with more basic tactics, such as confidence building to proceed with tougher questions; whether negotiations are held face to face, directly by officials representing all the parties, or through their representatives. It is crucial to accurately identify the nature and the underlying causes of the conflict. Essential is mediators' choice of mediation styles and typologies, which range from good offices, facilitatory role to problem solving, manipulating parties to the extreme of becoming themselves a party to the dispute.

For the described elaborateness, I credit the method of case–by–case study of mediation and application of its techniques and tactics. This method is valuable, as it allows to study mediation systematically. However, I do not exclude possibility of making implications for other cases, but rather consider the worth of the method of empirical study of individual cases that allows drawing lessons from and making inductive generalizations that could have been utilized and applied (or, on the contrary, should not be utilized or applied) in other cases. "While any situation–like any person–has its unique elements, no situation–like any person–is totally unique."[28]

The literature on international mediation reflects a great diversity of approaches. Zartman concludes that knowledge that we have about what works and what does not work in conflict resolution is based primarily on studies of what practitioners do (the only other source of data being experiments).[29] Bercovitch identifies four main traditions in the study of international mediation:

- The first group of studies is essentially prescriptive and is devoted to offering advice on what constitutes good conflict management in real world situations.

- Other studies of mediation in a variety of contexts are based on theoretical notions and the participation of academic practitioners in a variety of actual conflicts, with the aim of testing ideas and developing a generic theory for resolution of social conflicts.
- There are many studies of mediation by economists and game theorists who develop mathematical models to examine how people, under conditions of maximum rationality and knowledge, would behave in conflict situations.
- The fourth set of studies is based on actual descriptions and empirical examinations of mediation cases. These studies seek to develop theories and offer general guidelines through: a) detailed description of a particular case of international mediation; b) laboratory and experimental approaches to mediation to discover how parties and mediators behave in controlled circumstances, and c) large–scale systematic studies that draw on numerous cases of international mediation to formulate and test propositions about effective mediation and to assess the conditions under which mediation can be made work better.[30]

This last tradition, in many ways, is the most fruitful approach and one that can produce the most relevant policy implications for decision makers. To be successful mediators should be able to learn from the past mistakes. Thus, I hope that the conclusions drawn from the particular case study, offered in this paper, will be a modest contribution to the systematic study of international mediation.

In conclusion certain factors that contributed to the failure of mediation process in Nagorno–Karabakh, the largest conflict in the Transcaucasus over self–determination of a people, will be identified and analyzed. It is always good to know what to do, but it is also practical to know what not to do. The lessons drawn from Nagorno–Karabakh case are also lessons for other mediations and offer general themes for the future to make mediation a creative, intelligent, devoted, determined, and skilled process.

Chapter 2

HUMANITARIAN INTERVENTION AND THE USE OF FORCE IN PEACEMAKING. PREVENTIVE DIPLOMACY.

In the process of mediation some standpoints do not exclude the possibility of exerting pressure and the use of force by mediators: "*Si vis pacem para bellum* (If you want peace prepare for war)," pronounced the Romans. For example, Rubin suggests that it is the whip of external pressure and the pain of unacceptable alternatives rather than the lure of joint gain that drives disputants to the bargaining table.

Different views exist in relation to intervention or the use of force in specific contexts. Galina Starovoitova believes that "To prevent wars associated with self–determination, the world community will need to equip such organizations as the UN Security Council with a more sophisticated legal mechanism that would infringe upon the international legal principle of non–intervention... ."[31] In peace–enforcing process Zartman does not exclude the possibility of using force: "Conflict resolution is peacemaking and peace–building. Even in peacemaking there may be a need for force and threats of force.[32] On the contrary, Alexei Arbatov strongly defends traditional views of state sovereignty and international law, as opposed to the recent western emphasis on the need to protect human rights.[33] However, he does not exclude the use of military forces–regulated by strict legal rules and procedures–for resolving domestic problems.[34]

The question arises as to what to do in the situations, where diplomacy, economic measures and political strategies are not sufficient to prevent or stop outbreak or recurrence of a violent conflict? Resort to force? The issue of use of force by mediators–how much? when? in which cases? how?–has never been clarified and remains an eternal dilemma of foreign policy. On the other hand, the notion of "external pressure" is also extremely controversial and ranges from light sanctions to humanitarian intervention and the use of force.

The use of force is governed in the international law by the UN Charter. At the core of the Charter is the principle of sovereignty and integrity of states, which prohibits "the threat or use of force against the territorial integrity or political independence of any state" (Art. 2 §4). This principle, however, allows for two exceptions: first, Art. 51–"individual or collective self–defense," when a member state is the victim of aggression; second, when under Chapter VII the Security Council recognizes "the existence of any threat to the peace, breach of the peace, or act of aggression" (Art. 39), and decides on coercive measures to neutralize the threat (Art. 42). However, to bring an end to the threatening situation, Chapter VII also offers sanctions in forms of various embargoes to avoid the use of force (e.g. Art. 41).

Since 1945 a contradictory trend has developed in the international law, which prioritizes human rights over the sovereignty of states. In 1948 the United Nations Declaration of Human Rights was proclaimed. Human rights concurrently advanced on the European level–all members of the Organization for Security and Cooperation in Europe (OSCE) have accepted that "the commitments undertaken in the field of the human dimension of the OSCE are matters of direct legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."[35]

The trend progressed as to recognize the international human rights law as entailing *erga omnes* obligations that states must respect in all circumstances without any contractual exceptions or requirements of reciprocity.

The international human rights law, which derives from the UN's Declaration of Human Rights and consists of a body of rules–adopted at the international[36] and regional[37] levels–that provide for a set of political and juridical procedures to ensure respect for human rights is often being confused with much more ancient humanitarian law that has been developed by lawyers, politicians, theologians to "humanize" war by defining rules for *jus in bello*.

Difference between these two laws is that respect for the international human rights law is the responsibility of states, while violation of humanitarian law alleges prosecution of individuals. Common to these two laws is that they punish their violation via specific sanctions. The two laws also have similar weaknesses: for example, except for genocide–that is specified in 1948 Convention on the Prevention and Punishment of the Crime of Genocide–the international human rights law does not specify or define what is considered "gross and massive violation of human rights" and how it should be prevented. The humanitarian law is also silent on prevention mechanisms. Yet, it is prevention of gross human rights violations, humanitarian catastrophes, as well as recognition that populations are in danger of starvation, massacre or other forms of massive affliction that have become validation of "humanitarian intervention" in recent conflicts.

It is also worth pointing out the change of tendency in the practice of intervention. The Cold War tendency of competitive, unilateral and often coercive interventions of great powers into other states' internal affairs with an intent to reorganize domestic political structure has been intensively declining in the post–Cold War period, giving way to collective interventionism and multilateral collaboration on behalf of international organizations. Along with *Track One Diplomacy*–official government–to–government negotiation among instructed representatives of sovereign states–*Track Two diplomacy* has been increasingly used in conflict resolution for dealing with problems beyond the reach of official diplomacy. NGOs, such as The Carter Center's Negotiation Network, the International Crisis Group, the Project on Ethnic Relations, the Conflict Management Group, and many others are becoming increasingly useful in brokering political agreements and supplementing governmental roles, as well as building constructive relationships between confronting parties.

The right of the victims of natural or man–made catastrophes to receive assistance has become a part of the customary international law, by being set out and reaffirmed in General Assembly's Resolutions 43/131 of December 8, 1988; 45/100 of December 14, 1990. The practice kept on enriching with precedents as Security Council authorized humanitarian intervention via Resolution 688 on Iraq of 5 April 1991; Resolution 770 on Bosnia–Herzegovina of 13 August 1992; Resolution 794 on Somalia of 3 December 1992; Resolution 940 on Haiti of 31 July 1994; Resolution 1101 on Albania of 28 March 1997; Resolutions on Afghanistan–1378 of 14 November 2001, 1383 of 6 December 2001, 1386 of 20 December 2001, and many others.

Carnegie Commission suggests three broad principles that should govern the use of force in conflict prevention:[38]

1) Any threat or use of force must be governed by universally accepted principles, as the UN Charter requires. Decisions to use force must not be arbitrary or operate as the coercive and selectively used weapon of the strong against the weak.
2) The threat or use of force should not be regarded only as a last resort in desperate circumstances. Governments must be attentive to opportunities when clear demonstrations of resolve and determination can establish clear limits to unacceptable behavior.
3) States, particularly the major powers, must accept that the use of force, if it does become necessary, must be part of an integrated, usually multilateral strategy, and used in conjunction with political and economic instruments. For this purpose, the Commission suggests to institutionalize the view that the use of force for preventive purposes should be guided by the UN Security Council resolution specifying a clear mandate and detailing the arrangements under which force will be used and the units will be involved.

Although valuable, however, it is questionable how well these principles will work in practice. For example, as mentioned above, the UN Charter principles that guide the use of force in preventing or managing a crisis are not in complete accord with other international standards for force employment. Or, how can it be guaranteed that the strong will not use its political, economic, or military leverage—"carrots and sticks"—against the weak? To illustrate an example, when the US overrode the UN Security Council's vetoes to bomb Yugoslavia in 1999. What if by claiming a self–defense a state encroaches on the sovereignty of another state? Unfortunately, there are no mechanisms to prevent or protect from such violations.

In the aftermath of a crisis lightly armed peacekeeping missions can be helpful in deterring renewed strife, improving security for humanitarian enterprises, such as refugee camps, monitoring cease–fires and relations between adversaries, who are separated along clearly demarcated boundaries, and have agreed to the presence of outside forces. However, neither peacekeeping missions, nor international policing force can be substitutes for a political system and civil order. Therefore, it is important that international, regional, or *ad hoc* arrangements not only keep the tensions under control, but also help to restore and promote normal functioning of legitimate governmental, economic, judicial, penal systems within a state. This will, certainly, reduce necessity for military intervention.

Peacekeeping operations are usually associated with post–conflict contexts. However, the so–called *Thin Blue Line* preventive deployment, which is a preventive military rather than diplomatic strategy, involving the positioning of troops between confronting parties,[39] has been successfully practiced in Macedonia, via positioning in 1992 of a small force troops and civilian monitors with the objective to prevent the spread of hostilities from other regions of the former Yugoslav Republic.

By and large, it remains highly debated whether the use of force can prevent escalation of a conflict and avert a larger catastrophe. For example, it has been argued that it was nothing less than NATO bombing that drove Bosnian combatants to peace in fall 1995. Meanwhile, it was the same NATO war on Yugoslavia–"to prevent more human suffering and more repression and violence against the civilian population of Kosovo"[40]–that escalated Kosovo conflict and caused hundreds of thousands refugees, thus failing to give a final solution to Kosovo conflict and leaving the political status of Kosovo unresolved.

Even though a precedent is very important for the evolution of a law, I believe that military intervention must be a decision of the last resort, all the other peaceful means and unarmed pressure having been tried and exhausted, and the use of force remaining the only means to avert a major humanitarian catastrophe. Speaking in the context of mediation, it should never be forgotten that mediation is a voluntary form of conflict management and presupposes conflict resolution by peaceful means. It is extension of peaceful conflict management and is a non–coercive, non–violent, and finally non–binding form of intervention. Thus, resort to force must be excluded to the largest extent possible.

Preventive Diplomacy

It is often said that an ounce of prevention is worth a pound of cure.[41] In the discussions of crisis management preventive diplomacy is given much consideration. Along with the tools of traditional diplomacy, *preventive diplomacy* allows to make more urgent steps through unilateral and multilateral channels to promote non–violent resolution of a conflict via arbitration, mediation, pressuring, cajoling, lending good offices, encouraging a dialogue between parties, etc.. Indeed, the key to preventing a conflict is not so much the early warning, as the early action.

To prevent a crisis it is very important to first recognize a potential crisis. Ability to detect early and analyze proficiently developing trends that might result in conflicts is essential for prudent decision–making and effective action. Although it is not easy to recognize a latent hot spot, however there are certain indicators, which can facilitate identification of an emerging crisis. These encompass widespread human rights abuses, brutal political persecution, deportation of individuals or groups, disruption of normal functioning of non–governmental organizations and other state or non–state institutions, inflammatory manipulations of media, accumulation of arms, organized killing, etc.. Provided that it is difficult to recognize a potential conflict, at least warning signs and early manifestations of emergency must not be neglected, but should be responded immediately. Early action can be helpful in supporting locally sustainable solutions and preventing a spillover effect.

In its 1999 report on Preventing Deadly Conflict, Carnegie Commission identified strategies for prevention that fall into two broad categories: *operational prevention*—measures applicable in the face of immediate crisis; and *structural prevention*—measures to ensure that crises do not arise in the first place, or if they do, that they do not recur.[42]

Operational prevention relies on early engagement to help create conditions in which responsible leaders can resolve the problems giving rise to a crisis. The Commission has identified four key elements that increase prospect for success:[43]

1) A lead player—an international organization, country, or even a prominent individual around which or whom preventive efforts can mobilize. For example, the US leadership in the Gulf War, supported strongly by the UN, was critical in maintaining the unity within a diverse coalition of nations. The Commission believes that in most cases active support of the members of the Security Council, especially the permanent members, is important to success.
2) A coherent political–military approach to engagement designed to arrest violence, address humanitarian needs of the situation, and integrate all political and military aspects of the problem. The Commission believes that preventive responses must seek not only to reduce

potential for violence, but also to create the basic conditions to encourage moderation and make responsible political control possible. This means that in the acute phase of conflict assertive efforts may be necessary to deny belligerent weapons and ammunition. These military steps may need to be complemented by economic steps to deny access to hard currency for procuring weapons. Additionally, humanitarian assistance will usually be needed to help non–combatant victims of the crisis. This implies that crisis response must integrate humanitarian, economic, political, and military elements if it is to have prospects for success.

3) Adequate resources to support preventive engagement. The Commission suggests that not only governments, the International Committee of the Red Cross and global NGOs, such as CARE and Oxfam, but also smaller humanitarian organizations, such as *Médecins Sans Frontières*, and other private sectors can provide considerable resources and services, and therefore their efforts should be systematically integrated into the overall approach.

4) A plan for restoration of host country's authority (particularly applicable to intrastate conflict). The Commission believes that the primary responsibility to avoid reemergence of violence once peace has been achieved belongs to the people and their legitimate leaders who must resume complete responsibility for their own affairs.

Structural prevention, or peace–building, comprises strategies such as putting in place international legal systems, dispute resolution mechanisms, and cooperative arrangements; meeting people's basic economic, social, cultural, and humanitarian needs; rebuilding societies that have been shattered by war or other major crisis.[44]

Although the aforelisted steps might not be sufficient in themselves to prevent violence for a long period, in a short–term, however, they can help open up political space and time to resort to non–violent means to resolve a dispute.

Economic Measures

In conflict situations states and international organizations often resort to economic measures to influence course of a conflict. Economic measures range from *sanctions* to *inducements* and *economic conditionality*, which, if used effectively, can play an important role in preventive diplomacy. Sanctions are used as a warning to the offending state to signal international concern to the aggressor and punish his behavior, as well as warn about harsher actions that might follow up. However, very often the undesirable side effects of economic sanctions are increased civilian suffering and disruption of economic activities of neighboring states or international trade. In this respect, it is important that sanctions be as precisely targeted as possible on the causes of the conflict. For example, freezing personal assets of those responsible for the crisis and denying them access to hard currency to acquire weapons or pay combatants.

Compared to sanctions, inducements have found a more seldom implementation as a preventive tool. This can probably be explained by insufficient study and practice of inducement policies. Inducements are about rewarding for specified policy adjustments, changes or compromise. Inducement systems grant political or economic benefits, and are aimed at making cooperation or conciliation among the parties more appealing and beneficial than hostility or aggression. Inducements used in practice encompass military cooperation, economic aid, favorable taxation and

trade terms, tariff reductions, access to advanced technology, subsidies for exports and imports, and other political, economic and military elements. In this respect, reward power of mediators, their ability to provide a better understanding of inducements, and skills to project a viable picture of estimated benefits are critical for a successful implementation of inducement policies.

As a preventive mechanism, conditionality presupposes building ties between accountable, non–violent behavior and the promise of greater reward through integration into the community of market democracies. An example of conditionality might be when states demand good governance standards in return to development assistance they provide to the emerging economies. It is very important that donor states, mediators who exploit conditionality policies are well prepared to observe the conditions and standards that they require. Also, it should be born in mind that some mechanisms that might work between governments might not be suitable for intrastate disputes.

On the whole, outside rewards and incentives–such as foreign aid, actions and policies of the International Monetary Fund and the World Bank, as well as threats–such as economic sanctions, embargoes, prosecution of leaders, use of military force, can strengthen mediators' hands in negotiating an agreement.

Chapter 3

A BRIEF OVERVIEW OF THE EVOLUTION OF PRINCIPLES *UTI POSSIDETIS, TERRITORIAL INTEGRITY* AND *SELF–DETERMINATION.*

Nagorno–Karabakh conflict is over self–determination of a people and demonstrates an obvious case in which the principles of territorial integrity and self–determination clash in practice. Moreover, negligence of this principal cause of the conflict has been a major obstacle in the mediation process. Therefore, I deem necessary to discuss the afore–mentioned principles in the context of major international documents, as well as analyze their application to Nagorno–Karabakh case.

Uti Possidetis Doctrine and Territorial Integrity

The expression *uti posidetis* derives from the Roman Law, in which it was essentially a prohibition by the Praetor against interference with the possession of the immovable property, and consisted of the award of the interim possessions, as a preliminary to the determination of the ownership.

The notion of *uti possidetis* was first used by international lawyers to describe a method of determining what territorial changes had occurred as a result of a war. The international law of war gave the name of *uti possidetis* to the system of consolidating the *de facto* situation resulting from hostilities and their aftermath. It used to apply in so far as the combatant states made no stipulation to the contrary. Such States would continue in the possession of what they already possessed.

The principle of *uti possidetis* came to have a different meaning in Latin America. It consisted of a practice embodied in a number of bilateral treaties and constitutions of Spanish American countries which stated the intention of those countries that wherever possible, their international boundaries should follow the former colonial boundaries.

The doctrine of *uti possidetis* was discussed by the ICJ in the context of African boundaries in the Frontier Dispute Case (Burkina Faso/Mali). The Court held that:

> "at first sight this principle [of *uti possidetis*] conflicts outright with another one, the right of peoples to self–determination. In fact, however, the maintenance of the territorial *status quo* in Africa is often seen as the wisest course, to preserve what has been achieved by two peoples who have struggled for their independence, and to avoid a disruption which would deprive the continent of the gains achieved by much sacrifice. The essential requirement of stability in order to survive, to develop and gradually consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self–determination of peoples."[45]

Although the Chamber of ICJ contended itself with the fact that *uti possidetis* might conflict with the principle of self–determination, it did not really attempt to state the outcome of such a conflict.

Another attempt to provide for a solution of inherited border problems was the 1964 resolution of Organization of African Unity (OAU), which gave effect to certain principles stated in Art. 3 (3) of the OAU Charter, and declared that all member States pledge themselves to respect the borders

existing upon their achievement of national independence. Although this resolution has been referred to in solving some disputes in Africa, however, it is important to notice that the OAU's Cairo resolution of 1964 on Boundary Disputes in Africa has contributed to the formation of the principle of regional customary law, and it clearly cannot prevail over the principle of self–determination, which is a legal principle derived from the principles contained in the UN Charter, because a rule of regional custom is subordinate to the general international law.

Western states followed the principle of *uti possidetis* doctrine, practiced in previous decolonization, in recognition of the new states of the former Soviet Union that had been tied to the highest level of administration immediately below the state.[46]

Despite that the principle of *uti possidetis* has been favored for certain policy reasons by tribunals concerned with boundaries in Asia (e.g. Temple of Preah Vihear Case; Rann of Kutch Arbitration (Indo–Pakistan Western Boundary); Boundary Disputes in the Indian Subcontinent), however, as the practice has shown, this principle appears in no sense mandatory. For example, Latin American countries, as well as other states, have frequently agreed to modify it, or adopt different principles for the purpose of arriving at a settlement.

The principle of *uti possidetis* has been outstripped by the modern view of territorial integrity consolidated in the UN Charter, the international law, the Helsinki Final Act. However, some scholars (e.g. Herzig, Franck) use the terms *uti possidetis* and territorial integrity interchangeably, while others (e.g. Haggins) deny the interchangeable use of *uti possidetis* and territorial integrity. For example, Haggins argues that *uti possidetis* is the principle–first articulated in Latin America, and since adopted by emergent Africa and acknowledged by the International Court in Frontier Dispute (Burkina Faso vs. Mali), as of universal application–whereby states become independent within their colonial boundaries, forfeiting any historical claims they might aspire to regarding territories now held within the old colonial boundaries of others.[47] *Territorial integrity*, according to Higgins, is what is required by Art. 2 (4) of the Charter–that no force be used against the territory of an independent state, whether by bombardment, incursion, or occupation. Thus, this interpretation suggests that *uti possidetis* is to do with decolonization, while territorial integrity is the Charter principle applicable to all states.

In this paper the terms *uti possidetis* and territorial integrity are considered and used as two separate terms. The term territorial integrity is considered as the successor of *uti possidetis*, which has undergone significant conceptual, contextual and practical modifications and has acquired its meaning in the UN Charter, the International Law, the Helsinki Final Act and other important documents of the post–war world. Moreover, the modern concept of territorial integrity has developed simultaneously with another post–war principle, that of self–determination, and thus should be considered comprehensively in the same context with self–determination.

Territorial Integrity Within the United Nations System

The concept of territorial integrity (which is mainly used in combination with political independence) emerged during the years immediately following the end of the World War One. Art. 10 of the League of Nations stipulated that "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the

League." Later the same phrasing was used in the Stimson Note of January 7, 1932 (Stimson Doctrine). Another use of the expression can be found in the Art. 3 of the Convention on Rights and Duties of States (Montevideo, December 26, 1993), which dealt with the right of a State to defend its integrity and independence.

The concept of territorial integrity was introduced in the post–war era through the United Nations, Art. 2 (4) of which provides that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The concept was also inserted in the Dumbarton Oaks draft at San Francisco upon the insistence of the smaller States who believed that the composite wording covered a wide range of possible coercive actions or even preparatory acts against their territory and sovereignty.

Since 1950s the concept of territorial integrity has followed the course of rapid evolution. Specifically, the events of decolonization and the consequent emergence of a great number of new states, together with the East–West division, heavily influenced the traditional concept. In 1960, through adoption of the Declaration on Granting of Independence to Colonial States and Peoples,[48] the United Nations General Assembly enriched the scope of the concepts of territorial integrity and political independence by admitting two new elements into it, namely–that all peoples, and not only states, have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory; and that by virtue of that right they freely determine their political status and they freely pursue their economic, social and cultural development. It must be noted that in the Declaration the element of "peoples" is a recipient of the privilege of integrity and independence.

In fact, the wording of the Declaration equalizes the notion of state with the notion of the peoples striving for their autonomous status and interference in international affairs. This notion is further substantiated in the same Declaration:

> "all armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence and integrity of their national territory shall be respected."

Later the principle of territorial integrity was reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on October 24, 1970.[49]

Another UN document, which refers to the principle of territorial integrity is the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty of December 21, 1965.[50] In this Declaration the UN General Assembly, concerned over the increasing threat to universal peace due to armed intervention and other direct or indirect interference threatening the sovereignty and political independence of States, stated that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Identical to the Declaration on the Granting of Independence to Colonial Countries and Peoples, this Declaration also encompassed the freedom of economic, social and cultural development of a people.

The document that completes the image of territorial integrity within the UN system is Resolution of December 14, 1974, on the Definition of Aggression.[51] In this Declaration the General Assembly, reaffirming the duty of States not to use armed force to deprive peoples of their right to self–determination, freedom and independence, or to disrupt territorial integrity, defines aggression as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State. Art. 3 enumerates the cases which are considered as acts of aggression. This includes invasion or attack of territory; bombardment; blockade of ports or coasts of a State and several other instances.

It is worth noticing that the UN declarations referring to the territorial integrity mostly refer to prohibition of the threat or use of force. Also, their texts reflect the development of the notion of territorial integrity in the circumstances of the emergence of new small states.

Self–determination: Evolution of the Concept

The ideal of self–determination dates back to the Hebrews' exodus from Egypt. The political roots of the modern concept of self–determination can be traced back to the American Declaration of Independence of July 4, 1776, which proclaimed that governments derived "their just powers from the consent of the governed," and whenever any Form of Government becomes destructive of these ends, it is the Right of People to alter or to abolish it." This concept was further developed during the French Revolution in the doctrine of popular sovereignty, which renounced all the wars of conquest and allowed annexation of territory to France only via plebiscites.

In the 19th and early 20th centuries several nationalist movements interpreted self–determination as the right of each nation to constitute an independent state and that only nationally homogenous states were legitimate.[52] However, the concept of self–determination that developed in the first quarter of the 20th century in Europe–in response to the dissolution of the three empires–the German, Austro–Hungarian, and Ottoman, which unlike Latin America, encompassed many different and mutually–antagonistic political enclaves, cultures and politically–militant ethnic groups–was different from the surges of nationalist revolts of princes and theologians throughout Europe since Lutheran and Calvinist revolutions. Self–determination has been the revolt of the popular will.

This process entailed the limited redrawing of boundaries, in accordance with the expressed or implicit wishes of the inhabitants. Thus, the notion of self–determination prevalent in Europe after World War One empowered minorities to alter existing boundaries. For example, the principle of self–determination and plebiscites played a significant role during the unification processes of Germany and Italy. Acting on Versailles impulse, plebiscites were held to determine the preferences among the Danes of Schleswig annexed to Prussia in 1864, and the results were to reconfigure the Danish–German border.[53] The Versailles settlement brought self–determination to Poland. Woodrow Wilson also prevailed in the view "that all branches of the Slav race" in what was to become Czechoslovakia "should be completely freed from German and Austrian rule."

Later, principle of self–determination was embraced by the socialist movement and the Bolshevik revolution. However, having been developed by Lenin and Stalin, the right to self–determination in the Soviet doctrine was a tactical tool to serve the aims of the communism and not an end in itself that laid the foundation for the Stalinist practice of "gerrymandering" and "nationalities policy".

During World War One President Wilson championed the principle of self–determination in his Fourteen Points. Nevertheless, self–determination has never been fully realized in the Paris Peace Treaties, except for several cases of plebiscites held by the Allies over some disputed territories.

Later on principle of self–determination was reflected in a series of treaties concluded under the auspices of the League of Nations for the protection of minorities. For example, self–determination was specifically applied in the Aaland Islands dispute. However, as the principle of self–determination did not form a part of the Covenant of the League of Nations, it was then a political rather than a legal concept.

Self–determination Under the Aegis of the United Nations

The principle of self–determination was invoked on numerous occasions during World War Two. It was also proclaimed in the Atlantic Charter of August 14, 1941, in which President Roosevelt of the United States and Prime Minister Churchill of the United Kingdom declared, *inter alia*, that they desired to see "no territorial changes that do not accord with the freely expressed wishes of the people concerned," that they respected "the right of all the peoples to choose the form of the government under which they will live" and that they wished to see "sovereign rights and self–determination restored to those who have been forcibly deprived of them." These provisions of the Atlantic Charter were restated in the UN Declaration signed in Washington on January 1, 1942, as well as in Moscow Declaration of 1943 and other important documents of the time.

The concept of self–determination was shaped and incorporated into the United Nations Charter at San Francisco Conference of 1945. The principle of self–determination is specified in Articles 1 (2), 55 and 73 (b) of the UN Charter.

Article 1 (2) states that it is one of the purposes of the United Nations to "develop friendly relations among nations based on respect for the principle of equal rights and self–determination of peoples and to take other appropriate measures to strengthen universal peace." In Chapter IX (International Economic and Social Cooperation), Art. 55 lists several goals the organization should promote in the spheres of economics, education, culture and human rights with a view (as is noted in the introductory clause) "to the creation of conditions of stability and well–being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self–determination of peoples."

The Charter also refers to the principle of self–determination in the part concerning colonies and other dependent territories. Art. 73 affirms that "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self–government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the outmost, within the system of international peace and security established by the present Charter, the well–being of the inhabitants of these territories..." (Non–Self–Governing Territories). Art. 76 (b) provides that one of the basic objectives of the trusteeship system is to promote the "progressive development" of the inhabitants of the trust territories towards "self–government or independence," taking into account, *inter alia*, "the freely expressed wishes of the peoples concerned" (United Nations Trusteeship System).

Some experts argued that the Charter (except for the provisions concerning non–self–governing and trust territories that necessitate binding international obligations) entailed certain vagueness concerning the general principle of "self–determination". Particularly, the Charter did not provide a definition for what constituted a "people". However, this vagueness was clarified by the UN in its Declaration on the Granting Independence to Colonial Countries and Peoples. In Resolution 1514 (XV), adopted by the UN General Assembly on December 14, 1960, it was stated that all peoples have the right to self–determination. The administrative powers were called upon to take immediate steps to transfer without reservation all powers to the peoples in the trust and non–self–governing territories and all other territories which had not yet attain independence, "in accordance with their freely expressed will and desire." This Declaration constitutes the political, and, in many observers' view, the legal basis for the decolonization policy of the United Nations for which implementation special institutions and procedures were created. For example, plebiscites and elections were used to determine the will of peoples.

In the Resolution 1541 (XV) of December 15, 1960 the General Assembly also elaborated a list of principles which were to guide members in deciding whether or not particular territories qualified as territories to which Chapter XI (Declaration Regarding Non–Self–Governing Territories) of the Charter applied.

The next evolutional stage in the development of the concept of self–determination was the adoption by the General Assembly of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights on December 16, 1966 (International Covenants on Human Rights). The two treaties entered into force on January 3 and March 23, 1976. In their identically worded Art. 1 it is stated that "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," and call upon the States Parties to the Covenant, "including those having responsibility for the administration of Non–Self–Governing and Trust Territories" to respect that right and promote its realization. They also state that in "no case may a people be deprived of its own means of subsistence." Thus, by being included in Art.1 of the Covenants, the concept of self–determination was given the characteristic of a fundamental human right.

In the Declaration on Principles of the international law concerning the Friendly Relations and Cooperation among States the principle of self–determination (and equal rights) of peoples embraces the right of all peoples "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development," as well as the duty of every State "to respect this right in accordance with the provisions of the Charter."

Principles of Territorial Integrity and Self–Determination in 1975 Helsinki Final Act
Territorial Integrity

The principle of territorial integrity of States is covered in Principle IV of the Helsinki Final Act of 1975 on Security and Cooperation in Europe: "The participating States will respect the territorial integrity of each of the participating States."

The principle is, however, very vague, as it does not define the concept of territorial integrity. The wording itself is quite obscure. For example, if under territorial integrity the delegations meant territorial sea and national airspace, then, the language "any action" of the second paragraph might extend to the prohibition of such non–violent actions as, for example transnational pollution, or accidental violations of air space. The last paragraph condemns military occupation and forcible acquisition of territory: "No such occupation or acquisition will be recognized as legal."

Self–determination

Principle VIII of the Helsinki Accord of 1975 stipulates that "participating States will respect the equal rights of peoples and their right to self–determination," proceeding with "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."[54]

If there were certain disputes during the initial stages of development of the UN Charter principle of self–determination, for example, whether it strictly applied to the decolonization context or not, in contrast to that, the Conference on Security and Cooperation in Europe (CSCE) formulation, undoubtedly, affirmed the universal concept of self–determination, upholding the right of all peoples to choose, adapt or change their internal and external political status as they wished. The wording in this respect is clear. Moreover, the narrow notion of self–determination would not make much sense in the European context, of which the forms of colonial or racist domination were not typical.

The first paragraph proclaims the principle of self–determination in general terms and, mentioning the rules on territorial integrity of States reiterates the traditional safeguard clause against secession. However, the content of the first paragraph should not be interpreted as a limitation on the right of peoples to self–determination, as it rather restrains states from supporting secessionist movements abroad.

The second paragraph stresses that "all peoples" have "always" the right "when and as they wish" to pursue self–determination "in full freedom." Hence, even peoples living in an independent country, that is people having already achieved "external" self–determination, have a permanent right to retain or change their political, social or economic regime in order to achieve "internal" self–determination free from internal oppression or external interference.

The third paragraph emphasizes the significance of respect for and promotion of self–determination in order to develop friendly relations and cooperation among the participating States.

Both these principles—territorial integrity and self–determination—are equally qualified in the Helsinki Agreements and neither is prioritized or is primary over the other, according to the statement from the Final Act: "All the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into the account the others."

Chapter 4

KEY ISSUES IN NAGORNO–KARABAKH HISTORY.

Nagorno–Karabakh in Pre–Soviet Times

Nagorno–Karabakh (historically Artsakh) constitutes Eastern portion of the Armenian plateau. Its Armenian roots, including Christian era Armenian churches, monasteries, *khachkars* (cross–stones) and other historical monuments trace back to the fourth century A.D.

The political form which Nagorno–Karabakh took throughout history lent itself to small autonomous kingdoms. In various historical periods Nagorno–Karabakh was a part of the larger Armenian kingdom. In the first century B.C. it constituted the part of Tigran the Great's kingdom, more specifically, part of the ancient Armenian provinces of Artsakh and Utik. Throughout the history the territory had been conquered by Seljuk Turks, Arabs, Mongols, Ottoman Turks, Safavid Persians. However, suzerains recognized Nagorno–Karabakh's right to self–government. Continuous traditional Armenian rule over the territory had been realized by autonomous Armenian nobles (*meliks*) from the late first millennium up until the end of the 18th century, even in the periods in which Nagorno–Karabakh was incorporated into larger empires. A century before Russia's entry into the Transcaucasus the right of Nagorno–Karabakh Armenians to remain under the rule of their local Armenian princes was affirmed by the Persian Shah.

By the 1813 Treaty of Gulistan,[55] Nagorno–Karabakh was transferred from Persian to Russian dominion. This marked the period of security and prosperity for Nagorno–Karabakh. The city of Shushi flourished as a major Armenian cultural and economic center. The territory remained undisturbed even during the early years of World War One.

Nagorno–Karabakh from 1918–1921

The 1917 Russian Revolution put an end to the Russian empire and the Tsarist rule. As a result in 1918 there emerged briefly independent Republics of Armenia and Azerbaijan, the first Azerbaijani state in history. The dispute over Nagorno–Karabakh between Nagorno–Karabakh's Armenians and Azerbaijan, on whose side the Ottoman Turkish army intervened and in 1918 and 1920 invaded Armenia, dates from this period.

In July 1918, the First Armenian Assembly of Nagorno–Karabakh declared the region self–governing and created the National Council and government. In August 1919 Nagorno–Karabakh National Council entered into a provisional treaty arrangement with the Azerbaijani government in order to avoid a military conflict with a superior adversary. As a result of Baku's consistent violations of the terms of the treaty, which culminated in March 1920 in Azerbaijanis' massacre of Armenians in Shushi, the Ninth Nagorno–Karabakh Assembly nullified the treaty and pronounced a union with Armenia. Anti–Armenian policies of Azerbaijan and Ottoman Turkey, illustrated by the series of atrocities against the Armenians beginning with 1915 genocide of Armenians in Ottoman Turkey and

further continued in Baku and elsewhere in 1918, ceased with sovietization of the Transcaucasian republics in 1920 and 1921.

On November 30, 1920, the sovietized government of Azerbaijan recognized Nagorno–Karabakh as part of Armenia. On June 12, 1921 the government of Soviet Armenia declared Nagorno–Karabakh as its integral part on the basis of the repeatedly expressed will of Nagorno–Karabakh population. The decree of the Armenian government, published in Yerevan and Baku several days later, clearly stated that Nagorno–Karabakh was henceforth an integral part of Armenian SSR.[56]

The tumultuous period of 1918–1921 set the foundation for 1988 and later conflicts in the region. Particularly, Joseph Stalin's "nationalities policy" and the strategy of "divide and conquer" sow seeds for later discontent. On July 5, 1921, the Caucasian Bureau of the Russian Communist Party adopted a political decision to annex 94 percent Armenian populated territory of Nagorno–Karabakh to Soviet Azerbaijan:

> Taking into consideration importance of peace between Muslims and Christians, as well as necessity of the economic link between Nagorno– and Lower Karabakh and its tie with Azerbaijan, Nagorno–Karabakh is left within the borders of Azerbaijan with the city of Shushi as the center of the autonomous *oblast*.[57]

This decision was motivated by regional politics, specifically, the relations between the higher authorities of Moscow and Turkey, the vision of the vast Muslim world as fertile soil for the communism expansion and the desire to please Muslim East, as well as the strategy of securing the Soviet borders by preventing them to serve as invasion corridors and supply routes for enemies.

On July 7, 1923 Soviet Azerbaijan's Revolutionary Committee decided to dismember Nagorno–Karabakh and created on part of its territory an Autonomous *Oblast* of Nagorno–Karabakh. With the purpose of separating Nagorno–Karabakh from Armenia, from 1924 to 1929 on the territories of the present districts of Lachin and Kelbajar a jurisdiction called "Red Kurdistan" was established, which was abolished in 1930. However, the artificial buffer between Armenia and Nagorno–Karabakh was retained and later sealed by Stalin's 1936 Constitution. Since then, that separation became the subject of continuous resistance to Soviet Azerbaijan's authority and petitions to Moscow, such as in June 1965, September 1966. However, the disputable matter was constantly shelved and suppressed by the communist regime.

During the seventy years of the USSR's existence the government of Soviet Azerbaijan conducted systematic policy of deportation of Nagorno–Karabakh Armenians from their historic homeland. While Soviet statistics are not reliable and have been suspected of deliberately distorting and manipulating ethnicity figures, they show that from 1923 to 1979 Armenian population of Nagorno–Karabakh was reduced from 150,000 to 120,000, while the influx of new settlers increased Azeri population five–fold from 7,500 in 1923 to 38,000 in 1979.[58]

Nagorno–Karabakh from 1988 to Present

In 1987–1988 period of democratic reforms and Gorbachev's new policy of 'perestroika and glasnost', Nagorno–Karabakh question reemerged with a new surge. The political movement that emerged at that time raised Nagorno–Karabakh question in a peaceful manner and employed non–violent

means, such as marches, petitions, rallies, strikes. On February 20, 1988 the Decision of Nagorno–Karabakh Autonomous *Oblast* (NKAO) Regional Soviet of People's Deputies that was addressed to the highest legislative bodies of the Supreme Soviets of Armenia, Azerbaijan and the USSR was issued. It contained an official request to consider and resolve positively "the question of handing over NKAO from Soviet Azerbaijan to Soviet Armenia."

This was met with brutal anti–Armenian *pogroms* in Azerbaijani city of Sumgait in late February 1988, and was followed by subsequent round of massacres in the capital of Azerbaijan, Baku and other cities and regions of Azerbaijan. The exodus of more than 100,000 Armenians from Baku and elsewhere was organized.

On June 13, 1998 the Supreme Soviet of Azerbaijani SSR declined the proposal of Nagorno–Karabakh Assembly. On June 15 Armenia's Supreme Soviet approved Nagorno–Karabakh's proposal and appealed to the USSR Supreme Soviet. On July 18, 1988 the Soviet government decided to leave Nagorno–Karabakh within Soviet Azerbaijan. This decision was based on Art. 78 of the Soviet Constitution, which prohibited any territorial changes to a Union republic without its consent. By the resolution of the Central Committee of the Communist Party of the Soviet Union of March 24, 1988 Arkadi Volsky was appointed Moscow's authorized representative in Nagorno–Karabakh. Starting January 20, 1989 a special authority headed by Volsky and directly subject to the USSR was established by the Supreme Soviet. In the summer of 1989 a legislative body, named the National Council, which represented various strata of the Nagorno–Karabakh population, was formed.

On November 28, 1989 the USSR Supreme Soviet's resolution liquidated the "Volsky Committee." Three days later, on December 1, 1989 at the joint session of Parliaments of Armenia and Nagorno–Karabakh the reunification was accepted. Shortly after, Nagorno–Karabakh legislative body voted in favor of secession from Azerbaijan. The Supreme Soviet of Azerbaijan immediately deemed the decision illegal. The decision was also declared as null and void by the Presidium of the Supreme Soviet of the Union.

On January 15, 1990 by the decision of the USSR Supreme Soviet, Soviet Azerbaijan's "Republic Organizational Committee" (*orgkom*) was installed. Under the direction of Azerbaijani Communist Party deputy leader Viktor Polianichko, the *orgkom* made efforts to alter Nagorno–Karabakh's demographic balance, by artificially increasing the number of Azerbaijani residents in the territory. From January to May 1991, the inhabitants of 24 Armenian villages were forcibly driven from their homes. The accompanying military actions of Soviet Azerbaijan, succored by the Soviet Army detachment located in Nagorno–Karabakh, resulted in the military occupation of more than half of Nagorno–Karabakh's territory by Soviet Azerbaijan.

On August 30, 1991 Soviet Azerbaijan's Supreme Soviet declared its independence from the USSR in the "Declaration on Re–establishment of the National Independence of the Azerbaijani Republic." On November 23, 1991 the Supreme Soviet of Azerbaijan adopted a resolution on "Abolition of Nagorno–Karabakh Autonomous *Oblast*." On November 27, 1991 the USSR Constitutional Oversight Committee's resolution abolished the *orgkom* created by the Supreme Soviet decision of January 15, 1990, deemed void the November 23, 1991 Azerbaijani Supreme Soviet's decision abolishing Nagorno–Karabakh's autonomy, as well as annulled December 1, 1989 Armenian resolution on reunification. The USSR Constitutional Oversight Committee did not, however,

revoke the joint decision of Nagorno–Karabakh and Shahumian district to declare the establishment of Nagorno–Karabakh Republic on September 2, 1991, since that declaration was deemed in compliance with the then existing Soviet Law.

Nagorno–Karabakh's Declaration of Independence

Four days after Soviet Azerbaijan's Supreme Soviet declared its independence from the USSR, Nagorno–Karabakh, in compliance with the international law and domestic Soviet law, initiated the same process through the joint adoption of the "Declaration of the Republic of Nagorno–Karabakh" by the local legislative councils of Nagorno–Karabakh and bordering Armenian–populated Shahumian district. The distinction was that Nagorno–Karabakh declared its independence not from the Soviet Union, but from Azerbaijan.

This act fully complied with the existing Soviet law of the internationally recognized USSR titled "On the procedures for a Union Republic to leave the USSR," particularly Articles 1, 3, 4, 6, 7, 8, 12, 19 that provided that secession of a Soviet republic from the body of the USSR allows an autonomous region in the same republic's territory to also trigger its own process of independence. The law of the former USSR on "The Procedures for a Union Republic to Leave the USSR," accepted by the Supreme Council of the USSR on April 3, 1990 specifies the legal procedures for the secession from the USSR of a Union Republic and autonomous formations:

> "In a Soviet Republic that has in its structure autonomous republics, autonomous *oblasts* and autonomous *okrugs*, a referendum shall take place in each separate autonomy. People of autonomous republics and autonomous formations shall have the right to decide themselves whether to stay within the Union of SSR or within a seceding republic, as well as shall have the right to raise the issue of their statehood status."[59]

This law clearly provided autonomous entities and compactly settled ethnic minorities living on the territory of a seceding republic with the right to self–determination.

On October 18, 1991 Azerbaijani Republic confirmed its independence by adoption of the "Constitutional Act" on national independence, and on November 23 of the same year annulled Nagorno–Karabakh's autonomy. Based on this and the aforementioned law on secession, on December 10, 1991 the people of Nagorno–Karabakh held a referendum in the presence of foreign observers. The referendum was held in full compliance with the then acting USSR laws on the territory of Azerbaijan and Nagorno–Karabakh, as well as the international law. The vote overwhelmingly approved Nagorno–Karabakh's sovereignty with 82.2 percent of Nagorno–Karabakh's registered voters participating in the elections and 99.89 percent of those casting ballots in support of Nagorno–Karabakh's independence from the already seceded Republic of Azerbaijan.[60] However, independence of Nagorno–Karabakh has not been recognized. (A similar argument over the sovereignty of the Aaland Islands was raised after Finland's independence from Russia after World War I, and a totally different outcome has been achieved.).

Chapter 5

TERRITORIAL INTEGRITY AND SELF–DETERMINATION IN NAGORNO–KARABAKH: CLASH OF PRINCIPLES.

"Legitimacy... flows not from the barrel of a gun but from the will of the people."[61]

Despite that the principle of territorial integrity and self–determination both stem from the UN Charter, however, the practice has shown that whenever the reconciliation between territorial integrity and self–determination did not work, the preference was given to the territorial integrity. The UN itself showed inconsistency in applying these principles in practice. In certain cases the UN endorsed inviolability and sanctity of the existing boundaries, as for example in the cases of Nagorno–Karabakh, Abkhazia, Croatia not to go far, while in some other cases it supported the secessionist or anti–colonial movements as in Africa, Asia, Caribbean. It is quite understandable that the UN called on states not to recognize the secessionist government of Northern Cyprus,[62] because this is a case of intervention, but how to explain the refusal to recognize Nagorno–Karabakh's legal right to self–determination?

Franck explains the inconsistency practiced by the UN by the changing normative structure, as well as the context and time in which a particular case is developing.[63] He distinguishes between the following contexts: disintegration of the Spanish–American empire, defeat of Imperial Germany, Austro–Hugary and the Sublime Porta, rise of anti–colonialism in Africa, Asia and the Caribbean, and disintegration of the Soviet Union and its system of satellites. According to Franck, disintegration of the Spanish imperium in America produced the norm of *uti possidetis*. The end of the German, Austrian and Ottoman empires gave rise to self–determination. The entitlement to *uti possidetis* originated more than a century ago in Latin America, where it evolved as a way to deal with the dissolution of the Spanish Empire. It asserted that the new nations must have renounced all claims to territory beyond the administrative boundaries established by the former imperium and within which each had attained sovereignty. *Uti possidetis* was applied to new states, which had emerged from a single Spanish *imperium* and which, except for indigenees, shared a single ethnicity and culture.

However, while *uti possidetis* in its original meaning required new states emerging from colonial empires to renounce external territorial claims against other newly emerging states, the practical application of the principle of territorial integrity in post–colonial era seems to protect preexisting boundaries not only against external claims for revision (as for example, Serbia's claim against Croatia), but also against internal secession, such as by Krajina region of Croatia, or Nagorno–Karabakh *oblast* within Azerbaijan. Meanwhile, in Art. 1 of the International Covenant on Economic, Social and Cultural Rights, as well as in the identically worded Art. 1 of the International Covenant on Civil and Political Rights, self–determination is conceived as embracing an external, as well as an internal component: "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."

On the OSCE level, the principle of self–determination, a people's right to enjoy equal liberties and to determine its own political destiny, as confirmed in the Helsinki Final Act, clearly applies to Nagorno–Karabakh. As all ten precepts of the Helsinki Final Act have equal value, the principle of self–determination of peoples cannot be deemed inferior to the notion of territorial integrity and inviolability of borders, which governs interstate relations. They must be considered together and in the context of another Helsinki principle–the peaceful settlement of disputes.

The beginning of Nagorno–Karabakh movement in 1988 raised claims and counterclaims concerning the independence of Nagorno–Karabakh, or its transferability in the context of the USSR under the principles of the Soviet Law, and later the international law. Both principles—territorial integrity, invoked by the Azerbaijanis, and self–determination, invoked by the Armenians–are established principles in the international law. However, the mediators' recourse to the international law in Nagorno–Karabakh case was very inconsistent and biased: to support the territorial integrity of Azerbaijan the mediators embraced the international law, in the circumstance of Nagorno–Karabakh's self–determination they avoided it.

Some arguments in support of the territorial integrity of Azerbaijan rest on the fact that territorial integrity takes precedence. Therefore, Nagorno–Karabakh must remain within the borders of Azerbaijan. Does this imply that no case should ever become a precedent for self–determination? What about the cases that have already become precedents, as for example, the Aaland Islands, or the more recent recognition of the Palestinian state or East Timor? Relevant United Nations documents enshrining the rights of self–determination and decolonization, coupled with the variety of concrete cases of independence gained under the UN umbrella, have already provided compelling precedents for the Nagorno–Karabakh's position.

Nagorno–Karabakh and other similar cases, such as for example, Abkhazian territory of Georgia, Serbian region of Croatia, or the Ungava native peoples' region of Quebec that should themselves be entitled to secede from a seceding region in which they are a territorially distinct subgroup lead to believe that international community easier accepts secession of a state which is a "middleman" in the hierarchy of sovereignties, than secession from a seceding region within a state. For example, the international community and the United Nations gave a rapid recognition to the constituent republics of the former Soviet Union, meanwhile refusing to recognize secession of autonomous regions from the sovereign republics. Or, Croatia's claim against former Yugoslavia appeared to be stronger than the claim by Krajina region against Croatia.

The recognition of the constituent republics of the devolving USSR is often explained by that secession was accomplished peacefully, by a negotiated agreement, while for example, the UN's firm position on refusing to recognize secession of Abkhazia from already seceded Georgia was spelled out by that "international recognition would not be given to any entity that attempted to change international boundaries by force."[64] Nagorno–Karabakh's Armenians expressed their will for self–determination in a peaceful manner, by employing non–violent means–marches, petitions, rallies, strikes. It was Azerbaijani side that tried to suppress Nagorno–Karabakh movement by exerting violence. This distinction, however, was neglected on the part of international community.

Mediators frequently support subordination of the principle of self–determination to the principle of territorial integrity backing this with the following arguments:

1) secessionist emphasis of the principle of self–determination;

2) fear of setting a precedent;

3) fear of a ripple effect;

4) only colonies have the right to self–determination;

5) importance of the territorial integrity to the maintenance of international peace and stability.

However, the fairness of these arguments is highly disputable. I question their uprightness and objectivity in Nagorno–Karabakh case, thus suggesting contra–arguments for each.

1) secessionist emphasis of the principle of self–determination:

Although the case of Nagorno–Karabakh is clearly nothing else but Nagorno–Karabakh people's fair quest for self–determination which fully complies with the international law and the former USSR constitutional right to secession, however, even under such an erroneous interpretation as a secessionist movement, Nagorno–Karabakh case is eligible for separation for the following reason. Despite that secession continues not to be recognized by international community, however, in case if a regime is guilty of serious violations of human rights directed against a people and threatening its existence or identity, a right of separation might be recognized as a means of last resort in order to safeguard basic standard of human rights.

By the 1970 Declaration on Principles of the international law Concerning Friendly Relations the General Assembly indicated that the right of territorial integrity takes precedence over the right to self–determination only so long as the state possesses "a government representing the whole people belonging to the territory without distinction as to race, creed, or color." Where such a representative government is not present, "peoples" within existing states will be entitled to exercise their self–determination through secession.

For example, in the case of the dissolution of the former Yugoslavia, the republics of Slovenia, Bosnia–Herzegovina, Croatia and Macedonia were deemed entitled to secede on the basis that they had been denied the proper exercise of their right of democratic self–government, they possessed clearly defined borders within the umbrella state, and in certain instances they had been subject to ethnic aggression and crimes against humanity committed by the forces of the central government.[65] In the case of the Serb autonomous region of Kosovo, in the face of ethnic cleansing and repression by the central government of Serbia, international community through NATO action supported the effort of Albanian Kosovars to attain a status somewhat like "intermediate sovereignty" within Kosovo's regional borders.

Azerbaijan's human rights record with respect to Armenians of Nagorno–Karabakh has been dismal. During the seventy years of the Soviet rule Azerbaijani government's policy toward Armenians was that of repression and removal of Nagorno–Karabakh Armenians from their historic homeland. Human rights violations against the Armenians included deportation, *pogroms*, and other atrocities, as well as food and fuel blockade that continues up to present. The government that emerged in Azerbaijan after its secession from the Soviet Union did not treat Armenians of Nagorno–Karabakh

in accordance with applicable human rights norms. Hereby is an excerpt from the multiple evidences of severe human and civil rights violations carried out against Armenians of Nagorno–Karabakh in the Armenian village of Getashen and elsewhere, which have been recorded by the independent observers:

> During the deportation, there were numerous civil rights violations of several types. People were killed singly or multiply. There were beatings, rapes, forced abductions, and imprisonment. Property and livestock were stolen or bought for an insulting price, such as a car for two rubles. Voluntary requests to leave were obtained at gunpoint. Ears of girls were torn by forcible removal of earrings. We found no evidence, in spite of diligent inquiry, that anyone recently deported from Getashen left it voluntarily.
>
> Most of the witnesses told us that the beatings and killing were carried out by the Azerbaijani OMON (Azerbaijani Special Forces or "black beret units"). But the Soviet army organized the surrounding of the villagers, standing aside, while the OMON terrorized the villagers, who were left on the Armenian side of the border with only the clothes they were wearing.[66]

The above–cited is a tiny piece describing atrocities exercised against Armenians of Nagorno–Karabakh, who had for a long time, starting with the Soviet rule, been manywise suppressed: politically—Armenians were not allowed to occupy important administrative positions in Nagorno–Karabakh; culturally—studies of Armenian language, history, literature were withdrawn and prohibited in the schools; religionwise—Armenian churches, other Christian monuments and centers were destroyed; socially—human rights were severely violated; physically and morally—ethnic cleansing were carried out against the Armenian population in Azerbaijan and Nagorno–Karabakh; economically—the isolation and blockade of the territory; and otherwise.

2) fear of setting a precedent

The reasons behind the arguments supporting territorial integrity of Azerbaijan are easy to calculate. Ethnic, racial, religious, linguistic minorities and their secessionist claims are potential hot spots in almost all of the big states that face threats from national minorities within their borders. Consider the regional states—Turkey with its unresolved Kurdish question, or Iran that is potentially threatened by its Azerbaijani minority, or Russia's bitter experience in Chechnya.

Russia's reluctance to undertake decisive actions in Nagorno–Karabakh conflict can also be explained by the fear of setting a precedent for its own internal conflicts. However, from a legal perspective, there was a difference between the legal bonds by which Nagorno–Karabakh was related to Azerbaijan, and Russia's autonomous formations were related to Russia. Having rights and functions similar to the autonomous formations of the Russian Federation, Nagorno–Karabakh, by contrast, was in a privileged position in comparison, for example, to Chechnya, Tatarstan, or Dagestan. It was not tied to Azerbaijani Soviet Socialistic Republic by ties other than that of an autonomy within a republic, while Russia's autonomous formations were additionally bound to Russia by the ties of federation, and therefore had other legal responsibilities. Nevertheless, the fear of a precedent prevailed over this important distinctive detail. The Transcaucasian Republics of Georgia and Azerbaijan also have a good reason to press for the territorial integrity.

Such a fear is true not only for the regional powers and directly involved actors, but also for other states around the globe, which comprise most of Asia, Africa, and even Europe itself. These include states comprised of a number of cohesive ethnic, religious, linguistic minorities inhabiting distinct

regions of one state (e.g. Afghanistan, Pakistan, India, Mynmar, Canada, Switzerland, Belgium, Spain, Azerbaijan, Georgia, Cyprus, Tajikistan, Kenya, Somalia, etc.). In most cases claims to secession intensified when a minority within a state was persecuted and denied its cultural, economic, or political rights by a majority, as for example, in cases of Northern Ireland, Nagorno–Karabakh, Sri Lanka, etc.

The modern concept of self–determination is not, as it was understood in its initial stage, the exclusive right of "backward" peoples. It is equally applicable to the old nations of Europe, for example, the Union of Scotland, England and Wales. The threat of break–up extends itself to Britain's ongoing conflict with Northern Ireland; the continuous confrontations of Greeks with Turks in Cyprus; Basques, Catalans in Spain. Chechoslovakia and Yugoslavia have split. Austria, Slovakia, Macedonia, Serbia comprise minorities which seek closer ties with the people of an adjourning state who are of the same ethnic group and who encourage unification. Once monoethnic France and Germany have, in the course of time, for certain economic and humanitarian reasons received large waves of immigrants. Switzerland and Belgium are long–existing states made up of several ethnic or religious groups. Independence of Asia was felt in Belgium in that the grant of sovereignty to the former Belgian territories in Africa (Zaire, Rwanda, and Burundi) stimulated ethnic claims among Flemings in Belgium itself. The argument behind is simple: if Burundi can have an autonomous political status, why should the more numerous Flemish population be deprived of the same privilege?

The exercise of decolonization and self–determination had also been echoed across oceans. In Canada French speaking Quebeckers cited African independence as a precedent for their own, identifying the position of Afro–Americans as analogous to theirs, calling themselves "*Nègres blancs d'Amérique*."[67] To quote a Quebec separatist leader, if "people hardly emerged from the Stone Age" can have independence, surely "a people issued from the great French civilization" can.[68]

The USA, New Zealand, Australia, China possess minorities with a well–founded claim to "indigenous status". The USA, for example, is a state that consists of many minorities and no single majority, and often hears claims from national minorities, such as some African–American nationalists, native Americans, Puerto Rican separatists. Moreover, in the USA, Australia, and much of the Latin America states have been formed over time by immigration from many older states. Despite that the groups within these states do not occupy geographically distinct areas, yet they maintain separate identities, traditional and cultural distinctiveness.

To maintain inviolability of their own borders, governments are afraid to support the principle of self–determination. Thus is the fear among the mediators that their mediating actions might set a precedent for other disaffected territories around the world, and would threaten the stability in the immediate region. This is the reason why very often mediators support neither independence nor the maintenance of the *status quo*, and persuade the parties to agree on a solution somewhere between those positions. The fact that neither parties to the conflict, nor international community can agree on an appropriate political framework for resolving the crisis, but rather agree on some interim plans, does not solve the conflict but rather postpones it, thus giving a chance to a more severe explosion.

Art. 27 of the Covenant on Civil and Political Rights has often been referred by the governments who face the threat of internal secession, as a limitation on the right to self–determination pronounced in the Charter, as it permits minorities not to secede but "in community with other members of their

group, to enjoy their own culture, to profess and practice their own religion, or to use their own language,"[69] thus limiting the provision dealing with ethnic, religious, or linguistic minorities. This is, however, the interpretation offered by the governments of the states, hence it is intended for the governments.

In no case can Art. 27 be considered as a limitation on the legal right of Nagorno–Karabakh people to self–determination as Nagorno–Karabakh Armenians were severely denied the basic rights for mere existence. Moreover, none of the provisions within the context of the international law prohibits self–determination.

3) fear of a ripple effect

The ripple effect is demonstrated in the case of Yugoslav Federation that consisted of the Republics of Serbia, Slovenia, Croatia, Bosnia–Hercegovina, Montenegro and Macedonia and two autonomous regions of Kosovo and Vojvodina. Croatia is populated with 85% Croats. However, the 11.5% Serbian minority in Croatia constitutes the majority in 14 of 102 internal administrative districts, most notably Krajina and Petrinja.[70] Insistence of a sizable, geographically coherent minority of Serbs within Croatia to secede from a secession illustrated a ripple effect in the Croat case.

There is no threat of a ripple effect in Nagorno–Karabakh case.

4) only colonies have the right to self–determination

The UN General Assembly resolutions, declarations of international conferences, judicial pronouncements, decisions of international arbitral tribunals, and state practice since the fall of communism in Eastern Europe, have supported the right of non–colonial "people" to secede from an existing state when the group is collectively denied civil and political rights. While a minority of states had argued during drafting the self–determination clauses of the Political and the Social Covenants that the right should be limited to colonial situations, this was opposed by a majority which felt that it "should apply to the people of any territory whether independent, trust, or non–self–governing."[71]

The Friendly Relations Resolution clearly embraces the right of all peoples "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development." At the close of the age of colonialism, self–determination as a principle became universal in scope. The UN General Assembly has expanded the scope of immediate applicability of self–determination outside the traditional context of decolonization by expressly recognizing the right to self–determination of the Palestinians and inhabitants of South Africa.

The argument that self–determination is applicable only in the context of decolonization is ardently supported by Azerbaijani government in reference to Nagorno–Karabakh case. Some of the arguments forwarded by the Azerbaijani side are that "only colonies, that is dependent states, deprived of their statehood, have the right to self–determination,"[72] or that "Nagorno–Karabakh can realize its right to self–determination, remaining within the Republic of Azerbaijan."[73] The latter argument, in particular, lacks any rationale. Nonetheless, Nagorno–Karabakh case of self–determination fits even in the context of decolonization. During the USSR's existence

Nagorno–Karabakh was a part of a multilayered colonial system and was subjected to Soviet Azerbaijan not on a contractual basis, but by administrative reference to the Soviet Constitution. Hence, the independence of Azerbaijan from the USSR is the first, while the independence of Nagorno–Karabakh from Soviet Azerbaijan is the second level of decolonization and release from the neo–imperial bonds.

As James Hughes and Gwendolyn Saase fairly observed, in the former Soviet Union (FSU), as in many of the cases of decolonization in Africa and Asia, *uti possidetis* legitimated an artificial pattern of state territoriality which had been defined by the colonizing power: "This pattern was generally, and often deliberately, designed irrespective of ethnic and other cleavages. While Leninist and Stalinist "planned" bounding of ethnicity in the Soviet Union was not characterized by the kind of colonial "scramble" for territory that occurred in Africa, its outcome was often just as arbitrary, creating administrative units without regard to history, ethnicity, or geography."[74]

Nagorno–Karabakh is a vivid example of Stalin's "gerrymandering". Nagorno–Karabakh has never legally or otherwise belonged to sovereign independent Azerbaijan. Its inclusion into the structure of the Azerbaijani Soviet Socialistic Republic was an illegal act of Caucasian Bureau of the Russian Communist Party. The case of Nagorno–Karabakh is not a territorial, religious, or ethnic conflict between Armenia and Azerbaijan.[75] Nagorno–Karabakh's quest for freedom and self–determination is, in fact, a step in the Soviet Union's decolonization process and constitutes a legal and political case. For profound historic and legal reasons the cards cannot any more be played as they had been dealt by the imperial administrative convenience.

5) importance of the territorial integrity to the maintenance of international peace and stability

The support by international community of the territorial integrity in the name of international peace and stability has in many cases overriden the right to self–determination. For example, In Preah Vihear case (Cambodia vs. Thailand) the International Court of Justice endorsed the following decision:

> In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, on the basis of a continuously available process, be called in question.

It was in the spirit of maintaining international stability that the majority of new nations of Africa ascribed to the 1964 OAU Cairo Resolution on Border Disputes Among African States, which formally adopted *uti possidetis* as the absolute rule of the region.[76] The right of self–determination within colonial boundaries was given priority by the ICJ in the Western Sahara Advisory Opinion.[77]

The principle of territorial integrity has, as practice has shown, been static and has been applied rigidly, while the principle of self–determination, in the name of preserving international stability, has found more inconsistent applications. If the two principles are equally important in the international law, why should concessions always be made in favor of the principle of territorial integrity? How to explain the instances in which a case–by–case application of the principle of self–determination yields different results in identical cases and similar contexts? Ultimately, should the international law

impose rigid principles and define stiff frameworks in the rapidly evolving international context that constantly challenges with fast–breaking unprecedented cases and phenomena.

A stable world order may not always be achieved by a rigorous application of the principle of territorial integrity. Witness Bangladesh, Eritrea and Southern Sudan, where denial of self–determination precipitated the flight of hordes of refugees, placing serious economic, social, and political strains on the neighboring states of refuge. History and practice have shown that very often stability is only achieved through a change. In the Art. 1 of the UN Charter self–determination is conceived as one among several possible "measures to strengthen universal peace." Finally, the extension of the principle of self–determination to peoples within states could contribute to the strengthening of universal peace and the safeguarding of respect for human rights. As observed precisely by one scholar, "The violence we see around us is not generated by the drive for self–determination, but by its negation. The denial of self–determination, not its pursuit, is what leads to upheavals and conflicts."[78]

The international law should be constantly developing and improving, especially provided that it has many imperfections and contradictions inherent in it. Such a development presupposes elaboration of the existing principles and creation of the new ones. It presumes a settlement of the contradictions in the law that guides international community. Creative applications of existing laws and principles to guarantee the respect for the civil, political and human rights of the inhabitants of small state entities are necessary. Logical derivations from the existing principles should be formulated and amendments should be made that will take into consideration the changing normative structure and the context in which a specific case is evolving.

The Republic of Nagorno–Karabakh itself has introduced new concepts. They reconcile the principle of self–determination for a previously autonomous, now fully self–governing territory of Nagorno–Karabakh with that of the territorial integrity of the newly independent Republic of Azerbaijan, taking into consideration the prevailing international legal order and ensuring the full range of political rights to which Nagorno–Karabakh is entitled.

Nagorno–Karabakh Armenians' Entitlement to Self–determination: Unrecognized Reality

There has been a widespread concern among scholars and experts over that the UN Charter did not supply an answer to what constituted a "people." This vagueness–although existent in certain provisions, mainly adopted in the initial stages of the development of the general concept of self–determination–was explicated in subsequent UN documents, such as the Declaration on Granting of Independence to Colonial Countries and Peoples, adopted by the UN General Assembly without dissenting votes; International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights; Declaration Regarding Non–Self–Governing Territories, and several others discussed earlier. It states that all the people in the trust and non–self–governing territories, or all other territories which had not yet attained independence have the right to self–determination "in accordance with their freely expressed will and desire."

According to the United Nations Economic and Social Cooperation Organization (UNESCO) for a group to be entitled to a right to collectively determine its political destiny, it must possess a focus of

identity sufficient for it to attain distinctiveness as a people. UNESCO considers the following indicative characteristics in defining the people:

a) a common historical tradition,

b) religious or ethnic identity,

c) cultural homogeneity,

d) linguistic unit,

e) religious or ideological affinity,

f) territorial connection,

g) common economic life.[79]

The Armenians of Nagorno–Karabakh meet all the afore–mentioned criteria required of a group entitled to self–determination. The Armenians of Nagorno–Karabakh are distinct from the Azerbaijanis. They speak the dialect of Armenian language, which is a separate branch in Indo–European language family, while Azerbaijanis speak a Turkic dialect, which belongs to the Altaic language group. Nagorno–Karabakh Armenians are Christians, while Azerbaijanis are primarily Shi'i Muslims. Cultural and historical tradition of Nagorno–Karabakh Armenians stems from the common root of Armenian people, while Azerbaijanis, who are in the process of developing their national identity share historical heritage of Turkic people. Most importantly, Nagorno–Karabakh has a long historical tradition of being a distinct territorial unit. Nagorno–Karabakh's distinct territorial identity was recognized by the Soviet Union when it was designated an autonomous *oblast* from 1923 to 1989, and later as an ethno–territorial administrative division administered directly from Moscow rather than by Azerbaijan.

It was with respect to this check–over, when the Armenian population of Nagorno–Karabakh responded to the decision of Azerbaijan to remove its autonomy by holding an internationally monitored referendum on the independence of the region. Azerbaijanis responded with anti–Armenian violence, which continued in Nagorno–Karabakh during the winter of 1990–1991 up until the failed August coup in Moscow that heralded the end of the Soviet empire.

At that time Azerbaijan decided to resolve Nagorno–Karabakh question by force and launched direct military actions against Nagorno–Karabakh. In the open armed conflict between Nagorno–Karabakh and Azerbaijan, which claimed thousands of casualties on both sides, and made enormous number of people refugees, the Armenians of Nagorno–Karabakh finally prevailed. Presently, Nagorno–Karabakh's army of defense controls several Azerbaijani regions, which are vital to Nagorno–Karabakh's national security. In its turn, Azerbaijan controls a number of territories that belong to Nagorno–Karabakh, including the Shahumian district and some parts of Mardakert.

According to Art. 1 of the Montevideo Convention on Rights and Duties of States, signed on December 26, 1933, the applicable criteria for statehood are:

a) permanent population,

b) defined territory,

c) government, and

d) capacity to enter into relations with other states.[80]

As a newly independent state, the Republic of Nagorno–Karabakh created legitimate government institutions: on December 28, 1991, elections took place for its Parliament, and on January 6, 1992 the newly convened Parliament of Nagorno–Karabakh adopted its Declaration of Independence on the basis of the referendum results. In December 1994, the Parliament adopted a resolution establishing the post of the President of the Republic.

Nagorno–Karabakh's government commands the armed forces. Nagorno–Karabakh Army of Defense, which has been formed to resist the joint Soviet and Azerbaijani military operations, successfully breached Baku's blockade in 1992 opening the Lachin Corridor to Armenia and the world. In response to Azerbaijan's incessant military aggression against civilian Armenian population of Nagorno–Karabakh, and its occupation of northern portion of Nagorno–Karabakh, in 1993 Nagorno–Karabakh armed forces took Kelbajar, Agdam, and other Azerbaijani strongholds. This was a reactive self–defense that safeguarded Nagorno–Karabakh's territory from external aggression, and prevented the tragic repetition of the history. In the words of Nobel Peace Prize laureate Andrei Sakharov, who commented on the situation, "Armenian people are again facing the threat of genocide. For Nagorno–Karabakh this is a question of survival, for Azerbaijan–just a question of ambition."[81]

Nagorno–Karabakh possesses all the required traditional characteristics of statehood. The vast majority of the people in Nagorno–Karabakh constitute a unique group, with its own government and defense forces, as well as have a historic tie of the territory discussed earlier. Nagorno–Karabakh's government has control over a defined territory (over 5,000 sq. kilometers), its permanent population (150,000) is greater than that of some of the recognized states, such as Andorra, Liechtenstein, Monaco, San Marino, Nauru. Via its governmental institutions Nagorno–Karabakh showed the capacity to conduct foreign affairs and participate in negotiations. A series of documents related to the peace negotiations bear the signature of officials of Nagorno–Karabakh represented as a separate entity.[82] The new republic has demonstrated a capacity to withstand military assault and to bring warfare on its territories to end, as well as to defend its own national, political, economic and security interests.

Chapter 6

NAGORNO–KARABAKH PEACE PROCESS.

Russia

As the successor of the Soviet empire, Russia is keen to maintain its political and economic influence in the region. In the words of the Russian Foreign Minister Kozyrev, the Transcaucasus is a realm of traditional Russian interests.[83] Russia is also a global power, and therefore is in competition, in various guises, with China, Middle Eastern states, the USA and Western Europe. As Samuel Huntington grasped it "...Russia is a major power with regional and civilizational interests."[84]

Russia has many reasons to be involved in the region–protecting ethnic Russians and their rights; maintaining access to important resources; ensuring security and stability; preventing spillover effects of secessionism; creating favorable conditions for trade and economic activities; not allowing any CIS state to find itself in the sphere of domination of a third state; preventing actions hostile to Russia that can be taken from the territory of the CIS; guaranteeing the capacity to guard the CIS frontiers; formation of a belt of "good neighbors"; acceptance of the special role in the CIS; preventing the smuggling of drugs and weapons into Russia, and stopping the uncontrolled migration of people; settling intrastate ethnic conflicts and preventing the outbreaks of new ones; neutralizing the threat of radical Islam coming from Central Asia, Muslim communities of the Northern Caucasus, Azerbaijan, and Islamic fighters of Chechnya; as well as guaranteeing national security, as manifested in the desire to rebuild the old Russian defense perimeter and the need to deny the region to Moscow rivals.

Since Russia has important interests in the Transcaucasus, it continues to play a central role in the regional processes. However, presently it is hard to discern Russia's exact role in the region. Particularly vague are Russia's policies toward the resolution of the conflicts in the South Caucasus. This can be explained by the fact that Russia has its own serious internal problems, and is trying to overcome its domestic economic and political weaknesses, compounded by internal strives, especially the long–drawn conflict in Chechnya. Therefore, at present, Russia does not have a unified concept of its own role in the region, what can also be explained by the internal power struggles and that the Russian government does not always speak with a unified voice. As Russian expert Vitaly Naumkin confirms, Russia's political choice between the right to self–determination and the principle of territorial integrity has been strongly influenced by group and departmental interests.[85] In explaining the limitations of Russia's peacemaking potential and its departure in some cases from international norms, Dmitry Danilov asserts that inconsistencies of Russia's policies in Transcaucasia reflect a confrontation between different political currents in Russia itself regarding the general aims of its foreign policy.[86] He maintains that one current supports the policy of neo–imperialism, and strives to restore Russia's influence in the ex–USSR zone by all possible means, even including the use of armed force. The other current adheres to the policy of isolationism and wants to concentrate on the internal development, and keep as far away as possible from settling the mounting problems and crises in the "near abroad".

In Nagorno–Karabakh mediation process important was also Russia's security interaction with the West. As Vladimir Baranovsky observes, in Russia's perceptions of and attitude towards the West, a

competitive pattern certainly prevails over a cooperative one. In its relations with the OSCE Moscow fears that the OSCE might limit Russia's freedom of action within the post–Soviet space and peacekeeping in particular.[87]

On the other hand, the facts that Russia experiences financial crisis, and that it lacks appropriate institutions, expertise and money to invest heavily decrease Russian influence in the region. However, since Russia has a significant leverage and remains ambitious in the Transcaucasus, seeking military presence, it continues being a major factor for influencing foreign policies of the Transcaucasian states. Russia maintains its significant role in the political and military processes of the region. For example, the conflicting parties largely continue to be armed with Soviet/Russian weapons. Russia possesses various tools to put pressure on the conflicting parties in the region. Vital routes linking the region with the outside world run through Russia, and the conflicting sides are, to a large extent, dependent on Russia for their economic and energy needs. Despite that it has often been said that Moscow had its hand in manipulating the numerous disturbances that arouse throughout newly independent states, the positive aspects of Russian influence should not be underestimated.

For example, Russia was the first country to offer its mediation in Nagorno–Karabakh conflict in late 1991 that was initiated by the president Boris Yeltsin of Russia and Nursultan Nazarbayev of Kazakhstan after their visit to Nagorno–Karabakh, and confirmed in a joint declaration signed in Zheleznovodsk, Russia, with the participation of representatives from Armenia, Azerbaijan, and Nagorno–Karabakh. Russia continues its role of a key regional peacemaker and the most active mediator. As a result of Russia's efforts, the cease–fire in Nagorno–Karabakh conflict, introduced on 12 May, 1994 remains in effect. Days earlier Russia was instrumental in the negotiations held in Bishkek, Kyrgyz Republic on 5 May, 1994, which resulted in the signing of the cease–fire agreement by all the conflicting sides of the Nagorno–Karabakh conflict. Ongoing and expanded political and economic relations with Russia can still in many respects facilitate the problem–solving and conflict resolution processes in the region.

Turkey

After the collapse of the USSR, Turkey immediately came into the scene as a link to Europe and "big brother" to provide a model for the new Turkic states–Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan, and others. However, very soon Central Asian and Caucasian states, as well as Turkey itself were disillusioned by the Turkey's poor prospect of political and economic influence in the regions, limited by its inability to provide significant financial and technical support. Because of the failure to act as an exemplar model for the Central Asian states, Turkey concentrated its focus on the Caucasus, to which, and particularly to Azerbaijan, it shared a historical link.

Turkey's attitude regarding Nagorno–Karabakh conflict has consistently been pro–Azerbaijani. Turkey is interested in strengthening the position of Azerbaijanis, who possess strong ethnic relations with the Turks. Throughout the conflict Turkey has provided Baku with significant military, economic and diplomatic assistance. In addition, it has joined Azerbaijan's blockade of Armenia, as well as refuses to establish any level of diplomatic relations with Armenia. Turkey lobbied internationally for the Azerbaijani cause, and was the only country to defend Azerbaijani's position in rejecting the proposal of the co–chairs of the Minsk Group.

One of the Turkey's primary economic interests in the region is the construction of a main oil export pipeline from Azerbaijani oil fields to the Turkish Mediterranean port of Ceyhan. However, Turkish influence in the region is restrained by the Russian presence. Turkey is reluctant to endanger its relations with Russia, where it has important commercial interests. Also, Turkish actions are limited out of consideration for military dependence on the US and Turkey's intention to join the European Union.

In late 1993 and early 1994, the United States, Turkey, and Russia initiated a trilateral mediation. It was the first time that Turkey, out of the Minsk–Group's collective confines, tried to directly exert influence upon the regional processes. Turkey's offer to participate in mediation activities and in possible international peacekeeping force was rejected by Nagorno–Karabakh and Armenia, because in their view Turkey had become a participant in the conflict by joining Azerbaijan's blockade of Armenia and could by no means considered as a neutral mediator. After all, blockade is an act of war.

Iran

Iran's passive role in the Transcaucasus can be explained by its anti–American and anti–Israeli policies that run counter to the stances taken by the Transcaucasian states, especially Azerbaijan and Georgia, as well as by the scarce financial and technological resources Iran can offer to the region. Surprisingly, Christian Armenia has been the only Transcaucasian state that maintains mutually beneficial economic relations with Iran. Despite that Azerbaijanis share the same religion with the Iranians, Iran is reluctant to see a strong Azerbaijani state on its northern flank. Iran is concerned that Azerbaijani nationalists may jeopardize the integrity of the well–consolidated Azerbaijani minority in Iran (15%–20% of Iran's population).

Iran has pursued a less interventionist policy toward Nagorno–Karabakh, meanwhile seeking to keep the forces in the region in balance, and to prevent any spill–over effects. Its activities culminated, when the Islamic Republic of Iran launched mediation in February–March 1992 that resulted in the adoption of a quadrilateral agreement on Nagorno–Karabakh, signed by high level officials of Azerbaijan, Iran, Armenia and Russia on May 8, 1992. The agreement, however was nullified when the military operations resumed in the conflict zone, thereupon suspending Iran's mission of an active mediator.

The United States

The strategic importance of the Transcaucasus to the US can be explained by its proximity to Russia, Black Sea and the Persian Gulf–two strategically important waterways. In practical terms, this situation has led major international actors, most notably the United States, to approach the Transcaucasus from the vantage point of the impact that events there might have on the Middle East politics and the balance of powers.[88] In this connection, of particular consequence have been the US–Iranian confrontation and the declared policy of containing Iranian influence in the post–Soviet space;[89] the efforts of the US to promote Turkey's key role in the region and encouragement to forge close ties between the Transcaucasian states and Israel.[90]

The US interest in the region relatively activated after the disintegration of the Soviet Union. As 1990s unfolded, several factors led the US to increasingly develop a more explicit set of goals and policies toward the Transcaucasus and to build bilateral relations with each of three independent governments.[91] The central policy goals pursued by the US in the region can be summarized as the following: assuring independence, sovereignty, and territorial integrity of Georgia, Armenia, and Azerbaijan;[92] strengthening regional economic mechanisms; developing East–West energy and transportation processes, as well as supporting its own commercial involvement in the region's oil production and export, and assuring access to energy resources that could reduce dependence on the Persian Gulf in the future; supporting conflict resolution efforts; nonproliferation and keeping Iran and Islamic fundamentalism in check, because geopolitically and geoculturally, the Transcaucasus is exposed to the trends of the Islamic world, including its extremist manifestations.

The US government's activities in the South Caucasus are carried out by a number of agencies, as well as by many non–governmental organizations that are funded by these agencies. The US government policies and programs in the Caucasus are not specifically directed toward preventing the conflicts in the region, although they may refer to the broad purposes of maintaining security and preserving peace. The US agencies that may affect conflict prevention and resolution in the region include the three main Cabinet departments of the Department of State, Agency for International Development, and the Department of Defense, as well as the Departments of Commerce, Justice, Energy, and Agriculture, the US Information Agency (USIA), and the independent federal agencies known as the Export–Import Bank (EXIM) and Overseas Private Investment Corporation (OPIC).[93] The US Congress is involved to the extent it shapes specific US policies and budget resources directed to the region, and influences international financial and intergovernmental organizations, such as the International Monetary Fund, the World Bank, the UN Security Council, whose impact on the region is vital.[94]

In respect with Nagorno–Karabakh conflict the United States has several times exercised its own initiatives within the Minsk Group. The United States has also appointed a special envoy to facilitate the negotiations process. There was even a brief high–level US involvement in Nagorno–Karabakh, when Secretary of State James Baker personally negotiated with the Armenian and Azerbaijani foreign ministers during the conference in Lisbon in June 1992 with the purpose to agree on how Nagorno–Karabakh would be represented in the Minsk Group negotiations. Madeleine Albright represented the US mediation during the meeting with presidents of Armenia and Azerbaijan in New York on September 27, 1994. President Clinton and President Yeltsin discussed Nagorno–Karabakh issue, as it rose to the international agenda, because of its implications for the future role of the OSCE in conflict resolution.

However, the distant American involvement did not yield any substantial result in promoting the resolution of Nagorno–Karabakh conflict. No distinct plan by the US for the resolution of the Nagorno–Karabakh problem could have been discerned. Rather, the US government tended to see this and other conflicts in the territory of the former USSR as aspects of its overall policy toward Russia.[95] Hence, resolution of disputes in the areas of intense Russian interest was of a relatively low priority in the hierarchy of issues in Russia policy of the US. Therefore, to avoid any direct American action, the US tended to involve in Nagorno–Karabakh dispute mainly in the framework of international organizations, such as the OSCE.

The US Congress engaged in Nagorno–Karabakh conflict mainly through foreign operations appropriations legislation, namely, the allocation of funding in order to promote resolution of the conflict over Nagorno–Karabakh, as well as the provision of humanitarian aid to the people of Nagorno–Karabakh. According to 1999 Report of the House Committee on Appropriations, the House Committee on Appropriations went forthwith as to urge the Secretary of State to appoint a permanent Special Negotiator to facilitate direct negotiations.[96] The Secretary was further urged to remain engaged in the regional peace processes.

To press Azerbaijan to lift now fifteen–year blockade of Nagorno–Karabakh and Armenia the viability of restriction on direct assistance to Azerbaijan was put in place, specifically, in Section 907 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support of 1992 (also known as Freedom Support Act).[97] However, Section 907 was waived, even though the Azerbaijani government failed to meet the conditions imposed by it.

The US interest in the region significantly increased as the US launched post–September 11 anti–terrorism campaign. However, the prospects of the US realistic contribution to the resolution of the regional disputes in the Transcaucasus remain very vague at this point, especially now when Afghanistan and Iraq are at the top of the US foreign policy agenda. One issue, however, is clear—the US policy and actions toward the resolution of conflicts in the Transcaucasus will be more in consensus with Russia than before 9/11.

The OSCE

The OSCE is the only pan–European organization with a mandate to operate throughout the Commonwealth of Independent States (CIS). The Conference on Security and Cooperation in Europe commenced its direct mediation of the Nagorno–Karabakh conflict in June 1992, although its first contacts with the confronting parties date back to February of the same year. The peace process was initiated at an "Additional Meeting" of the CSCE Ministerial Council in Helsinki on March 24, 1992.

It was decided during the meeting that the Chairman–in–Office should visit the region in order to contribute to the establishment and maintenance of an effective cease–fire, as well as to the establishment of a framework for an overall peace settlement. This meeting also set up the mandate of the Minsk–Group of eleven member–states[98] charged with preparing a peace conference to be held in the capital of Belarus within the CSCE framework. A call to end the blockades and to open a humanitarian corridor to Nagorno–Karabakh was also issued. The CSCE ministers stated that elected representatives of Nagorno–Karabakh would be invited to the Minsk Conference as interested parties after consultation with member states of the Minsk Group.

The conference, however, did not take place due to a failure of the states to agree on whether the Nagorno–Karabakh delegation would participate directly or as a part of Armenian delegation. Despite that a formal conference did not occur, the designated participants continued to meet as the Minsk Group in an ongoing attempt to hammer out a political solution to Nagorno–Karabakh dispute on the basis of the United Nations Security Council Resolutions 822, 853 and 874 (1993).

However, the ambiguous status of Nagorno–Karabakh's participation and the practice of the Minsk Group chairman to deal with Nagorno–Karabakh indirectly via the narrow prism of either Armenian

or Azerbaijani community was unsatisfactory to Nagorno–Karabakh's representatives. Worse, such an approach presented the problem as an intercommunal dispute.

The efforts of the Nagorno–Karabakh government directed at clarifying its participation status resulted in the conduct of the first two sessions of the Minsk Group, in June 1992, without the presence of Nagorno–Karabakh's delegation. Nagorno–Karabakh's delegates were invited the following month to the third session in Rome, and took part for the limited purpose of determining the status of their participation.

Nagorno–Karabakh's participation in the activities of the Minsk Group continued until September 1993, when the conflicting sides failed to agree on the "Adjusted Timetable" proposed by the Minsk–Group. The "Adjusted Timetable" was based on a step–by–step approach consisting of a series of measures including withdrawal of troops from the occupied territories, restoration of all communication and transport, exchange of hostages and prisoners of war, unimpeded access for international humanitarian relief efforts to the region, establishment of a permanent and comprehensive cease–fire to be monitored by the CSCE, and the formal convening of the Minsk Conference. Those arrangements were not accepted. In addition, Azerbaijan's armed forces had launched a massive military offensive by that time.

Nagorno–Karabakh peace process entered a new phase between March and December 1994, when at Russia's initiative, consultative meetings of experts were convened. This circumstance complicated the relations between Russia and its OSCE[99] partners up until the OSCE summit in Budapest in December 1994, when a decision was made to establish a co–presidency of the Minsk Group, to compromise the Russian representative and the Minsk Group counterpart. As a result, the negotiations within the Minsk Group were resumed in January 1995 and continue to this day.

Mediation efforts by Russia in cooperation with the Minsk Group led to the conflicting parties' agreement on a formal cease–fire on May 12, 1994. At December 1994 Budapest meeting, the OSCE determined to form a multinational OSCE peacekeeping force to support the cease–fire. The OSCE established High–Level Planning Group (HLPG) comprised of military experts seconded by the participating members of the OSCE. The HLPG's mandate was to:

1) Make recommendations for the Chairman–in–Office on developing a plan for the establishment, force structure requirements and operations of a multinational OSCE peacekeeping force for Nagorno–Karabakh.
2) Make recommendations on, *inter alia*, the size and characteristics of the force, command and control, logistics, allocations of units and resources, rules of engagement and arrangements with contributing states.

In August 1995, the Chairman–in–Office of the OSCE appointed a "Personal Representative of the Chairman–in–Office on the Conflict Dealt with by the OSCE Minsk Conference." The Personal Representative's task was: a) to represent the Chairman–in–Office in matters relating to Nagorno–Karabakh conflict, particularly in achieving agreement on the cessation of the armed conflict and in creating conditions for the deployment of OSCE peacekeeping operation; b) to assist HLPG; to assist the parties in implementing and developing confidence building, humanitarian and other measures facilitating the peace process, in particular by encouraging direct contacts; c) report

on activities in the region and cooperate, as appropriate, with representatives of the United Nations and other international organizations operating in the area of conflict. Assisted with five field assistants, the Personal Representative monitored the line of contact between the parties. Based in Tbilisi, he maintained branch offices in Stepanakert, Baku, and Yerevan.

In 1996 OSCE's Lisbon Summit took place. During the Lisbon Summit representatives of Azerbaijan threatened to veto all Summit documents, unless their territorial claim to Nagorno–Karabakh appeared in an official OSCE document. Azerbaijan's claim was not enshrined in an official declaration of the summit, but a compromise was reached whereby the Chairman–in–Office made a non–binding statement that a settlement of Nagorno–Karabakh conflict should be based on the following principles:

1) the territorial integrity of the Republics of Armenia and Azerbaijan;
2) 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; and
3) 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.

The consequence of this statement was in effect to halt progress on a long–term resolution of the conflict, because subsequent to this statement Azerbaijani side refused to negotiate any proposal which did not explicitly reaffirm its territorial integrity consistent with the Lisbon letter. As a result, the OSCE Istanbul summit in November 1999 adopted a resolution calling upon the parties to resume trilateral negotiations, while refusing to reaffirm the language of the Lisbon letter.

In 1997, the three co–chairs of the Minsk Group—France, Russia, and the United States—announced a new initiative. The new initiative embraced two–stage settlement of the conflict. The first stage included demilitarization of the line of contact, including, *inter alia*, troop withdrawal, deployment of a multinational peacekeeping force, and return of refugees, establishment of measures to guarantee security of all populations, removal of blockades and embargoes, and normalization of communications throughout the region. The second stage would then determine the status of Nagorno–Karabakh. However, the parties failed to reach agreement on this proposal, in large part because it attempted to resolve the consequences of the conflict without addressing the causes, which relate to security and status issues.

In November 1998 the Minsk Group prepared a proposal for agreement for the comprehensive settlement of the conflict in Nagorno–Karabakh. Despite that the contents of the report were kept confidential, the public reports indicated that the proposal addressed the main issues concerning the status of Nagorno–Karabakh, cessation of the armed conflict, and guarantees concerning compliance with the agreement. Nagorno–Karabakh and Armenia accepted the Common State proposal as a basis for negotiations, while Azerbaijan rejected the proposal.

In December 1999, the co–chairman of the Minsk Group visited Stepanakert, Baku and Yerevan in hope of revitalizing the peace process. Despite that all the parties stated that the visit advanced the negotiating process, however, no breakthrough was announced. Though more sporadically, passively, and inconsistently negotiations within and out of the Minsk Group continue up to date, however, no substantial results have been achieved ever since.

The United Nations Security Council Actions

Concerned over the escalation of Nagorno–Karabakh conflict and the accompanying fighting in and around Nagorno–Karabakh, the United Nations Security Council adopted four resolutions concerning the conflict: Resolutions 822 (of April 30, 1993), 853 (of July 29, 1993), 874 (14 October, 1993), and 884 (12 November, 1993).

In the Resolution 822, the Security Council demanded immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease–fire, withdrawal of all occupying forces from the Kelbajar district, as well as urged the parties to immediately resume negotiations for the resolution of the conflict within the framework of the Minsk Group. The government of Azerbaijan failed to terminate the hostile blockade of Nagorno–Karabakh, and Nagorno–Karabakh refused to abandon control over the Kelbajar district. Azerbaijan's subsequent bombardment of Nagorno–Karabakh from fortifications based in Agdam offered Nagorno–Karabakh army no choice but to disable those military installations.

Security Council Resolution 853 condemned attacks on civilians and bombardments of inhabited areas in the region, as well as denounced the seizure of Agdam. The resolution also welcomed "the preparations for the OSCE monitor mission with a timetable for its deployment." It urged the parties concerned "to refrain from any action that would obstruct a peaceful solution to the conflict," as well as urged the government of Armenia "to continue to exert its influence" on the Armenians of Nagorno–Karabakh to comply with the Resolution 822 and the current resolution.

After another Azerbaijani military strike in 1993, the Resolution 874 was adopted, which called upon the parties "to make effective and permanent the cease–fire established as a result of the direct contacts undertaken with the assistance of the government of the Russian Federation in support of the CSCE Minsk Group." The Resolution commended to the parties the "Adjusted Timetable of Urgent Steps to Implement Security Council Resolution 822 and 853 set out on September 28, 1993 at the meeting of the CSCE Minsk Group."

The last UN action related to Nagorno–Karabakh was the Security Council Resolution 884 that condemned the violations of the cease–fire and the reactive occupation of the Zangelan district of Horadiz by Nagorno–Karabakh forces. The resolution again called upon the Armenian government "to use its influence to achieve compliance by the Armenians of Nagorno–Karabakh region of Azerbaijani Republic with resolutions 822, 853, 874."

Despite that the Security Council resolutions highlighted importance of returning the occupied territories, none of the four resolutions mentioned Shushi or Lachin, what speaks for their special status in Nagorno–Karabakh negotiations.

The recital paragraphs of each of the four resolutions, in addition to expressing concern about the threat to peace and security in the Transcaucasus, contained language stating that the Security Council reaffirmed the sovereignty and territorial integrity of all states in the region and the inviolability of international borders.

Chapter 7

FACTORS THAT PRESET THE FAILURE.

The notion of successful mediation is relative, and depends heavily on the goals that have been set and expected to achieve, criteria to be improved and issues to be resolved. To the extent to which Nagorno–Karabakh conflict has deescalated and immediate hostilities have ceased, international mediation in Nagorno–Karabakh has been constructive. To the extent the parties and mediators failed to achieve final settlement and negotiate the political status of Nagorno–Karabakh this mediation has been a failure. Below I summarize several factors and circumstances that, I believe, preset this failure.

- The principles of territorial integrity and self–determination are both enshrined in the international law. However, clash of the principles of territorial integrity and self–determination over the issue of sovereignty and nationhood in Nagorno–Karabakh case has received no practical solution. The inconsistency in the way these principles have been interpreted and applied by international community in Nagorno–Karabakh has generated confusion and cynicism towards international mediation among the parties to the conflicts. The mediators in Nagorno–Karabakh conflict were not impartial from the normative point of view. The OSCE's support of primacy of borders over the will of a people contradicted the organization's core principles–the spirit of the Helsinki Final Act, which assigns equal weight to self–determination and territorial integrity. The UN Security Council and some individual states also firmly supported the principle of territorial integrity.

Such a position largely contributed to the deepening of the deadlock and reduced the area of compromise. For instance, it encouraged the sides to adopt intractable and rigid positions. An example is Azerbaijan's refusal to recognize Nagorno–Karabakh as the second party to the dispute. Meanwhile flexible reciprocation of compromises is a prerequisite for a peace settlement. Subordination of the will of Nagorno–Karabakh people and their right to self–determination to the principle of territorial integrity of Azerbaijan has been the core impediment responsible for the unsuccessful international mediation and unresolved political status of Nagorno–Karabakh.

Mediators' support of the territorial integrity of Azerbaijan not only subordinated the equally weighty principle of self–determination, but also failed to treat the case in conformity with the prevailing international human rights standards. By being included in Art. 1 of the Covenants, the concept of self–determination was given the characteristic of a fundamental human right. More accurately, it became an essential prerequisite for the existence of human rights, since these rights could not genuinely be exercised without realization of the collective right to self–determination. The Covenants provide in their general formulation an essential evidence of the meaning and content of the principle of self–determination even for states which are not parties to them.

Solutions proposed by the OSCE in relation to Nagorno–Karabakh crisis have mainly emphasized military, economic, and refugee questions, and marginalized resolution of political issues. The essence of the dispute—resolution of Nagorno–Karabakh's political status—has been continuously adjourned. The mediators failed to reach agreement on many of the solutions they proposed, in large part because they attempted to resolve the consequences of the conflict without addressing the causes which relate to the status and security issues. Piecemeal approach is not an effective strategy for resolving

interrelated problems that require comprehensive solutions. The issues stemming from Nagorno–Karabakh conflict have common roots. They cannot be resolved separately or out of the context. They require a complex solution that would address the interconnected issues simultaneously. Hence, the Nagorno–Karabakh question cannot be solved in advance of its political status.

- Mediation is aimed to solve conflicts by peaceful means. To be impartial, such a process presupposes engagement of direct parties on equal footing with corresponding rights and obligations. Nagorno–Karabakh is an immediate party to the conflict. This presupposes Nagorno–Karabakh representatives' active and meaningful participation in all the initiatives, otherwise, Nagorno–Karabakh cannot be held responsible for any document adopted or decision made without the full participation of its officials. For example, the Lisbon summit during which mediators attempted to predetermine the legal status of Nagorno–Karabakh without consultation and agreement with either Nagorno–Karabakh or Armenia. This position of mediators aggravated Azerbaijan's intermittent refusal to come to terms with the fact that Nagorno–Karabakh is a distinct and principal party to the conflict. Meantime, mediators could have lent legitimacy to Nagorno–Karabakh party by recognizing Nagorno–Karabakh as a direct party to the conflict and fully involving it into negotiations.

As Zartman points out, there exists a perception that "Meeting is recognizing and recognizing is approving."[100] Thus, Azerbaijani side avoids any sign of recognition of Nagorno–Karabakh as a distinct party to the conflict. Whereas, as Zartman continues "Recognition and legitimization permit negotiation. Once they have been attained, conflict resolution can come into play to regularize the new *status quo*."

Despite that the OSCE peace process played a role in securing a cease–fire, however, it fell short of reaching political–legal solution to Nagorno–Karabakh conflict. It also failed to provide effective mechanisms to legally or politically support and promote the few agreements that had been reached so far. Mediated agreements in Nagorno–Karabakh brought to end active hostilities, however, the parties were left unhappy to one degree or another. Such circumstances do not exclude resumption of hostilities. For example, Azerbaijani side frequently threatens with an attempt to resolve Nagorno–Karabakh conflict by force. Hence, mere truce does not mean final resolution.

- Most of the postmodern claims to secession arose in or transformed into the context in which potential or recurrent conflict was being managed by peacemaking process. Similarly, Nagorno–Karabakh peace process was internationalized at the end of 1991. However, international mediation and other peace processes should not impede recourse to the procedures of the international law and legal clarity, because the international law, legal principles, laws and institutions, as well as the bodies applying these principles and laws are key elements in the substance of mediation.

Paradoxically, the key principles of the international law often themselves become barriers to a negotiated agreement, especially when they are strictly imposed on the parties as rigid categories in which framework the sides must seek a settlement. The conflicting principles of the international law (e.g. territorial integrity vs. self–determination; non–intervention and a state's sovereignty vs. human rights, etc.) imply that the international law, in its turn, should be in a constant process of development and improvement, as it is being applied in the world where a change has become the only constant, and a change heralds forthcoming transformation. The imperfections inherent in the existing international law should ultimately find solution. Modern international law must be able to

provide adequate answers, flexible solutions, and balanced adjustments to the phenomena and challenges posed by the multitude of non–monolithic situations, which necessitate separate considerations.

Diplomatic and political strategies to prevent or manage a crisis should utilize innovative ways of defusing tensions among belligerent. As suggested by Carnegie Commission such strategies can include a serious discussion of peaceful border adjustments or revisions, new constitutional arrangements, forms of regional or cultural autonomy, or even partition, in unusual circumstances.[101] The international law should be able to respond to the newly insistent calls for justice. The contentious issues of the international law should not be left entirely to political forums, but should find solution in a new normativity.

As Arthur Khachikian fairly observes, not all the entities in the international legal system are equal subjects of the international law.[102] With a nation state being the main building block of the international legal system and the main subject of the international law, other entities, such as autonomy, federation, occupy a marginal place in the international legal system–international law relates to them only by moderating and constraining the behavior of the main actors, nation states. Galina Starovoitova noticed that "for diplomats the rights of the state generally prevail over the rights of peoples living in that state..."[103] The international law does not provide any clear–cut guidelines or regulations regarding accommodations within the category of the nation state, thus leaving them in "legal vacuum." Hence, legal norms that would be able to reconcile competing claims for order and for change should be created.

As the practice has shown, in the context of a war, where an exchange of populations and territorial changes have taken place, the minority that has carved a *de facto* but unrecognized state will never agree to revert to its previous status or even join in a federation with adversaries against whose rule they revolted. That the case for secession intensifies when the claimant group has attained *de facto* independence was illustrated in the case of Aaland Islands. The Commission of Jurists on the Aaland Islands dispute recognized *de facto* independence as a special factor:

> From the point of view of both domestic and international law, the formation, transformation and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law... This transition from a *de facto* situation to a normal situation *de jure* cannot be considered as one confined entirely within the domestic jurisdiction of a State. It tends to lead to readjustments between the members of the international community and to alteration in their territorial and legal status.[104]

Similarly, Nagorno–Karabakh people believes that any solution must reflect the existing political realities, namely, the *de facto* statehood of Nagorno–Karabakh. For cases like Nagorno–Karabakh, stylized criteria that would enable to assess legitimacy, eligibility for secession and entitlement of a people to self–determination should be formulated. Application of stylized criteria will, nonetheless, require taking into consideration various variables—political, historical and legal facts, human rights dimensions, context and circumstances in which a particular case is developing, and certain other criteria. Political and legal environment, as well as appropriate mechanisms through which secession can occur must be secured.

However, by no means do I suggest that any entity that decides to secede must be given recognition. Any change must be legitimate and justifiable by principles and norms by which international community must be guided. Otherwise, we might find ourselves in the world of divided states that have been broken up on the basis of ethnicity, religion, language, etc.. Therefore, right to self–determination should be legitimized. The international law should provide a road map for sovereignty. This is a tremendous challenge that if met, will significantly reduce the ambiguity and uncertainty prevalent in international community with regard to a people's right to self–determination, sovereignty, and recognition.

Finally, a stable world order may not always be sustained by a rigorous application of the principle of territorial integrity. History and practice have shown that very often stability is only achieved through a change. In Art. 1 of the UN Charter self–determination is conceived as one among several possible "measures to strengthen universal peace." Extension of the principle of self–determination to peoples within states could contribute to the strengthening of universal peace and safeguarding of respect for human rights. Moreover, self–determination is the logical outset for an examination of legitimacy of a global democratic entitlement. It is the historic root from which democratic entitlement grew, as self–determination has to do with a collective right of people to govern themselves by creating a voluntary civil society, usually by founding a state.

- Efforts of the United States and several other European states, who occasionally exercised their own initiatives within the Minsk Group, failed largely because most of the proposals made by the western states have promoted one–sided solutions, seeking to restrict the status of Nagorno–Karabakh to an undefined level of autonomy within Azerbaijan. Such proposals were rejected by the governments of Nagorno–Karabakh and Armenia, who argued that those strategies prejudiced the outcome of the Minsk process and could even jeopardize the maintained cease–fire.

Biased position of Western states is largely accounted for by the priorities of their foreign policies, national interests, their relations with global, regional powers and parties to the conflict as well as interests they have in the region. For example, some Western states, and the US in particular, see Turkey as their partner in the Transcaucasus and Central Asia. Thus, they promote expansion of Turkey's regional influence, which is ardently favored by Azerbaijan, whereas Russia, Armenia disfavor excessive Turkish profile. Views also diverge regarding Iran and its strategic role in the region. For instance, the US pursues the policy of isolation toward Iran and strives to prevent Iran's expanding influence in the region. Moreover, the US has included Iran into the "black list" of states that assumingly or factually support terrorism. By contrast, Armenia does not object to Iranian presence in the region, as a counterweight to Turkish power, as well as retains a common border with Iran that provides with an outlet to the outside world. While Western states disapprove excessive Russian presence in the region, Armenia maintains good relations with Russia.

Also, not all the mediators within the OSCE Minsk Group equally actively participated in Nagorno–Karabakh peace process. Western states' inertness can also be explained by their reluctance to involve seriously or directly in a remote conflict in the region of Russia's influence, as well as unwillingness to shoulder the burden of responsibility in the East, where peacekeeping, in addition, would be expensive. Above all, most of the Western states measure importance of their engagement into Nagorno–Karabakh by the priorities in their policies toward Russia. Thus, Nagorno–Karabakh cannot rely solely on the West to safeguard its security and other interests.

Biased positions and lack of sustained high–level Western interest in the conflict led the conflicting sides to doubt the credibility of Nagorno–Karabakh peace process. For example, absence of the US commitment to participate in the possible OSCE peacekeeping force made the parties question the effectiveness of such an operation.

Consequently, mediation should be a responsible process. Demonstrated and continued impartial backing of international leaders is important to the success of mediation. Without such commitment it will be hard to push through to a resolution. Moreover, irresponsibility of mediators and backing out in the mid–process threatens to freeze the conflict in an unfavorable and unresolved state. Such a stable deadlock is sometimes worse than an active conflict.

- Sanctions and other types of pressure were not effectively and consistently exercised by international community to stop aggressions practiced in Nagorno–Karabakh conflict. In the case of Nagorno–Karabakh, international community clearly buttressed predominance of the UN Charter's core principle of sovereignty and integrity of a state, thus largely neglecting human rights factor.

Imperfections and contradictions inherent in the international law related to the protection of human rights in many cases leave interpretation of certain provisions open, thus exposing them to subjective judgment. However, this should not give way to subjective manipulations of the international law and development of a double standard. The international law cannot be preference–sensitive. Irresponsiveness of international community to atrocities exercised toward Armenian population in Nagorno–Karabakh, Baku, and elsewhere in Azerbaijan, was diametrically contrary to international community's reaction, to the Balkan crisis, for example, and the actions undertaken by them to "stop human suffering."

International community immediately responded to hostilities in Yugoslavia, which began with action on June 27, 1991 by Yugoslav Federal Army against the incipient secession in Slovenia. The European Community banned arms exports and restricted economic aid to Yugoslavia–both to federal and regional authorities, on July 5, 1991.[105] The Committee of Senior Officials of the CSCE agreed to suspend all deliveries of weapons and military equipment on September 4.[106] On September 25, the Security Council decided, under Chapter VII of the Charter, "that all States shall, for the purposes of establishing peace and security in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise, following consultation between the Secretary–General and the Government of Yugoslavia."[107] By October, the European Community had prepared rigorous draft economic sanctions against Yugoslavia with potential for exceptions for those parties that were seen to contribute to progress towards peace.[108] Sanctions further culminated into the use of force against Yugoslavia to protect Kosovars.

Normally, sanctions are imposed to achieve certain results. To be effective, sanctions must be enforced. For example, Section 907 of the Freedom Support Act that was intended to coerce Azerbaijan to lift its blockade of Nagorno–Karabakh and Armenia was withdrawn without achieving the objective. Subsequent appropriations legislation, beginning with fiscal year 1996, did weaken impact of Section 907, by specifying exceptions and carve–outs to it.[109] Existence of Section 907 altogether was threatened in 1999 in connection with the passage of the Silk Road strategy Act of 1999. On January 26, 2002 the Bush administration waived Section 907 of the Freedom Support Act,

despite Azerbaijan's failure to meet the conditions of this law to lift blockade of Armenia and Nagorno–Karabakh. In fact, abolition of the Section 907 rewarded the government of Azerbaijan for its intransigence and removed a major incentive for negotiations.

- That parties to the conflict define the problem differently contributes to the existing *impasse* and complicates mediation efforts. Armenians of Nagorno–Karabakh base their claim to Nagorno–Karabakh on the history and demography, backing it with prevailing standards of human rights and the legal right to self–determination. Azerbaijani side, in its turn, avoids any historical or legal argumentation. This state of affairs has been exacerbated by that in the course of time the parties have not changed their interests, tactics and strategies. This created a vicious cycle, which resulted in that the contending parties harbor mutually exclusive prerequisites for an acceptable compromise agreement.

It is always difficult for conflicting sides to decide for themselves how much to compromise. Most often conflicting sides approach conflict from a winner–loser perspective. This implies that to make a compromise would mean to accept defeat, while conflict resolution should be problem–solving for all the engaged sides, if it has to yield positive results. Those conflicts that end in military victory are most likely to reemerge, including the extreme outcome of genocide or "politicide". Accordingly, it is mediators' priority task to induce confronting parties to approach conflict resolution process as problem–solving that directly engages immediate actors and other interested parties. In this respect, mediators' resources, reward powers and ability to produce incentives for compromise are very important.

The gist of the dispute over Nagorno–Karabakh is its ultimate political status. The only formula acceptable to Azerbaijan is broad autonomy for Nagorno–Karabakh and abandonment of Nagorno–Karabakh's quest for independence. Meanwhile, Nagorno–Karabakh rules out any vertical subordination to Azerbaijani jurisdiction. The Republic of Azerbaijan insists on preserving the territories assigned to the Soviet Socialistic Republic of Azerbaijan, meanwhile Nagorno–Karabakh renders unacceptable any form of return to its past, Soviet time status as an enclave.

Up until now Baku, fearful of granting any kind of recognition to Nagorno–Karabakh, refuses to accept Nagorno–Karabakh Armenians' participation in negotiations on Nagorno–Karabakh's status. Throughout the conflict, Baku has been insisting that it would negotiate the fundamental issues only with Yerevan. Yerevan, in its turn, argues that the government of Stepanakert is an independent actor not under its control, and thus cannot agree on anything unacceptable to Stepanakert.

Baku's opposition to the deployment of Russian–dominated peacekeeping force (PKF) undermined Vienna–based OSCE High Level Planning Group's (HLPG) attempts to reach an agreement on the composition and command of PKF. While Azerbaijan opposed domination of Russian troops in peacekeeping contingent and insisted that PKF be answerable to the OSCE and not Moscow, Armenia, in its turn, objected to Turkish military involvement. Furthermore, Baku insisted that negotiations could begin only after Nagorno–Karabakh's army withdrew from the territories beyond Karabakh's border. This suggestion was unacceptable to Stepanakert, because it would undermine Nagorno–Karabakh's security in the absence of an agreement on the status and international security guarantees, thus exposing the mere physical security of Nagorno–Karabakh people. Circumstances, under which Armenians of Nagorno–Karabakh occupied pieces of Azerbaijani territory should by no means be neglected.

As noted by Caroline Cox and John Eibner in their book published in 1993, there had been tremendous asymmetry of violence in the struggle for Nagorno–Karabakh, and Nagorno–Karabakh Armenians who contributed to the death toll and suffering had been the principal victims.[110] Atrocities against Armenians bore vivid similarities to organized massacres and were intent on intimidating the whole Armenian community. Cox and Eibner cite Azerbaijan as the primary aggressor and put forward the following reasons in support of their conclusion:

- Azerbaijan and the Soviet 4th army carried out deportation of Armenians from Nagorno–Karabakh and Shahumian District;
- Azerbaijan initiated the use of GRAD rocket launches which greatly escalated the level of civilian casualties and destroyed housing, hospitals, and other essential facilities;
- Azerbaijan deployed 500kg and cluster bombs against civilian populations;
- Azerbaijan deployed missiles against civilian populations in Nagorno–Karabakh;
- Azerbaijan imposed economic blockades on Armenia and Nagorno–Karabakh.[111]

These and other unbearable circumstances made Armenians of Nagorno–Karabakh believe that they cannot survive if they do not defend themselves by fighting back. They could no more sit back and wait for the matters to resolve themselves. These are the facts that account for the resistance of Nagorno–Karabakh to return the territories prior to resolving its political status and guaranteeing its security. Moreover, if Nagorno–Karabakh controls 7,059 sq. km (8%) of territory considered to have been traditionally Azerbaijani, Azerbaijan, in its turn, occupies approximately 750 sq. km (15%) of territory considered to have traditionally been a part of Nagorno–Karabakh.[112]

Nagorno–Karabakh maintains that the withdrawal of its forces can only be implemented after the fundamental issues of security and political status are finalized. Nagorno–Karabakh has consistently maintained that it has no territorial claims concerning Azerbaijan and is ready to withdraw its forces upon reaching agreement on appropriate political and security–related matters. Nagorno–Karabakh's insistence on guaranteeing its security prior to withdrawal of its forces from Azerbaijani territories is largely accounted for by the mistrust of Nagorno–Karabakh Armenians in outside powers and their long–term promises to protect interests of Armenians in Nagorno–Karabakh.

This mistrust has historical roots. Betrayal by the British, the alliances of Azerbaiajni leaders with Ottoman and Republican Turkey, massacres of Armenians in Baku and Shushi after World War One, and the fact that the Azerbaijanis are a Turkic people, are historical lessons that continue to be current.[113] In the words of the historian Richard Hovannisian "The sense of being tricked and betrayed in 1918 and 1920 now reinforces Armenian disbelief in any terms or truce that require withdrawal or disarmament prior to the implementation of firm and permanent guarantees."[114] This is also a reason that Nagorno–Karabakh insists on direct access to Armenia and the world as a part of its status.

- Measure of historical continuity and historical memory is so strong in certain conflicts that it can significantly affect or undermine mediation and conflict resolution processes. Experience has proven that in most of intense protracted identity conflicts it is extremely hard to overcome psychological barriers and historical memories. Very often, in a conflict situation, especially if it has involved violence, emotions overweigh rationality. Israeli–Palestinian, Cyprus, Northern Ireland, Nagorno–Karabakh conflicts clearly share this characteristic.

Nature of Nagorno–Karabakh conflict is violent. The conflict escalated and turned into warfare from 1991 to 1994. It involved atrocities, severe human and civil rights violations, beatings, rapes, forced abductions, imprisonment, and deportation. The psyches of the current generation of Armenian and Azerbaijani peoples have in many ways been forged by the enduring sense of conflict, being opposite sides of a recondite cultural line. Animosity is fresh in memories of people who or whose families suffered violence and deportation. Moreover, the 1915 genocide of Armenians by the Ottoman Turkey is part of the consciousness of Armenians in Armenia, Nagorno–Karabakh and elsewhere.

Psychological factor, intensified by historically augmenting mistrust of Armenians into outside powers, developed cynicism about outside mediation efforts. Distrust of Armenians warranted by actions of Britain and the Soviets in the Transcaucasus, as well as the Paris Peace Conference of 1919, not without a reason, further extended to Russia, some Western states and finally the OSCE. This mistrust is justifiable, because multiple times throughout history Armenians were misled by representatives of outside powers in deciding the future of the disputed territories of Nakhichevan, Nagorno–Karabakh and Zangezur. Regional policies of great powers, who acted out of their interests, consistently supported Azerbaijan's rather than Armenia's interests in the region.

Psychological factor is powerful and can play a decisive role in affecting the course of mediation and attempts of reconciliation. It will probably take more than goodwill of the confronting sides to reconcile historical memories, mutual antipathy and mistrust on which Armenian–Azerbaijani relations are currently based. Such efforts will surely need external impulses that will promote justice and legitimacy.

- Timing is another decisive factor that implies when the parties are ready to give up and start compromising. There are always stages in a conflict when conflicting parties are relatively certain about the future outcome and stages when they are much less certain about it, and thus are more likely to compromise. Equally important is the timing of efforts at peacemaking. Some methods are appropriate to the prevention of escalation, while others become pertinent only when the conflict appears to have become stalemated.

International intervention in Nagorno–Karabakh conflict when it loomed was not feasible. Preventive diplomacy and early warning by international mediators could not be exercised in their classic sense in the case of Nagorno–Karabakh, because when the conflict activated, the territory then was a part of the USSR. International community tended to view the conflict as an internal conflict within the USSR in which it would hardly even try to intervene then. On the other hand, appropriate time–when Nagorno–Karabakh conflict could have received peaceful political and legal solutions within the USSR, according to the referendum results and under the international and domestic Soviet Law–was intentionally missed by the government of the USSR, thus giving way to escalation of the conflict and prompting sides to take up arms.

However, not only one window of opportunity was missed in Nagorno–Karabakh case. After collapse of the USSR, a number of opportunities that could have deescalated hostilities and have led to more effective negotiations were overlooked. For example, one of the most important conclusions of the OSCE's early 1992 fact–finding mission was that the conflict had a strong potential to transform into a large–scale regional conflict. Based on this conclusion, the Minsk Group started energetically a negotiating process, which could have prevented escalation of violence. However, very shortly it waned, because of the discords with Russia. Of consequence in this respect was also the tendency to

leave the solutions to the disputes in the former USSR to Russia, especially in the early 1990s, as well as the fact that high–level western attention was then concentrated on the former Yugoslavia. In other words, the importance of early warning was seized by the OSCE, but commitment to decisive action was lacking.

On the other hand, early period was complicated by that the sides were not ready for compromise. For example, the fatigue of the warfare and the exhaustion factor had not yet been felt. Parties to the conflict still harbored ambitions to win the conflict, and to a certain extent could rely on help from outside. In addition, political gamesmanship played hindering role, as the sides were not strong enough politically, and thus were cautious not to risk their positions at home being accused by the domestic opposition of the "sell–out." For example, this was most likely the reason the Azerbaijani side backed out of the Stockholm agreement. Natural unwillingness to compromise is often aggravated by political leaders of conflicting sides who play on nationalistic feelings to gain or preserve power.

- Mediation is also an intellectual process. Mediators' competence, skills, expertise, deep knowledge of the conflict's history and contextual peculiarities are critical to the success of conflict management and resolution. Very often mediators value more what they perceive as facts than what the facts are in reality, or as perceived by the immediate parties to the conflict.

The fact that mediators and immediate parties to conflict perceive the conflict, view its sources, and causes differently complicates the process of finding common ground and denominator. Failure to accurately address regional peculiarities, negligence of rich historical background, legal arguments and specifics of conflict's evolution prolonged *impasse* in Nagorno–Karabakh. Up to today some Western media describe Nagorno–Karabakh conflict as one between the states of Armenia and Azerbaijan over Nagorno–Karabakh; as an intercommunal or separatist conflict; or worse, as confrontation within a Christian–Muslim paradigm. Such erroneous and simplistic assumptions completely distort geostrategically complex context.

Levon Chorbajian enumerates inaccuracies favored by the Western journalism, establishment analysts and commentators.[115] These include exaggeration in the amount of Azerbaijani territory alleged to be held by Armenian forces; overstatement of the number of Azerbaijani refugees and distortion of the number of Armenian refugees; use of individual case histories devoid of context, and other similar oversights that shift the struggle of Nagorno–Karabakh Armenians from a legitimate quest for self–determination into an "illegitimate case of Armenian irredentism."

The OSCE's Minsk Group, in its turn, failed to accurately address certain issues. While the roots of the Nagorno–Karabakh conflict trace back to the beginning of the 20th century, the Minsk–Group views the conflict as one that started in 1988.[116] Minsk–Group limits the conflict to the territory of Nagorno–Karabakh, while Nagorno–Karabakh conflict is an internal conflict within Azerbaijan, and thus should be viewed in a more extensive context. Such difference of appreciation of the essence of Nagorno–Karabakh dispute complicates mediation, thus generating proposals of irrelevant solutions to the dispute by the mediators.

- Track Two Diplomacy was attempted in relation to Nagorno–Karabakh conflict by several non–governmental organizations, which proposed draft resolutions for Nagorno–Karabakh. For example, "*A Stability Pact for the Caucasus*,"[117] prepared by the Center for European Policy Studies (CEPS), drafted strategies to resolve the conflicts in the Transcaucasus. "*A Stability Pact*

for the Caucasus" excluded an "outright independence" for Nagorno–Karabakh (as well as Adjaria, Ossetia, and Abkhazia), and considered return of Azerbaijani territories "to be a categorical part of a settlement," without providing a clear framework for resolution of Nagorno–Karabakh's political status.

"*The Nagorno–Karabakh Crisis: A Blueprint for Resolution*"[118] prepared by the Public International Law & Policy Group and the New England Center for International Law & Policy is a more feasible alternative for resolution of Nagorno–Karabakh dispute for several reasons: first, it is based on the current facts and realities of the crisis; second, it does not impose rigid prerequisites for a possible settlement, such as exclusion of absolute independence, and does not suggest one–sided compromises, such as one–way return of the territories in exchange for intangible pledges to resolve the political status of Nagorno–Karabakh; third, the proposed resolution is based on the factual precedents in the international practice when sovereignty and recognition had been "earned" through a phased process (for example, the more recent case of independence of East Timor).

- Lack of appropriate mechanisms and adequate experience for conflict resolution was a major cause for failure in Nagorno–Karabakh. International organizations lacked a unified system for warning, prevention and localization to effectively respond to the security challenges in the region. For example, the OSCE did not have peacekeeping or monitoring force immediately available to monitor the cease–fire agreement, whereas monitoring force is an essential element of any cease–fire agreement that is hard to materialize without outside supervision. The OSCE did not have relevant experience to efficiently deal with complex Nagorno–Karabakh conflict, because never before had the OSCE undertaken a conflict prevention or conflict resolution role.

Alternatively, bodies such as the Conciliation Commission of the Organization for Security and Cooperation in Europe, the European Court of Human Rights, or the International Court of Justice that have made important rulings on territorial and human rights issues and play an important role in resolving narrower international disputes, have not been very effective in solving sovereignty and minority rights that are at the core of many current intrastate conflicts. This can be explained by that the mentioned organizations have not been granted the mandate to rule on such complex issues, and also because these issues still remain contended in the international law.

Important in this respect are also mediators' authority, reputation and credibility. For example, Western conflict resolution credibility was at a higher level at the initial stage of involvement in Nagorno–Karabakh. However, it gradually diminished as the sides perceived the lack of interest on behalf of the international community. Unpreparedness of international security organizations for local and interethnic conflict management, as well as lack of adequate means and mechanisms for immediate effective action became manifest. Worse, they became associated with failures in the former Yugoslav Republic. The OSCE's limitations that were not clear in the beginning became obvious in the process. Russia's attempts at political maneuvering and power politics undermined its authority, hence significantly diminishing its peacemaking capability.[119]

Consequently, if the OSCE and other international organizations want to increase their leverage as mediators or peacekeepers in conflict management and resolution process, they must develop reliable structures, mechanisms and procedures that would effectively work in practice.

- Different interests are involved in process of mediation that need to be satisfied. When engaging into a conflict, mediators make inputs that entail costs, expend resources and therefore expect

some gains, thus involving their own interests, and themselves becoming actors in the process by virtue of mediating.

Mediation in Nagorno–Karabakh represented "dual–mediator" model—Russia/CIS and West/OSCE/Minsk Group—with the Russian Federation that assumed the role of a facilitatory and conducted peacekeeping mainly under the guise of the CIS, and Western states that acted chiefly on behalf of the OSCE remaining the key mediators throughout the peace process.

Very often mediators' interests, if several mediators are involved, are not in agreement, and offer competing agendas. This fact, in its turn, exacerbates tensions, and complicates unified action and decision–making. For example, continued divergence between the mediators in Nagorno–Karabakh—particularly between Russia and the OSCE over organization of peacekeeping force, chain of command, combined with unequal level of participation of different countries (Russia remains the most active mediator within and out of the OSCE framework, and the US is the most influential of the Minsk Group members)—has largely delayed the peace process.

Thus, not only regional powers', but also interests of great powers clashed in Nagorno–Karabakh peace process, in many instances considerably hindering advancement. To illustrate an example, I will depict an episode of the US–Russia rivalry throughout Nagorno–Karabakh conflict. Russia was striving to secure recognition of its special role as the main peacekeeper in Nagorno–Karabakh and was keen to obtain a special responsibility status. The US would agree to this only if Russia compromised on other issues. When in Budapest it was recognized that Russia had a special role in the Caucasus, this was mainly due to the softening of the United States position, which largely determined approach of the Minsk Group. Hence, during her September 1994 visit to Yerevan Madeleine Albright did not any more lay down international make–up of peacekeeping force as one of the conditions for entry of peacekeeping forces into Nagorno–Karabakh conflict zone. On the contrary, she declared that involvement of Russian troops seemed acceptable, if certain conditions were observed. Among the conditions listed by Albright was monitoring of actions of the Commonwealth's peacekeeping forces.

However, the situation changed radically after the statement by the Russian Foreign Ministry on the non–recognition of the oil contract of September 20. This prompted the US to oppose Russia's special role in the Transcaucasus (despite that Russia had more capacity and incentives in the region) and demonstrate activation of its role in Nagorno–Karabakh, by organizing a meeting with the presidents of Armenia and Azerbaijan in New York. This is one of the multiple examples where power politics and clash of mediators' interests delayed and complicated the peace process. Whatever the mediators' incentives and the commitment to promote resolution of a conflict are, they will never sacrifice their national interests and foreign policy priorities.

Hence, another factor that might interfere into the mediation process is the concept of "subcontract peacekeeping," which implies a practice, in which an international organization authorizes individual states to carry out peacekeeping and other activities. This might be a case when informal agreements are achieved between two or more mediators, who trade each other's approval for operations. Such a situation can threaten impartial mediation, especially if a state that has received authorization might have direct political interests in the area of conflict.

Despite the existence of theoretical criteria and general legal principles that are supposed to resolve unavoidable contradiction and complexity of choice between territorial integrity and self–determination, policies in this respect inevitably take political interests in account. Competing geopolitical, economic and partisan interests of third parties in the region are largely responsible for ineffective peace process in Nagorno–Karabakh. Interaction between the mediators in Nagorno–Karabakh crisis was not that of cooperation to divide the labor and responsibilities, but was rather competition in mediating initiatives. For example, Turkey's, Russia's, and Iran's unilateral mediation in Nagorno–Karabakh conflict in large part was motivated by their own regional interests. Penetration of additional interests into the conflict exacerbated bilateral problems between Azerbaijan and Nagorno–Karabakh.

Furthermore, Azerbaijan played oil politics that has been favored by certain states. Azerbaijani oil factor has been given much weight by some analysts (e.g. Roland Suny, Edmund Herzig, MacFarlane), some of whom consider that the Caspian Sea possesses "one of the great underdeveloped oil reserves in the world." Meanwhile, other analysts (e.g. Anatol Lieven, Levon Chorbajian) offer a more realistic assessment of the Azerbaijani oil reserves (according to Lieven around 2 percent of the world's reserves). They point out the disadvantages of the fields that will likely result in the extraction, transport and marketing costs running at three times the world average.[120] In Chorbajian's opinion, another disadvantage of the Caspian reserves is that there is no easy outlet to the sea.[121]

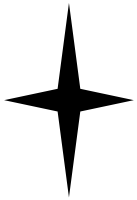
Despite that early projections of significant reserves, extent of those reserves and the economic viability of their full exploitation have recently been questioned, oil diplomacy, nevertheless, has been advantageously used by Azerbaijan as a lever to circumvent the due process by imposing unacceptable settlement of the Nagorno–Karabakh, as well as strengthened its bargaining power with the West, as it attracted interests of major western oil companies, which, as it is well–known, have significant influence on shaping policies in Washington, D.C. and elsewhere. However, without resolving Nagorno–Karabakh issue, the region's security and economic development, especially exploitation of the underdeveloped oil and gas reserves under the Caspian Sea will constantly be threatened.

Despite that neutrality is an unresolved theme within conflict resolution discourse and practice, to the extent possible, competing interests must not intrude in search for common ground between the conflicting sides. Mediation should by no means become foreign fishing in troubled waters. It is vital that economic, military, or diplomatic actions and policies of mediators not aggravate volatile situations, because if not carefully planned, even well–intended efforts can make adverse effects. Interest in one party to the conflict usually results in military, economic, political support. The factor of external support can be a major barrier to settlement, because, as long as the parties can rely on external support, be it military or else, they will be less willing to compromise, and will nurture hope to prevail in the conflict.

- Mediation is a process. Thus, it cannot be a rigid, uniform, ready–made, one–size–fits–all model that can be patterned and similarly applied in all cases. Mediation should rather be a flexible and dynamic, adaptive and responsive process which must strike a balance among diverse interests and values, competing needs and concerns. A mediation tool or mechanism successfully applied in one case, does not automatically guarantee successful application of the same mechanism in another, even similar situation, because process of mediation is affected by and itself affects various variables that vary from context to context–international, regional, domestic settings; interaction of actors; historical, political, legal and social factors; external and internal influences, and many others.

Most importantly, any dispute should be treated as a discrete issue, sui generis, with its own unique causes and characteristics. As every case is unique, it therefore requires policies and solutions carefully tailored to its own circumstances. Nagorno–Karabakh dispute constitutes a distinct legal and political case unconnected with other territorial, ethnic, nationality, or minority disputes within the borders of the former Soviet Union. Accordingly, it requires contemporary approach based on the merits of the case and on present realities. And the reality is that Nagorno–Karabakh has maintained an independent existence for already twelve years. It possesses essential attributes and institutions of statehood. Nagorno–Karabakh's *de facto* statehood satisfies the requirements for *de jure* recognition.

Peaceful resolution of Nagorno–Karabakh confrontation is crucial to overall security in the region and possible economic integration. The first steps in this effort have been the maintenance of the cease–fire; stabilization of the military front since 1994; an exchange of prisoners of war and hostages in May 1996. These advancements demonstrate that a breakthrough can be achieved via compromise. If successfully managed, conflict may generate cooperation. Not violence, but cooperation should be the method for resolution. To be sustainable, peace in the conflict zone should be supported by international guarantees, because conflict settlement does not always mean resolution, as well as two parties agreeing not to fight does not mean that collaborative and beneficial relationship exists. Cease–fire based solely on goodwill of the conflicting parties is fragile and can be upset by a slight shift in the political "climate" or the balance of military forces. Resolution of the Nagorno–Karabakh dispute requires a comprehensive approach that will embrace political and legal merits of the case. As we cannot swim against the tide of history, such an approach must also revert to the historic roots of the dispute. Finally, the world, as it is, is not optimal. However, there is a hope to improve it, in some part by successful application of conflict resolution tools.



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