

# Coddling the Caucasus: Iran's Strategic Relationship with Azerbaijan and Armenia

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## Abstract

*Fearful of losing its economic regional and global dominance, Iran has sought to align itself diplomatically and economically with Armenia and Russia to counter Azerbaijan's new pro-western policies and rising economic power. This paper analyzes the international relations of the Southern Caucasus through a Neorealist paradigm to demonstrate how Iran's behavior and action in the area were a direct result of the anarchical system that ensued after the fall of the Soviet Union in the 1990s. The lack of a bipolar system in the Caucasus has pushed the region to the brink of another regional conflict that could potentially be more far-reaching and widespread than that of the previously contained Nagorno-Garabagh conflict between Azerbaijan and Armenia. Iran's foreign policy of the past decade demonstrates Iran's pragmatism in the Southern Caucasus that is not dictated by religious ideology, but rather by Iran's national interests, both economic and political, and national security concerns. The "New Great Game" of the post-Cold War era in the southern Caucasus will radically transform the region into one of great strategic and geopolitical importance.*

**Keywords:** *neorealism, anarchy, balance of power, BTC Pipeline/Caspian Sea oil and gas pipelines, ethnonationalism, external Influences—Russia, Iran, United States, Turkey*

## Introduction

The collapse of the Soviet Union and birth of independent states in the Caucasus region sparked the strong interest of the world because of its wealthy natural resources and strategic placement between Europe, Russia, the Middle East, and Central Asia. As a result of the Soviet Union's disintegration in the Caucasus, the operation of the international system has been forced again to find regional stability in what Kenneth Waltz has described in his book, *Theory of International Politics*, as an anarchical international system. Over the past decade, the countries of the region, including Azerbaijan, Armenia, Turkey, Russia, and Iran have sought to reestablish their national interests and military power among the other competing states.

By using Kenneth Waltz's Neorealist paradigm, a strong explanation can be given regarding the actions and policies of these regional Caucasian countries. Indeed, a Neorealist international politics model cannot explain every aspect of the international system in the Caucasus, but it will be shown that it offers the best lens in which to view the

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behavior of the states in this region. In particular interest to this paper is the role of Iran and its unlikely increased economic and political relations with Armenia during the past decade. This paper will elucidate why Iran, ruled by a heavily theocratic Islamic government, acts as such a reliable trade and diplomatic partner to Armenia, an openly Christian state.

Iran's foreign policy of the past decade demonstrates Iran's pragmatism in the Caucasus that is not dictated by religious ideology but rather by Iran's national interests, both economic and political, and national security concerns. Iran's behavior in the Caucasus as a unitary actor in this regional subsystem of the international system is best viewed through a Neorealist paradigm because of its strong explanation of Iran's behavior in the region, such as its open pursuit of national interests and protection of its national sovereignty. Furthermore, this paper will demonstrate through a Neorealist paradigm that the increased polarity of the region, from a bipolar to a multipolar system of alliances, has led to greater instability, drastically placing Iran and the Caucasus at risk for future conflict or war.

To best understand Iran's role in the Southern Caucasus, Iran's national interests in the region, including its national security and hydrocarbon trade, will first be examined to demonstrate how they dictate Iran's behavior and policies in the region and in particular with Armenia. Second, this paper will discuss, in relation to Iran and the Caucasus, the anarchical and balance-of-power system that Kenneth Waltz posits as operating the international system. Over the past decade, Iran has drawn closer to Armenia because of its desire to counterbalance Azerbaijan's regional rise in economic and political power, in addition to the augmented presence of the United States. Furthermore, Russia has acted as an unreliable ally to Iran in the Caucasus, thus forcing Iran to align with the few remaining countries from the region that are pro-Iranian. The third and last section of this analysis will deal with the future of the Southern Caucasus, as well Iranian-Armenian relations, as seen through a Neorealist perspective. With the increased role of such countries as the United States and Israel in the region, in addition to an insecure alliance system involving both Russia and Azerbaijan, Iran's political and economic power is significantly challenged for the future. This combined analysis will demonstrate the validity of the Neorealist paradigm in explaining the state relations of the southern Caucasus in relation to Iran and Armenia, and shed light on the future precariousness of the region.

## **Iran's National Interests**

H.W. Bruck, Burton Sapin, and Richard Snyder write in their book *Foreign Policy Decision-making* that a country's foreign policy is greatly affected by its national interests. Furthermore, state behavior is determined by "heads of state, policy-makers, and diplomats [who] discover, define, and preserve the "national interest" through a formula or formulas employed to guide the choices and to legitimate choices already made."<sup>1</sup> Such a definition directly relates to the Neorealist model that describes states as unitary rational actors where the decision-making process leads to choices based on national interest.<sup>2</sup> Such definitions

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<sup>1</sup> H.W. Bruck, Burton Sapin & Richard Snyder, *Foreign Policy Decision-making* (New York: The Free Press of Glencoe, 1962), pp. 46-47.

<sup>2</sup> James Dougherty & Robert Pflatzgraff, *Contending Theories of International Relations: A Comprehensive Survey* (New York: Longman): p. 64.

are aptly applied to explain Iran's foreign policy in the Caucasus and with Armenia during the past decade.

After the fall of the Shah in 1979 and prior to the 1990s, Iran's foreign policy was largely characterized as both explicitly and implicitly supportive of the growing number of Islamist movements in countries such as Afghanistan, Lebanon, Tunisia, Algeria, and the Philippines. Beginning in the 1990s, however, Iran's Islamic rhetoric was largely toned down or abandoned, as Iran grew more prone to external international markets with the sale of its hydrocarbon reserves—gas and oil reserves were discovered during the 1960s in Iran. Additionally, Iran's government understood that it was economically dangerous to continue “exporting the Islamic Revolution” in a global economy: “Iran had to give in to international capitalism to survive in the world market and receive the maximum return on its oil revenues.”<sup>3</sup> As a new and industrializing country, Iran placed more emphasis on its economic interests versus pursuing a fully religious ideology in its foreign policy and understood that many countries were reluctant to trade with Iran, if it sought to forcefully spread Islam around the world. Other factors leading to a more pragmatic Iranian foreign policy came in 1988 after Iran lost an eight-year war against Iraq. In addition, there was a lack of reception to the spread of Iran's Islamic Revolution after the breakup of the Soviet Union in the newly formed Commonwealth of Independent States.<sup>4</sup> Overall, Iran's foreign policy was more geared toward security and economic concerns during the 1990s, preferring to nurture state-state relations over Islamic ideology.<sup>5</sup>

In 1988 when war broke out just beyond Iran's border in the Nagorno-Garabagh between Armenia and Azerbaijan, Iran remained largely neutral despite the fact that a large Shiite majority inhabited Azerbaijan. Iran, a country ruled by Muslim Shiites, has an Azeri ethnic minority population living in the northwest corner of the country, known as “southern Azerbaijan”, totaling more than 15 million people, compared with a population in Azerbaijan of 8 million. During the Nagorno-Garabagh conflict, Iran grew worried that support for Azerbaijan against Armenia would elicit a call for unification between the two “divided” Azerbaijanis that had been separated by the Persian and Ottoman Empires since the nineteenth century. In addition, Iran did not want to undermine Moscow's role in the region and mire in what was viewed as a Soviet internal affair. Moreover, if Iran were to increase the violence in the area, it feared the external intervention by either Russia or NATO, which would have brought international troops uncomfortably close to Iran's borders and a disturbance in the regional balance of power.<sup>6</sup> Therefore, alignment with either side was not an option:

“Siding with Azerbaijan would produce unnecessary domestic pressures from the rich upper Armenian elite in Iran. Such a move would also be seen as religiously based and therefore stir international criticism. On the other hand, the radical Islamic government

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<sup>3</sup> Anoushiravan Ehteshami, “The Foreign Policy of Iran” in *The Foreign Policies of Middle East States* (London: Lynne Rienner Publishers, 2002), pp. 284-285, 289, 305.

<sup>4</sup> Shireen T. Hunter, “Iran, Central Asia, and the Opening of the Islamic Iron Curtain”, in *Islam and Central Asia: An Enduring Legacy or Evolving Threat* (Washington, DC: Center for Political and Strategic Studies, 2000), p. 175.

<sup>5</sup> *ibid.*, p. 175.

<sup>6</sup> Lalg Papazian, “A People's Will: Armenian Irredentism over Nagorno-Garabagh” in *The Making of Nagorno-Garabagh: From Secession to Republic* (London: Palgrave, 2001), p. 78.

would not support a Christian actor fighting against a Muslim republic. Neutrality was therefore the safest reality.”<sup>7</sup>

Public opinion in Iran called for the government to support the Azerbaijani side against the Armenian “infidels”, but the government refused to take sides citing security concerns.<sup>8</sup>

By 1992 Iran was confronted with new problems regarding its policy in the Nagorno-Garabagh, in addition to being faced with what to do regarding the newly established independent states in the Caucasus region after the fall of the Soviet Union. By the end of that year, Armenia had captured the majority of the Garabagh and forced approximately 700.000 Azerbaijanis to flee from their homes in the area.<sup>9</sup> This crisis triggered a mass exodus of Azerbaijanis to flow across the border into Iran and further contributed to the government’s worries about an Azerbaijani nationalist revival. Iran sent troops to the borders by the beginning of 1993 and provided Azerbaijan humanitarian aid to feed refugees and build refugee camps within Azerbaijan’s borders. Iran’s government did not want to risk the increased presence of Azerbaijanis who might foment Azerbaijani nationalist sentiment and therefore prevented further refugees from entering Iran in the early 1990s.<sup>10</sup> Iran also feared that “secessionist movements in Iran and on its borders could be used by outside powers to destabilize the country.”<sup>11</sup> Such historical foes in the region as Russia possessed the potential to fulfill its neo-imperialistic impulses and tamper with Iran’s national security interests both within Iran and the Southern Caucasus.<sup>12</sup>

Aware of all of these internal and external possibilities and factors along its borders, Iran attempted to broker a ceasefire in 1992 with its national interest in mind but was unsuccessful because of continued bloodshed and a buildup of troops between Azerbaijan and Armenia. Iran was also dealt further troubling news during the same year when Abulfeyz Elchibey was elected president of the Republic of Azerbaijan. President Elchibey openly declared his government’s desire for unification with “Southern Azerbaijan”, thus greatly contributing to Iran’s fears of national unrest and insecurity. In addition, President Elchibey began to realign his government with Turkey, a “secular” country viewed disdainfully by Iran, and the United States, one of Iran’s other foes.<sup>13</sup> The tense events and Azerbaijani declarative policies against Iran of 1992 marked the beginning of strained relations between the two countries. As a result of Azerbaijan’s increased rhetoric for unification with “southern Azerbaijan”, Iran began to align itself more closely with Armenia and signed a bilateral treaty of friendship and economic cooperation at the end of 1992.<sup>14</sup> Such an agreement marked the beginning of rapprochement by Iran towards Armenia. Additional reports on Nagorno-Garabagh also

<sup>7</sup> Lalig Papazian, “A People’s Will: Armenian Irredentism over Nagorno-Garabagh” in *The Making of Nagorno-Garabagh: From Secession to Republic* (London: Palgrave, 2001), p. 78.

<sup>8</sup> Svante E. Cornell, “Iran and the Caucasus”, *Middle East Policy* (Jan 1998, v5, n4), p. 56.

<sup>9</sup> Charles Van der Leeuw, *Azerbaijan: A Quest for Identity* (New York: St. Martin’s Press, 2000), p. 183.

<sup>10</sup> Gareth M. Winrow, “Azerbaijan and Iran” in *Regional Power Rivalries in the New Eurasia* (London: M.E. Sharpe, 1995), p. 99.

<sup>11</sup> Ehteshami, p. 303.

<sup>12</sup> Alvin Z. Rubinstein, “Moscow and Tehran: The Wary Accommodation” in *Regional Power Rivalries in the New Eurasia* (London: M.E. Sharpe, 1995), pp. 45-46.

<sup>13</sup> Richard Giragosian, “Nagorno-Garabagh: International Political Dimensions” in *The Making of Nagorno-Garabagh: From Secession to Republic* (London: Palgrave, 2001), p. 245.

<sup>14</sup> Giragosian, p. 245.

claim that Iran permitted the transit of weapons headed to Armenia during the Nagorno-Garabagh conflict. It was also reported that Iran trained the Armenian Secret Army for the Liberation of Armenia (ASALA), which directly influenced the government in Nagorno-Garabagh and directly fought against Azerbaijani military forces. In essence, Iran opposed Azerbaijan and its new president, as well as Azerbaijan's new anti-Iranian policies, by aligning itself with Armenia.<sup>15</sup>

By 1994, change and equilibrium in the international system was once again established in the Southern Caucasus with a Russian-backed ceasefire in the Nagorno-Garabagh and a coup d'état that replaced President Elchibey with a more "moderate" leader, Haydar Aliyev. Despite President Aliyev's more moderate tendencies and efforts to improve relations with Iran, the Iranian government still remained wary of Azerbaijan and the threat it posed on its ethnic Azerbaijani population. As a result of continued tepid relations between the two countries, Iran adopted a policy to support the ceasefire in the Nagorno-Garabagh in an attempt to further prevent the displacement of Azerbaijanis who might stir national sentiment and threaten the national sovereignty of Iran. Iran also began to boost its relations with Armenia after Turkey and Azerbaijan implemented a trade embargo in 1994 that significantly affected Armenia's food and energy supplies.<sup>16</sup> Furthermore, Iran's support for Armenia better insured the government of Iran that Armenia could remain strong enough to stave off a future, armed conflict with Azerbaijan.

Today, the government of Iran continues its preoccupation about the possibility of ethnic Azerbaijani uprisings in Iran and has maintained a policy to minimize or censure the voice of the National Liberation Movement of Southern Azerbaijan that formed over the past decade, along with other Azerbaijani nationalist news agencies in Iran.<sup>17</sup> To uphold Iran's national interest of maintaining national sovereignty and unity, Armenia has been used as an initial tool of the Iranian government in some preliminary formal and informal agreements between the two states—this paper will later discuss more specific arrangements between the two countries. In relation to Iran, one can begin to see how Armenia slowly began to transform at the beginning of the 1990s into what Kenneth Waltz has referred to as a "buffer" zone for the dominant powers in the international system. Iran used Armenia as a potential buffer to insulate against the future rise to power of Azerbaijan. Over the course of the decade, Armenia acted as a balancing power in favor of Iran in a region that experienced increased polarity and opposing alliances.

The conflict in the Nagorno-Garabagh posed serious threats to Iran and caused an enormous outcry among its population in favor of supporting the Azerbaijanis in their fight against Armenia. The government of Iran, however, maintained its policy of preserving national security and sovereignty as the ultimate deciding factor for its foreign policy in the Garabagh. This aspect of Iran's foreign policy further gives validity to the Neorealist paradigm, which posits that a state will determine its foreign policy based on national interests, such as security, as opposed to being influenced by other forces like domestic politics or transnational organizations. Kenneth Waltz further contributes to this model by stating that a country will at the very minimum seek its own preservation, and at a

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<sup>15</sup> Cornell, p. 60.

<sup>16</sup> Svante Cornell, "Iran and the Caucasus", *Middle East Policy* (Jan.1998, v5, n4), p. 57.

<sup>17</sup> Robert Olson, "Turkey-Iran relations, 2000-2001: The Caspian, Azerbaijan, and the Kurds", *Middle East Policy* (June 2002, v9, i2), p. 121.

maximum, strive for universal dominance.<sup>18</sup> In Iran's case, the government of Iran sought its national preservation instead of being influenced of other ideologies and public opinion.

Aside from being preoccupied with protecting its national borders and sovereignty, Iran's involvement in the politics of the region was greatly influenced because of its strong economic ties and hydrocarbon interests in the Caucasus. After the ceasefire in the Nagorno-Garabagh and the increase of Azerbaijan's wealth from lucrative oil digging projects in the Caspian Sea, Iran moved to counterbalance Azerbaijan's rise in economic power by further aligning itself with Armenia, in addition to increasing its competition for hydrocarbon markets in the global economy.

According to Robert Gilpin, "states engage in cost-benefit calculations about the alternative courses of action available...[Furthermore,] a state will attempt to change the international system by means of territorial, political, or economic expansion until the marginal costs of additional change become equal to or exceed the marginal benefits."<sup>19</sup> Contrary to a Realist paradigm, Neorealism more properly accounts for a country's economic interests in determining the makeup of the international system. According to this model, a country not only seeks power politically and territorially, but also strives for economic dominance. In Iran's case, it worked to build up its economic power and dominance in the Caucasus after a lasting ceasefire was established in the Nagorno-Garabagh with the help of Russia in 1994. However, Azerbaijan proved to be a major obstacle and competitor for achieving Iran's goal.

During the 1960s and 1970s, Iran began to reap a major profit from the discovery of national hydrocarbon reserves. Aside from the Persian Gulf, Iran was a major exporter of hydrocarbons for the region. By the 1990s, however, Azerbaijan also began to capitalize on its hydrocarbon resources, thus marking the beginning of competitive trade for global and regional markets between the two countries. In September of 1994, Azerbaijan signed a US\$8 billion dollar deal, with a US\$300 million signing bonus, headed by British Petroleum and including twelve other national and private oil companies from the United States, Saudi Arabia, and Turkey. The deal, however, excluded both Iran and Russia from a thirty-year contract that predicted a profit of US\$35 billion.<sup>20</sup>

Azerbaijan compensated for Iran's exclusion from the "Western Consortium" of oil companies, also referred to as "Contract of the Century", by offering Tehran a 5% Azerbaijani stake in the exploitation of the Caspian oil sea shelf. Iran reluctantly accepted the offer in November 1994 because of the country's pragmatic foreign policy and economic interests. However, under increased pressure from the United States because of America's new stakes in the Caspian basin oil projects, President Aliyev was persuaded to annul the bilateral agreement with Iran in April 1995.<sup>21</sup>

After the United States signed the 1994 Western Consortium contract with Azerbaijan, President Bill Clinton's administration's Caucasian policy significantly

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<sup>18</sup> Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), p. 118.

<sup>19</sup> Dougherty & Pfaltzgraff, p. 81.

<sup>20</sup> Oles M. Smolansky, "Russia and Transcaucasia: The Case of Nagorno-Karabakh" in *Regional Power Rivalries in the New Eurasia* (London: M.E. Sharpe, 1995), p. 220.

<sup>21</sup> Smolansky, p. 322.

changed from one of ambiguity and passivity to one of increased American presence and involvement in the Caucasus. The following are some of the United States' policy objectives in the Caucasus that directly opposed Iran's role in the region:

1) Find a solution for the regional conflicts; 2) Increase and expand the world's energy supply; 3) Promote and maintain the sovereignty and independence of the Caspian Basin countries; 4) Uphold Iran's isolation in the region in order to limit its revenues, stopping it from building nuclear weapons and supporting terrorism.<sup>22</sup>

The increased presence of and pressure from the United States seriously threatened and infringed upon Iran's economic and political power in the region and provoked Iran to build up stronger alliances with Russia and Armenia against America's newly enforced policies.

Iran's initial response to Azerbaijan's annulment of the Caspian Sea oil contract from November 1994 was to verbally lash out at the Aliyev government, but thereafter it moved to counter Azerbaijan's actions by aligning itself with Russia and Armenia: "The Iranians were furious, accusing Aliyev of being a tool of the "great Satan"... Since then, Iran has been counteracting all Azeri aims to produce and export its oil."<sup>23</sup> Iran's national economic interests were directly threatened because of Azerbaijan's pro-Western policy and rapprochement with the United States. Looking at the situation from a Neorealist paradigm, Iran's actions to counterbalance Azerbaijan are properly explained because a status quo or balance of power no longer existed between the two countries, thus forcing Iran to take the proper measures to protect its economic interests.

After being diplomatically stung by Azerbaijan in the spring of 1995, Iran and Russia countered Azerbaijan by signing an official agreement consenting to cooperate in offshore drilling and platform construction in the Caspian Sea: "In June 1995, Iran and Russia agreed to coordinate their oil and gas policies, in a wider context of improving relations. Iran was particularly eager to cooperate with Russia as it was under the pressure of U.S. isolation. Both for political and economic reasons, Iran therefore wanted to prove that it could stand up against the United States."<sup>24</sup>

In regards to Armenia, Iran also boosted its trade and economic relations with its Christian neighbor after Iran's fallout with Azerbaijan. Armenia's economy struggled after the 1994 Nagorno-Garabagh ceasefire because of the Turkish and Azerbaijani trade embargo and therefore gladly accepted increased diplomatic and trade relations with Iran. During the fiscal year 1992/1993 Armenia's Gross Domestic Product fell by 60% from its 1989 level, while unemployment soared and wages declined.<sup>25</sup> By 1996, Armenia's economy improved slightly with the help of Russian and Iranian trade. For example, in 1996 Armenia earned US\$264 million from exports where 13% of the export trade went to Iran, compared with 24% to Russia.<sup>26</sup> By mid-1998, Iran became Armenia's third largest

<sup>22</sup> Nasib Nassibli, "Azerbaijan: policy priorities towards the Caspian Sea" in *The Caspian: Politics, Energy, and Security* (London: RoutledgeCurzon, 2004), p. 167.

<sup>23</sup> Cornell, p. 59.

<sup>24</sup> Cornell, p. 61.

<sup>25</sup> Markar Melkonian, "Betrayed Promises of the Garabagh Movement: a Balance Sheet" in *The Making of the Nagorno-Garabagh* (London: Palgrave, 2001), p. 188.

<sup>26</sup> Melkonian, p. 190.

trading partner after Russia and Belgium, in addition to tentatively agreeing on future accords to establish cross-border energy and transportation links between the two countries.<sup>27</sup> By 2001 trade between Iran and Armenia reached US\$120 million.<sup>28</sup> Also in the same year, construction began on a hydropower plant along the Araz River separating the two countries. The project will be largely be financed by Iran and provide energy for both countries.<sup>29</sup>

In addition to trade and hydro-energy cooperation, Iran has also signed an agreement in 2001 to build an oil and gas pipeline into Armenia.<sup>30</sup> Iran's rapprochement with Armenia openly counters Azerbaijan's construction of its Baku-Tbilisi-Ceyhan (BTC) oil and gas pipelines that is expected to generate billions of dollars for Azerbaijan. Since 1994, Azerbaijan has concluded 21 international oil contracts signed with 33 oil giants representing 15 countries. By 2000 a total of US\$3.2 billion was invested in Azerbaijan's oil sector and by 2003 US\$5 billion had been allocated. By 2005 30 million tons of oil were produced, compared with only 9 million tons in 1997, and in 2010 an expected 70 million tons will be exported.<sup>31</sup> Azerbaijan's rise to economic power greatly worries Iran because its economic dominance in the region is slowly being usurped by Azerbaijan. In the meantime, however, Iran is taking steps to slow Azerbaijan's rise to economic and political power by investing in and boosting trade with Armenia. Furthermore, Iran is supporting Armenia economically in order to protect its regional oil investments that might be endangered in the event of an Armenian economic or political collapse.<sup>32</sup>

Iran's behavior toward Armenia in the last decade directly correlates to the Neorealist model that describes and explains a state's action in the international system in terms of its national interest: "...states, like individuals, are basically motivated by egoism, which, in the international context, is usually called 'national interest' or 'raison d'état'... on this assumption the survival of the state and self-preservation become the supreme goal."<sup>33</sup> In Iran's case, economic factors and the share of regional and global hydrocarbon markets significantly influenced its national interest in the region. Therefore, Iran's foreign policy goals during the past decade were more in line with achieving economic and political power and stability in the Caucasus versus pursuing the exportation of the Iranian Islamic revolution to its neighbors in the region. Furthermore, Kenneth Waltz states that the international system is a self-help system where a state seeks to defend its own interests in reaction to the behavior of other units in the system:

A self-help system is one in which those who do not help themselves will fail to prosper, and will lay themselves open to behave in ways that tend toward the creation of balances of

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<sup>27</sup> Giragosian, p. 245.

<sup>28</sup> Islamic Republic News Agency, "Armenia-Iran Trade Reached 120 Million Dollars Last Year", August 18, 2002. <<http://www.payvand.com/news/02/aug/1055.html>> Viewed 9 November 2004.

<sup>29</sup> Tigran Liloyan, "Armenia and Iran to build hydro-power plant on Araks River", *ITAR-TASS News Agency*, June 17, 2001.

<sup>30</sup> Dmitry Vinitsky, "Pipeline to link Iran, Armenia in interests of Caspian states", *ITAR-TASS News Agency*, August 8, 2001.

<sup>31</sup> Nassibli, p. 172.

<sup>32</sup> Thomas De Waal, *Black Garden: Armenia and Azerbaijan through peace and war* (New York: New York University Press, 2003), p. 4.

<sup>33</sup> Joseph Frankel, *The Making of Foreign Policy* (London: Oxford University Press, 1963), p. 54.

power...The theory says simply that if some do relatively well, others will emulate them or fall by the wayside.<sup>34</sup>

In this self-help system, Iran guarded its economic and political influence and power by aligning with Armenia to counter Azerbaijan as it slowly pushed to the forefront with its new wealth and western alliances.

## **Anarchy and the Balance of Power in the Southern Caucasus**

After the breakup of the Soviet Union in 1991, a state of “anarchy” ensued in the international system as the newly formed states of the Caucasus such as Georgia, Armenia, and Azerbaijan, in addition to Iran and Turkey, worked to establish a balance of power both economically and politically. Aside from defending each country’s own sovereignty and national security, the individual states of the region also sought to capture a share in the new and evolving financial and economic markets in wake of the Soviet collapse.

Kenneth Waltz describes what is meant by the balance-of-power theory in the international system in the following citation from his book *Theory of International Politics*:

*States, or those who act for them, try in more or less sensible ways to use the means available in order to achieve the ends in view. Those means fall into two categories: internal efforts (moves to increase economic capability, to increase military strength, or to develop clever strategies) and external efforts (moves to strengthen and enlarge one’s own alliance or to weaken and shrink an opposing one.)...The system, like a market in economics, is made by the actions and interactions of its units, and the theory is based on assumption about their behavior.*<sup>35</sup>

As seen in the previous section of this paper, Iran worked to increase its “economic capabilities” by developing “clever strategies” to achieve power in the region. At the same time, Iran also began to strategically build up its alliances in a region that became increasingly multi-polar after the fall of the Soviet Union.

The definition and concept of power is also important to grasp in order to best understand the anarchical nature of the international system, and especially in relation to Iran. According to Waltz, “an agent is powerful to the extent that he affects others more than they affect him...Power is a means, and the outcome of its use is uncertain. To be politically pertinent, power has to be defined in terms of capabilities; the extent of one’s power cannot be inferred from the results one may or may not get.”<sup>36</sup> This definition of power differs from the previously accepted Realist definition that views power as the ends to achieving international equilibrium rather than the means. Furthermore, power is not thought to automatically establish control, but rather to provide a “means of maintaining one’s autonomy in the face of force that others wield.”<sup>37</sup> In relation to Iran, its government sought alliances and other strategies as a way of avoiding physical conflict and to establish

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<sup>34</sup> Waltz, p. 118.

<sup>35</sup> Waltz, p. 118.

<sup>36</sup> Waltz, p. 192.

<sup>37</sup> Waltz, p. 194.

its “power”, both economic and political, in the region. The power void present in the wake of the Soviet Union’s collapse pushed Iran to seek more “power” in the absence of the Soviet Union; forming alliances with such countries as Armenia and Russia was one way of achieving this goal. Iran was not looking for territorial gain but rather to strengthen its autonomy and economic dominance in the Caucasus. Therefore, power in this case is not associated with territorial gain but rather with national preservation aided by a system of alliances.

Aside from the concept of power in world order, the idea of “anarchy” is also another important term that describes the operation of the international system. In the 1990s the collapse of the Soviet Union led to chaos and “anarchy” within the international system until a balance of power was reestablished among the different unitary actors. As this paper will argue, the balance of power that has been established over the course of the past decade is one that is precarious, extremely multi-polar, and still possesses elements of anarchy because of such unsettled disputes as the Nagorno-Garabagh. As Kenneth Waltz notes, a multi-polar system is much less secure than a bipolar system and therefore more likely to collapse and fall back into a state of anarchy until proper stability can be reestablished.<sup>38</sup>

After a tenuous Nagorno-Garabagh ceasefire was brokered in 1994, the various countries of the region slowly formed two sets of new but opposing alliances: Tehran-Moscow-Yerevan *versus* Ankara-Baku-Tbilisi-Washington. Each alliance was insecure and internally polarized in its own right.

Iran, Russia, and Armenia formed an alliance for many similar reasons. First, Russia and Iran sought to thwart the rise of pan-Turkism, as well the increased American presence in Azerbaijan and the Caucasus.<sup>39</sup> Furthermore, Iran feared that if its economy were to decline as a result of an Azerbaijani strengthened and flourishing economy, then Iran would be more prone to ethnic Azerbaijani unrest and a call for the unification of a “greater” Azerbaijan.<sup>40</sup> In addition, both Russia and Iran feared that Azerbaijan’s attempts to lure the United States or NATO to build military bases in Azerbaijan would seriously threaten each country’s military power in the region. From Armenia’s perspective, it suffered from being completely isolated with the embargos implemented by Turkey and Azerbaijan after 1994 and therefore sought an alliance with Iran. From Iran’s standpoint, it sought to stabilize Armenia’s economy and political situation in order to maintain a lasting status quo in the Nagorno-Garabagh.

The alliance between Russia, Armenia, and Iran has been significantly weakened since Russian President Vladimir Putin was elected in 2000. Prior to 2000, Azerbaijan had excluded Russia in 1994 from the “Contract of the Century”, greatly disgruntling Russia. In addition, Russia viewed Azerbaijan’s alliance with the United States and Turkey as a direct threat upon its national security and regional interests. Since 2000, however, Putin has made efforts to normalize Russian relations with Azerbaijan and has reassessed Russia’s policy in the Caspian Sea in order to reestablish the credibility of Russia’s

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<sup>38</sup> Waltz, p. 163.

<sup>39</sup> Henri J. Barkey, “Iran and Turkey: Confrontation across an Ideological Divide” in *Regional Power Rivalries in the New Eurasia* (London: M.E. Sharpe 1995), p.165.

<sup>40</sup> Cornell, p. 57.

regional policy. In 2000, President Putin signed important economic and security agreements with President Aliyev and emphasized the strong need for regional cooperation. Furthermore, Russia adopted a “new non-confrontational economic approach” to the area.<sup>41</sup>

Russia’s increased rapprochement with Azerbaijan throws the international system back into slight disequilibria, thus pushing Iran closer both politically and economically to Armenia since it lacks other stable allies. In 2002, for example, the defense ministers of Iran and Armenia met in Yerevan to sign a protocol of understanding and to begin talks for military defense cooperation.<sup>42</sup> In addition, the two countries have finally announced the official beginning construction of the 100-kilometer oil and gas pipelines that could potentially be extended later into the Ukraine.<sup>43</sup>

Due to Armenia’s increased economic and political weakness in the region over the past decade, very few choices exist to help Armenia preserve its national interests in the international system. Therefore, Armenia has aligned itself with Iran, as well as Russia, because of the few other viable options that will help maintain its national sovereignty and security—such a tendency in the international system is referred to as “bandwagoning” in Kenneth Waltz’s Neorealist paradigm.<sup>44</sup> Now that Russia is beginning to improve its relations with Azerbaijan, Armenia is left to rely more heavily on Iran and vice versa. As a result of this beginning balance of power shift, stability in the Caucasus begins to look less certain than before. Russia will most likely never abandon Armenia because of their historically strong ties, but the extent to which Russia might support Armenia in a future regional conflict is more uncertain. Furthermore, as Russia increasingly gravitates toward Azerbaijan, the Tehran-Yerevan alliance is an insufficient force to oppose the other polarized alliance of the region consisting of the United States, Turkey, and Azerbaijan.

Waltz’s Neorealist model for the operation of the international system predicts the precariousness of a multi-polar system and states that no balance of power can be maintained with more than four or five countries vying for different demands.<sup>45</sup> In the Caucasus, there are more than six different countries wrapped into the two different alliances in the region. Each country has its own interests and relatively significant power in their own right. The currently preserved status quo among the two opposing camps is very unlikely because of the varied national interests and insecure alliances.

## **The Future of Iran, Armenia, and the Caucasus**

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<sup>41</sup> Oksana Antonenko, “Russia’s policy in the Caspian Sea region: reconciling economic and security agendas” in *The Caspian: Politics, Energy, and Security* (London: RoutledgeCurzon, 2004), pp. 247-248.

<sup>42</sup> Tigran Liloyan, “Armenia, Iran intend to develop defence cooperation”, *ITAR/TASS News Agency*, March 4, 2002.

<sup>43</sup> “Iran planning new pipeline to Armenia”, *Pipeline & Gas Journal* (March 2004, v231, i3), p. 10.

<sup>44</sup> Waltz, p. 126: “. . .bandwagoning is sensible behavior where gains are possible even for the losers and where losing does not place their security in jeopardy.” Armenia’s best option after the Nagorno-Garabagh ceasefire was to align itself with the two countries that dominated the region in the 1990s: Russia and Iran.

<sup>45</sup> Waltz, p.163.

The regional balance of power in the Southern Caucasus continues to change on a regular basis with new alliances being perpetually formed and broken. Such changes in the balance of power have not been conducive to maintaining Iran's dominance in the region. Recently, Israel has increased its direct presence in the Caucasus and has begun military strategic talks with Azerbaijan, in addition to having already bolstered its relations with Turkey. Israel consistently reproaches Iran for funding international terrorism and other illicit actions: "By mid-summer 2001, Tehran obviously thought that the Turkey-Israel-U.S. pincer was drawing tighter."<sup>46</sup>

Since 2003, Iran's freedom and maneuverability in the region has also been further hindered with the wars in Afghanistan and Iraq. Slowly being closed in by the United States, Turkey, Israel, and Azerbaijan, Iran grows seriously isolated, thus putting the regional stability in flux. It is no wonder therefore why Iran has become such a strong diplomatic and trading partner with Armenia, one of its few reliable allies left in the region. Furthermore, such increased isolation and lack of secure regional allies for Iran posits an interesting response and explanation for why Iran is currently trying to threaten the world with nuclear weapons. These recent Iranian nuclear threats can be explained through a Neorealist paradigm: As a last ditch effort, Iran seeks to preserve its national sovereignty in a region filled with enemies and bereft of allies; a balance of power has shifted unfavorably away from Iran, thus forcing Iran to maintain some semblance of sovereignty.

Lastly, Azerbaijan's rise to economic power in the region as a result of its lucrative oil revenues also jeopardizes Iran's future national security and sovereignty: "A wealthier and more confident Azerbaijan will inevitably begin to consider the option of going to war again in the next five to ten years to recapture its lost lands [in the Nagorno-Garabagh]."<sup>47</sup> Azerbaijan's rise to regional power further explains Iran's strategic alliance with Armenia. Iran desires a status quo to keep its ethnic Azerbaijani population pacified. A status quo also permits Iran to continue the pursuit of its economic interests in the Caspian Sea basin. Nevertheless, the fact that the Nagorno-Garabagh conflict was never properly resolved after 1994 leaves the potential for future conflict between Armenia and Azerbaijan a strong possibility. Furthermore, conflict grows increasingly likely as Azerbaijan builds up its military from its newly established wealth.

## **Conclusion**

Over the course of this paper, Iran's relations with Armenia in the international system have been examined and explained through a Neorealist paradigm. Through initial analysis, Iran and Armenia appear to be unlikely regional allies because of their different political and religious ideologies. However, after a detailed political and economic breakdown of the Southern Caucasus and through the lens of a Neorealist model, it is indeed apparent why Iran has increasingly aligned itself with Armenia since 1994. As examined in the first section of this paper and explained from a Neorealist perspective, Iran sought to uphold and pursue its national interests in the southern Caucasus during the 1990s. Armenia was a strategic partner in the region for Iran to fulfill its national interests of preserving its national sovereignty by quieting ethnic Azerbaijanis who called for the unification of a 'greater' Azerbaijan. Furthermore, it was shown how Iran possessed

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<sup>46</sup> Olson, p. 115.

<sup>47</sup> De Waal, p. 278.

lucrative economic interests in the region that were increasingly challenged as a result of Azerbaijan's Caspian Sea oil and gas revenues. Fearful of losing its economic regional and global dominance, Iran looked to align itself with Armenia and Russia to counter Azerbaijan's new pro-western policies, in addition to safeguarding its national economic interests. In the second portion of the paper, Kenneth Waltz's concepts of anarchy and his balance-of-power theory were applied to explain the regional alliances of the Southern Caucasus. Iran's behavior and action in the area were a direct result of the anarchical system that ensued after the fall of the Soviet Union in the 1990s. Additionally, Iran was increasingly forced to bolster its relations with Armenia because of Russia's unreliability as a secure Iranian ally in the region. Lastly, Waltz's international politics model was applied in explaining the present precariousness of the Southern Caucasus. The lack of a bipolar system in the Caucasus has pushed the region to the brink of another regional conflict that could potentially be more far-reaching and widespread than that of the previously contained Nagorno-Garabagh conflict between Azerbaijan and Armenia.

Overall, a study of this a nature on the international relations of the Southern Caucasus in relation to Iran and Armenia helps demonstrate how world order and international stability is maintained, further shedding light on why and how certain foreign policies are formulated. Learning from this case of the Southern Caucasus will hopefully assist in understanding the relations and actions of other countries in the international system that currently challenge the international balance of power and world order. Anarchy of the international system will continue to prevail in the future of the Southern Caucasus. With the aid of such paradigms as Neorealism, however, international relations' scholars will better be able to understand and predict future events in the region before the area reverts back to regional conflict and permanent instability.

# Legal Aspects of the Nagorno-Garabagh Conflict

Mushfig Mammadov\*

## Abstract

*The Nagorno-Garabagh conflict has been going on since 1988. The conflict between Armenia (although it denies its involvement in the conflict claiming that it is just “an interested party”) and Azerbaijan is considered to be the most important conflict in the South Caucasus. Though the object of this conflict is Nagorno-Garabagh Autonomous Region (the region was called so as an administrative-territorial area during the Soviet time), seven other districts of Azerbaijan which have nothing common with this autonomous region are also occupied by the Armed Forces of Armenia. So, as a result of the conflict approximately 20% of the territory of the Republic of Azerbaijan is still under occupation and more than one million Azerbaijanis have become refugees and internally displaced persons. In May 1994 the parties concluded cease-fire agreement which is still in force today. The Republic of Azerbaijan states that Armenia should be recognized as an aggressor according to the Charter of the UN, but it is not the case yet. The Republic of Armenia claims that the Armenians of Nagorno-Garabagh are entitled to secede from Azerbaijan and build their own state on the base of the self-determination principle of international law. Now the Minsk Group of the OSCE is exercising a mediation function between the parties to the conflict. No political agreement on the settlement of the conflict has been achieved yet.*

**Keywords:** *Nagorno-Garabagh conflict, territorial integrity, self-determination, peoples, minorities, occupation, uti possidetis.*

## Introduction

Before speaking about the legal aspects of the Nagorno-Garabagh conflict, we should tackle some issues concerning the legal status of this territory. In Soviet times this enclave, called Nagorno -Garabagh Autonomous Region (hereinafter referred as NGAR) had no direct land border with Armenia. First of all, it should be mentioned that after the collapse of the USSR, **Nagorno-Garabagh remained within the state of Azerbaijan in terms of international law.** In their struggle for political status of the region, the Armenian side illegally claimed either the annexation of this area to the Republic of Armenia or its independence. According to their major arguments, prior to the conflict 75% of the population of Nagorno-Garabagh comprised the Armenians and they were imposed to a socio-economic

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discrimination and cultural exploitation by Azerbaijan for decades. As for the Republic of Azerbaijan, it fairly demands the protection of its territorial integrity on the base of the universally recognized norms and principles of international law. At the same time, Azerbaijan offers high degree of autonomy for Nagorno-Garabagh only within its territorial integrity. On the other hand, Armenia continuously insists that Nagorno-Garabagh had historically been their native land and therefore, despite the fact that NGAR had been within the former Azerbaijanian SSR (Soviet Socialistic Republic), it can not remain within the independent state of Azerbaijan after the collapse of the USSR. According to the official position of Armenia in this regard the boundaries in the former USSR Republics were just of an administrative character.

Basic legal aspects of the conflict can be summarized as above. But, what response do the national law valid during the Soviet period as well as international law give to the allegations of Armenia?

Firstly, it should be mentioned that according to the official position of the Republic of Azerbaijan Armenia must be recognized as a directly participating party to this conflict. But, Armenia declares that this is a conflict between Azerbaijan and Nagorno-Garabagh, and Armenia is involved here just as «an interested party». Furthermore, they declare that the Armenian population of Nagorno-Garabagh has the right to self-determination and they are entitled to establish their own independent state in accordance with this right.

Since this conflict was an internal affair of the USSR prior to its collapse, relevant norms of the Soviet law were applicable to this conflict. For analysis of the conflict from the legal point of view, I will address the last Constitution of the USSR of 1977.

After the collapse of the USSR the nature of the conflict has changed. Therefore, relevant norms and principles of international law should be applied to the conflict. I will tackle these issues from two aspects: 1) Firstly, Nagorno-Garabagh conflict will be discussed as an internal affair of the Republic of Azerbaijan; here I will touch upon the issue of national minorities according to international law and examine whether the Armenian population of Nagorno-Garabagh was entitled to secede from Azerbaijan; 2) Secondly, the Nagorno-Garabagh conflict will be tackled as an international armed conflict between the Republic of Armenia and the Republic of Azerbaijan.

## **1. Legal assessment of the Nagorno-Garabagh conflict according to the Soviet law**

### ***1.1. Hierarchy of regional unions by their status according to the Constitution of the USSR***

According to Art. 71 of the Constitution of the USSR from 1977, the Soviet Union consisted of 15 union republics and these republics stood on the highest level of hierarchy of regional unions, established on national basis. The abovementioned highest level of hierarchy was followed by the undermentioned regional unions, established on a national basis: a) autonomous republics; b) autonomous regions (oblasti); c) national regions (okrugi). According to Art. 72 of the Constitution, **only union republics** were entitled to secede freely

from the USSR. On the threshold of the demise of the USSR, a new comprehensive law, regulating the mechanism of such secession, was adopted (we will touch upon this law again below).

### ***1.2. The Nagorno-Garabagh conflict as an internal affair of the USSR***

Prior to the collapse of the USSR, the Nagorno-Garabagh conflict was not an issue of international nature, but rather an internal affair of the USSR. Notwithstanding this, the Armenian side was trying to apply the right to «self-determination» to prove their arguments. However, as the conflict was developing from the very beginning within the framework of the communist ideology in the USSR, discussions in this field were conducted not on the base of the right to self-determination, as stipulated by international law, but upon «the Leninist principle on self-determination». As the relevant Leninist principle was more popular in the USSR than the documents adopted by the UN in this field and as it supported the right to self-determination for all nations (including full secession), supporters of the secession of Nagorno-Garabagh were benefiting much from this idea. Naturally, such idea had nothing common with the norms and principles of international law concerning the right to self-determination.

## **2. Did the USSR Constitution entitle Nagorno-Garabagh to secede from the Azerbaijanian SSR?**

### ***2.1. Status of Nagorno-Garabagh in the USSR Constitution***

Firstly, we should investigate the status of Nagorno-Garabagh according to this Constitution. According to Art. 86 of the Constitution Nagorno-Garabagh was an autonomous region. The Article states that Autonomous Region is an integral part of the territory of the respective Union Republic. In Art. 87.3. of the Constitution Nagorno-Garabagh is mentioned as an autonomous region constituting an integral part of the Azerbaijanian SSR.

### ***2.2. Secession possibilities for Nagorno-Garabagh***

As already mentioned, only the union republics were entitled to secession and such right could be exercised in respect to the entire USSR. But the Armenians of Nagorno-Garabagh were claiming secession from the Azerbaijanian SSR and annexation to the Armenian SSR. The question is whether the Armenian population of Nagorno-Garabagh was entitled to put forward such a demand on the base of the USSR Constitution? In this respect, like the Constitution of the former Yugoslavia, the USSR Constitution also contained relevant Art. 78. That Article stated:

***„The territory of a Union Republic may not be altered without its consent. The boundaries between the Union Republics may be altered by mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics.”***

As it is evident, unlike autonomous territories, territorial integrity of the union republics was regulated by the constitution and any change to it could be made only by consent of the

relevant republic. On the other hand, there was no agreement between the Azerbaijanian SSR and the Armenian SSR on the secession of the Nagorno-Garabagh Autonomous Region from the Azerbaijanian SSR.

Resolution adopted in 1989 by the Supreme Soviet of the Armenian SSR on annexation of Nagorno-Garabagh to Armenia was the highest point of these processes, which completely contradicted to the provisions of the abovementioned constitution.<sup>1</sup> Taking into consideration that in 1988, as the conflict broke out, the USSR still existed as a state and its constitution was still in force, one understands the anti-constitutional nature of the demand of the Nagorno-Garabagh Armenians. Moreover, the special meeting of the Presidium of the Supreme Soviet of the USSR, held on 18 July 1988, discussed a request of the Council of the NGAR on secession of Nagorno-Garabagh from the Azerbaijanian SSR and its annexation to the Armenian SSR, and decided to keep the NGAR in the composition of the Azerbaijanian SSR.

### ***2.3. Alma-Ata Declaration of 21.12.1991 and the issue of territorial integrity***

When we compare dismembration processes in the former Yugoslavia and the USSR, it becomes evident that unlike Yugoslavia, union republics of the USSR<sup>2</sup> regulated the process of dismembration in line with international law, i.e. through the Alma-Ata Declaration adopted on 21 December 1991. Preamble of the declaration says that *the states adopt the declaration by recognizing and respecting territorial integrity as well as inviolability of existing borders of each of the signatory states*. This provision once more confirms that union republics had taken an obligation to recognize existing borders even upon collapse of the USSR. By not recognizing territorial integrity of Azerbaijan in its further practice the Republic of Armenia has violated also this provision.

### ***Conclusion***

In conclusion, we may say that valid legislation during the Soviet period did not envisage possibilities of secession for autonomous regions, and borders among union republics could be changed only upon their consent. Taking all these into consideration, it is noteworthy that separatist actions of the Armenians of Nagorno-Garabagh have violated relevant provisions of the USSR Constitution as well as territorial integrity of the Azerbaijanian SSR within the USSR.

## **3. Assessment of the Nagorno-Garabagh conflict upon the relevant documents of international law**

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<sup>1</sup> Although the Republic of Armenia claims to be neutral in the conflict, the abovementioned resolution of the Supreme Soviet of the Armenian SSR has not been cancelled up today. Even in February of 2003, referring to this resolution, one of the Yerevan courts stated that the resolution had resolved not only the issue of annexation of Nagorno-Garabagh to Armenia, but also the naturalization of the Nagorno-Garabagh Armenians (i.e. citizens of Azerbaijan) as citizens of the Republic of Armenia. This ruling of the court resolved disputes around the citizenship of President Robert Kocharyan (as he was born in Nagorno-Garabagh, his candidacy did not meet the criteria of citizenship in presidential elections). In Azerbaijan this ruling was criticized as an act against territorial integrity of Azerbaijan. In Armenia it was assessed as an act against sovereignty and independence of Nagorno-Garabagh (!) and condemned.

<sup>2</sup> International Legal Materials (1992), p. 148. These republics were as follows: The Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Moldova, Russian Federation, the Republic of Tajikistan, the Republic of Turkmenistan, the Republic of Uzbekistan and Ukrain. At that time 3 Baltic republics had already gained independence and been admitted to the UN on 17.09.1991

Assessment of the Nagorno-Garabagh conflict is not possible without analyzing relevant norms and principles of international law. The importance of this issue is explained by the fact that it covers the contradiction between two important principles of international law: territorial integrity of states and self-determination of peoples.

### ***3.1. Regulation of self-determination by international law***

After World War II, the right to self-determination began to change from political concept into legal principle. This principle began to be reflected in fundamental documents of the contemporary international law. As an example, we can refer to the UN Charter, Covenant on civil and political rights as well as Covenant on economic, social and cultural rights. But issues concerning the right to self-determination are not explained in details in these specific documents. Therefore, the UN General Assembly pledged itself to resolve this task. In this connection, we can enumerate resolutions of the UN General Assembly 1514 (XV), 1541 (XV) and 2625 (XXV). These resolutions established close relationship between the right to self-determination and the process of decolonization, and the International Court of Justice confirmed that this aspect of the right to self-determination constituted a part of international law. Nevertheless, it should be mentioned, that there are significant differences between the provisions of resolutions 1514 and 2625.

It becomes evident from the text of several international documents that the right to self-determination goes beyond the notion of colony. Article 1 of the abovementioned Covenants state that peoples enjoy the right to self-determination.<sup>3</sup> Resolution 2625 states that the right to self-determination is the right, which can be applied to all peoples and is the duty, which shall be followed by all states.<sup>4</sup> It should be mentioned that the nature and character of the right to self-determination can always cause tension among the states.

### ***3.2. Contradictions between the right to self-determination and territorial integrity***

According to some international lawyers, there is a conflict between the principles of self-determination and territorial integrity. This approach to the issue raises a question which of these principles should prevail. It should be pointed out that nearly in all international legal documents provisions stipulating the right to self-determination are followed by the provisions emphasizing inviolability of borders and territorial integrity of sovereign states. For example:

*The General Assembly (GA) Resolution 1514 (XV) „The Declaration on Granting of Independence to Colonial Countries and Peoples“, Abs. 6: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.*

Helsinki Final Act dated from the 1<sup>st</sup> of August 1975 also limits self-determination by territorial integrity of states. 8<sup>th</sup> principle of this act on equal rights and the self-determination of peoples states:

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<sup>3</sup> International Covenant on Civil and Political Rights (1976) 999 UNTS 171, 173; International Covenant on Economic, Social and Cultural Rights (1976) 993 UNTS 3, 5.

<sup>4</sup> Christian Tomuschat „Völkerrecht“, Baden-Baden 2001, p.81.

***“The participating States will respect the equal rights of peoples and their right to self-determination, acting in all times in conformity with the purposes and principles of the Charter of the United Nations and with relevant norms of international law, including those relating to territorial integrity of States”.***

Obligations reflected in this document have been further reiterated in the Paris Charter (1990), Final Declaration of the Lisbon Summit (1996) and the European Security Charter (Istanbul Summit). All these provisions allowed some lawyers and states to prove the prevalence of territorial integrity over self-determination. Moreover, it was suggested that provisions of resolution 1514 only apply to «the peoples of colonies». Professor Gros Espiell wrote in this connection: „*The right to self-determination of peoples does not apply to peoples which are not under colonial or alien domination, since Resolution 1514 (XV) or other UN instruments condemn any attempt aimed against...territorial integrity of a country*”. Conclusion stemming from such logic is that today self-determination is of no importance, as there are no colonies any more. Nevertheless, such interpretation of self-determination is rejected. Because, this interpretation would pose a danger on universality of this principle as per clause 1 of resolution 2625, which stipulates self-determination as a fundamental right for all peoples. However, even in this document self-determination is limited by conditions on territorial integrity. Clause 7 of this resolution says:

***“Nothing in the foregoing paragraph shall be construed as an authorizing or encouraging any action, which would dismember or impair, totally or in part, the territorial integrity or political union of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color”.***

Having read this provision thoroughly, one can say that this could serve as the only provision, to which the Armenian population of Nagorno-Garabagh might refer. However, as mentioned above, the Armenian population of Nagorno-Garabagh blamed official Baku for social-economic discrimination and cultural exploitation. In fact, this provision of the resolution 2625 does not prohibit a secession as a result of an internal conflict. When reading this provision from the aspect of the right to self-determination as a human right, we may conclude upon textual interpretation of the resolution that secession is not prohibited as an action in contradiction to international law. As such, provision concerning protection of territorial integrity of states envisages a reservation which states that territorial integrity of a state is protected if it respects the right to self-determination and possesses a government representing the whole people belonging to the territory without distinction as to race, creed or colour. We should mention with regard to this provision, i.e. representative government, that Nagorno-Garabagh was the only autonomous region in the USSR, represented in the Supreme Soviet of the Azerbaijanian SSR by deputy chairman. In general, Nagorno-Garabagh was represented in the Supreme Soviet of the Azerbaijanian SSR by 10 MPs of the Armenian nationality.<sup>5</sup> Moreover, number of the Armenian MPs in the Regional Council of Nagorno

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<sup>5</sup> Interestingly, on 17<sup>th</sup> June 1988, as the Supreme Soviet of the Azerbaijanian SSR rejected the request on secession of Nagorno-Garabagh from Azerbaijan, 17 MPs of the Armenian origin from constituencies beyond Nagorno-Garabagh also voted for this decision. See, O. Luchterhandt „Das Recht der Berg-Karabachs Armenier auf Selbstbestimmung aus völkerrechtlicher Sicht“. Hamburg 1992, p.14

-Garabagh exceeded the number of the Azerbaijani MPs due to predominance of the Armenian population in the region.<sup>6</sup>

According to Karl Doehring, a German international lawyer, ethnic groups may have the right to secession only if they are exposed to an excessive discrimination. This means that in case of systematic gross violation of human rights and absence of any state mechanism against such violation, national minorities can benefit from the right to self-determination and establish their own state. But, the Armenian population of Nagorno-Garabagh was not exposed to any violation of human rights and their actions bear separatist character.

### ***3.3. Was the Armenian population of Nagorno-Garabagh entitled to secede from Azerbaijan for establishing their own state as national minority?***

#### ***a) Difference between the notions of people and national minority***

After collapse of the USSR the Armenian population of Nagorno-Garabagh has changed their previous position. If previously they aimed at a secession from Azerbaijan and annexation to Armenia, now they claim to establish an independent state upon the right to self-determination of peoples. However, in this case it is important to take into consideration the difference between the rights of «peoples» and «minorities». In all documents of international law the right to self-determination is granted only to peoples. “People” is any group living on the territory of any state and building majority of its population. Only in this sense people are entitled to self-determination and creation of their own state. As to minorities (national, ethnic, linguistic, religious, etc.), they are not entitled to determine their political status. In this connection, Art. 27 of Covenant on civil and political rights states:

***“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, 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.”***

Declaration of the UN GA on rights of national, ethnic, religious and linguistic minorities, dated from 18.12.1992, does not either grant to minorities right to self-determination. Article 2 of this declaration contains a similar provision on the rights of minorities. Article 8 para. 4 of the declaration is as follows:

***“Nothing in the present Declaration may be construed as permitting activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States”.***

The Armenian population, living in Azerbaijan, are ethnic minorities like Russians, Georgians, Ukrainians, Jewish and other ethnic minorities.<sup>7</sup> The Armenian population of Nagorno-Garabagh can be afforded only abovementioned rights (Art. 27 of the Covenant). This means that they are entitled to determine their status for effective participation in political, social, economic, cultural, religious and public life of Azerbaijan. They may not commit any action, which might pose a danger to sovereignty and territorial integrity of the Republic of Azerbaijan according to international law.

<sup>6</sup> 110 MPs out of 140 were Armenians by nationality. See., O. Luchterhandt, p.13.

<sup>7</sup> Armenians comprise 2% of the total population of Azerbaijan.

## ***b) Examples from history***

In 1921, as the dispute over territorial integrity of Finland and the right to self-determination of the population of Åland Islands (Ahvenanmaa), mainly consisting of Swedes, was investigated, a report of International Lawyers' Commission prepared for the Council of the League of Nations, concluded that compared to Finns the population of Åland Islands was just a «national minority», not «people». The report of the commission stated furthermore that regulations applied to the people can not be applied to minorities. The most important conclusion was that minorities are not entitled to self-determination.<sup>8</sup> This report was submitted to the Council of the League of Nations. The Council approved the report and attached it to its resolution. According to that resolution, sovereignty of Finland over Åland Islands was recognized. The resolution also called for according of guarantees to the inhabitants of the island and achieving of an agreement over the neutral status of the island.<sup>9</sup>

The other example is more recent. On August 27, 1991, the European Communities, taking into consideration the processes in the former USSR and Yugoslavia, adopted declaration. According to the declaration, the European Communities would never recognize the frontiers, which were not established through peaceful means i.e. negotiations. The declaration established a Peace Conference and Arbitration Commission of the EC for Yugoslavia. Opinion 2 adopted by the Commission comments on the possibility of application of the right to self-determination to the Serbian people of Croatia and Bosnia-Herzegovina. The Serbian population on these territories constituted 1/3 of the total population. The opinion rejected the demand of the Serbian people for the right to self-determination. In its opinion, Arbitration Commission declared „*that the Serbian population in Bosnia-Herzegovina and Croatia must be afforded every right accorded to minorities under international conventions as well as national and international guarantees consistent with the principles of international law...*”<sup>10</sup>. Thus, prevalence of the principle of territorial integrity over self-determination was declared once again. First part of the opinion states:

*„It is well established that, whatever the circumstances, the right to self-determination must not involve changes of existing frontiers at the time of independence except where the states concerned agree otherwise.”*<sup>11</sup>

Issue of frontiers is also important in assessment of the Nagorno-Garabagh conflict. Because, representatives of both Armenia and Nagorno-Garabagh are constantly claiming that Nagorno-Garabagh has never been within independent Azerbaijan and borders during the Soviet period had exclusively administrative nature. By such statements they are trying to justify separatist actions of the Armenian population of Nagorno-Garabagh. Such problem

<sup>8</sup> Report of the International Commission of Jurists (1920) LNOJ Spec. Supp. 3; The Åland Islands Question: ~~Report Submitted to the~~ Council of the League of Nations by the Commission of Rapporteurs (1921) League Doc. B7.21/68/106, 27

<sup>9</sup> Resolution Adopted by the Council at its Thirteenth Session (1921) LNOJ, Supp. 5, 24-6

<sup>10</sup> 31 ILM 1497 (1992), paragraph 2. Moreover, European Union has adopted declaration on recognition of newly-established states in Eastern Europe and Soviet Union.

<sup>11</sup> Again there.

arose also in the former Yugoslavia and it can be called “irredentist demand”<sup>12</sup> in legal terminology.

### ***c) Role of the Principle *Uti possidetis iuris* in this regard***

During dismembration of Yugoslavia the abovementioned Arbitration Commission of the EC referred to the principle of *uti possidetis*.<sup>13</sup> In other words, this principle was applied in order to limit the boundaries of the newly established independent states, This principle envisages that frontiers of the territories, which are not subject to self-government, remain unchanged after they gain independence. Although this principle was in particular applied in the processes of liberation from colonies<sup>14</sup>, Arbitration Commission of the EC declared that *uti possidetis* has already gone beyond the context of colonies and become a general principle. To substantiate its position once again, the Commission referred to the case concerning the frontier dispute between Burkina Faso and Mali, decided by the International Court of Justice<sup>15</sup>. Here, the judgement of the International Court of Justice was based on the principle of *uti possidetis*:

***“Nevertheless the principle is not a special rule which pertains to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles”***<sup>16</sup>.

It can be stated in general that if the Nagorno-Garabagh issue is brought before the International Court at any time, then we may say with confidence that the decision will be in favor of Azerbaijan under the principle of *uti possidetis*. However, it should also be mentioned that since Azerbaijan and Armenia do not recognize compulsory jurisdiction of the International Court of Justice according to Art. 36 para. 1 of its Statute, or due to the absence of special agreement between the parties on submission of the dispute to the International Court and in general, since the Republic of Armenia denies its involvement in this dispute as a party, possibility of submitting the dispute to the ICJ is at zero yet.

### ***Conclusion***

Summarizing the abovementioned, we can classify the evidences against separatism as follows:

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<sup>12</sup> *Irredentism* is a movement of an ethnic group, living on the territory of a state, which strives to secede from that state in order to be included within the boundaries of another state where the ethnic group constitutes majority.

<sup>13</sup> In 19<sup>th</sup> century when Spanish colonies gained independence in Central and Southern America, they acted on the principle of *uti possidetis iuris* (*Uti possidetis, ita possedatis* – what You have, You possess it). The essence of this principle was that borders of the former Spanish provinces remained as borders of the newly established states.

<sup>14</sup> During the processes of liberation from colonies in Africa, Conference of African states, held in Cairo in 1963, adopted a decision about not changing borders of former colonies and keeping borders of newly established states within the limits of former colonies.

<sup>15</sup> Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali) Judgement, ICJ Reports 1986, p. 554-565

<sup>16</sup> Again there.

1. The right to self-determination of people can only be exercised on the basis of the maxim *pacta sunt servanda* (treaties must be respected);
2. International Law is the law of states and not of peoples or individuals. States are the subjects of international law and peoples are the objects of that law;
3. The so-called principle of reciprocity; as a state cannot oust a part of itself, equally a part of the state cannot forcefully secede from that state.

Such approach to self-determination reflects the position of majority of countries, which are able to protect their territorial integrity. As such, usually, if there is a discrepancy between territorial integrity of any independent state and self-determination of any national minority, living on the territory of this state, only internal self-determination (i.e. granting autonomy) can be taken into consideration. Any claims, which demand that the principle of self-determination should support secession of any part of state from it, have always been rejected. With only exception of Bangladesh (in that case, without interference of the Indian army Bangladesh could not have gained independence), no other separatist claim has been accepted by the international community since 1945. As it is evident, Bangladesh events did not serve as precedent, these events were mainly explained by «oppression theory». Linguistic, ethnic and cultural differences of Bengalis and geographical separation of the territory from Pakistan served as a ground for establishment of the state of Bangladesh according to abovementioned theory (around one million people were reported to be killed during the conflict).

#### ***3.4. Assessment of the referendum, held on December 10<sup>th</sup> 1991 in Nagorno-Garabagh, in terms of international law***

Coup d'etat, committed in August 1991 in Moscow, served as a signal for most Soviet Republics. This was followed by the processes of secession from the USSR and the Soviet republics declared their independence.

On September 2<sup>nd</sup> of the same year the meeting of the Regional Council of Nagorno-Garabagh declared the Nagorno-Garabagh Autonomous Region as a new Republic of Nagorno-Garabagh. The meeting was held without participation of the Azeri delegation. On November 26<sup>th</sup> of the same year Azerbaijan reacted to this illegal action by cancellation of the autonomous status of Nagorno-Garabagh. The so-called republic held referendum on independence on December 10<sup>th</sup> and declared its independence on January 6<sup>th</sup> of 1992.

As for legitimacy of this referendum, held in Nagorno-Garabagh on ethnic basis, the Armenian side refers to the Law of the USSR dated 03.04.1990 on «Procedures for resolution of the issues related to secession of Soviet Republics from the USSR». It should be noted, that this law itself was contrary to the Constitution of the USSR, because it contradicted the abovementioned Articles (78, 86, 87) of the USSR Constitution. Art. 3 of this Law, which is based on the principles of Leninism and which supports self-determination of not only peoples, but also of ethnic minorities (including secession from any state), envisaged right to self-determination for autonomous regions of the Soviet Union, too. However, Armenia's position on legitimacy of this referendum had no substantiation both in national and international law. As such, there is a fact, which is obviously ignored (may be deliberately) by the Armenian side in connection with this matter: when the referendum was held (10.12.1991) Azerbaijan was an independent state. **Therefore, provisions of the abovementioned Law could not be applied to the independent Republic of Azerbaijan and its territory.**

Secondly, the Armenian side can not substantiate legitimacy of their secession from Azerbaijan by oppression theory (i.e. for the reason of discrimination of the Armenian people of Nagorno-Garabagh). Even if there were facts of discrimination, the Armenian population of Nagorno-Garabagh could not refer to it. Because, in the former Soviet Union government was rather centralized and local governments (Republics of the Union) were directly subordinated to the instructions of the Kremlin. Moreover, the Armenians and the Azerbaijanis of Nagorno-Garabagh had joint administration council in Nagorno-Garabagh. The Head of the Council was Armenian by nationality, there were Armenian schools in the enclave, welfare of the population was very good and etc. Taking all these into consideration, we can insist that any fact of discrimination towards the Armenian population of Nagorno-Garabagh is out of question.

Thirdly, this referendum is neither legitimate from the point of view of valid international legal regulations, as the referendum was held without consent of the independent Azerbaijani state exclusively on an ethnic basis. Ethnic principle of self-determination has never been taken as a serious factor by international community in assessment of any claims against a state. Moreover, ethnic principle of self-determination can not be considered legitimate without consent of all related parties, because the referendum, held on this basis is of discriminative character by itself. If the Armenian population, living in Nagorno-Garabagh expresses their wish of independence through self-determination, then this wish should raise a suspicion as the fact of their ability of self-determination. As mentioned above, on the threshold of the conflict, the Armenian population of Nagorno-Garabagh did not aim to gain independence at all, their major intention was to annex Nagorno-Garabagh to Armenia. There are many facts which prove irredentist character of the intention of the Armenian population. Appointment of the Minister of Defence of the so-called Republic of Nagorno-Garabagh Serj Sarkisyan as the Minister of Armenia in 1993, election of Robert Kocharyan (although he remains a citizen of Azerbaijan from the legal point of view) as the President of the Republic of Armenia in March of 1998 and February of 2003, non-cancellation of the resolution of the Supreme Soviet of the Armenian SSR dated 01.12.1989 on annexation of Nagorno-Garabagh to Armenia, involvement of the Armed Forces of the Republic of Armenia in this conflict and other evidences prove that **the conflict bears irredentist character and is closely connected with the issue of territorial integrity**. Naturally, when we consider the conflict from this point of view, we should treat it as an international armed conflict and the Republic of Armenia should be accepted as an aggressor.

#### **4. Nagorno -Garabagh Conflict as an international armed conflict**

When we treat the conflict from this aspect, first of all the violation of the Art. 2 para. 4 of the UN Charter by the Republic of Armenia should be examined. Such violation results out of Armenia's sending of its armed forces to Nagorno-Garabagh or its support for the Armenian people, residing there. This provision of the UN Charter prohibits threat or use of force in international relations, which contradict the purposes and principles of the UN.

##### ***4.1. Prohibition of use of force according to the UN Charter***

First, it should be examined, which type of force is envisaged in Art. 2.4 of the UN Charter. We can unequivocally say that this provision prohibits use of military force in international relations, i.e. direct use of armed forces against the territory or armed forces of any country<sup>17</sup>. Furthermore, it should be examined, whether Art. 2.4 of the Charter envisages direct use of force, i.e. support of any aggressor state or sending of armed groups to the territory of any state. It is not possible to get a comprehensive information from the text of the abovementioned provision in this regard. Other provisions of the UN Charter are also unhelpful in this respect. However, we can refer to the Declaration of the UN General Assembly of 1970 “On friendly relations among States” as a customary law. This Declaration contains the following provisions on prohibition of use of force:

**«Every state has obligation to refrain from organizing or encouraging organization of illegal forces (including mercenaries) or armed groupings for the purpose of intervening to other state's territory»<sup>18</sup>**

During dealing with the Nicaragua case, the International Court of Justice referred to this provision and stated that principally intensive support to rebels on the territory of other state can also be treated as use of force, as envisaged in Art. 2.4 of the Charter.<sup>19</sup>

Resolution 2625 also envisages relevant provision on self-determination:

**«Every state has to refrain from any actions aimed at partial or complete destruction of national and territorial integrity of any other country or state»<sup>20</sup>.**

Other provisions of the resolution also prohibit use of force in any form. This also envisages use of indirect force. Taking the abovementioned into account, we can conclude that although Armenia denies its direct involvement in the conflict, it has violated Article 2.4 of the UN Charter by its indirect involvement, i.e. sending of armed groups, or providing intensive support for the Nagorno-Garabagh separatists. Thus, the Republic of Armenia has violated legal values like territorial integrity and political sovereignty of Azerbaijan protected under the said Article, and such violation contradicts the purposes of the UN.

The abovementioned article prohibits use of force only in international relations, i.e. between two states. Thus, this article does not envisage use of force within state boundaries. That is why, we can absolutely say that even if the conflict can be treated as a conflict between Azerbaijan and Nagorno-Garabagh, i.e. as an internal (non-international) armed conflict, as insisted by the Armenian side, then Azerbaijan will still preserve its right to use armed force at any time against Nagorno-Garabagh separatists with the purpose of restoring its territorial integrity observing relevant norms of international law (*Additional Protocol II from 1977 to Geneva Convention of 12.08.1949 on protection of the victims of non-international armed conflicts*).

#### **4.2. Some reflections on the Resolutions of the UN Security Council on the Nagorno-Garabagh Conflict**

<sup>17</sup> see, Fischer, in: Ipsen, § 59, RN 12; Randelzhofer, in Simma, Art. 2 (4), RN 16

<sup>18</sup> see G. A. Resolution 2625, Tomuschat, p. 79

<sup>19</sup> see ICJ Reports, 1986, p. 119, § 338, in: ILM 25 (1986), p. 1076.

<sup>20</sup> see, G. A. Resolution 2625, in: Tomuschat, p. 81. In this regard resolution of the Supreme Soviet of the Armenian SSR dated from 01.12.1989 should again be mentioned).

#### ***4.2.1. Measures for the maintenance of international peace and security in accordance with Chapter VII of the UN Charter***

In accordance with Article 39 of the Charter, the UN Security Council determines the existence of any threat to the peace, breach of peace, or act of aggression. Then, in accordance with Article 41 and following articles of the Charter, decision may be taken to impose non-military or military sanctions.

Here, a question may arise, whether the SC is governed by its own discretion while adopting the resolutions under Chapter VII, or any legal restrictions do exist? Article 24.1 of the UN Charter confers upon the SC the primary responsibility for the maintenance of international peace and security. That is why, there is a unanimous opinion on this issue that the SC has a broad freedom of action in actual and legal assessment of three cases (threat to the peace, breach of peace and act of aggression) considered in Article 39 of the Charter. Here, the SC may only be subject to a limited legal control by third organizations.<sup>21</sup>

According to Article 24.2 sentence 1 of the UN Charter, the SC shall act in accordance with the purposes and principles of the UN. However, these purposes and principles are systematically restricted by Chapter VII in accordance with Article 24.2 sentence 2 in comparison with Article 2.7 sub-sentence 1 of the Charter. Thus, the SC should settle the issue of existence of the conditions, envisaged in Article 39 by making comments on the content of the norm when any suspicion arises. Here, it should be governed by its broad discretion and the UN purposes and principles.

#### **4.2.2. Legal basis for resolutions adopted by the SC on the Nagorno-Garabagh conflict according to the UN Charter**

When reading resolutions of the SC on Nagorno-Garabagh conflict,<sup>22</sup> we may conclude that the SC has not adopted these resolutions on the basis of Chapter VII of the Charter. Because, any resolution, adopted in accordance with Chapter VII, should contain at the end of its preamble the following sentence: «*acting under Charter VII of the Charter*»<sup>23</sup>. None of the resolutions, adopted on the Nagorno-Garabagh conflict, contains such provision. A question arises, what was the legal basis for the UN SC to adopt the said resolutions? In this connection, only Article 36 of the Charter can be referred to. This article says that the SC may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

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<sup>21</sup> See Jurij Daniel Aston. «*Die Bekämpfung abstrakter Gefahren für den Weltfrieden durch legislative Massnahmen des Sicherheitsrates – Resolution 1373 (2001) im Kontext*». In ZaoRV 2002, p. 257 (270). However, principally, the examination of the SC Resolutions by the International Court of Justice is possible under Article 92 and following Articles of the Charter (International Court of Justice did not allow such examination in the Lockerbie Case («Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incidents at Lockerbie», ICJ Reports 1992, p. 126, § 39, in: ILM 1992, p. 671) and the case of Bosnia-Herzegovina against NATO countries («Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide», ICJ Reports 1992, p. 18 f, § 33-35, in: ILM 1993, p. 898). The only argument was that the current stage of the trial did not give any ground for such examination.)

<sup>22</sup> All these resolutions of the SC can be found at <http://www.un.org/Docs/scres/1993/scres93.htm>

<sup>23</sup> As an example, the SC Resolutions on the Iraq issue: No 678, dated: 29.11.1990 «On liberation of Kuwait», also No 687, dated: 03.04.1991 «On peace agreement with Iraq», see Tomuschat, p. 531

**Now, let us analyze these resolutions one after another:**

a) Although Resolution **822** adopted by the SC on 30 April 1993 states the fact of deterioration of the relations between the Republic of Azerbaijan and the Republic of Armenia, Armenia is not mentioned here as a party involved in the conflict. Moreover, the resolution stresses the sovereignty and territorial integrity of all states of the region, inviolability of international borders and inadmissibility of the use of force for acquisition of territory. Further, the SC demands “*immediate withdrawal of occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan*”. As it is evident, the expression «all occupying forces» does not clearly specify who is meant, and naturally, similar expressions make it difficult to comment on the resolution. I think, it would have been better to concretely demand immediate withdrawal of the Armed Forces of the Republic of Armenia and separatist armed groups of Nagorno-Garabagh from the occupied territories of Azerbaijan. But, we should mention here that if we take into consideration procedural difficulties in decision-making mechanism of the SC, it was impossible to include such provision in the text of the resolution. Further, the SC calls the parties to continue the negotiations within the framework of the peace process of the Minsk Group of Conference on Security and Cooperation in Europe (CSCE).

b) Preamble of the SC resolution **853** dated 29 July 1993, restates the fact of deterioration of the relations between the Republic of Azerbaijan and the Republic of Armenia, principles of sovereignty and territorial integrity of the states. In comparison with the previous resolution, it mentions territorial integrity of Azerbaijan more explicitly. In the operational part of the resolution the SC condemns the occupation of the district of Agdam and other recently occupied areas of the Republic of Azerbaijan and demands immediate, complete and unconditional withdrawal of occupying forces from these territories. As it is evident, here it is not also defined who is meant under the expression «occupying forces». In comparison with resolution 822, this resolution contains several provisions, interpretation of which can serve as a ground to conclude on indirect involvement of the Republic of Armenia in the conflict. The matter is that in this resolution the SC urges the Government of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorno-Garabakh region of the Republic of Azerbaijan with its resolution 822 (1993) and the acceptance by this party of the proposals of the Minsk Group of the CSCE. Of course, the Republic of Armenia is not mentioned in this provision as a direct party, but it is difficult to interpret the word «influence» used here. This means that if the Armenian population of Nagorno-Garabagh was treated as an independent party, as claimed by themselves and officials of the Republic of Armenia, then they would not have to agree to the influence of the Republic of Armenia as an independent party. However, inclusion of this provision in the resolution gives reason to conclude that although indirectly the SC has recognized by default the involvement of the Republic of Armenia in the conflict as a party.

Then, the abovementioned provision indicates Nagorno-Garabagh as a part of the territory of the Republic of Azerbaijan. There is nothing new in the resolution except the abovementioned.

c) In its Resolution **874**, dated 14 October 1993, the SC expresses its serious concern that a continuation of the conflict in and around the Nagorno-Karabakh Region of the Republic of Azerbaijan, and of the tensions between the Republic of Armenia and the

Republic of Azerbaijan would endanger peace and security in the region. As it is evident, for the first time, this resolution concretely defines the object of the conflict: ***the conflict in and around the Nagorno-Garabagh region of the Republic of Azerbaijan***. Previous two resolutions mentioned the occupation of several districts of the Republic of Azerbaijan and it was difficult to understand the essence of the conflict. Moreover, in this resolution the SC also draws attention to the fact of displacement of large numbers of civilians of the Republic of Azerbaijan from their native lands. Furthermore, like in the resolution 853, the SC also calls all states of the region to maintain peace and security.

d) Resolution **884**, dated 12 November 1993, also states important principles of international law and mentions continuation of the tensions between the Republic of Azerbaijan and the Republic of Armenia. The SC notes with alarm the escalation in armed hostilities and excesses in the use of force in response to those violations, in particular the occupation of the Zangilan district and the city of Goradiz in the Republic of Azerbaijan. Here also, forces, occupying these territories are not mentioned unequivocally. Besides that the SC expresses its grave concern at the latest displacement of a large number of civilians and the humanitarian emergency in the Zangilan district and the city of Goradiz, on Azerbaijan's southern frontier

In the operative part of the resolution the SC condemns the occupation of the abovementioned territories, attacks on civilians and bombardments of the territory of the Republic of Azerbaijan. This provision specifies expressly either who attacked the peaceful population and bombed the Azerbaijani lands.

Further on, the SC calls upon the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorno-Karabakh region of the Republic of Azerbaijan with resolutions 822 (1993), 853 (1993) and 874 (1993) and to ensure that the forces involved are not provided with the means to extend their military campaign further. Again, like in the previous provisions of the resolution, the SC uses abstract and ambiguous words like «forces involved». However, as it is evident, the second part of this sentence of the resolution contains an interesting provision, i.e. the Government of Armenia is called upon **to ensure that the forces involved are not provided with the means** in order to continue military operations. For the first time in this resolution, although not openly, support of the abovementioned «involved forces» by the Republic of Armenia is implied. May be, by this provision the SC wants to express the fact of violation of the principle of prohibition of the use of force by Armenia.

Then, the SC demands immediate cessation of armed hostilities and withdrawal of occupying forces from the Zangilan district and the city of Goradiz.

### ***Interim conclusion***

I think the resolutions adopted by the UN SC did not fully reflect the realities and the SC had not correctly assessed the situation. It means that the resolutions had to be adopted upon Chapter VII of the UN Charter, because conditions, envisaged in Article 39, were present. I would like to substantiate my position by commenting on Article 39. For this purpose, we should clarify presence of any of the three conditions as a result of the actions of Armenia, as envisaged in Article 39 of the UN Charter.

### ***4.3. Definition of peace under Article 39 of the UN Charter***

First of all, we should analyze which definition of peace is envisaged in Article 39 of the Charter. According to «the notion of negative peace», «**peace**» means absence of only that type of force in the international relations, which is envisaged in Article 2.4 of the UN Charter<sup>24</sup>. When interpreting Article 39 according to this definition, we may conclude that the SC can take measures upon Chapter VII only if armed force is used or threat of use of such force is present.

### ***4.4. Assessing actions of the Republic of Armenia as an act of aggression***

Now, we should review the possibility of assessing actions of the Republic of Armenia as an act of aggression under Article 39 of the Charter. An act of aggression means continuous use of direct or indirect armed force, i.e. this is the breach of peace in any case.<sup>25</sup> As it is known, this conflict did not begin by using direct armed forces from the territory of Armenia to Azerbaijan. The Armenian population of Nagorno-Garabagh had started the conflict on the territory of the Republic of Azerbaijan. Actions of the Republic of Armenia in this conflict coincide with Art. 3, lit. g of the Resolution of the UN General Assembly on «Definition of Aggression», dated from 14 December 1974. It states:

*«Article 3*

*Any of the undermentioned actions should be assessed as an act of aggression under provisions of Article 2, notwithstanding declaration or non-declaration of war.*

*.....g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein»<sup>26</sup>.*

In its decision, issued on Nicaragua case, International Court of Justice referred to this provision and recognized it as a valid customary law. When treating the issue from this aspect, it is possible to insist that the Republic of Armenia has violated valid customary law and thus, peace envisaged in Article 39 of the UN Charter by its actions, i.e. sending paramilitary bands and other groups.

### ***4.5. Intervention possibilities of the UN Security Council in presence of threat to the peace***

Article 39 of the UN Charter authorizes the SC to intervene not only in the case of breach of peace, but also in the case of threat to the peace. When any threat to the peace exists, intervention covers preventive authorities. But a question arises: What are the margins of preventive authorities of the SC? When treating the notion of threat in the narrow sense, only imminent breach of peace may be regarded as a threat to peace.<sup>27</sup> Such approach allows limiting authorities of the SC and thus, meets the principle of sovereign equality.

<sup>24</sup> see, Michael Bothe., in: Wolfgang Graf Vitzthum, *Voelkerrecht*, 2. Aufl., Berlin/New York 2001, p. 612.

<sup>25</sup> see, Jochen Abr. Frowein., in: Bruno Simma, «*Charta der Vereinten Nationen*», 1. Aufl., München 1991, Art. 39, RN 12.

<sup>26</sup> see, G. A. Resolution 3314, Tomuschat, *Voelkerrecht*, p. 84.

But it is possible to interpret the notion of threat in a broader sense and define it as an action beyond simple violation of borders. In the practice of the UN SC the situations of gross violation of human rights within any state were assessed as a threat to the peace with a certain caution. Nevertheless, beginning from 1990s of the last century, the SC has developed a different practice. According to this practice, gross violation of human rights within any state from the point of view of partial crossing of borders (e.g. refugee flow) within any country are also assessed as the threat to the peace (*For example, the SC Resolution 688 dated 5 April 1991 (Iraq); the SC Resolution 841 dated 16 June 1993 (Haiti); the SC Resolution 955 dated 8 November 1994 (Ruanda); the SC Resolution 794 dated 3 December 1992; for comparison, also the SC Resolution 1137 dated 12 November 1997 (on violation of disarmament provisions); the SC Resolution 1161 dated 9 April 1998 (illicit arms trafficking in crisis areas).*

## **Conclusion**

In conclusion of all abovementioned statements, we can say that the Armenian population of Nagorno-Garabagh is not entitled to secede from Azerbaijan and build their independent state according to international law, as they constitute national minority in Azerbaijan and they had never been exposed to systematical gross violation of human rights.

When taking into consideration the fact that more than one million people have become refugees and IDPs as a result of this war, and gross violation of human rights has taken place during these processes, we may say with confidence that during the conflict all conditions, mentioned in Art. 39 of the UN Charter, were present, which gives ground to say that the SC had to take appropriate and necessary measures and recognize the Republic of Armenia as an aggressor under Chapter VII of the Charter.

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<sup>27</sup> see, Joachim Arntz., *Der Begriff der Friedensbedrohung und Praxis der Vereinten Nationen*, Bonn 1975, p. 22.

# The Galtung Triangle and Nagorno-Karabakh Conflict

Taleh Ziyadov \*

## Abstract

*The Nagorno-Karabakh conflict is one of the longest - standing conflicts in the former Soviet Union. Despite numerous attempts by mediating parties and direct talks between the governments of the Republic of Armenia and the Republic of Azerbaijan, the conflict remains unresolved. In this paper, I will try to analyze the general causes of the conflict within the framework of Johan Galtung's conflict triangle. After giving a brief description of the Galtung conflict triangle and short asymmetry and symmetry analysis, I will examine the Nagorno-Karabakh conflict using the model's three axes – structural, cultural (social constructs) and behavioral (direct violence). The paper will investigate the nature and dynamics of the conflict in chronological order, starting from 1988 and ending with the signing of the cease-fire agreement in 1994. Hence, the purpose of this paper is limited to the three theoretical aspects of Johan Galtung's conflict triangle and does not include the conflict's detailed history and its post-ceasefire developments. This study aims to increase understanding of the cultural and structural causes of interethnic violence between Armenians and Azerbaijanis in 1988-1994.*

**Keywords:** *South Caucasus, Nagorno-Karabakh, Azerbaijan, Armenia, conflict resolution, frozen conflicts, ethnic and territorial conflicts, Johan Galtung*

## The Galtung Conflict Triangle

The term “Galtung conflict triangle” or “the violence triangle” refers to a theoretical model developed by the Norwegian researcher Johan Galtung, who analyzed the causes of violence in three phases: before violence, during violence, and after violence. Galtung lists various types of violence that could roughly be classified in three categories: direct violence (behavioral), cultural violence (social constructs) and

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structural violence. Each of these categories represents individual angles of the violence triangle, which Galtung argues has “built-in vicious cycles.” He separates these categories into visible and invisible ones (Figure 1):



**Figure-1<sup>1</sup> - The Galtung Conflict Triangle**

According to Galtung:

*The visible effects of direct violence are known: the killed, the wounded, the displaced, the material damage, all increasingly hitting the civilians. But the invisible effects may be even more vicious: direct violence reinforces structural and cultural violence.<sup>2</sup>*

Galtung claims that although the cultural and structural aspects of the conflict are invisible, they in fact play the most important role during the prevention and rehabilitation stages of a conflict. He states that it is “cultural and structural violence [that] cause direct violence, using violent actors who revolt against the structures and using the culture to legitimize their use of violence as instruments...The direct violence may be the lesser evil, at least in the longer term, than the structural and cultural damage wrought.”<sup>3</sup>

*Asymmetric vs. Symmetric*

Before analyzing the behavioral, cultural and structural aspects of the Nagorno-Karabakh (NK) conflict, it is important to examine the nature of the conflict itself:

<sup>1</sup> Source: Polylog: Forum for Intercultural Philosophy. Available online at <http://them.polylog.org/5/fgj-en.htm>

<sup>2</sup> Johan Galtung, *Violence, War, and Their Impact: On Visible and Invisible Effects of Violence*, (Polylog: Forum for Intercultural Philosophy 5, 2004). Also available online at <http://them.polylog.org/5/fgj-en.htm>. More comprehensive study is available at <http://www.transcend.org/TRRECBAS.HTM>

<sup>3</sup> Ibid.

whether there is an asymmetric or symmetric relationship between the warring parties in the conflict.

The NK conflict has both asymmetric and symmetric aspects. The initial conflict, which began during the final stages of the Soviet Union, involved two communities living in the Azerbaijan Soviet Socialist Republic (AzSSR): the majority (Azerbaijanis residing in the AzSSR) and the minority (Armenians in the Autonomous Oblast (region) within the AzSSR).

Since the conflict emerged during the Soviet Union, and both Armenia and Azerbaijan were a part of that Union, the NK conflict had in fact a multilayer asymmetry. In addition to the asymmetry between the NK Armenians and the central government of AzSSR, there was the central government in Moscow that had direct control over both the republics and the autonomous regions within these constituent republics. For example, in 1987, NK Armenians sent a petition to Moscow requesting unification with the Armenian SSR (ArSSR). Gorbachev's ethnically Armenian adviser Abel Aganbegyan and numerous prominent Armenian intellectuals also had openly supported this initiative.<sup>4</sup>

As a characteristic of an asymmetric conflict, the initial stage of the NK conflict was not about a particular issue or interest, but it was about the very structure of the relationship between the NK Armenian minority in AzSSR and the majority represented by the Azerbaijani central government. According to Miall, Ramsbotham and Woodhouse:

*[T]he structure is such that the top dog always wins, the underdog loses. The only way to resolve the conflict is to change the structure, but this can never be in the interests of the top dog. So there are no win-win outcomes, and the third party has to join forces with the underdog to bring about a resolution.*<sup>5</sup>

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<sup>4</sup> Thomas De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, (NY: New York University Press, 2003), p. 288-289

<sup>5</sup> Hugh Miall, Oliver Ramsbotham and Tom Woodhouse, *Contemporary Conflict Resolution*, (Cambridge, UK: Policy Press, 1999), p. 12

If the above statement is applied to the NK conflict, the “top dog” would be the Azerbaijani central government, or the majority, and the “underdog” would be the Armenian minority in the Nagorno-Karabakh Autonomous Oblast (NKAO). The structural changes that the NK Armenians demanded and were unacceptable to the Azerbaijani central government - in particular separating from AzSSR and joining ArSSR - made the outcome of the conflict a zero-sum game. To achieve the desired outcome, the NK Armenians joined forces with the third party, in this case ArSSR – later the Republic of Armenia.

With the collapse of the Soviet Union, a seemingly asymmetric conflict became symmetric, with the involvement of the Republic of Armenia. Thus the NK conflict is not only a minority vs. majority conflict, but also a conflict between two states: the Republic of Armenia and the Republic of Azerbaijan.

## **Three Axes of the Galtung Triangle**

### ***Structural Violence***

The current boundaries of the NK region came into existence only in 1923. The leadership of the newly established Soviet Union carved out the territories primarily populated by Armenians within Azerbaijan and created an autonomous region called the Nagorno-Karabakh Autonomous Oblast (NKAO). By doing so, the Soviet government hoped to resolve ethnic and territorial disputes between Armenians and Azerbaijanis. It was done to satisfy both Azerbaijanis, who opposed any transfer of this territory to another republic, and the Armenians, who demanded unification of Armenia and the NK region.

This strategy proved to be successful for only about seventy-five years. On February 20, 1988, in the midst of Gorbachev’s *perestroika* and *glasnost*, the local Soviet of the NKAO adopted a resolution demanding the transfer of the NKAO from AzSSR to ArSSR. This event had a shocking effect in Azerbaijan. Although the resolution itself did

not have any legal basis and was nothing but a request, it nonetheless was a controversial step aimed to alter the status quo.

*Essentially, the local Armenian parliamentary deputies wanted the map of the Soviet Union redrawn and to see their region leave Soviet Azerbaijan and join Soviet Armenia...By calling on Moscow to change the country's internal borders, the Karabakh Armenian were, in effect, making politics from below...<sup>6</sup>*

Protests in the NKAO were followed by a demonstration in Armenia, which openly supported the separatist aspirations of the NK Armenians. Several rallies were held in the Armenian capital of Yerevan demanding the unification of NKAO with Armenia. Finally on June 15, 1988 the Supreme Soviet of Armenian SSR passed a resolution supporting the decision of the NKAO authorities' request to transfer the NKAO to ArSSR. The decision of the Supreme Soviet of Armenian SSR was interpreted as direct interference in Azerbaijan's internal affairs with the intention to annex the NKAO and undermine the territorial integrity of AzSSR.

In July 1988, the USSR Supreme Soviet confirmed the previous decision on retaining NKAO within Azerbaijan SSR on the basis of Article 78 of the USSR constitution, "which prevents territorial changes without the agreement of the republics concerned."<sup>7</sup> However, Moscow also temporarily transferred the NKAO to the jurisdiction of the USSR central government in January 1989, a move that was seen in Azerbaijan as the first step in undermining its right to the province.

*To Azerbaijan, all Russia seemed to believe the Armenian accusations. Although the USSR government was forced by its own constitution to retain the NKAR [Nagorno-Karabakh Autonomous Region] inside Azerbaijan, Russian sentiments were such that many in Baku feared Moscow would find a pretext to hand over to Armenia land that Azeris consider their patrimony for the creation of a 'Greater Armenia.'<sup>8</sup>*

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<sup>6</sup> De Waal, p. 11

<sup>7</sup> Audrey L. Altstadt, "Ethnic Conflict in Nagorno-Karabakh," in eds. Leokadia Drobizheva, Rose Gottemoeller, Catherine McArdle Kelleher and Lee Walker, *Ethnic Conflict in the Post-Soviet World*, (New York and London: M.E. Sharpe, 1998), p. 231

<sup>8</sup> *Ibid.*, p. 232

Moscow returned the jurisdiction of the NKAO back to Azerbaijan in November 1989, but it was too late. Clashes between the two communities had already taken place and the first influx of refugees from Armenia and Azerbaijan fed more fuel into an already growing interethnic fire between the respective republics. On August 30, 1991, Azerbaijan declared its independence from the Soviet Union and few months later abolished the autonomous status of the NKAO. Armenia declared its independence on September 23, 1991. Meanwhile, the NK Armenians (without consent of the NK Azerbaijanis) announced their separation from Azerbaijan in January 1992.

The structural changes that took place during this period were, and still remain, important for the parties involved. Azerbaijan and Armenia were recognized by the United Nations on March 2, 1992 within the boundaries of their predecessor Soviet Republics, which meant that the NKAO was recognized as an integral part of the Republic of Azerbaijan.<sup>9</sup> On the other hand, none of the UN member states, including the Republic of Armenia, has recognized the self-proclaimed republic of Nagorno-Karabakh. As a result of hostilities between Armenian and Azerbaijani forces, however, Armenia and the NK Armenians came to control about 16 percent of Azerbaijan's territories, a bulk of which is located outside the former NKAO.

### ***Cultural Violence / Social Construct: Myths and History***

Despite the fact that for centuries Armenians and Turkic people (the majority of Azerbaijanis are of Turkic origin) lived in peace side by side, the end of nineteenth century and the beginning of the twentieth century were marked with serious acts of brutality, ethnic cleansing and massacres on both sides.

During World War I intercommunal violence reached its peak. The forced relocation and massacre of Armenians in 1915 in Eastern provinces of the Ottoman Empire has been the most important event in the collective memory of the Armenian people. Armenians refer to the events as a “genocide” and put the death toll as high as 1.5

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<sup>9</sup> For more data on UN member states visit [www.un.org](http://www.un.org)

million people, while the Turkish government rejects such accusations and claims the number of dead was around 300 thousand, blaming intercommunal clashes. These events have lived on in the popular memories of both Armenians and Azerbaijanis, but especially among Armenians, for whom the events of 1915 constituted a part of their national identity.

Being an Armenian, particularly for those in the Armenian Diaspora who played a crucial role in logistic and military support for NK Armenians during the conflict<sup>10</sup>, meant “being a survivor of genocide, and therefore a member of a community of sufferers.”<sup>11</sup>

*[The] mentality of victimhood, which was an important part of Armenian national identity for centuries...once again was ingrained as the central element of Armenian collective consciousness – at least until 1970s when a new wave of Armenian radicalism arose in the diaspora, and 1988 when the [Karabakh] movement exploded in Soviet Armenia.*<sup>12</sup>

Although Armenians in Armenia or in the NKAO lived under different circumstances, these myths came forth once the Soviet system that suppressed interethnic violence collapsed. As Yamskov asserts:

*Mutual perceptions and ethnic relations are more likely to be favorable when ethnic groups share a similar ideology or religion, or when both groups oppose the same enemy or ideology. However, mutual relations will be neutral or negative in the absence of these factors.*<sup>13</sup>

For some time the principles of communism served as a “common ideology” for both Armenians and Azerbaijanis and ethnic tensions were managed and avoided. But when Gorbachev initiated *perestroika* and *glasnost*, he unintentionally shook the very source of the system that kept all ethnic groups intact. And it was during this period when old myths and perceptions resurfaced again. While Azerbaijanis were reminded of 1918-

<sup>10</sup> Svante E. Cornell, “Turkey and the Conflict in Nagorno-Karabakh: A Delicate Balance,” *Middle Eastern Studies*, Vol. 34, No 1, (January 1998).

<sup>11</sup> Razmik Panossian, “The Past as Nation: Three Dimensions of Armenian Identity,” *Geopolitics*, Vol. 7, No. 2, (Autumn 2002).

<sup>12</sup> Ibid.

<sup>13</sup> A.N. Yamskov, “Ethnic Conflict in the Transcaucasus: The Case of Nagorno-Karabakh,” *Theory and Society*, Vol. 20, No. 5, (October, 1991).

20s when Armenians tried to “steal” their lands, Armenians were alarmed against possible extermination.

*After the eruption of the [Karabakh] movement in 1988, the Armenian demand for [Karabakh] is woven into the discourse, highlighting the threat of ‘another genocide’ if Armenians do not defend themselves against both Azerbaijan and Turkey.<sup>14</sup>*

Hence, myths, stereotypes and historical prejudices were an inseparable part of the NK conflict and an important part of cultural violence.

### ***Behavioral (Direct) Violence***

Was it possible for Armenians and Azerbaijanis to avoid bloodshed? Or was the gap between both societies so wide that it could not have been avoided? The answers to these questions lay in the behavioral and social aspects of the conflict.

By the late 1980s, intercommunal tensions between the two societies brought along hitherto suppressed nationalistic views in both countries. Azerbaijanis and Armenians, who have lived side by side in peace for more than seventy years, found themselves in a very difficult situation. More than 200,000 Azerbaijanis living in Armenia and some 300,000 Armenians residing in Azerbaijan fled their respective countries. Terrifying stories told by the fleeing refugees increased antagonism and enmity in both republics.

The first blood in the NK conflict was shed on February 22, 1988, when a crowd of young Azerbaijani men marched from Aghdam, Azerbaijani city outside NKAO, towards Stepanakert/Khankendi to protest the NK Armenians’ demand to separate from Azerbaijan. They were met by a group of armed Armenian villagers around the village of Askeran in NKAO. As a result of the fight that took place at Askeran, two Azerbaijani

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<sup>14</sup> Yamskov.

men, aged 23 and 16 years old, were killed. These were the first victims of the Armenian-Azerbaijani conflict.<sup>15</sup>

By February 27 1988, five days after the first deadly incident in Askeran, violence was reported in several cities of Azerbaijan. But the majority of Azerbaijanis were still unaware of the Askeran killings. It was a statement by the Soviet military prosecutor Alexander Katusev that “put a match to a tinderbox” and triggered the escalation of the conflict. Katusev spoke on Azerbaijan’s national television and radio stations and confirmed the death of two Azerbaijani men in Askeran.<sup>16</sup>

The next day, several hundred angry men filled the streets of Sumgait, a major industrial city in Azerbaijan where many refugees from Armenia found refuge. Azerbaijani refugees from Armenia, who were scattered throughout Azerbaijan, were “the raw material for the demonstrations.”<sup>17</sup> A mob of angry men broke out from the demonstrators and formed small groups that started to smash windows, burn cars and attack Armenians in the city.

As a result of the Sumgait events, 26 Armenian and 6 Azerbaijanis died and many were wounded. Although most of the 14,000 Armenians living in Sumgait<sup>18</sup> left the city unhurt, the scale and unexpected nature of the Sumgait events left an emotional mark among many Armenians and ordinary Azerbaijanis. The Azerbaijani government later claimed that several dozen of these refugees were used by the Soviet secret service (KGB) to commit pogroms against Armenians<sup>19</sup> in order to destabilize the region and increase the republics’ dependence on Moscow.

While Sumgait was remembered among Armenians as the most brutal incident of intercommunal atrocities, it was Khojali massacre that shocked and devastated

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<sup>15</sup> De Waal, p. 15

<sup>16</sup> De Waal, p. 33

<sup>17</sup> Ibid., p. 32

<sup>18</sup> Ibid., p. 40

<sup>19</sup> Adil Baguirov, “Myths Related to the Nagorno-Karabakh Conflict,” *Azerbaijan International Magazine*, Vol. 6, Issue 1, (Spring 1998).

Azerbaijanis. Before February 26, 1992, Khojali was a little known town in the NKAO, one of the few predominantly Azerbaijani-populated towns in the region. It also had a strategic importance as home to the region's main airport. On the night of February 25-26, Armenian forces raided the town with help of the 366<sup>th</sup> former Soviet Regiment. Most of the victims in Khojali were civilians who could not escape. According to the Azerbaijani sources, some 613 people were killed (among them, 63 children, 106 women, and 70 elderly people), 487 people were wounded (including 76 children) and some 1275 people were taken hostage.<sup>20</sup>

The Sumgait pogroms and Khojali massacre were the two major incidents that had a behavioral aspect (direct violence). While massacres by Armenians and their demands for unification with Armenia caused Azerbaijanis to believe that the Armenians posed a direct threat to Azerbaijan's territorial integrity, pogroms in Azerbaijan resulted in increasing fear by Armenians that their national identity would be in danger if the NKAO remained within Azerbaijan.

## **Conclusion**

The Galtung triangle with its three axes - behavioral, structural and cultural- is proven to be a useful model for analyzing the root causes and basic nature of the Nagorno-Karabakh conflict. Each angle in the triangle has shown how different the perceptions of the parties are and what are the general causes of the conflict for one or the other party. Although some of these perceptions had been formed during the conflict itself, there were times when previously formed myths and social constructs played a far more important role.

The structural aspect of the NK conflict involves the issue of territorial integrity versus the right for self-determination - two seemingly contradicting concepts that need to be reconciled in order to resolve the conflict. The former has dominated Azerbaijani thinking, since a threat to Azerbaijan's territorial integrity was real and the possibility of

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<sup>20</sup> For more on Khojali massacre see <http://www.diaspora-az.com/genosid.htm>

the NKAO joining Armenia was unacceptable for Azerbaijan. For the Armenian side, on the other hand, the unification of the NKAO with Armenia was in part an attempt to change “the structure” or the status quo and in part a social construct, which is to say, the perception that if Armenians were left within Azerbaijan, they would be exterminated.

During the conflict’s early stages cultural violence on both sides played an important role. In particular, the events of 1915, the notion of being a ‘survival nation’ on the verge of ‘another genocide’ were instrumental in mobilizing Armenian forces in and outside of NK. To a lesser extent Azerbaijanis used historical events to justify their attacks on Armenians as well.

As far as the behavioral aspect of the triangle is concerned, here again we see different triggers. For Azerbaijanis the influx of refugees from Armenia, the killing of two Azerbaijani men in Askeran and the Khojali massacre were the major events that escalated the conflict. Whereas for Armenians the trigger was the “Sumgait pogroms” which led Armenians to believe that their national identity was in danger and that they had to fight in order to survive.

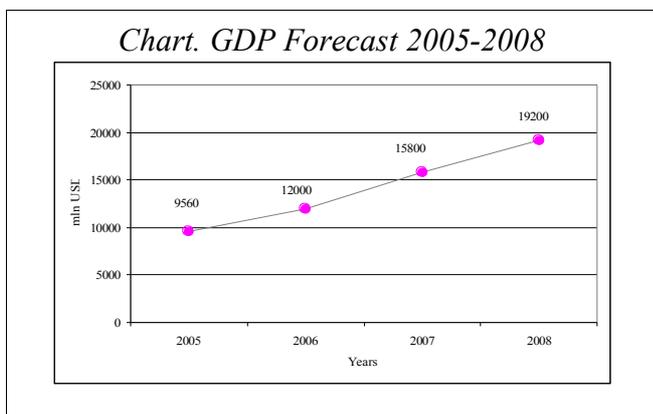
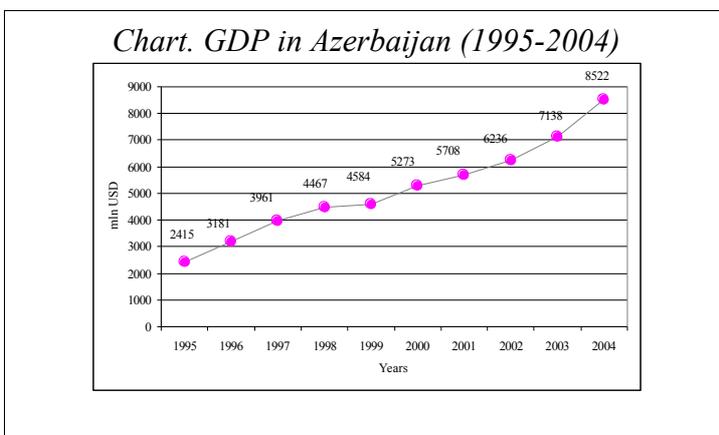
# Is Azerbaijan going to continue to get massive Inward Foreign Direct Investments?

## Policy issues, risks & opportunities

Emil Majidov\*

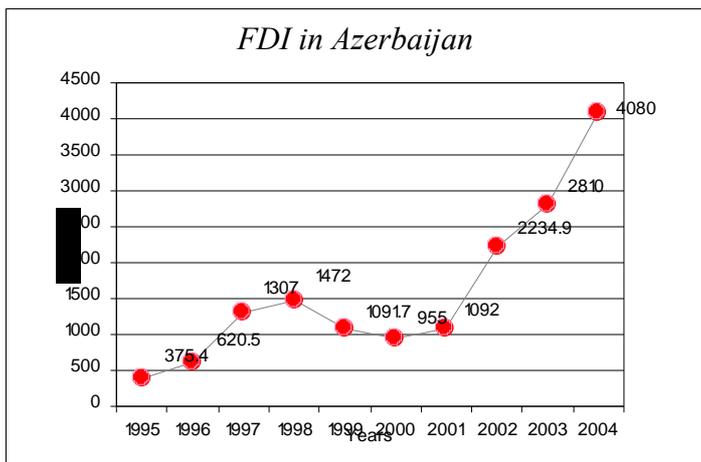
### *Recent macroeconomic performance*

Azerbaijan is one of the fastest growing economies in the world. The GDP annual surplus in 2003 was above 11%. The growth for the year 2004 is 10.2%. A record growth of circa 17% is expected in the year 2005. As per some forecasts (ADB 2005) growth in 2007 may be as much as 26%! It is highly probable that the country will be the global leader in economic growth in the coming next 2-3 years. GDP per capita is growing respectively although from a very low base. In 2004 it was USD 1042 per capita. Nominal wages grew by 26%. Almost all other major economic indicators point out a similar growth pattern.



The GDP growth forecast for the years to come look even brighter (see the chart). As illustrated the Gross Domestic Product is expected to nearly double in the next four years. It is noteworthy that Azerbaijan managed to sustain economic stability even during the period of fluctuation of oil prices in late 90-s of the XX century and general economic downfall of early 2000-s.

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### ***Bright FDI statistics***

Plus to the general economic growth with circa 5,000 million USD actually invested by foreign companies in the economy in 2005, Azerbaijan is now living through an investment boom. The boom, however, is largely conditioned by the ongoing development of the oil & gas industry which accounts for approximately 90% of inward investments registered. Most

of the flow goes into 3 major projects: Azeri-Chirag-Guneshli oil field, Shahdeniz gas field and Baku-Tbilisi-Ceyhan pipeline. The development phase for these projects is due to end by 2008 and consequently the investment flows is expected to decline sharply unless new major oil field discoveries occur or investments in other sectors of economy are approved. Interestingly, in all of the above oil & gas projects the lead violin is being played by the British Petroleum as the major stakeholder and investor, which apparently is another risk of depending on one single large investor.

### **Mixed FDI attractiveness picture**

The Government has not managed so far to secure any substantial inflows of investments in other segments of economy, though a number of state sponsored initiatives aimed at improving attractiveness of the economy as the location to do business outside the oil & gas were announced or are underway. One can name such government endorsed mechanisms as Regional Development State Programme and Poverty Reduction State Programme. The both have undoubtedly shaped up the agenda and the workload of the various Government Bodies during the last 2 years. A number of achievements have been reported, including openings of new enterprises, infrastructure improvements, new schools and hospitals in the regions outside Baku etc.

The country has undergone a major legal reform in early 2000-s. A number of vital legal acts were adopted in order to stimulate easier business conduct. Interestingly, however, that practically no specific measures targeting foreign investors as such have been taken lately. The legal regime for foreign businesses considering starting up in Azerbaijan has not been changing in essence for approximately a decade. The new draft Law on Investments which is now going through the Parliament approval stage does not contain any basic reform agenda and is merely a better legal technics compared with 1992 and 1994 laws. The Government continues to adhere to formal “non-discrimination” principle in respect of foreign capital. The practical trends, however, show that there are some indications that the Government lately is falling under increasing pressure from the developing local business community as regards to more protectionist policy for foreigners who wish to do business in the country. The Government is formally continuing the liberalization policy (e.g. the average weighted customs import tariff went down by 1% in 2004 to 5.8%) while a number of practical difficulties are being created by various pressure groups to outcast local and international competitors.

The situation described above does not stimulate a better general business environment as it artificially boosts the “informal” side of regulation while making the “formal” regulatory framework less efficient. The phenomena that come together with “informality” such as corruption, red tape and arbitrariness of officials do not make the picture brighter.

As one might have gathered from the above Azerbaijan at the moment has two parallel stories to tell in respect of attraction of FDI. On one part Azerbaijan is the number one performer in the region of Central and Eastern Europe in respect of FDI attracted per GDP unit as well as one of the top performers as per this indicator globally. The country by now has an Oil & Gas business which is regarded as one of the best models internationally. Despite all the existing problems it is still the most liberal market among those of the Caspian region. The country is also perceived as a rapid grower with the wealth growth practically secured for the next 2 decades.

On the other hand Azerbaijan is not on the international investment maps of the largest TNCs outside oil business as it is regarded as the location outside traditional markets. There is also a perception of Azerbaijan as a generally “difficult” or “unknown” place for trade and investment. As the country is relatively small, it also does not attract extra attention compared with neighboring Russia, Ukraine or even Kazakhstan.

In short, Azerbaijan is a mixed picture when it comes to FDI. There are apparent strengths as well as actual and perceived weaknesses. The future flows of investments in the country is very likely to depend largely on whether the Government will implement an efficient strategy to capitalize on the abovementioned strengths and compensate for some of the weaknesses.

### **Variables for future FDI in Azerbaijan**

The complexity of the issue might be better apprehended if we would try to identify the most possible scenarios as well as the factors and decisions that are most likely to happen and if so, to make the strongest impact on the FDI attractiveness of the country (or in other words “Variables” for future FDI flows in Azerbaijan)

The following factors are, in our opinion, the most important Variables for the inflows of FDI in Azerbaijan in the next 3 to 5 years:

#### **- *New oil & gas discoveries***

So far the Azerbaijani Government signed 23 oil contracts with a number of oil corporations from dozen of leading economies. To the moment only few of the contracts reached full scale development phase. There were few disappointments when SIPCO (Italian led consortia) and JAOC (Japan led consortia) have stopped operations due to unsuccessful exploration and drilling attempts. However, it can not be ruled out that new discoveries of oil or gas in Azerbaijan as well as opening up of the neighboring Caspian countries for foreign investors may give another boost to the sector in the years to come. In any case, Azerbaijani oil & gas industry is likely to remain the strongest part of the

economy and the largest attraction for foreign companies due to its openness and modernity.

- ***Liberalization of business climate***

The previous 5 years were the period of steady liberalization of the business climate in Azerbaijani albeit from a very low base as the governmental policies of mid 90-s were to some extent oppressive in respect of private sector development. So, the positive trend is certainly existing, however, one may argue that the pace of reform and liberalization is too slow. In general, the government of the last decade has been pretty conservative in respect of introducing any major steps in order to ease environment for both foreign and domestic investors, apart from few cases (reform of licensing system, introduction of “revision” registrars, abolishment of a large number of revisions of businesses etc.).

Another potential conflict is arising from the recent trend when the local companies, in particular, large holdings and state owned enterprises openly and discreetly lobbying against new arrivals to the economy. A clear agenda by the Government where it states which sectors will be genuinely open for FDI as well as a clever protectionist policy for local producers and financial groups will be a useful instrument to resolve this potential conflict of interests.

- ***Introduction of FDI incentives, free zones or industrial platforms***

There are no sector or territory specific incentives for doing business in Azerbaijan for local business. Neither there are any FDI oriented incentives. Few years ago the Government came very close to introducing tax incentives for the regions outside Baku in order to stimulate regional development there. However, the initiative was seriously opposed by the international financial institutions such as IMF and was later put away. UNDP office in Baku and the Government of Azerbaijan have been also long discussing establishment of a Free Economic Zone in Sumgayit, an industrial town of 200 thousand population north of Baku with strong traditions in chemicals and metallurgy. The idea was buried alive as well at the time.

The most recent developments in this area include announcement of establishment of an Industrial Town (industrial platform of 300 ha, 25 km north of Baku), which is at the moment at the stage of going through approvals in the Government as well as the recently revived discussion on the establishment of the first Free Economic Zone in Azerbaijan, and probably in the Caspian Region.

Introduction of incentive schemes might boost few sectors of the economy as well as potentially the re-export and regional trade (in particular, in the case with Free Economic Zones).

The ongoing negotiations with the WTO on accession of Azerbaijan is another factor that might affect its international competitiveness.

***Change to the perception of the country as a difficult place to do business outside oil & gas***

Azerbaijan traditionally ranks very low in the international rankings devoted to such topics as corruption, economic freedom, governance. E.g. TI ranks Azerbaijan 140 (6<sup>th</sup> place from the bottom), Heritage puts Azerbaijan in a row with “predominantly unfree economies” (rank 103 in 2005). This may be attributed to both reflections on the reality in Azerbaijan and somewhat distorted perception of Azerbaijan in the international media as a country that went through a military conflict, located in a complex part of the world and that never really made any targeted efforts to remedy such perception. Obviously, the Government may potentially launch an international campaign aimed at improvement of the international perception of the country. The clever design of the campaign, the correct positioning of the country might become a factor behind the future success in getting FDI or else.

### **Development of Azerbaijan’s strategy and policies towards FDI**

As mentioned above the strategy of the Azerbaijani Government in respect of FDI went through a certain evolution. The first and so far the most decisive step was taken in mid 1995 with opening of the oil & gas industry for foreign companies. Since then the Government has undergone some evolution to realizing the need to diversify the investment stock and to attract businesses in the non mining projects. However, to the moment, not much has been done to provide for really competitive environment for FDI.

The Government is preaching the so called “equal playing field” approach, according to which no sector or territory should receive special treatment or enjoy exemptions from the general legal regime. This concept, however, has a very serious weakpoint in Azerbaijan specifically, as a number of businesses to the moment have managed to break the principle by securing near monopolistic positions in many segments of the local market, or enjoying more liberal administrative regime through the so called “informal” instruments. The resolution of this mere problem in the local business climate requires a number of decisive and maybe even unorthodox steps.

It is likely that the Government will be forced to take a number of decisions in the area of policy making as well as reform continuation if it is genuinely interested in removing the obstacles for investments.

In our opinion a sound strategy towards FDI would include the following necessary elements:

- prioritization of sectors in which the Government is welcoming the investors in particular, though the “umbrella” principle remains in place that all sectors remain open
- introduction of incentive schemes with emphasize on such criteria as sector, export element, jobs creation etc.
- further liberalization of the general business climate or creation of “red tape free” zones such as special economic zones or industrial platforms
- support to targeted country promotion campaign

This approach has been to some extent reflected in the INOTIS 2003 study prepared by the World Bank team in form of the sector prioritization proposal. The sectors that have been picked up by WB experts and that they believe to be potentially competitive internationally are Fruit and Vegetable processing, Oil & Gas related industries, Trade and Transport, Telecom and IT.

It is also vital for the Government to design an efficient public investment programme which will boost the business development including FDI projects. The current strategy of the Government aimed at construction of high class transport infrastructure is seen as the major tool. One can only reiterate the importance of establishment of the international legal infrastructure for businesses including system of international agreements on such issues as double taxation, investments protection, free trade zones as well as introduction of international certification and quality standards in Azerbaijan, harmonization of FDI approval procedures and better Government services to investors.

WTO accession process speed up, more efficient utilization of existing bilateral trade and investment treaties, improvement of customs policies and practices, upgrade of the critical infrastructure, need for bonded warehouses and free zones, reform of investment law, business start up procedure streamlining, simplified land titling and access to land for projects, improve application of IP laws, strengthen competition, access to financing, public private partnerships, market info dissolution, development of industry clusters; exchange of data etc. are other supplemental factors that would help Azerbaijan to overcome a number of apparent weaknesses such as, small market, mixed image and lack of positive record in non-oil FDI.

## **Conclusion**

The development of the Azerbaijani economy during the last decade and the set of policy instruments that has been used by the Government so far is to some extent determining the future of this line of business in Azerbaijan. It is safe to say that unless major oil & gas discoveries take place in Azerbaijan in the near time the structure of FDI inflow will change dramatically. Should even the most efficient non oil FDI policy be implemented in Azerbaijan it is unlikely that the country will be able to secure so much capital in the economy. However, the stock may be diversified in future, and include other segments of business. We might point out few sectors which are likely to be the next targets for investors in Azerbaijan. They include telecom and logistics, construction, food processing and maybe some segments of tourism.

A non proactive Government stance will end in the minimal or no FDI inflow after the oil projects expansion phase is over and should be avoided by all means.

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# Thieves of the Law and the Rule of Law in Georgia

Virginia Davis Nordin\* and Georgi Glonti\*\*

## Abstract

*This article combines research on the Thieves of the Law in Georgia by a Georgian criminologist with the search for the real meaning of the Rule of Law in this former soviet country by an American lawyer. The first section of the paper cites some of the contradictory descriptions of the Thieves of the Law in the USSR and Georgia with a brief look at the functions of customary commercial law in emerging societies and concludes that the story of the Thieves of the Law is vital to understand the nature of Georgian society and the possibilities of establishing the Rule of Law in that Country. The next section illustrates the importance of and the continuing impact of the Thieves Law in national and international economic activities. A final conclusion stresses that defining law, crime and society is complex and that a knowledge of the particular stories of each is a necessary first step.*

**Keywords:** *Georgia, thieves in law, rule of law reform, crime, thieves code, traditions*

## Introduction

The establishment of the Rule of Law is important in all former Soviet states for social, political and economic growth. However, this establishment is not going as well as might be hoped. We believe that one reason for this is a failure to relate Rule of Law reform efforts to existing legal norms. The presentation of material on the Thieves of the Law in Georgia is intended to help reformers understand the current and historic legal context in Georgia. Although all Georgians are aware of the Thieves organization in Georgia, most foreigners have not been. But, when a university professor tells a Westerner that he might ignore laws passed by Parliament, but he would never ignore a Thieves' law, that law becomes interesting.

The interaction between Georgians and Americans regarding the Rule of Law is especially interesting because they are such opposite ends of the pole. Americans have a religious reverence for the Rule of Law, its procedures and manifestations, especially their Constitution. Georgians, on the other hand, automatically resist law in any and all forms because for most of their history "the law" has not been Georgian law but that of an overlord or conqueror. Although the Americans are not conquerors or colonizers, many

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Georgians tend to regard them as the current overlords. Georgians are happy to pass most suggested law reforms, possibly because they don't have much intention to pay attention to them once they are passed. Perhaps understanding more about the legal context and history of Georgia would help make reform laws more effective.

Understanding the Thieves of the Law is one part of this effort. From one standpoint the Thieves, under the tutelage of the Soviet prison camp authorities learned to extend their historic guild or brotherhood into a more effective administrative structure and learned to extend that structure geographically throughout the Soviet prison camps in all of the USSR. Thus, an extended international criminal-economic organization is one more thing we have to thank the Soviets for. From another point of view, on a local basis the Thieves supplied local stability and support during the Soviet era. As the separate culture Caroline Humphrey refers to, they had an excellent welfare and tax systems and, of course, police force. They allowed the development of the shadow economy that sustained and enriched the country during difficult times.

As a political and economic force they have played and still play an important role. The interaction between Georgian clans and the Thieves is yet to be fully described, and their role in ordinary life in Soviet times when every neighborhood had its Thief also needs to be understood more thoroughly. It is hoped that this effort and the forthcoming American edition of the Glonti material will be a useful step toward an understanding that will underpin an effective effort to establish the Rule of Law.

### **The American Perspective: The Rule of Law in Georgia**

I first went to Georgia as a Fulbright professor in the spring of 2000 because I thought the West, specifically the US, was not doing enough to help the former USSR learn democracy and the market economy. It seemed to me that the Soviets had never known much about either historically and they certainly hadn't been free to study our way of doing things from behind the iron curtain. Given this total lack of familiarity or understanding of our complex system, worked out by us over hundreds of years, it appeared to me that the West was not adequately preparing Russia and the Newly Independent States (NIS) to function in their new free world. If anything the West was trying to teach these venerable societies about the free market and democracy and the Rule of Law about the same way someone might teach a child to swim by throwing him off the end of a dock. I thought I could at least put my little drop in the bucket by teaching American law in some area.

By my good fortune and Providence I wound up in Georgia. Georgian society was a revelation to me. I became slowly convinced that very little progress toward democracy, civil society and the free market economy was being made because the Western, more precisely American, culture and the Georgian culture did not understand each other. We Americans had all the good will, good intentions and technical expertise in the world, but good intentions do not necessarily result in good programs or progress. Nor was there much of a clear concept that the Georgians have an extensive, intricate, sophisticated society and culture that has survived for centuries, not necessarily with any of the basic assumptions Americans make about the innate nature of man which includes a reverence

for a written Constitution, a devotion to due process and a number of similar concepts which constitute the American civil religion. Assuming that American laws and market rules could be grafted onto Georgian society was like trying to graft an artichoke onto an orange tree. The reforms wither and die. The Georgians politely do what the Americans and other Western reformers ask by way of passing laws, adopting constitutions, changing police procedure, customs and tax procedures and instituting whatever other reform measures are suggested. And then, basically, nothing happens. As I left in June of 2000 an Agency was offering \$10,000,000 to implement the reforms that had been adopted. Many of those reforms are still not effective. However, it became clear to me fairly quickly that *something* was working because Georgia was not in anarchy nor was the society destitute. Even though there were not enough jobs, and public servants including teachers and professors were not being paid a living wage, Georgians went about their daily business in a way that indicated a common understanding of the laws of an economically viable society. Wondering just what these obviously unwritten laws were led me eventually to the Vory V Zakoni, the Ramidini or Thieves of the Law.

Georgians today seem to be becoming disenchanted with their American patrons and do not always understand that the Americans expect them to do a great deal for themselves. Their history has been that of responding to overlords, and picking those overlords carefully. I think they are beginning to wonder about us and it behooves us to understand them more thoroughly for all our sakes. One thing we need to understand more are the Thieves because they have had such a pervasive influence on Georgian society. Studying the Thieves of the Law might help us build a rule of law. Even if there is nothing adequately positive to be salvaged from the Thieves' culture, understanding it better might help explain Georgia in a way that would be useful. Further, the Thieves are not adequately studied for their role in everyday life. During the Soviet period, Thieves operated as neighborhood supervisors and judge-arbitrators. Every neighborhood had its Thief who never committed a crime himself. There was a senior Thief, sometimes called a "Thief in a Frame" who had been empowered to act as an arbitrator or judge. The Thief knew all about the neighborhood and had connections with other neighborhood Thieves. If your car was stolen your Thief could find it and tell you how much you had to pay to get it back (or not pay if you were connected to the Thief or he owed you a favor)--this is the example always given to foreigners on initial inquiry. The Thief could also clear the entryway of your apartment of homeless squatters whom the police refused to touch. He could arbitrate business disputes. This service would cost you something, probably related to the value of the business, but the result could not be bought and you could count on the Thief to enforce the decision. Thieves also collected a tax or tribute from all members of the organization for the general fund or treasury, usually kept in cash and hidden away. They saw to it that members of the families of those in prison were cared for from this fund. Above all, they provided protection, a krysha (Russian for roof) for businesses. That this concept is still operative is the media report that current President Mikhail Saakashvili, when speaking to Italian businessmen in Italy, said, "Come to Georgia; I will be your krysha!" Current activities are reputed to include financial advice as well as physical security.

Almost everyone realizes that history is extremely important to Georgians. They are proceeding into the new millennium with their eyes firmly fixed on the 12<sup>th</sup> century, the golden age of Georgia. There are also more recent historical experiences that shape their

culture, their character and their society. Given the long history of Georgia constantly conquered by one or another neighboring empire, it is understandable that economic activity outside the law was the only way to sustain the family. The line between hidden economic ways of sustaining life under a repressive regime, the most recent of which even outlawed a market economy and private property, and crime in the traditional sense became and continues to be blurred, particularly given the strong duty and loyalty toward family in Georgia. As in many other cultures, family responsibility and cohesiveness have held Georgia together over centuries of foreign rule. The obligation toward family is still extremely strong. If a family member asks a favor, even if it is slightly illegal, and you refuse, you will be shunned, really shunned as in the old Puritan notions, not only by your family but generally; you will become an outcast in society. In a society that depends heavily on relationships for its organization and operation, this can be close to a death sentence.

In some of its rules or “laws”, the Thieves in Law parallel the Mafia as Georgia parallels Sicily. There are differences but much that is similar. Leoluca Orlando writes that Sicily was always a place to be exploited rather than governed; always a colony passed from one ruler to another without even the compensation of a harsh but effective government.<sup>1</sup> Georgia is much the same. Overrun by one powerful neighbor after another, it became the military staging ground for the clash of empires, Ottoman, Persian, Mongol, and Russian. Georgians learned not to accumulate property which could be requisitioned but rather to survive by other means, burying their wine cisterns and even their houses in the ground. Georgians are very smart and subtle. They learned how to survive. Russian literature is full of stories of smuggling in the Caucasus. When considering Georgia the Land of the Golden Fleece, it is well to remember that fleece is also a verb. As Peter Nasymth has written, “in historic times, no matter who won the battle, the Georgians usually went home with the gold in the caravan.”<sup>2</sup>

As with the Mafia, the Thieves stress honor, with an especially strict code of conduct and responsibility. Orlando calls this honor a myth for the Mafia and perhaps it is also the same for the Thieves who like the Mafia took over many functions of the state.<sup>3</sup> No wonder that when the Shevardnadze government took over, like the Sicilians, it had to resist the Thieves as criminals in order to retake its own (governmental) power.

An additional factor affecting Georgia is that most recently it was a part of the Soviet Union where that great effort was made to destroy the concept of private property. What was legitimate economic activity in most of the world was a crime against the state in the USSR, often punishable by death. Further the Soviets originally viewed law itself as a capitalism institution, designed primarily to protect private property, and questionable at best. This again contributed to the blurring of the line between crime and politico-economic resistance.

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<sup>1</sup> Orlando, Leolura. “Fighting the Mafia and Renewing Sicilian Culture”, San Francisco, Encounter Books (2001).

<sup>2</sup> Naysmyth, Peter. “In the Mountains of Poetry”, New York, St. Martin’s Press (1998).

<sup>3</sup> Orlando, Leoluca. “Fighting the Mafia and Renewing Sicilian Culture”, San Francisco Encounter Books (2001).

The Bolsheviks in the Soviet Union had no problem in defining the Thieves as criminal but as they say, it takes one to know one. The Soviets were happy to use the Thieves ability to organize a society and enforce its rules as a way of governing the prison camps. Of course, the Thieves rather helped this effort by requiring prison time of applicants for Thief status, probably to reinforce their status as resisters to the overlords and to establish their authority as enforcers, as well as to reflect their own life patterns, but they were also probably influenced by the fact that they considered the Bolsheviks themselves to be criminals. Of course, Stalin and many others were Georgians. (They are considered by criminologists to have been criminals, but not Thieves.) They adhered to no governing Code like the Thieves did, and, once in power they made every attempt to eliminate those, such as the Georgian revolutionary leader Kamo, who knew them to have been criminal. Further, the communists in pre revolutionary times were quick to use funds obtained by crime. Revolutionary and political movements are often funded by crime of one kind or another that some revolutionaries doubtless do not classify as crime at all.

Different authors writing in English on the current criminal influence on economic development in the former Soviet Union interpret the term Thieves of the Law, differently. Since the Thieves have a Code obligation not to discuss their organization, akin to the Sicilian omerta, it is difficult to get definitive information; although in Georgia, Thieves are well known and understood in society. Solzhenitsyn refers extensively to the Thieves in the non-fiction Gulag books, without ever completely describing or defining them. One of the most pervasive stories about the origins of the Thieves is that they were formed in Soviet prison camps when Stalin threw unprecedented numbers of criminals, intellectuals and political prisoners together in groups that were uncontrollable because of their sheer size. The Soviet internal security police were said to have unofficially supported the Thieves as long as they kept order in the camps. However there is more than one point of view on what the story really is.

The Thieves Code prohibits any cooperation with state or government. This obligation caused a big split among the Thieves in prison camps during World War II when they were given the opportunity to serve in the soviet army, in violation of the Thieves Code. The return of those who fought to the prison camps caused a major battle called the bitches' war that weakened the entire Thieves organization considerably and created rival groups and factions. In later years some Thieves proposed that this rule among others be changed, and that the Thieves move toward being a more legitimate organization. One leader to take this position was Jaba Isoliani from Georgia who later served in the Goergian Parliament, the first Thief to do so openly. However the Thieves Congress at which this was proposed did not adopt that suggestion causing more splits and rivalries. One reason to try to understand the Thieves is that many of the criminal organizations that seem to be taking over a major part of the economies of many countries are based on the Thieves, even if they do not adhere fully to the Code and in fact war with the Thieves. Many other provisions of the original Code are also breaking down as the reason for the original Thieves and their original Soviet prison camp context no longer exists in the extensive form it once did. For example, it is often no longer necessary to have served in prison to be a Thief; in some organizations, coronation can be bought. Originally, Thieves could not achieve the highest status unless they had been in prison,

were sponsored by existing Thieves served an apprentice-probationary period supervised by a Thief, and were voted in or crowned at a Thieves' meeting where they were given a new name or nickname. So who and what are they?

Johan Backman in *The Inflation of Crime in Russia* argues that the name of the Thieves should really be Acknowledged Thieves, because “zakoni” does not refer to law, but to something that is generally “acknowledged” by the underworld. He thinks “Thieves Professing the Code” is also a good suggestion, but “acknowledged thief” is better. But he also discusses the penchant of the Russian police culture of consciously stigmatizing groups and maintaining lists of stigmatized groups with detailed files as a method of law enforcement in a system depending heavily on extra-judicial discretion. Based on this analysis he asks whether this term, “has practically nothing to do with the actual underworld, but is invented and reinforced by the Russian police?” Could it be possible that the “acknowledged thief” is a pure police term and one of the stigmas serving the discretion of the Russian police culture?<sup>4</sup> That is, is it a term solely made up by the Soviet Ministry of Internal Affairs to strengthen their fight against this group by using a term which meant more or less acknowledged criminal leader, for purposes of stigmatizing the group and which ignored any political overtones.

On the other hand, Volkov refers to those who characterize the “Zakonniks” as lawyers, as “doctors of informal (unwritten) law.” He contrasts them primarily with the more modern emergent Russian criminal groups that he calls bandits. Others may think the bandits are modeled on Thieves but less constrained by their Code and more able to integrate into protection of the widest sort and forms of economic monopoly verging on and becoming totally legal, whatever that means in current Russian society. He quotes a speech of Putin's as indicating that organizations which become totally legal should not have to worry about the original source of their capital, (possibly even as the American robber barons?).<sup>5</sup>

However, Federico Varese in *The Russian Mafia: Private Protection in a New Market Economy*<sup>6</sup> raises the question of whether the Thieves were strictly a Soviet phenomenon arising in the overcrowded camps of the Stalin era or a product of pre-revolutionary Russia. He cites historian Jacques Rossi for the validity of the pre-Soviet existence of this group. He refers to the legends of the ‘old noble thieves world’ that tell of the heroics that existed in Tsarist Russia and cites Santere as an additional source. Others he cites say the opposite and the whole analysis is complicated by the fact that soviet analysts tended to label all crime and criminal organizations as inherited from capitalism. He says the term Vory-V-Zakoni only first appeared in criminal documentation and dictionaries in 1955, at the time when some the Thieves themselves were disappearing as a result of the bitches war. Another part of this problem is that some analysts see the Thieves as primarily an organization of convicts within prisons while others see widespread activity outside prisons. Varese also refers to historians who have

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<sup>4</sup>Backman, Johan. “The Inflation of Crime in Russia”, National Research Institute of Legal Policy (1998).

<sup>5</sup> Volkov, Vadim. “Violent Entrepreneurs: The Use of Force in the Making of Russian Capitalism”, Ithaca, NY, Cornell University Press (2002).

<sup>6</sup> Varese, Federico. “The Russian Mafia: Private Protection in a New Market Economy”, Oxford University Press (2001).

chronicled thieves and beggars guilds in Russia from the middle of the nineteenth century onward. In comparing the guilds or arteli he finds the Thieves much better organized which he concedes may be a result of the Soviet prison camp system.

While the Thieves' organization is in many ways reminiscent of the Sicilian mafia, unlike the Mafia, it is not strictly hierarchical, but rather distinctly democratic, or horizontal, or rather disorganized, depending on your point of view (Georgians tend to concede that they are disorganized, but also spontaneous). The organizational structure was more horizontal than vertical although there was also a clear progression in rank. Varese sees them outside the prison walls as a coalition of criminal leaders each controlling a sector but allied with each other.

Caroline Humphrey in *The Unmaking of Soviet Life* sees the Thieves as not an illegal network, but a separate world with distinct groups rather than networks. She also refers to the arteli and the bratva (fraternity) concepts. Her argument is that “the rackets are not only private suppliers of protection, nor simply ad hoc usurpers of state functions, but culturally distinctive groupings that use what we might call techniques of predation and patronage evolved from historically earlier Soviet contexts.”<sup>7</sup> Her analysis is extensive and instructive. I would agree that the analysis of the Thieves requires an acknowledgement of a different, non-Western, definition of “the state” and definitely of the “Rule of Law”. Thieves in Georgia may well antedate the Soviet era. Analyses of their function and meaning need to recognize that opposition to the national government and its laws has been for centuries based on the fact that the governing power in Georgia has not been Georgian. Some Georgian Thieves have claimed a princely heritage from ataman times. The Soviets only increased this attitude by making the few activities that were legal new serious criminal offenses.

Some might say they helped hold the country together through a time of oppression and anarchy when private business was a crime and people suffered from economic deprivation as well as repression. Some allege that the current widespread international government corruption makes it hard to distinguish between criminals and newly emerging states which don't really exist in this part of the world as the West knows them. Writers on the economic role of criminal organizations after the fall of Communism stress that at least at the beginning, the state was just one organization among many with the potential for achieving order through controlled violence. The state must provide justice, a workable tax system, and an enforcement system of controlled violence. The Thieves do all that.

Some see positive elements in this system that ran Georgia for at least a century and built on folklore figures of earlier times like Arsena Odzelashvili whose statute can be found in Msketa, the ancient capital and spiritual center of Georgia and who robbed from the rich and gave to the poor. The Thieves do have laws. Even if they were originally named by the Soviet Miltia as a means of stigmatization, their code and the necessity for obeying it certainly became widely known among the population. The Thieves regime was in a sense an alternate Rule of Law that was rarely violated since the consequences

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<sup>7</sup>Humphrey, Caroline. “The Unmaking of Soviet Life: Everyday Economies after Socialism”, Ithaca, NY, Cornell University Press (2002).

were serious to fatal. The Thieves are generally described as brutal, and they work to maintain that reputation. Nevertheless the Thieves enforced a legal system known to all and respected by many. Is it possible to have officially adopted the Thieves laws? Stephen Handelman of Freedom House has written in an article that at one point Georgia considered doing just that. He says, “Some countries, such as Georgia, have contemplated in effect giving up the battle by legalizing many of the existing practices of the black market economy.”<sup>8</sup> If Georgia had done this, it would not be completely unprecedented. Hernado DeSoto has documented that the American frontier law called the Homestead Act was not the result of legislative genius in Washington as was evidently given out at the time and is still so studied in American history, but rather a codification of existing frontier customary property law enforced by squatters’ associations. Further, even the lower federal courts as well as state legislatures refused to follow the U.S. Supreme Court decision, *Green v. Biddle*, upholding the rights of formal legal title holders over squatters titles. According to DeSoto, Congressmen eventually realized that squatters had a lot of votes and passed the Homestead Act and other legislation protecting the rights of those operating under squatters’ law. Interestingly, DeSoto titles one section discussing these issues, “Lawlessness or a Clash of Legal Systems?” He also writes:

*“It took the politicians some time before they awakened to the fact that alongside the official law, extralegal social contracts for property had taken shape and that they constituted an essential part of the nation’s property rights system. To establish a comprehensive legal system that could be enforced throughout the nation, they would have to catch up with the way people were defining, using and distributing property rights”<sup>9</sup>*

The question in DeSoto’s title seems extremely pertinent to the former USSR and Georgia. Looking for an answer to that question is one of the purposes of this work. The capacious American common law system, the life of which is experience rather than logic according to Oliver Wendell Holmes, Jr., also gradually encompassed the squatters’ law which included constitutions for claim associations and attendant rights for members. Although some squatter sanctions rivaled the Thieves in violence, most gave at least the illusion of due process.

Harold Berman in his latest book, *Law and Revolution II*, in discussing the emergence of capitalism in 16<sup>th</sup> century Germany, notes how many practices codified and systematized then had existed for centuries. He says that only economic historians have told this story so far, “yet it is critical also for legal history, since it reveals that a primary source of contract law in the sixteenth century was the customary law of merchants and bankers” The same was true for property law of the time.<sup>10</sup> While at first glance it might seem a bit of a stretch to relate the Thieves law to emerging capitalist law in 16<sup>th</sup> century German commercial law, it is necessary to remember the discussions referred to above

<sup>8</sup> Handelman, Stephen. “Thieves in Power: The New Challenge of Corruption”, *Nations in Transit* 45, 49.

<sup>9</sup> DeSoto, Hernando. “The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else”, New York, Basic Books, (107-108, 131 et seq.).

<sup>10</sup> Berman, Harold J. “Law and Revolution II; The Impact of the Protestant Reformations on the Western Legal Tradition”, Cambridge, Harvard University Press (2003) p. 166.

which points out that the whole concept of “state” and “law” is different in post Soviet societies and in Georgia in yet other ways. But as the foregoing examples indicate, the strength of customary law has been notable in achieving our current status of Rule of Law; the strength of the peoples’ law, considerable. And again, the question is what have the Thieves contributed and what do they still contribute, good or bad, to the peoples’ law for everyday life, and now, post-Soviet to the rules of economic activity?

It could also be said that the society of Thieves has given the Country of Georgia the only uncorrupted and enforceable judicial system Georgia has ever known. This is in contrast to many state judicial systems in the CIS, including Georgia. In Georgia, King Vashtung VI writing an enormous new legal code in the 18<sup>th</sup> century nevertheless privately despaired of there ever being true justice in Georgia.

Georgi Glonti’s study brings newly released information and an independent perspective to the discussion of these issues that pertains not only to Georgia, but to the entire region, and indeed the world.

From a socio-political perspective how this quasi-governmental organization is to be fairly categorized is a difficult question. Is it primarily a quasi-legal society or a quasi-criminal society so extensive it developed its own legal system? Is it or was it primarily political? Most importantly from a social perspective, how has it operated and how does it operate now? These Thieves speak of honor. Have they treated their fellow citizens with honor? Has the Thieves Law supported the day to day economic activity which allows a society to survive? And have the Thieves of the Law enabled Georgian families to survive when no other form of income was available, making all Georgians to some degree a part of the Thieves Rule?

This last question is an important one for Georgian society and Georgian self-image. Many Georgians, when told that an American was looking for the positive side of the Thieves would say, “Well thank you for that.” I think that in their deepest hearts Georgians are ashamed of their cooperation and tolerance of the Thieves but have found no other way to survive. It is necessary to bring some of this into the light so Georgians can deal with the truth of these matters, their part in it, and the need to go forward. Also, since most Georgians admit to following Thief law more strictly than governmental law, it behooves reformers to know what sort of system the Georgians have been used to. Perhaps the Thieves are more Robin Hood than Mafia, perhaps not. We will try to contribute some knowledge to this evaluation.

The country of Georgia is still considered to be a lawless society by many. In 2004 it was estimated that up to 80% of its economy was still shadow, or extra-legal. It is often listed as the most corrupt country in a corrupt region. Elizabeth Pond, writing in the *Wall St. Journal* in 2000 commented that the Georgian system was not corrupt; corruption was the system.<sup>11</sup> Georgia has never had an opportunity to develop a tradition of the Rule of Law and as a nation still barely understands the concept. In the 18<sup>th</sup> century King Vachkung the VI of Georgia attempted to identify sources of law which could be used by Georgia judges (Persian law, canon law, maybe even Armenian law) and to enact 267 new

<sup>11</sup> Pond, Elizabeth. “The Wall Street Journal”, (2000).

laws to run the country, but even after he completed his great work, he wondered if there would ever be the kind of law which results in justice in Georgia. Law to Georgians has tended to mean oppression and they are in no hurry to obey it no matter what the source, whether it is tax law or keeping their seat belts fastened while taxiing to an airport terminal.

In 2003 authorities of Georgia on behalf of the president of Georgia, Eduard Shevardnadze repeatedly publicly declared that the problem of the Ramkiani, the “Thieves of the Law” threatened the political and economic stability of the country. Sessions of parliament and the Ministry of Internal Affairs were repeatedly held to develop efficient methods to conduct the struggle against professional criminality. This is particularly interesting because one of the small junta who helped remove the democratically elected president, Gamsecurdia, and put Shevardnadze in office, or whom Shevardnadze used to take power, was a well known Thief, Jaba Ioseliani, who later became a professor of theatre and author who was assassinated after the beginning of Shevardnadze’s campaign against the Thieves.

So how criminal are the Thieves? For a criminologist, an early question is whether there is a category of criminals known as *professional* criminals. Early criminology research did not distinguish between organized crime and the criminal professional; there was little analysis of individual motivation or status. Now, however, there is an emerging category of professional criminal, one who earns his living by crime, and this is where most think the Thieves belong. The Thieves in Law, including their judicial branch, the Thieves in a Frame, infiltrate every aspect of Georgian life, control large financial resources participate in organized crime, have extensive contacts abroad and generally run a tight ship at home. But, they are currently being superceded by more “modern” criminal organizations which do not have their reluctance to cooperate with the state in any form and are able to combine criminally obtained capital with cooperative state officials to take a “legitimate” business position. In Russia, Putin has indicated that the government will only look at current practices of organizations, not how they originally got their money. This will allow former criminal organizations to go legitimate, but although some individual Thieves have abandoned the organization to become legitimate businessmen the Thieves as a whole seem committed to non cooperation with state authorities and dependence on crime for income.

As mentioned above, there is an on-going debate among criminologists as to the connection or distinction between professionalism and organization in criminal activities. The criminal organization is stable and serves organizational ends, not personal agendas. A criminal organization is a professional business with clearly understood offices among its members, well-established connections with law enforcement and political authorities and so forth. Criminologists tend to consider organized crime not so much as a legal concept but as a complex social phenomenon whereas professional criminology is understood only as a criminal law concept which does not have sociopolitical characteristics. The authors of this work disagree with this analysis, since organized crime cannot be adequately understood without understanding professional criminals who are an integral part of criminal organizations. This is also important now that criminal organizations are moving into legitimate business.

The following excerpt from Georgi Glonti's book <sup>12</sup>, *Vory V Zakoni* is an illustrative description of a leading Georgian Thief who operated before and during the time of transition:

### **The Best Known Georgian Thieve**

The Georgian Thieves leadership has had many personalities who exerted a big influence on the development of criminal society in the USSR and the countries of the CIS. Among those to be especially noted is a Legend **Jaba Ioseliani**, the actor-academic-politician.

*Jaba Ioseliani* was born in 1926. He was arrested for the first time at sixteen for larceny and soon achieved the supreme achievement in the criminal world, becoming "a thief of the law ". It was an unprecedented career at that time because of his youth. After his second arrest he disappeared from view and eventually was located in Leningrad. There, he lived under an assumed name and, without a secondary education, was accepted by the psychological faculty of the university. Unfortunately, he studied only four years. At twenty nine he was again arrested for participation in armed robbery and was sentenced to 25 years. By intervention of national leaders of the USSR theatre community, Sergo Zakariadze and Medeas Dzhaparidze, who were Georgians, his prison term was reduced and, as a consequence, Ioseliani was transferred from Russia to a Georgian prison colony where he was elected a thieves "curator" (overseer) of a zone.

Ioseliani was freed at the age of forty. He finished evening school and was admitted to the Theatrical Institute of Tbilisi due to the support of the then Minister of Finance of Georgia, P. Ananiashvili. Subsequently he successfully defended his candidate and doctor's dissertations (The theme of the latter: "Comedy masks of the Georgian theatre"), taught theater science in the Tbilisi Theatrical Institute and at the State University, and wrote plays which were successfully presented at a Theatre given financial support by Mardzhanishvili.

There are data that for all these years, the underworld maintained the rank of "the thief of the law" for Ioseliani. Young thieves learned endurance and the creative relation to business, by the example of the operation conducted in the 50's under Ioseliani's management in Moscow. He and his comrades devised the idea of putting their own cash registers in some consumer stores, and regularly punched buyer's cheques for several hours and then left with the proceeds leaving the shop to fend for itself. There is evidence that Ioseliani took part in the all-Union Thieves' Congress of 1980 at which questions of changes in the Thieves' Code and participation in commercial activity were decided which resulted in big changes in the further development of the criminal community of the USSR and the CIS.

At the end of the 1980's to the beginnings of the 90's the political stage rightfully claimed this person of destiny and abilities. Jaba Ioseliani would become one of the central state figures of independent Georgia. Ioseliani was the first of the all-Union Thieves who, having been in prison about 25 years was elected a deputy of the Supreme

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<sup>12</sup> Glonti, Georgi. "Vory V Zakoni" Tbilisi, Georgia (2004).

Soviet of Georgia (Parliament) and the councilor of president E. Shevardnadze from 1992 for 1995.

Ioseliani debuted in policy in 1989 when during the election of the People's Deputies of the USSR he held himself out as the authorized representative of the well-known public figure. Akakija Bakradze. We must recognize a successful debut: A. Bakradze became a People's Deputy, probably, because Ioseliani played a role in his success. In the Soviet society of the time, especially in Georgia, the implication that a person was involved in the criminal underworld always was appreciated above all as a mark of courage and the ability to counter the authorities.

The tragic events of April 9, 1989 in Tbilisi that so painfully affected the destiny of Georgia and the USSR forced Ioseliani to make the decision that it was necessary to create an armed force for the protection of the interests of the nation. The need for such a force soon presented itself. In the summer of 1989 the relations between Georgians and the Azerbaijanians living in the Marneulsk area of Georgia appeared headed for bloodshed. The memory of the Tbilisi events was still fresh, and groups of armed Georgian youth rushed to Marneulsk to protect their compatriots. Among them there were both idealists and people with doubtful pasts. In August about 30 Georgian men who had participated in the Marneulsk events gathered in the Tbilisi stadium "Dynamo" and named themselves the "Mkhedrioni" (Cossack) squad. The idea of voting for candidates for commander did not arise. The post was offered to the most authoritative representative, Jaba Ioseliani who accepted without hesitation.

Ioseliani began at once to push forward his political ends using the Mkhedroni. Their leitmotif was embodied in the following declaration: "We do not obey any political forces or state structures, and we serve the interests of the nation. We shall participate in interethnic conflicts to protect the peace of the population ". Actually, during the first stages of civil war in Abkhazia and South Ossetia, the members of the Mkhedrioni did not noticeably participate in fighting or marauding. However the rise in Georgia of an uncontrollable armed force led by such a leader as Ioseliani frightened everyone, especially Z. Gamsahurdia who confidently went on to victory in the general election for president. Ioseliani never hid his negative relations with Gamsahurdia, especially during the political process of 1987. The program of action which Ioseliani supporters aimed at Gamsahurdia is reflected in a statement of the time: "To remove this vermin before he has ruined all the people".

The overall objective of Ioseliani during this period was to give the Mekhedrioni official status as a militia or military force. In September, 1990 some weeks prior to the defeat of the communists at elections, Ioseliani succeeded in registering the Mekhedrioni as a legal person or organization. He was helped in this task by an old friend, the first vice-president Sovmina Guram Mgeladze, presently a substantial businessman controlling a solid share of the gaming industry in Moscow. The Mekhedrioni achieved the status of a recognized legal entity for the purpose of acting as rescuers in cases of natural disasters. That designation allowed Ioseliani to create legal bases and divisions in different areas of Georgia.

The Mkhedrioni was also registered as public organization without the right of possession of weapons; however, they kept actively armed and by this time they already had armored vehicles. These activities were watched closely by Gamsakurdia who, after his victory at the elections, immediately cancelled the registration of the Mkhedrioni and forbade its functioning. However he decided that the right opportunity to dissolve this organization had not yet come. The decree of President Gorbachev of the USSR "About dissolution of the illegal armed formations ", made public in the winter of 1990 helped since the possibility of asking for the help of the Soviet Army thereby appeared. On February, 18, 1991 special troops called Zakvo conducted operations on seizing illegal weapons and technical equipment in the territory of a former Komsomol small town, a suburb of Tbilisi where the central base of the Mkhedrioni had been established. The result of this exercise was a little injury to men on both sides, and the arrest of the head of the Mkhedrioni and his closest lieutenants. Ioseliani was charged with "Illegal storage of Makarov pistols" and thrown into prison.

During this period in prison together with Jaba Ioseliani there were a leader of South Ossetia Torez Kulumbegov, chairman of the National Democratic party of Georgia George Chanturija, and the cameraman George Haindrava. All of them were recognized by International Amnesty as prisoners of conscience. While in prison Ioseliani was put forward as a candidate for the presidential elections. Having found out about it, Gamsakurdia hastily convened a session of parliament and changed the law.

Jaba Ioseliani well knew how to react against arbitrary authorities when in prison. He at once declared a dry hunger-strike and maintained it for forty two days. Only after much persuasion he accepted a plea from hands of the Orthodox Patriarch of Georgia, Ilia II to cease his strike. As with many a folk hero, the time in prison, became for Ioseliani the peak of his popularity.

In December, 1991 Jaba Ioseliani was freed. Six days earlier demonstrations against president Gamsahurdia had begun in Tbilisi. The revolt was headed by the head of the National Guard, Kitovani--the main shock force for the putsch - but they had such serious early losses that they ceased storming the presidential palace. So, the support of Ioseliani was solicited and he mobilized the Mkhedrioni since the majority of members had not earlier entered the fighting because their leader was in prison.

Two hours after being freed Ioseliani acting on this request, notified his forces to mobilize with the words: "All forces: on overthrow status". Within one day Kitovani's national guardsmen received the required reinforcement. (To tell the truth, the criminal world, while opposing this political dictatorship, did not forget itself: in a shipment of two hundred Kalashnikov rifles, only half remained the next day.).

Word had it that Ioseliani also decided Z. Gamsahurdia's destiny. Answering the offer of the president of Armenia, Levon Tep-Petrosyan to grant asylum to his Georgian colleague, Ioseliani reportedly agreed thus saving Gamsahurdia's life. The Mkhedrioni recorded victory over Gamsakurdia by a phrase which was probably supreme, in the annals of political frankness: "In Georgia there came into authority a known Thief over an unknown sculptor". The explicit understanding of the measure of Kitovani's popularity

and political possibilities made Ioseliani immediately the main supporter of the return to Georgia of Eduard Shevardnadze. In a conversation with the former Minister for Foreign Affairs of the USSR, held on January, 6, he formulated his position thusly: "Why send in Hodia on the soccer field if we have Pele?" To the supporters of Gamsakuria on whom he this very day ordered his troops to open fire, Ioseliani addressed another aphorism: "Building Democracy is more difficult than eating beans."

In his subsequent capacity as vice-president of the Council on Safety and Defense and as a deputy in Parliament Ioseliani began to lobby for his power base, the fine figures of the underworld. Due to the insistence of Ioseliani, in 1993 an amnesty for prisoners was declared. As a result about five thousand criminals were released. Ioseliani also precisely defined the spheres of economic influence between him and Kitovani: on one side a tribute would be collected for the Mkhedrioni, on another the national guards grazed. "While I am alive, dictatorship will not happen " - so Jaba Ioseliani stated his views which have established his place and position on the Georgian state. Probably he was right; dictatorship and criminal power cannot be jointly held. But as it usually happens in politics, yesterday's thieves and robbers bring with themselves those customs and rules by which they lived before. So the question of principle was raised for Georgia: shall we live under Thieves' Law, or will the fashion for criminal politicians pass?

In 1995 Ioseliani, with a group of colleagues, was convicted of the charge of "change to the native land" or treason and of the organization of an assassination attempt on President Eduard Shevardnadze as well as the organization of the assassination of the leader of the National Democratic party, George Chanturia, the head of the presidential Fund, Soliko Habejshvili and the chief of a traffic police, George Gulua. A number of other well known criminals were incriminated also. The Mkhedrioni were outlawed. In 1998. Ioseliani was sentenced to 11 years of deprivation of liberty, but in 2001 he was released. Ioseliani once again became interested and involved in politics. Shortly before his demise he stated his intent to participate in parliamentary elections.

In 2003 Jaba Ioseliani died in the central clinic of the Tbilisi University Medical Institute. He died after not regaining consciousness after an assault instigated, some believe, by political opponents. Leading Russian and European doctors came to treat him, but they appeared to be powerless. He was buried in the pantheon of Didubisk, the cemetery for state and public figures of Georgia.

## **Conclusion**

Glonti's work shows that professional criminality in territories of the former USSR and in Georgia in particular has deep roots and is closely connected to sociopolitical conditions at various historical stages of development of the society.

The thieves' community has arisen and was developed in the bowels of the repressive Stalinist system of the GULAG and was essentially transformed during the period of the Khrushchev-Breshnev era. The original organization characterized, on the one hand, irreconcilable confrontation with a ruling government, and, on the other, a

symbiosis with camp administration in the business of operation of the camps and supervision of inmates in penal servitude for the fulfillment of socialist five year plans.

The modern community of Thieves of the Law has regenerated itself as mafiosi-like gangsters of organized crime although it has kept the traditions of some formal rituals having more symbolical than practical value. At the same time modern Thieves as leaders of criminal societies are a terrible force which did, during the reorganization of the former USSR and the wild capitalism of the 80's-90's-and beyond, succeed in getting financial power, political influence and transnational criminal connections which make them even more dangerous to the existing nation state or any social system.

This is an international problem, the solution to which many believe lies in essentially new legal approaches including more perfect and coordinated actions of policemen and financial systems of the countries of the CIS and of other nations.

The question also persists as to whether the Thieves have any positive aspect. In "Global Organized Crime in Latvia" the authors make the following comments:

"From the global view, organized crime as a transnational anti-social reality is a phenomenon with a powerful intellectual and material potential. However, on the other hand, this phenomenon also inspires a few positive consequences:

- It is able to initiate consolidation of countries with different orientations and legal system;
- It determines the development of new legal systems, organizational forms, technologies and methods intended to control the phenomenon itself, and from a dialectical aspect, it can encourage the progress society."

These authors also agree with Viano's statement in 1995 that economic revitalization in the former Soviet areas requires a "genuine social partnership that embraces all elements of the people in a common economic task which in turn requires overall fairness, equity in the distribution of property, income and social services."<sup>13</sup> And, they believe this kind of social and economic justice would also counteract organized crime. Along with many others they see the necessity of developing national structures to deal with organized crime, but some commentators on the current international efforts at nation building are beginning to wonder if the days of the nation state are numbered. If so, social and economic justice in those states that remain and survive becomes increasingly important as do efforts to establish social and economic justice on a world wide basis.

The Thieves may have had, and do have, more of a positive influence in Georgia than elsewhere. Today, the Thieves organization in Georgia has yielded to Georgian family values and the clan organization which is the basis for much of social organization. Thieves in Georgia do marry and their Thieves titles do tend to become hereditary, with sons following fathers as Thieves. Further, although there is a new anti

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<sup>13</sup> Viano, Emilio C. (ed.) "Global Organized Crime and International Security", Burlington, VT, Ashgate (1999).

crime legislation from the U.S. and Italy and a stronger police force and some thought that the Thieves are weaker in Georgia, the perceived failure of the new tax policies of the Saakashvili government for small businesses has led to an increase in the shadow economy that will benefit the Thieves. As elsewhere, Thieves are entering the legitimate business world, and have perhaps more incentive to do so since their existence is perhaps historically more political than elsewhere. For these reasons, understanding the Georgians Thieves better is one way to help understand the Georgian approach to the Rule of Law.

## ***Appendix:***

### **The Thieves Code**

There were seven basic laws in the Thieves Code:

1. A thief must be faithful to and support the basic thieves' idea.
2. A thief is forbidden to have any contact with law-enforcement agencies.
3. A thief must be fair in all relations with all others, both to "thieves in the law " and to authorities.
4. A thief has a duty to support and define the thieves' environment, especially for young members.
5. A thief is forbidden the following:
  - a) A thief must refuse to cooperate with any power structures;
  - b) A thief must refuse to give evidence in criminal investigations or to courts of justice;
  - c) A thief must refuse to confess to a perfect crime;
  - d) A thief must remain silent concerning accomplices and their presence (for example, dispositions of "raspberry");
  - e) A thief must not have property or savings;
  - f) A thief may not have a family;
  - g) A thief must periodically be imprisoned;
  - h) A thief may not carry weapons;
  - i) A thief may not be employed under any condition;
  - j) A thief must maintain order in his zone of influence by resolving conflicts and refusing to take sides in quarrels and fights;
  - k) To heat (to adjust procurement) ШИЗО1 and ПКТ2;
  - l) A thief must "fill up the thieves' blessing," i.e. collect a tribute from all convicted, concluded and other persons;
  - m) A thief must honour his parents (especially his mother);
  - n) A thief must not join any parties or associations;
  - o) A thief must understand the thieves basic concepts.
  - p) A thief must teach correct concepts of life to youths, and explain them;
  - q) A thief must not have a registration (registration);
  - r) A thief must be honest in gambling games among thieves;
  - s) A thief must have up to six assistants.



# The Universities of Europe in the New Era

Dimitris Michalopoulos\*

## Abstract

*The 1968 student crisis in France was the symptom of a rampant moral and intellectual disease; for the European universities were no longer adapted to meet the necessities of the societies that had invented them. In point of fact, the etymon of the term “university” is the mediaeval Latin word *universitas*, i.e. the erroneous translation of the Greek term *encyclopaedia*; and *encyclopaedia* means a general, advanced education capable of giving rise to the *homo universalis*. These *homines universales* were regarded as the natural leaders of traditional, hierarchically organized societies as were those before the French Enlightenment. Therefore, the very issue which the 1968 crisis raised was the one tackled as early as the 19<sup>th</sup> century mainly in France and Russia: Does a modern European society need universities or highly specialized schools? The time now seems ripe to opt for the second solution.*

**Keywords:** *Universities – 1968 uprising – hierarchical societies – Greek Church -Sublime Porte- Walachia and Moldavia*

## Introduction

Above the main entrance of a famous university, in Spain, there is an eloquent Greek inscription which reads as follows: “The Kings to the Encyclopaedia. The Encyclopaedia to the Kings”. The sovereigns in question are Ferdinand and Isabel, i.e. the famous “Catholic Kings”. So, the very term “encyclopaedia” might be considered to be an enigma; but it is not, because this word was the one initially used for to-day’s expression “university”.

As a matter of fact, the term “university”, which derives from the Latin *universitas*, is no more than an unsuccessful translation of the Greek term “encyclopaedia”; for “encyclopaedia” has – but from a merely intellectual point of view - the same meaning as *universitas*. The latter expresses generally the idea of a “whole”, whereas the former expresses a “whole” but a specified one; in other words a complete education. The distortion of the term *encyclopaedia*’s meaning during the Age of Enlightenment (and mainly through the French language) must not thereby allow its essential significance to fall into oblivion.

In brief, *encyclopaedia/university* means the place where a human being is able to acquire a complete education in order to have an adamant character and succeed in becoming a *homo universalis*. Nonetheless, the question that emerges after this clarification is: Why so?

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The answer is simple: so as to equip one to become a top civil servant or a well-paid lawyer. This is at least my summing-up of the study of the history of the (so – to – speak) ‘early universities’, both ancient and mediaeval.

It was the Roman emperor Marcus Aurelius (161–180 AD) who established the first university of Europe in Athens. His idea was clear-cut: philosophy could provide the means of governing human beings. So, he created a university consisting of two “Schools”, i.e. a Philosophic and a Sophistic one. In the former the four main streams of ancient thinking were taught; namely, the Platonism, the Aristotelianism, the Stoicism and the Epicurianism. Students of both Schools, however, were provided with elements of History, Mathematics and Medicine. The professors received a regular (and high) salary from the emperor’s treasury<sup>1</sup>; nonetheless, the students had to pay fees for their tuition; and after having covered the curriculum, they could apply for high-ranking posts within the government apparatus.

As a result, Athens became the intellectual and, in some respects, the spiritual centre of the empire; while Rome was and, of course, remained the administrative one. In other words, it was quite natural for the emperor Decius to make as early as the mid-third century the famous statement: “I would prefer to have in Rome another emperor rather than the Pope”<sup>2</sup>; for the Christian Church was so rich and influential in the Eternal City as to covet already the imperial power. Nonetheless, the situation was quite different in Athens. Because of the university’s existence, the Christian religion could never achieve real progress in Attica and, generally speaking, the whole of Greece. Greek philosophers and sophists, in fact, persisted in professing paganism as late as the 6<sup>th</sup> century; thus the emperor Justinian I the Great (527–565) was compelled to impose Christianity on Athens through an edict: he simply stopped the pay of the university professors; therefore the university was closed down, and the ‘academics’ emigrated. The significance of this story is not at all an ‘occult’ one: the university is the stronghold of the State ideology<sup>3</sup>; and if the State succumbs, so does the university. Christians, in fact, were not allowed to teach in the university of the pagan Roman empire; as a corollary, Athens university would be abolished once the imperial authority converted to Christianity. Another university must educate the higher civil servants of the renovated empire; and as a matter of fact, one had already been established during the first half of the 5<sup>th</sup> century.

## II

The role of the universities as the means of elaboration and the propagation of an official ideology were emphasized in the Middle-Ages, the era of their proliferation throughout Central and Western Europe. In a continent where the nation was by no means recognized as an essential ‘form’ of the State and at a time when the Roman Pope was regarded as the ‘supreme’ sovereign, it sounds logical enough that the universities under the aegis of the spiritual authority should elaborate church doctrine and produce ecclesiastics<sup>4</sup>. As a matter of fact, the universities were, initially, nothing more than clerical brotherhoods<sup>5</sup>. Nonetheless, it was then that the real problem of academic life emerged: Are research and reasoning compatible with

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<sup>1</sup> One, engaged in the Sophistic School, from the City of Athens.

<sup>2</sup> Ernest Renan, *Marc Aurèle et la fin du monde antique* (Paris: Calmann-Lévy [1912<sup>16</sup>]), p. 520.

<sup>3</sup> See among others: V. H. H. Green., *The Universities* (Penguin Books, 1969), p.16.

<sup>4</sup> “The medieval university existed to train churchmen, canonists, monks and friars, schoolmen and schoolmasters” (*ibidem*).

<sup>5</sup> *Ibidem*.

the universities' function as means of elaboration and propagation of a given ideology? If they are, how can authority 'oust' subversive ideas or findings? And if they are not, how can society rid itself of this strange contradiction?

In point of fact, this is the key not merely to the academic life but to intellectual one as a whole; and, strangely enough, this tricky issue was handled better in the Middle- Ages than it has been in our time. The new ideas and concepts were then sorted out and, if proved powerful enough, incorporated in the ideological mainstream. The harmonization of Aristotelian thought with the Christian notion of the world achieved by Saint Thomas Aquinas (1225-1274) was a masterly – and risky – intellectual pirouette<sup>6</sup>. Nonetheless, several centuries later in several parts of Europe an obvious gap had opened up between State ideology and academic thought; the universities lost therefore their efficiency and the very problem they constitute fully emerged. The first signs of this gap were seen in Germany and Austria after the fall of Napoleon and the collapse of the French Empire. The student bodies wanted a national Germanic kingdom, i.e. a united Germany, but this aim was in stark contrast to the interests of the dynasties ruling the then large number of German states. The patent antithesis brought about assassinations, oppressive measures, establishment of police régimes and so on and so forth. Nonetheless the problem was now perfectly clear. If the universities' "task is to supply the country with civil servants, administrators and technologists"<sup>7</sup>, what calibre of "civil servants" and "administrators" would the German universities supply to the dynastic states of which Germany was then made up?

The root of the 1968 uprising in Paris is to be found in this very problem: Where are the limits between so-called 'academic liberty' and State needs? For the universities must be "more or less closely correlated to national needs"<sup>8</sup>. Nonetheless, given that this criterion is somewhat vague, the problem may be couched in another way: Where are the limits of knowledge to be found? And moreover who is empowered to fix such limits?

Strangely enough, an answer to this crucial dilemma is provided by Ottoman History. As a matter of fact, in the late 16<sup>th</sup> and the early 17<sup>th</sup> centuries, the university of Padua in Italy was very popular among the influential strata of Greek society; and given that this city was then included in the territory of the "Most Serene Republic of Venice", Orthodox Christians from the Venetian dominions either in the Archipelago or the Ionian Sea wished to study there – and eventually they did. One among them was Cyril Lucar, from Candia, the future patriarch of Constantinople; another was a certain Theophilus Corydalleus, an obscure clergyman but a notorious philosopher. Nonetheless, the ideological mainstream in Padua at that time was Neo-Aristotelianism, as professed by Cesare Cremonini, a materialist theoretician. So, when the "Patriarchal Academy", i.e. a quasi-university, was established in the Ottoman capital, Corydalleus was put at its head; as a result, thanks to the approbation of the Greek-Orthodox Church, materialism began to spread throughout the Balkan peninsula<sup>9</sup>.

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<sup>6</sup> Muammer İskenderoğlu, *Fakhr al-Dīn al-Rāzī and Thomas Aquinas on the question of the eternity of the world* (Leiden-Boston-Köln: Brill, 2002), p. 125 ff. *passim*.

<sup>7</sup> V. H. H. Green., *The Universities*, *op. cit.*, p. 16.

<sup>8</sup> *Ibidem*.

<sup>9</sup> See mainly Cléobule Tsourkas, *Les débuts de l'enseignement philosophique et de la libre pensée dans les Balkans. La vie et l'oeuvre de Théophile Corydalée (1570 – 1646)*, Salonika: Institute for Balkan Studies, 1967, pp.17, 23, 95.

To study how and why materialism could be taught by a Christian Church would be beyond the scope of this paper. The point is, however, that materialism was transplanted from the capital to the Danubian Principalities, Walachia and Moldavia, thanks to the Phanariots on whom – from the second decade of the 18<sup>th</sup> century – the administration of these lands was bestowed by the Sublime Porte. In other words, because of the curricula of the Academies that, on the model of the Patriarchal one, were established in the Danubian Principalities, materialism became the official ideology of an important part of the South – East of Europe<sup>10</sup>. Of course this was all but contrary to any concept of ‘national interest’ or ‘national will’. And as could easily be foreseen, this had a fatal impact on the evolution of the Romanian people.

The case of the Patriarchal Academy illustrates the very problem of the universities in the Modern Era, namely: What is the *raison d’être* for young people to receive higher education? In order to become top clerks in an ecclesiastical or state apparatus? And what if they profess an ideology contrary to that of the apparatus they are supposed to serve? In Greece, for instance, during the 1920’s and the 1930’s, the university of Athens was the main cradle of Marxism, whereas the Republic and (from 1935 on) the Kingdom were based on idealistic conceptions of social and national life<sup>11</sup>. This is why the French and the Russian experience can provide solutions to this problem valid even to-day.

In France, under the Third and the Fifth Republics it was decided that specialized civil servants would be educated –and trained- in the so-called *Grandes Écoles*: *numerus clausus* and therefore competition and an austere way of life guaranteed that people with a degree from those Schools would be highly qualified civil servants – and, needless to say, faithful to the government they were going to serve. The universities, on the other hand, were practically open to everybody; nonetheless it was doubtful whether young people with a ‘typical’ university degree would be able to find a job in the civil service; moreover, if they were able to find one, it remained doubtful whether they could hold it down till the end of their active life. The 1968 riots in Paris brought out this fact, and the very strict examination system was abolished; therefore the gates of unemployment swung open for the youth of the country. In the imperial Russia moreover years of discussions took place on what system of higher education should be established. The monarchists proposed ‘Institutes’, approximately close up to the French *Grandes Écoles* but with an even stricter system of education and way of life. The liberals, on the other hand, wished universities run more or less along the lines of the Western ones. The latter prevailed; and as could easily be foreseen, a large number of students turned into enemies of the monarchy until finally they proved able to undermine it.

## Conclusion

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<sup>10</sup> *Ibidem*, pp. 24, 195.

<sup>11</sup> Albeit that the ministry of Public Instruction had also the charge of all religious matters. As a fact, even during the ‘dark days’ of the Greek Revolution (1821-1829) and the subsequent financial difficulties which were the direct consequence, the cause of public instruction was never forsaken nor yet even partially neglected in Greece. From the 1830’s up to the early 1980’s the Greek system of education was the same as the German in organization; afterwards it was more or less ‘Americanized’. It is noteworthy moreover that most of the professors of the university of Athens had taken their degrees or had completed their studies abroad - that is to say in either Great Britain, Germany, France, or the U.S.A.

May the following serve as a conclusion to this brief historical analysis: The university is a mediaeval institution; and its roots can be traced back to Antiquity, during which the Middle-Ages were being forged. Therefore is doubtful whether the university, as an educational institution of primary importance, is able to serve the needs of the New Era. Why? First of all, because its function presupposes not only a vast imperial, oecumenical statehood but also a full conformity between the burgeoning student and scholar growing up on campus and government needs. If there is a gap between the very ideology on which statehood is based – and the ideas professed in the university – the result is social conflict and eventually the partial or total collapse of a country: De Gaulle's fall in 1969 and the 1975 American army's defeat in Vietnam might well be considered to be two typical cases. In other words, the university exists for the nation or, more conclusively, the Faith; and by no means do the country and religion exist for the university.

In the views of many, we are all fuelling the nations' eclipse; nonetheless the global state that is supposed to be created will not be (if such an experiment proves successful) a unified one. Unification presupposes a common language, and a common faith, and eventually a common way of life. To-day it is doubtful whether the majority of universities meet the virtual needs of society; in other words, they practically constitute a world apart. Thanks to the grants given them by governments, in most cases they live in 'brilliant isolation', the result of which is arrogance, absurdity, and sometimes madness...And last but not least, they feed unemployment – the Damoclean sword of our Western world. With the exception of a few universities in Russia and America, it is very difficult to assert that research is going on as it was thirty years ago. In short, the universities, as far as the Western World is concerned, lead society no more. On the contrary, they prove to be demoralizing, debilitating factors; therefore it is time once more to recall that the function of universities is to serve the society.

***What should be done? I think the following:***

- a) First of all, the abolition of the notorious 'academic asylum'. In point of fact, such was fully established in the 19<sup>th</sup> century, mainly in the German universities, in order to provide protection for students and teachers struggling for a national identity. To-day, the universities are, in the main majority, openly hostile not merely to nationalism but to nationhood as a whole. Therefore, the prohibition placed on the police from entering campuses, is in our time, nothing more than a pretext to make the trafficking in drugs easier and put an official stamp on the implementation of absurdities.
- b) Instead of so-called 'academic freedom', a stricter connection should be established between the higher educational system and the national government. And from this point of view the –usual- confusion between government and administration must be avoided. European or, generally speaking, supra-national directives must be channeled through national governments and by no means directly to universities.
- c) The proliferation of institutes providing a highly specialized education is recommended. In fact, to-day the mediaeval, hierarchical society exists only in the United Kingdom; that is why the universities of Oxford and Cambridge prosper even now. Throughout the rest of Europe any kind of hierarchical society has disappeared; as a result, keeping higher education in the same tracks as six centuries ago simply does not make sense. As far as we can see, society in our time needs highly specialized people with a good humanistic education as well. We need people who not only can do things, i.e. act, but who are able to have an overview of the society they live in.

These are the first measures to be taken in order to achieve the synchronization of higher education with social life. Nonetheless, this is a debate about to open now; and a lot of ideas must be mulled and discussed before proceeding to a virtual reformation.