



# **THE LEGAL SITUATION AROUND THE REPUBLIC ARTSAKH (BERG-KARABACH)**

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## **Content**

I. Right to self-determination and independence of the Artsakh Republic .....	1
II. State identity of the Republic of Artsakh.....	4
III. The current legal ramifications of the UN SC resolutions .....	5

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## I. Right to self-determination and independence of the Artsakh Republic

Since the beginning of the War of Independence of Artsakh the territorial integrity of the Republic of Azerbaijan including “Nagorno-Karabakh” has been continuously highlighted and circulated in the media. What is neglected, however, is that during the summit meeting in Lisbon, Portugal on December 2, 1996, the principle of the right of self-determination of peoples was a driving force negotiations for the future of the Republic of Artsakh.

1. The conflict over Artsakh has its roots in the decisions of Joseph Stalin, who was Acting Commissioner for the Soviet Union in the early 1920s. After the Caucasian office of the Central Committee of the Communist Party of Russia passed a binding majority decision on July 4, 1921 to transfer Artsakh to the Armenian SSR, the Caucasian Office of the Central Committee of the Communist Party revoked the decision the following day on Stalin's orders from Moscow. The Central Committee Office did this with disregard to any of the procedural rules- and illegally repudiated its own official majority decision without giving any legitimate reasons. The result was that Artsakh (NKAO), which was largely inhabited by Armenians, became an autonomous oblast (area) in the Azerbaijani SSR. In 1926, the Armenians made up 89.1 percent of the population.
2. The USSR consisted of 15 Soviet Socialist Republics (SSRs) (Article 71 USSR Constitution), which enjoyed the highest self-government. Secondary autonomy was enjoyed by the 20 Autonomous Soviet Socialist Republics (ASSR), which were part of the SSR (Article 82 of the USSR Constitution). At the third level in the federal system of the USSR stood the autonomous oblasts (Article 86 of the USSR Constitution). With the collapse of the USSR, the Supreme Council enacted a law on the withdrawal order from the Union on April 3 of 1990 based on Article 72 of the USSR, "on the procedure for solving problems in connection with the withdrawal of the Union Republic from the USSR." - Article 3 of the USSR Withdrawal Act reads:

*“In a union republic with autonomous republics, autonomous areas and autonomous counties, a separate referendum is held. The peoples of the autonomous republics and the autonomous formations reserve the right to decide independently about their legal status and whether they should remain in the USSR or in the Union republic”*

3. The second sentence is fundamental here: Until the collapse of the USSR, the autonomous region of Artsakh tried several times to initiate the assignment of the area to the Armenian SSR. In 1988, demonstrations calling for reunification took place in the capital of the NKAO and the capital of the Armenian SSR. Meanwhile, counter-demonstrations also took place in the Azerbaijani SSR, which ultimately led to an armed conflict with the aim of ethnically cleansing the Armenian population of the Republic of Artsakh. In an interview in 2002, then President Heydar Aliyev (father of current president Ilham Aliyev) confessed:

**"I tried to increase the number of the Azeris and to reduce the number of Armenians in Nagorno-Karabakh."**<sup>1</sup>

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<sup>1</sup> <https://horizonweekly.ca/en/aliyev-admits-azerbaijan-worked-to-boost-number-of-azeris-in-artsakh>.

4. At this point it is important to refer to the international law terminology “*remedial secession*.” The principle was applied in the case of East Timor and Kosovo to prevent mass violations of human rights. The principle indicates that peoples have the right to exist free from aggression, fundamental human rights violations, and genocide. But if an ethnic group is regularly suppressed in an area of the state as a whole, and as a result its existence is called into question, this ethnic group has the right to defend itself against it. In view of the pogroms of the Armenians in the Azerbaijani SSR in Sumgait (February to March 1988), Kirovabad (November 1988) and Baku (January 1990) and later also the policy of cleansing the population of Artsakh, Artsakh had the right to remedial secession.
5. The Armenian SSR proclaimed its independence on August 23, 1990, which was confirmed by the independence referendum on September 21, 1991. This was followed by the declaration of independence of the Azerbaijani SSR on August 30, 1991, which was carried out with the referendum of December 29, 1991. On September 2, 1991 Artsakh activated Art. 3 of the USSR Withdrawal Act, when the autonomous regions of Nagorno-Karabakh and the Shahumyan District proclaimed themselves (provisionally) the Republic of Nagorno-Karabakh. Subsequently, on December 10, 1991, a referendum was held on the status of the Nagorno-Karabakh Republic as an independent state, whereby the following question was decided:

*"Do you agree that the proclaimed Republic of Nagorno-Karabakh is an independent state which itself decides on the form of cooperation with other states and communities of states?"*

6. 82.2 percent of the residents (132,328) took part and 99.89% (108,615) voted yes, so that the two-thirds majority who, according to Art. 6 para. 1 of the USSR Withdrawal Act was prescribed, was fulfilled. On January 6, 1992, the Nagorno-Karabakh Republic confirmed its status as an independent state in the form of its Declaration of Independence. Any legal acts on the part of the Azerbaijani SSR, which were intended to undermine the Nagorno-Karabakh self-determination process, which was envisaged by Union law, were ineffective because the Azerbaijani SSR, as a union republic, was subordinate to the law of the USSR. In the event of a conflict, Union law applies (Art. 74 sentence 2 Union Constitution). Azerbaijan was only able to legally exit in the way prescribed by the Withdrawal Act. Art. 1 of the law expressly ruled out any other, competing path:

"The procedure for resolving issues related to leaving the USSR in accordance with Article 72 of the USSR Constitution is determined by this law."

Furthermore, the referendum in the Azerbaijani SSR took place at a time when the referendum in Nagorno-Karabakh had already been concluded (19 days after the referendum in Nagorno-Karabakh).

7. Almost three decades after its independence, Nagorno-Karabakh adopted the traditional Armenian name Artsakh as part of the constitutional reforms of 2017 and is now called the Republic of Artsakh. As early as the 8th century BC, Artsakh belonged to the Armenian Kingdom of Urartu.  
As a democratic state, Artsakh held parliamentary elections in 2020 and elected a new president. In the vote on March 31, no candidate received more than 50 %, so a second round was necessary. On April 15, Arayik Harutyunyan was finally elected president. Due to the recent outbreak of war with Azerbaijan, Harutyunyan was unable to implement the planned

political reforms, which were based on the promotion of democracy, the rule of law and security and the expansion of infrastructure.

8. The events that have been unfolding since September 27 indicate that the Republic of Azerbaijan is pursuing an aggressive policy against Armenians. This was also confirmed by the ECHR judgment of May 26, 2020 (No. 17247/13) in the case of Ramil Safarov.

On February 18, 2004, Safarov beheaded the Armenian officer Gurgen Margaryan in his sleep with an ax during a NATO seminar.

The ECHR stated:

*'Paragraph 216. The Court also notes that the statements made by a number of Azerbaijani officials who glorify R.S., his actions and his pardons are particularly worrying (see paragraph 25 above). It also deplors the fact that a large majority of these statements expressed particular support for the fact that the crimes of R.S. directed against Armenian soldiers and congratulated him on his actions, calling him a patriot, a role model and a hero.'*

The prevailing hatred of the Republic of Armenia has often been reported.<sup>2</sup>

9. The incessant bombing of the civilian population in the Republic of Artsakh clearly shows that it will be impossible for Armenians and Azerbaijanis to live together in a common state ruled by Azeris without serious human rights violations.

If the right of self-determination of the people of the Artsakh Republic is not observed, the preventive provisions of the Genocide Convention of December 9, 1948 will also be violated.

10. Today the right of peoples to self-determination is generally recognized as a customary norm (*jus cogens*) of international law. Its legal character is also guaranteed by Article 1, Paragraph 2, Article 55 of the UN Charter, Part I, Article 1, Paragraph 1 of the International Covenant on Civil and Political Rights (IPBPR) and Part I, Article 1 of the International Covenant on Economic, social and cultural rights (IPWSKR), both dated December 19, 1966, recognized under international treaty law. So it is universal. A legal codification of self-determination goes something like this:

#### Article 1 IPBPR

**(1) All peoples have the right to self-determination. By virtue of this right, they decide freely about their political status and freely shape their economic, social and cultural development.**

(2) All peoples may freely dispose of their natural riches and resources for their own ends, without prejudice to all obligations arising from international economic cooperation on the basis of mutual welfare and from international law. In no case should a people be deprived of their own means of existence.

(3) The Contracting States, including the States responsible for the administration of areas without self-government and trust areas, must promote the realization of the right to self-determination and respect this right in accordance with the provisions of the Charter of the United Nations.

The Armenians of Artsakh already legally made use of their right to self-determination three decades ago and since then have been freely shaping their economic, social and cultural development, while maintaining democratic standards in a region with predominantly authoritarian states.

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<sup>2</sup> See war report §§ 82-95 [https://dearjv.de/onewebmedia/War-Report\\_Dearjv\\_EN.pdf](https://dearjv.de/onewebmedia/War-Report_Dearjv_EN.pdf).

## II. State identity of the Republic of Artsakh

The legal concept of the state under international law is based on the "three-element doctrine" found by Georg Jellinek in the beginning of the 20th century, that presupposes a people, a territory, and a state power for the existence of statehood. The Republic of Artsakh fulfils all these characteristics.

**People of the State:** By virtue of the constitution, the inhabitants of the Republic of Artsakh have a common citizenship (Article 14 of the Constitution of the Republic of Artsakh) with rights of political participation (*status activus*) (Article 32) and rights of freedom and defense (*status negativus*) (Article 5). They are entitled to vote at the communal and national levels (Art. 3) and have basic human rights, civil rights and freedoms (Art. 2) and duties (Art. 55 et seq.).

**State's Territory:** For more than 25 years, the Republic of Artsakh controls permanently and orderly a territorial area (cf. Art. 142), namely large parts of the historical region of Nagorno-Karabakh, and has an administrative and legal system that applies to this territory.

**State power:** The Republic of Artsakh possesses organs and institutions that exercise sovereign power within the national territory. It has a parliament (Article 76 et seq.), a government (Article 99 et seq.), a judicial system (Article 118 et seq.), an army (Article 11), a regional administration (Article 104), or respectively, a local self-government (Article 123). State authority can also be traced back to the people through an "unbroken" *democratic chain of legitimacy* (Arts. 3 and 4).

Art. 1 of the Montevideo Convention of December 26, 1933 requires, in addition to the characteristics of a) permanent population, b) defined national territory and c) government as the fourth prerequisite, the ability to create relations to other states.

The Republic of Artsakh meets this requirement as well:

- As an Armenian state, it maintains close relations with the Republic of Armenia
- It provided humanitarian aid in Lebanon in August 2020 under its own flag
- It has permanent representations in multiple UN member states
- It is a member of parliamentary friendship groups in the parliaments of Lithuania, France and Cyprus, as well as in the European Parliament.
- It has been recognised by ten US states, one Australian state, the autonomous community of the Basque Country and by the partially recognised republics of Abkhazia and South Ossetia.
- Its defense army actively cooperates with international organizations, including the OSCE (monitoring of the ceasefire regime), the ICRC (martial law, human rights, raising of awareness for landmines, hostages), the HALO Trust (humanitarian mine clearance) and the IWG (working group for refugees, internally displaced persons and hostages).

### **III. The current legal ramifications of the UN SC resolutions**

The four resolutions of the UN Security Council from 1993 (822, 853, 874, 884), which the Azerbaijani side often references, are used to manipulate the public debate.

In the following we make some clarifications that are often neglected by the international community in the discourse on Nagorno-Karabakh (Republic of Artsakh), but are fundamental for understanding the failed negotiations and the renewed outbreak of the war:

#### **1. Artsakh's right to self-determination and its original territories not affected**

Contrary to the representation of the state-coordinated Azerbaijani propaganda, the four UN resolutions concern exclusively the areas that came under the control of the Armenian side after the completion of the independence process of the Republic of Artsakh during the war between 1992 and 1994 (Kelbajar, Agdam, Fizuli, Jabrayil, Qubadli, Zangilan).

This does not apply to the Lachin region, which, regardless of the aforementioned regions, is the only land connection between the Republic of Artsakh and the Republic of Armenia. The four resolutions do not call for troops to be withdrawn from the Republic of Artsakh. Even the Lachin area is not mentioned, as the participating member states of the UN Security Council were aware of the serious humanitarian consequences of the geographical separation of the Republic of Artsakh from the Republic of Armenia.

Insofar as there is discussion of territorial occupation in violation of international law, it is often not mentioned that Azerbaijan itself has occupied two areas of the Artsakh Republic to this day (Martakert and Shahumyan), which despite the current international non-recognition of the Artsakh Republic, violates customary international law, cf. about Article 1 IPBPR.

From this it follows: The assumption that the four UN resolutions also affect the territories of the Republic of Artsakh as of 1991 is simply wrong. As a result, based on international law, there is no conflict between the territorial integrity of Azerbaijan and the right to self-determination of the Republic of Artsakh, since the territories of the Republic of Artsakh, which were already under its control at the time of its declaration of independence, are not part of the territory of today's Republic of Azerbaijan.

#### **2. Armenia is not a party to the conflict**

The Azerbaijani side often wrongly gives the impression that the resolutions concern the Republic of Armenia itself. In the resolutions of the UN Security Council, the Republic of Armenia is not mentioned as a party to the conflict, but exclusively as a mediator to persuade Nagorno-Karabakh to comply with these resolutions. Azerbaijan's President Heydar Aliyev recognized this fact in his speech to Parliament on February 23, 2001:

“Four resolutions were adopted in the United Nations Security Council [...]. These four resolutions mention that the occupying army should leave the occupied country of Azerbaijan. But there is no word "Armenia", that is, there is no word "the Armenian Armed Forces".<sup>3</sup>

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<sup>3</sup> Ref. „ В Совете Безопасности Организации Объединенных Наций принято четыре резолюции. Я попросил Виляята Гулиева ознакомиться с этими резолюциями. Сегодня утром и я ознакомился. В этих четырёх резолюциях написано, что оккупационная армия должна покинуть оккупированные азербайджанские земли. Но слово "Армения" отсутствует, то есть отсутствуют слова "армянские вооруженные силы.“  
<https://lib.aliyev-heritage.org/ru/6753023.html>.

Resolutions 853 and 884 say calling for Armenia to exercise influence over Nagorno-Karabakh. It follows from this: The Republic of Armenia has declared itself to be the guarantor of security for the Republic of Artsakh, but is not mentioned as an aggressor in any of the four resolutions. Nonetheless, the Republic of Armenia faced a military attack by Azerbaijan in July 2020. For the numerous war crimes of the military conflict between Azerbaijan and Armenia of July 2020 see War Report.

### **3. The resolutions are outdated: Azerbaijan itself violated them and troop withdrawal is no longer a precondition.**

The four UN Security Council resolutions were passed in 1993 at the height of the Nagorno-Karabakh War. They reflect the respective conditions on site and also contain mutual obligations.

With the Artsakh blockade, the initiation of the wars against the Republic of Artsakh in April 2016 and September / October 2020, numerous war crimes and the boycott of the negotiations, Azerbaijan itself violated some provisions of the resolutions and international law, such as the obligation to grant unhindered access to international humanitarian aid in the region, an obligation not to use force and respect for the right of peoples to self-determination.

From this it follows: The Republic of Azerbaijan has shown through the many violations of the four resolutions and customary international law that it is only interested in unilateral concessions on the part of the Republic of Artsakh and is not ready to fulfill its own obligations, which means that the constant reference to the resolutions is now on Has lost credibility. The UN Security Council took this into account in its statement of 29 September 2020. The statement explicitly mentioned that a joint dialogue must take place without preconditions, which also includes the issue of troop withdrawal. The UN Security Council has thus adapted its position on the four resolutions of 1993 to the current situation and implicitly relativized them.

### **4. No right of self-defense in Azerbaijan because of the ban on violence and the negotiation format of the so-called Minsk Group**

The four resolutions were all enacted during the first Karabakh war in 1993 and **did not trigger any action under Chapter VII of the United Nations Charter**. The co-chairs of the Minsk Group, made up of the United States, France and Russia, are the official mediators of the Artsakh conflict, **not the UN Security Council and not the UN General Assembly**. Finally, the war was temporarily ended with the Armistice Agreement of May 5, 1994 (Bishkek Protocol), which was concluded by the authorized representatives of Azerbaijan, Nagorno-Karabakh and Armenia.

The agreement has the legal character of a fully-fledged international treaty within the meaning of Art. 12 of the Vienna Convention on the Law of Treaties and contains a prohibition of force to which the parties involved must adhere until the conflict is peacefully resolved. The Azerbaijan Agreement has thus undertaken to adhere to the ceasefire for its duration, i.e. for an

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We are members of the Commonwealth of Independent States. There was no meeting of heads of states that I did not raise that issue at. Our friends, brothers and other countries do not even mention that Armenia is an aggressor. As soon as the words "struggle against separatism" appear in a number of documents of the Commonwealth of Independent States, Armenians oppose it. However, I insist that the words "struggle against separatism" be present. All heads of state ask me to take back my proposal. <https://lib.aliyev-heritage.org/ru/6753023.html>.

indefinite period, and accordingly to renounce the use and deployment of military force. The international community agrees that the Nagorno-Karabakh conflict should be decided in the **negotiation format of the so-called OSCE-Minsk group**, which has been involved in the conflict since 1992 and initiates regular attempts at negotiation.

The legal statement and thesis made about the legal relationship between the right of self-defense and the ceasefire obligation of Azerbaijan is confirmed by the more detailed interpretative provisions of the general **prohibition of violence** (Art. 2 No. 4 UN Charter), which the UN General Assembly on 24 of October 1970 in her "Friendly Relations Declaration" made:

*"Every state also has a duty to refrain from threatening or using force that violates International demarcation lines, such as cease-fire lines established under an international convention that it is obliged to respect as a party or otherwise."*

“The Bishkek Protocol is such an agreement that should pave the way for the negotiating format of the so-called Minsk Group of the OSCE, excluding any military solution.

From this follows: The self-defense right, which Azerbaijan as a state has in principle by virtue of Article 51 of the UN Charter and to which reference is often made, is overlaid in the specific case of the Nagorno-Karabakh conflict by the Bishkek ceasefire agreement and consequently by the obligation restricted to a ceasefire and the omission of military action in the form of a ban on violence.

The UN Security Council reaffirmed this view in its statement of September 29, 2020. The military resurgence of the conflict is due to failed negotiations, not least because Azerbaijan claims not only the areas named in the four resolutions, but also the Republic of Artsakh and even areas of the Republic of Armenia.

#### **IV. Conclusions**

The military re-emergence of the Nagorno-Karabakh conflict in the fall of 2020 is due to failed negotiations. One of the main reasons for this is Azerbaijan's aggressive stance with regard to the legal status of the Republic of Artsakh. Azerbaijan's autocratic President Aliyev claims not only the territories mentioned in the four resolutions, but also the territories of the Republic of Artsakh that were under the control of the Republic of Artsakh at the time of the declaration of independence. The state hate rhetoric even goes so far as to claim Aliyev's territories in the Republic of Armenia.<sup>4</sup>

This dangerous and aggressive state policy can only be countered if Artsakh's right to self-determination is recognized by the international community and Artsakh's statehood is respected.

The security of the people of Artsakh can therefore only be guaranteed by recognizing the Republic of Artsakh as a full subject of the international community.

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<sup>4</sup> President Aliyev claims for example the Syunik region and the Armenian capital Yerevan, see <https://eurasianet.org/azerbaijan-president-calls-for-return-to-historic-lands-in-armenia>.