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Prevention of armed conflict****Security Council
Seventy-fourth year****Letter dated 18 November 2019 from the Permanent
Representative of Armenia to the United Nations addressed
to the Secretary-General**

I am writing in response to the letter dated 20 September 2019 from the Permanent Representative of Azerbaijan to the United Nations ([A/74/450-S/2019/762](#)), which contains groundless allegations against Armenia and factual distortion of the history and root causes of the Nagorno-Karabakh conflict.

We regret that the Azerbaijani side continues to resort to bellicose rhetoric to conceal its inability to uphold the commitment on preparing peoples for peace. Rejection of the constructive and forward-looking proposal of Prime Minister Pashinyan that the settlement should be acceptable to the peoples of Armenia, Artsakh and Azerbaijan is illustrative in this regard. The formula put forward by the Prime Minister of Armenia is aimed at engaging societies affected by conflict in creating an environment conducive to peace, thus facilitating the political process.

The recent statements of the President of Azerbaijan, in which he cast doubt on the existence of the people of Nagorno-Karabakh (Artsakh) in their own historical homeland and reiterated territorial claims to Armenia, are a case in point. Azerbaijan, at the highest level, dehumanizes the people of Artsakh and the Armenian people in general and denies their fundamental human rights.

The continuous hostile policy conducted by Azerbaijan against the people of Nagorno-Karabakh, the attempts to isolate them from the international community, and the State-led policy of the promotion of anti-Armenian hatred and the glorification of perpetrators of hate crimes and atrocities against the Armenians manifest that Azerbaijan continues to pose an existential threat to the people of Nagorno-Karabakh, with the ultimate goal of their extermination. Armenia, as a guarantor of the physical security of the people of Artsakh, will not allow another genocide of the Armenians in their homeland.

The claims of Azerbaijan to exercise sovereignty over the people of Artsakh and the attempts to restore the Soviet-era status of Nagorno-Karabakh lack any legal ground and are futile. On 20 February 1988, a session of the Regional Council of Delegates of the Nagorno-Karabakh Autonomous Oblast (Region) adopted a resolution making an appeal to the Supreme Councils of the Azerbaijan SSR and the



Armenian SSR to withdraw the Nagorno-Karabakh Autonomous Oblast/Region from the Azerbaijan SSR and transfer it to the Armenian SSR. The appeal of the Regional Council of Delegates was fully consistent with the existing USSR legislation and the norms of international law.

The response of the authorities of Soviet Azerbaijan to the peaceful appeal of the Regional Council of Delegates of the Nagorno-Karabakh Autonomous Oblast was not dialogue, but mass atrocities, ethnic cleansing and the forced deportation of the Armenian population from Azerbaijan, including its capital, Baku, and the abolition of the autonomous status of Nagorno-Karabakh, in violation of the legislation of the USSR. Simultaneously, the Azerbaijani authorities resorted to hostile acts against Armenia, imposing a land blockade and hindering humanitarian access to Armenia.

The massacres against the Armenian population were recognized by the international community as threatening the very existence of the Armenian population living in Azerbaijan. The international community fully supported the legitimacy of the peaceful demands of the people of Nagorno-Karabakh.

The European Parliament, in its resolution on the situation in Soviet Armenia of July 1988, stated:

Having regard to the historic status of the autonomous region of Nagorno Karabagh (80% of whose present population is Armenian) as part of Armenia, to the arbitrary inclusion of this area within Azerbaijan in 1923 and to the massacre of Armenians in the Azerbaijani town of Sumgait in February 1988; whereas the deteriorating political situation, which has led to anti-Armenian pogroms in Sumgait and serious acts of violence in Baku, is in itself a threat to the safety of the Armenians living in Azerbaijan; condemns the violence employed against Armenian demonstrators in Azerbaijan; supports the demand of the Armenian minority for reunification with the Socialist Republic of Armenia.¹

With a view to regulating the existing situation, on 20 January 1989, the Supreme Soviet (Council) of the USSR, by its decision of 12 January 1989, established the Nagorno-Karabakh Autonomous Oblast Special Administration Committee, which was put under direct supervision of the Soviet Central Government. Thus, the USSR Central Government exercised formal control over the territory of Nagorno-Karabakh. As a result, the overall supervision of the economy, internal governance bodies, and cultural and educational institutions of Nagorno-Karabakh was transferred to the appropriate institutions of the Soviet Union. By the end of 1989, Nagorno-Karabakh was therefore no longer under Soviet Azerbaijan's jurisdiction.

The Law On the Procedure for Resolving Issues Related to a Union Republic's Secession from the USSR of 3 April 1990 authorized autonomous entities and compact ethnic groups living within a Soviet Republic to freely and independently decide their own legal status in case the republic seceded from the USSR. Following Soviet Azerbaijan's declaration of 30 August 1991 on the restoration of 1918–1920 state independence, Nagorno-Karabakh initiated the same legal procedure by adopting its own declaration of independence on 2 September 1991. It was followed by the referendum on independence of the Nagorno-Karabakh Republic of

¹ Official journal of the European Communities, No. C 94/117, July 1988.

10 December 1991. The Azerbaijani population of Nagorno-Karabakh was provided with all the opportunities to participate in the referendum.²

Hence, following the collapse of the Soviet Union, two state entities were created on the territory of the former Azerbaijani Soviet Socialist Republic: the Nagorno-Karabakh Republic and the Republic of Azerbaijan. The inescapable fact is that independent Azerbaijan, throughout its entire history, has never exercised sovereignty and jurisdiction over Nagorno-Karabakh.

Therefore, the claims of the Azerbaijani side that the secession of Nagorno-Karabakh was unlawful within the Soviet legal system do not withstand any scrutiny. Remarkably, Azerbaijan refers to the Soviet legal system in a rather opportunistic manner and dismisses the Law on the Procedure for Resolving Issues Related to a Union Republic's Secession from the USSR on the dubious grounds that this law was not created in good faith, a claim which illustrates frustration rather than the validity of Azerbaijani arguments.

Another argument, that none of the Soviet Republics had ever invoked this law, is erroneous as well, since the Republic of Armenia launched the legal process of gaining independence through referendum strictly in conformity with the above-mentioned Soviet law.

It should also be added that in the Constitutional Act on State Independence dated 18 October 1991, the then authorities of Azerbaijan rejected the Soviet political and legal heritage in declaring the Republic of Azerbaijan as a successor of the Azerbaijani Republic of 1918–1920 rather than Soviet Azerbaijan. It means that any reference to the putative rights coming from Soviet Azerbaijan is groundless.

On the reference to the principle of *uti possidetis*, it should be emphasized that the consistent body of jurisprudence demonstrates that the doctrine of *uti possidetis juris* is not an automatic rule that binds successors, but is rather based on their expressed consent.³ International courts and tribunals have only ever applied the doctrine of *uti possidetis juris* in their jurisprudence with the mutual consent of the parties.⁴ Whenever such consent has been doubtful or clearly absent, international

² On 10 December 1991, the Central Electoral Committee of the Nagorno-Karabakh Republic adopted an act on referendum, which confirmed the fact that 22,747 persons of Azerbaijani origin, who did not participate in the referendum, were previously notified and given the appropriate documents on the referendum.

³ *Case Concerning the Dispute between Argentina and Chile concerning the Beagle Channel*, Arbitral Award (18 February 1977), XXI R.I.A.A. 53, para. 9; e.g., *The Boundary Case between Costa Rica and Panama*, Arbitral Award (12 September 1914), XI R.I.A.A. 519, 531; *Affaire des Frontières Colombo-vénézuéliennes (Colombie contre Vénézuéla)*, arrêt de 24 mars 1922, I R.I.A.A. 223; *Honduras Borders (Guatemala v. Honduras)*, Arbitral Award (16 July 1930), II R.I.A.A. 1307, 16 July 1930, 1307, 1322–1325.

⁴ E.g., *Affaire de la délimitation de la frontière maritime entre la Guinée-Bissau et le Sénégal*, XX R.I.A.A. 119–213, arrêt de 31 juillet 1989, paras. 61–62; *Case concerning the location of boundary markers in Taba between Egypt and Israel*, Arbitral Award (29 September 1988), XX R.I.A.A. 1–118, paras. 169–173, 185; *Frontier Dispute (Burkina Faso v. Mali)* [1986] ICJ Rep. 554, paras. 19–26; *Kasiliki/Sedudu Island (Botswana v. Namibia) (Judgment)* [1999] ICJ Rep. 1045, para. 19; *Benin v. Niger*, *supra* note 20, para. 23; *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras, Nicaragua intervening)*, International Court of Justice, Judgment of 11 September 1992, para. 40; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* [2007] ICJ Rep. 659, paras. 150, 154. Cf. *Territorial Dispute (Libya v. Chad)* [1994] ICJ Rep. 6, paras. 64–65.

courts and tribunals have refrained from applying it.⁵ It is evident that Armenia and Azerbaijan, as former Union Republics, did not form a common agreement on the principle of *uti possidetis juris*. By the time of adoption of the Alma-Ata Declaration of 21 December 1991, which created the Commonwealth of Independent States, pursuant to article 3 of the Law on the Procedure for Resolving Issues Related to a Union Republic's Secession from the USSR of 3 April 1990, the Nagorno-Karabakh Republic had already declared independence on 2 September 1991, followed by the referendum on independence on 10 December 1991.

It is ironic that Azerbaijan, which for years has failed to comply with the judgments of the European Court of Human Rights with regard to numerous violations of the human rights of its citizens, does not shy away from exploiting the Judgment of the Court. The Judgment of the Court on the *Chiragov* case applies to the protection of the rights pertaining to the European Convention on Human Rights, namely, the right to peaceful enjoyment of possessions, the right to a family life and the right to an effective remedy. Moreover, on the same day of the *Chiragov* case Judgment, the Court adopted another Judgment on the case of *Sargsyan v. Azerbaijan*, pertaining to the protection of human rights of Mr. Sargsyan, who was forcefully displaced by Azerbaijan from the Gulistan village of the Shahumyan region of Nagorno-Karabakh. In both cases, the Court registered the violation of the same rights of the Convention. It is noteworthy that Baku tries to circumvent any mentioning of the *Sargsyan v. Azerbaijan* case.

The fact is that the Judgment of the European Court of Human Rights cannot have any impact on the status of Nagorno-Karabakh. The Court did not pronounce on the legal situation concerning Nagorno-Karabakh for matters not pertaining to the European Convention on Human Rights (1950), as the Court lacks jurisdiction to do so.

The people of Nagorno-Karabakh exercised their right to self-determination in full compliance with international law and the applicable legislation. The inherent right to self-determination of the people of Nagorno-Karabakh derives from the purposes and principles of the Charter of the United Nations; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966; the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970; and the Helsinki Final Act of 1975. All of these fundamental documents recognize the principle of equal rights and self-determination of peoples.

The 28 years since the adoption of the Declaration of Independence of Nagorno-Karabakh have been marked by significant progress in the development of democratic state institutions, strengthening of the rule of law, protection of human rights and fundamental freedoms, and building a liberal market economy. According to the reports of the international human rights institutions, Nagorno-Karabakh is far ahead of Azerbaijan when it comes to upholding human rights and fundamental freedoms, conducting free and fair elections, building democratic institutions and ensuring the rule of law.⁶

⁵ E.g., *Frontier Dispute (Burkina Faso v. Niger) (Judgment)* [2013] ICJ Rep. 44, paras. 63–66; Separate Opinion of Judge Yusuf, paras. 11–47 (esp. paras. 29–31); *Maritime Delimitation and Territorial Questions (Qatar v. Bahrain) (Judgment)* [2001] ICJ Rep. 40, para. 148; Joint Dissenting Opinion of Judges Bedjaoui, Ranjeva and Koroma, paras. 51, 215; Separate Opinion of Judge Kooijmans, paras. 17–26; Separate Opinion of Judge al-Khasawneh, paras. 9–10; Dissenting Opinion of Judge Torres Bernárdez, paras. 425–433.

⁶ Report of the Freedom House, “Freedom in the World 2018”, Nagorno-Karabakh profile. Available at <https://freedomhouse.org/report/freedom-world/2018/nagorno-karabakh>.

All attempts of the Azerbaijani side to misrepresent the Nagorno-Karabakh conflict as an inter-state conflict fully contradict the position of the international community. The Security Council resolutions of 1993, which Azerbaijan refers to in an attempt to justify its narrow conflict perception, clearly recognize Nagorno-Karabakh as a party to the conflict by referring to the “local Armenian forces”. The Security Council did not consider the issue of a political settlement to the Nagorno-Karabakh conflict, nor did it set limitations on the right of its people to self-determination. Instead, the Security Council expressed its full support for the efforts to find a peaceful settlement within the framework of the Minsk process of the Conference on Security and Cooperation in Europe/Organization for Security and Cooperation in Europe (OSCE).

The right of the people of Nagorno-Karabakh to self-determination is recognized by the OSCE Minsk Group Co-Chairmanship as one of the basic principles for the resolution of the Nagorno-Karabakh conflict and is endorsed by the OSCE Athens Ministerial Statement of 2009, to which Azerbaijan adhered as well. Determination of the final legal status of Nagorno-Karabakh through a legally binding expression of will is one of the key elements of the resolution of the conflict and remains at the core of the settlement.

Armenia believes that there is no alternative to the peaceful settlement of the conflict, whereby the restoration of the violated human rights of the people of Artsakh, and their security and status are central to the resolution of the conflict.

I kindly request that the present letter be circulated as a document of the General Assembly, under agenda item 31, and of the Security Council.

(Signed) Mher **Margaryan**
Ambassador
Permanent Representative