

IN ARTSAKH'S DEFENSE*

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The article studies the legal and factual basis for the independence of Nagorno-Karabakh Republic. The Author presents the background of the conflict, studies all the political, economic and social preconditions and provides the possible strategies for the solution of the issue based on the world experience.

The research is undertaken with the usage of comparative, selective and analytical methods.

The author thoroughly analyses the prerequisites and provides the strategies that Armenian and NKR can pursue to externally and internally balance against Azerbaijani aggression and to attract Great Power support.

In conclusion the author presents defense procurement initiatives that can be pursued in favor of NKR's territorial claims.

Keywords: *NKR, NATO, UN, Great Powers, independence, international law, aggression, military strategies.*

Background to the Current Conflict

The Nagorno-Karabakh Region (NKR) sits at the crossroads of Europe and Asia, which has historically facilitated Silk Road commercial exchanges, multi-ethnic interactions and invasions by Arabs, Persians, Mongols and Turks. Perhaps because of these interactions, over the years many attempts have been made to separate ethnic Armenians from Azeris or to extinguish them. NKR today is comprised primarily of ethnic Armenians that speak an Armenian dialect. Within the Soviet Union, NKR was placed within the Azerbaijan Soviet Socialist Republic.

Path to Independence

In light of popular Armenian independence demands, however, in 1988 the then-Nagorno Karabakh Autonomous Oblast Council of Peoples' Deputies appealed to the Azerbaijan Soviet Socialist Republic to secede and unite with Armenia. As Soviet authority was delegated to Azerbaijan, this request allegedly led to "sanctioned pogroms, mass killings and actions of a genocidal character" in various cities and over 400,000 Armenians fleeing Baku, northern NKR and rural Azerbaijan. In January 1990, Baku purportedly became Armenian-free after the further killing of 200 Armenians. In 1991, Azerbaijan launched further operations to force out ethnic Armenians from NKR, including

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the removal from 24 NKR villages. Allegations of ethnic cleansing were made on both sides, with some historians considering the pogroms by ethnic Ottoman Turks to be a continuation of the Armenian Genocide of 1915. In a referendum, Karabakhians strongly supported independence for NKR, secession by NKAO from Azerbaijan and unification with Armenia. The ensuing unrest led to the outbreak of the Nagorno-Karabakh War, an effort by Armenia and Nagorno-Karabakh to protect NKR's ethnic Armenians from alleged state persecution and by Azerbaijan to preserve its territorial integrity. Over 30,000 people were killed in the fighting. Ultimately, Armenian and Karabakh forces seized Shushi, the historical Azerbaijani capital of NKR, and Lachin, which thereby linked NKR to Armenia. Hundreds of thousands of Azerbaijani refugees also fled as these troops advanced to control most of NKR and the adjoining areas. The United Nations Security Council called for the immediate withdrawal of all occupying forces and adopted resolutions to end hostilities, provide for unimpeded humanitarian relief efforts and a peacekeeping force. Armed conflict ended with a cease-fire brokered by Russia on May 5, 1994. Of course, this has been interrupted over the years including as recently as in 2020, when Azerbaijan re-conquered large swaths of NKR outside of Stepanakert.

NKR is Legally and Factually independent

From an international law perspective, the traditional criteria for a valid unilateral secession – a people subject to historical and persistent State-sponsored human rights abuse with no viable alternative within existing channels – appear to be satisfied if the allegations of state sponsorship are legitimate. The 1991 referendum indicated that domestic relief was first sought. These official efforts within the existing framework of the Azerbaijan SSR and the Soviet SSR to give voice to popular will and to peaceably effectuate a transfer from Azerbaijan to Armenia were ignored. Azerbaijan's government responded with alleged state-sponsored ethnic cleansing of its ethnic Armenian element. As self-determination and the call for independence simply were not respected domestically, Karabakhians had only one alternative: to secede by invoking the doctrine of external self-determination.

The factual criteria for determining the existence of an independent state are set forth in the Montevideo Convention on Rights and Duties (the "MC"). These criteria are without regard to recognition by other states, and so are deemed hallmarks of *de facto* (but not *de jure*) independence. The Montevideo Convention has become universally accepted and now forms international law. These criteria include (1) a permanent population; (2) a defined territory; (3) a functioning government; and (4) the capacity to enter into relations with other states. Since the war, NKR has existed as a *de facto* independent state with help from Armenia, and has developed executive, judiciary and legislative arms of government. It controls a defined territory with a permanent population. NKR's president and legislature are democratically elected. Its government controls the armed forces and engages with foreign states through its representative offices and at the OSCE-led peace talks. Additionally, NKR's development of military and civil forces that withstood a war is a testament to their durability. Thus, we presently have an NKR state that functions independently, yet lacks formal recognition by most major nations. In order to provide some closure, the OSCE Minsk Group was founded with co-chairs Russia, France, and the United States spearheading peace talks and working exclusively through the Minsk Group toward a peaceful resolution of NKR's status.

Although the Montevideo Convention is clear that "[t]he political existence of the state is independent of recognition by the other states," international recognition by Great Powers is nonetheless valuable. The absence of Great Power support, however, does not detract from NKR or Armenia's independence; instead, it underscores the need to *internally balance* against Azerbaijan's economic success and strategic resource access.

I. Can Armenia and NKR attract Great Power support?

The Great Powers have historically been able to provide flexible terms on consistent defense technology sales, military aid, and Security Council influence, due to their heavy media and political involvement. Indeed, the presence or absence of Great Power support has been able to ensure independence for the Kosovars and Timorese, both due to human rights violations and no “Great Power” in opposition although denied it for Chechens, South Ossetians and Abkhazians due to Russia’s opposition (and despite similar State-sponsored human rights concerns).

In NKR’s case, Great Powers have primarily sided with Azerbaijan as they want access to the Caspian Sea for oil exploration and development as an alternative source for their energy needs but have not been too interested in actually reconciling the ethnic strife between Armenians and Azeris. Turkey today supports Azerbaijan militarily, economically and politically and enforces a blockade of Armenia. Turkey and Azerbaijan are ethnically similar, and have even been described as one nation with two states. Russia aims to sell arms evenly between Armenia and Azerbaijan, as both are former Soviet republics and it gains if both are evenly-matched in a zero-sum game. In effect, the issue of Armenian-Azeri reconciliation has been constantly postponed or ignored in favor of Great Power geostrategic priorities. However, in light of recent battlefield aggression there is concern that the dispute could pose a threat to international peace and security that might serve as the basis for a call to concerted U.N. Security Council economic or military intervention.

In the absence of Great Power support – and indeed in the face of Great Power opposition – Armenia and NKR should consider *internally balancing* and *externally balancing* against Azerbaijan, by following the example of such so-called “middle powers” as India and Israel. These powers have over time been able to leverage a stable, investor-friendly domestic economy into a successful defense procurement program. In both India’s and Israel’s cases, this has included developing broad-based diversified trade relationships, becoming a nuclear power, and expanding their financial service offerings to include products across the global and thus pegging their own well-being to that of the global economy.

II. Which strategies can Armenia and NKR pursue to internally balance against Azerbaijani aggression?

Under Neoclassical Realist thinking, a nation may either externally balance by allying with other nations through military pacts in which they pledge to defend one another, or by internally balancing. Internal balancing involves development of the economic, political and military welfare of the state and its organs.

As an example of external balancing, Israel has benefitted from a powerful Jewish-American lobby in the United States that has been able to influence favorable trade and defense external relations with Israel. Under the Abraham Accords, Israel has even expanded its recognition and trade relations with the United Arab Emirates and is continuing to develop positive relations with other Arab nations that see Israel’s market as integral to uplifting themselves as well.

In India’s case, a traditional absence of a powerful lobby in Western nations has meant distinguishing its political system from those of its authoritarian neighbors; i.e., it has developed a rare and successful true democracy with all the hallmarks of an open society. In effect, India has developed the conditions favorable for its own economic development that have the collateral effect of attracting foreign money as well. India has now developed partnerships with most Western democracies and participates in surveilling the Indian Ocean against Chinese adventurism through the Quad and routine maritime exercises.

Despite having abrasive neighbors, India and Israel have found a way to balance against them with the concomitant effect of leveraging that success to then develop their own military-industrial capacity. In effect, these states are self-perpetuating bastions of democracy and free markets that appeal to investors across the globe.

Similarly, Armenia and NKR should strive for such economic, political and legal development that render them an open society that similarly appeals to tourists and investors. As a measure of the types of norms that would be necessary, Freedom House publishes an annual assessment of Global Freedom scores, that considers individual access to political rights and civil liberties, including the right to vote, freedom of expression and equality before the law; Armenia ranks 55/100 (partly free), 22/50 political rights and 33/50 civil liberties. By contrast, India ranks 67/100 (partly free), 34/50 political rights and 33/50 civil liberties. Interestingly, India and Armenia are tied in terms of civil liberties (free media, religious freedom, academic freedom, and freedom of expression), though India even under the nationalist Bharatiya Janata Party outranks Armenia in political rights (free and fair elections, fair electoral laws, political pluralism and participation, and the functioning of government). Perhaps stamping out systemic corruption in Armenia would make a world of difference and place Armenia on a firmer path forward. Interestingly, Armenia outranks India in the Internet Freedom score – 75 (free) vs 51 (partly free) – though Armenia's Democracy score of 33/100 (semi-consolidated authoritarian regime) is not admirable. The moral: become a rare democracy in a sea of authoritarian states, with a financial system that invests in its own infrastructure.

III. Which strategies can Armenia and NKR pursue to externally balance against Azerbaijani aggression?

Aside from military pacts, Armenia should see the rising democratic tide in opposition to China as an opportunity to distinguish itself, just as India has done. The United States and other Western nations need access to Persian Gulf oil reserves, and China continually threatens this with its South China Seas claims, its “blue” navy development, and its Belt and Road Initiative across Asia, Europe and Africa. Although Armenia does not even have water access itself, this is immaterial to its ability to take a leadership role in developing the rule of law in the South China Seas, in undertaking naval weapons research in cooperation with other governments, or in obtaining training in defense technologies. Although some Armenians cringe at the thought of joining the European Union, given Armenia's historical good relations with Russia, such concerns should not trouble Armenia in joining or even leading a Western bloc against China's authoritarian pursuits throughout Asia, Europe and indeed wherever they may be found. In effect, the Great Powers' focus upon China can provide Armenia precisely the necessary “trump card” leverage to distinguish itself as a partner in the greater civilizational struggle against Chinese authoritarianism. As with most things, the response to such leadership will invariably be, how can we help you? In fact, the more vocal Armenia can be in this regard, the more it can influence the deployment of coalition resources against authoritarian states, including both China and Azerbaijan.

Similarly, Armenia's foreign ministers should petition to join the EU, NATO and the Quad and should be willing to both take a leading role as well as to get in line while it follows a responsible pathway to membership. They should also petition to join naval technological research initiatives. Though Armenia's initial contributions may be intellectual, in time it can also assess which platforms will be more likely to enable it to develop and thus invest in these platforms strategically. Moreover, with every state with which it might interact, Armenia's foreign ministry should develop a threat assessment that dictates whether it should bandwagon, buck-pass, soft balance or hard balance.

IV. Which defense procurement initiatives can Armenia and NKR lawfully pursue in favor of NKR's territorial claims?

Armenia need not wait to ramp up its defensive capabilities until it is a full democracy, or helmed a global coalition to ban Chinese consumer products. Given that a proportionate response is in keeping with establish principles of international law, Armenia should prioritize obtaining munitions, arms and defense technologies that match what we know Azerbaijan has in stock and also has the effect of denying Azerbaijan's strategic battlefield advantage.

If it has not already, Armenia should consider petitioning the US State Department's Directorate of Defense Trade Controls for military aid as well as for government-to-government arms sales. Similarly, Armenia should petition Israel, France and India to co-develop defense technologies and for arms sales that do not violate their other contractual commitments. Although some of these nations traditionally sell to Azerbaijan, most are invariably happy to entertain additional client states.

Armenia needs to invest in procuring (and eventually developing):

1. Intelligence Surveillance and Reconnaissance (ISR) capabilities, i.e., small-to medium-sized drones and radars through which Armenia can monitor Azeri movements and weapons deployments. As the Azeri advantage in 2020 was primarily due to Israeli armed drones, these are essential for Armenia in order to deny Azerbaijan's strategic advantage. Moreover, ISRs can be useful in gathering intelligence that can be put to strategic use far outside of the immediate Armenian homeland. Armed drones are sold by various nations, so these need not be purchased only from Israel or the US.
2. State-of-the-art heavy tanks that can roll through NKR terrain even under artillery fire, such as modern 5th generation US tanks that can outperform Russian third generation T90s.
3. Submarines that can provide it a "trump card" in the South China Seas, Indian Ocean and elsewhere in naval competition with China.
4. Long-range artillery that can outperform Azerbaijan's own long-range capabilities.
5. Fighter jets: need at least 4.5 Generation versus existing Russian jets are only 3rd generation.

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Հոդվածում ուսումնասիրվում են Լեռնային Ղարաբաղի Հանրապետության անկախության իրավական ու փաստացի հիմքերը: Հեղինակը ներկայացնում է հակամարտության սախապատմությունը, ուսումնասիրում է բոլոր քաղաքական, տնտեսական ու սոցիալական սախադրյալները և առաջարկում է խնդիրների լուծման հնարավոր ռազմավարություններ, որոնք հիմնված են համաշխարհային փորձի վրա:

Հետազոտությունն իրականացվել է համեմատական, ընտրանքային ու վերլուծական մեթոդների օգտագործմամբ:

Հեղինակը հանգամանորեն վերլուծում է սախադրյալները և առաջարկում ռազմավարություններ, որոնք Հայաստանն ու ԼՂՀ-ն կարող են իրականացնել,

որպեսզի արտաքուստ ու ներքուստ հավասարակշռեն ադրբեջանական ագրեսիան և ունենան մեծ տերությունների աջակցությունը:

Վերջում հեղինակը ներկայացնում է պաշտպանական գնումների ոլորտի նախաձեռնությունները, որոնք կարող են իրականացվել՝ հոգուտ ԼՂՀ տարածքային պահանջների:

Հիմնաբառեր՝ ԼՂՀ, ՆԱՏՕ, ՄԱԿ, մեծ տերություններ, անկախություն, միջազգային իրավունք, ագրեսիա, ռազմական ռազմավարություններ:

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В статье исследуются правовые и фактические основы независимости Нагорно-Карабахской Республики. Автор представляет предысторию конфликта, изучает все политические, экономические и социальные предпосылки и предлагает возможные стратегии решения проблемы, основанные на мировом опыте.

Исследование проводится с использованием сравнительных, выборочных и аналитических методов.

Автор тщательно анализирует предпосылки и предлагает стратегии, которые Армения и НКР могут реализовать, чтобы на внешнем и внутреннем уровне сбалансировать проявления азербайджанской агрессии и привлечь поддержку великих держав.

В заключение автор представляет инициативы в области оборонных закупок, которые могут быть реализованы в пользу территориальных претензий НКР.

Ключевые слова: НКР, НАТО, ООН, великие державы, независимость, международное право, агрессия, военные стратегии.