

Research Article

ANALYSIS OF RUSSIA'S MILITARY AGGRESSION AGAINST THE AZERBAIJAN DEMOCRATIC REPUBLIC FROM THE INTERNATIONAL LEGAL PERSPECTIVE

Saftar Rahimli

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Keywords: International law, sovereignty, occupation, genocide, human rights, state continuity.

ABSTRACT

Background: *The article analyses the aggression of Soviet Russia against the Azerbaijan Democratic Republic (ADR) from two perspectives – from the point of view of both Soviet Russia and international law. The problem of whether or not to continue the subject of international law and recognition during the restoration of independence of the states subjected to aggression has created the need for an unambiguous legal response.*

Saftar Rahimli

Ph.D. (Law), 'Human rights and right to information' UNESCO section, Faculty of Law, Baku State University, Azerbaijan Saftarrahimli@bsu.edu.az <https://orcid.org/0000-0002-4076-1379>

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Even though the rules of the Montevideo Convention (1933) were fully valid in the establishment of the ADR and the republic became a subject of international law, it was recognised by the Versailles legal system, and it was provided with all the attributes of a state in political, economic, social, and other regards, but it was subject to the aggression of Soviet Russia. The conclusion that it is impossible to assess the aggression of Russia against independent states in the framework of the legal system at the beginning of the 20th century is also controversial. The conclusion that Russia's military aggression against independent states 'cannot be evaluated within the framework of the legal system of the period' is wrong, at least in terms of the IV Hague Convention on the Law and Customs of War on Land Territory of 1907(Regulations (Addendum)) Art. 42, the principle of 'no transfer of sovereignty to the occupying state during occupation'.

Methods: *The occupation of the Republic of Azerbaijan after the restoration of state independence is comparatively analysed using historical and legal methods, taking into account the practice of other states that were attacked by Soviet Russia. A case study approach was used in this article. Since the case study is explanatory and descriptive in design, the description of the conventions on Russian military aggression (1899-1907 Hague Conventions, 1949 Geneva Convention) and practical explanation are included in the article.*

Results and Conclusions: *The activity of the emigration government, the national liberation struggle, international crimes committed against the population, and the results of the illegal annexation are evaluated according to international law due to the military aggression of Soviet Russia against the ADR. Illegal annexation does not mean the loss of international legal subjectivity of the occupied state. Only in cases of disintegration of the population and disintegration of the society does the loss of state identity occur. Regardless of the existence or effectiveness of the government-in-exile, the long-term struggle of the Azerbaijani people for self-determination during the Soviet era creates an objective basis for the continuity of the ADR.*

1 INTRODUCTION

Although military aggression is prohibited in interstate relations, the non-regulation of the continuity of the state of the occupied territory in accordance with international law increases the importance of domestic legislation. Assessing the continuity of a state subjected to military aggression from the perspectives of third countries is one of the most problematic issues in terms of ensuring international peace and security. The self-attitude (declarative statement) of the state subjected to military aggression should be taken as a basis for the rule of international law in this area, and third countries should also act on the declarative statement of the state subjected to occupation regarding their self-attitude. The principle of non-transfer of the sovereignty of the occupied territory to the occupying state not only makes war illegal as a political tool but also defines a normative direction for the concept of continuity of states in international relations.

We researched these issues through an examination of archive materials and legal documents. During the research, we referred to local legal documents and international conventions. Using the experience of other states that have encountered similar problems, we have provided suggestions to enrich the international law context through comparative legal analysis.

1.1 International (1907 Hague Regulations) and domestic law during the period of occupation

Since the early years of the establishment of Soviet Russia, a number of acts regarding the illegality of aggression have been adopted. V. Lenin formalised the fall of the Russian Empire with the declaration of the rights of the Russian peoples on 2 (15) November 1917¹ and the Peace Decree on 26 October (8 November)² and ended its international agreements on aggressive policy. In Arts. 1 and 2 of the Declaration of the Rights of the Russian Peoples, along with the declaration of the sovereignty of the peoples, the creation of an independent state within the framework of self-determination is considered the only legitimate means for any government.

The Peace Decree not only condemns aggression and annexation but considers any kind of military intervention unacceptable for future Russia. Any measure against the will of the people is declared illegal. Soviet Russia also referred to the right of peoples to self-determination in its international agreements.³ The acts adopted by Soviet Russia on the prohibition of aggressive war were also on the agenda of the Versailles peace conference. Of course, the non-acceptance of aggression in both the Versailles peace conference and the Statute of the League of Nations, which was created as a result of it, directly refers to US President W. Wilson. First of all, among the 14 principles declared by the US Senate, 'political sovereignty and territorial integrity of states' (Art. 14)⁴ is also found in the Statute of the League of Nations (Art. 10)⁵ with very little editorial difference. The importance of the domestic law of individual states in the establishment of international law is a well-known fact. Art. 10 of the Statute of the League of Nations, which says that the territory of the state cannot be the object of the aggressive goal of another state, has been reiterated in the Charter of the United Nations (Art. 2.4).⁶ The Versailles-Washington treaties of 1919-1920 were supposed to ensure collective security, the prevention of military operations, and the peaceful settlement of interstate disputes by laying the foundation of the League of Nations. The domestic law of these states has influenced not only the Statute of the League of Nations but also other norms of international law. In 1928, the Paris Agreement (Briand-Kellogg Pact) was signed to renounce war as a tool of national policy.⁷ Shortly after the entry into force of the Statute of the League of Nations (Art. 10) and the Briand-Kellogg Pact, the adoption of the Montevideo Convention on the Rights and Duties of States on 26 December 1933 also established the obligation to exclude the use of illegal force (Art. 11).⁸

The meaning of the illegality of aggression dates back to the years before the adoption of the Statute of the League of Nations 1907, the Fourth Hague Convention on the Law and Customs of War on Land (Regulations (Appendix)) Art. 43 (respect for public life and rules), Arts. 46 and 50 (protection of personal and property rights of the civilian population), and

- 1 Declaration of the Rights of the Peoples of Russia (adopted 2 (15) November 1917) [1957] 1 Decrees of Soviet power 39.
- 2 Decree on Peace (adopted 26 October (8 November) 1917) [1957] 1 Decrees of Soviet power 12.
- 3 Treaty of Peace between Russia and Esthonia (signed 2 February 1920 Tartu) 289 LNTS 11.
- 4 Woodrow Wilson, President Woodrow Wilson's 14 Points (1918) <<https://www.archives.gov/milestone-documents/president-woodrow-wilsons-14-points>> accessed 18 February 2023.
- 5 Covenant of the League of Nations (signed 28 June 1919, entered into force 10 January 1920) <https://libraryresources.unog.ch/ld.php?content_id=32971179> accessed 18 February 2023.
- 6 United Nations Charter (signed 26 June 1945) <<https://www.un.org/en/about-us/un-charter/full-text>> accessed 18 February 2023.
- 7 General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact) (signed 27 August 1928) 2137 LNTS 94.
- 8 Convention on the Rights and Duties of States (Montevideo Convention) (signed 26 December 1933, entered into force 26 December 1934) 3802 LNTS 165.

Art. 42, which contains the principle that 'sovereignty should not be transferred to the occupying state during the occupation.'⁹ Both international law doctrine¹⁰ and international tribunals draw attention in their decisions that those norms originate from 'customary international law'.¹¹ While the non-transfer of sovereignty to the occupying state during the invasion indicates the illegality of aggression, it also creates a basis for distinguishing aggression from annexation.

The correctness of this content appears later in the Fourth Geneva Convention of 1949 and the advisory opinion of the UN International Court of Justice. In Latin, *occupare* means to forcefully capture and occupy territories that do not belong to oneself with the help of armed forces. In other words, we are talking about the seizure and occupation of the territory of another state by military force. Acquisition of that territory is not ensured by occupation. In order to acquire or appropriate, an acceptance of occupation must take place. Therefore, it is necessary to distinguish occupation from appropriation, acquisition, and conquest. Appropriation means the complete subjugation of the territory occupied by conquest.¹² The occupation by Russia and the interruption of the activities of ADR in Azerbaijan forced the government to go into exile. Before the process of the occupation of Azerbaijan by the Russian army was completed, the people of Azerbaijan began to fight against this terrible invasion of their country, and in a short period of time, nearly the whole country revolted against the Russian occupation.¹³

The aim was that any occupation would be considered illegal¹⁴ when defining the term 'aggression' in the Hague Regulations (Art. 42) (1907). After the ADR was invaded by Russia, it was not possible to talk about the cessation of the people's struggle with the termination of the ADR's activities by Russia, nor was it possible to appropriate the territory.

1.2 National liberation uprisings against military aggression and Soviet rule

The continuity of a state begins with the determination of the true will of the people, which is the basis for that state. Attempts to create the 'union of workers and peasants', which Russia tried to build, were often accompanied by mass speeches against the Soviet system.¹⁵ No matter how important the political factors are during the acceptance of the new power established as an output of the occupation regime by the international community, the struggle of that people is the only means that determines the legitimacy. As long as the people's ideas of political independence live, there will be no time 'framework for accepting the occupation

9 Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Hague Convention IV) (signed 18 October 1907, entered into force 26 January 1910) <<https://www.refworld.org/docid/4374cae64.html>> accessed 18 February 2023.

10 Romulus A Picciotti, 'Legal problems of Occupied Nations after the Termination of Occupation' (1966) 33 *Militaru Law Review* 25; Christopher Greenwood, 'The Administration of Occupied Territory in International Law' in Emma Playfair (ed), *International Law and Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip: The proceedings of a conference organized by al-Haq, Jerusalem, January 1988* (Clarendon Press 1992) 244-5.

11 *The Trial against Goering et al* (Judgment of 1 October 1946) International Military Tribunal in Nuremberg, *The Trial of the Major War Criminals* (1947) vol 1, 64-5; *In re Hirota and Others* (Judgment of 12 November 1948) International Military Tribunal for the Far East, Tokyo [1948] AD Case No 118, 366.

12 Eyal Benvenisti, *The International Law of Occupation* (2nd edn, OUP 2012); Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law* (OUP 2005).

13 Mahammad Amin Rasulzade, *Azerbaijan Republic* (Elm 1990) 69-70; Mirza Bala Memmedzade, *National Azerbaijan Movement* (Nicat 1992) 154.

14 Benvenisti (n 13); Nabulsi (n 13).

15 Khayyam Ismayilov, *Legal History of Azerbaijan* (Elm ve Tehsil 2015) 357.

regime.¹⁶ As stated in the preamble of the Constitutional Act of 18 October 1991 on the State Independence of the Republic of Azerbaijan, '... the December 30, 1922 Treaty on the Organization of the USSR should have established this annexation. For 70 years, against the colonial policy of the Republic of Azerbaijan, the Azerbaijani people continued to fight for state independence.'¹⁷ One direction of the political struggle of the Azerbaijani people was organised by armed uprisings. This process started on 27 April 1920. Contrary to what is stated in some sources,¹⁸ military resistance began on the first day of the military aggression of the Russian army in Azerbaijan.¹⁹ By 1924, four years after the April occupation of 1920, a total of 54 armed uprisings against the Soviet occupation regime took place in Azerbaijan.²⁰ In the following years, smuggling, sabotage, and other forms of the resistance movement against the Soviet occupation regime were also tested.

1.3 International crimes committed to cancel the continuity of the ADR

According to the Hague Regulations (Arts. 27, 28-34, 42, 47), voluntary subjugation of the civilian population cannot occur. If the occupation regime survives long-term, the continuity of the state may be questioned over time. However, if the illegal annexation is accompanied by mass crimes, including crimes against humanity and genocide, in this case, it is not possible to apply a time limit.²¹ As stated in the preamble of the Constitutional Act on the independence of the Republic of Azerbaijan, '...for 70 years...the people of Azerbaijan were subjected to persecution and mass punishment measures, their national dignity was trampled...'²²

This factor was the basis of the repression launched against the Republic officials after the April 1920 occupation. The criminal regime of Soviet Russia began to commit war crimes against members of the Azerbaijani government. From April 1920 to August 1921, 48,000 people in Azerbaijan became victims of 'red Bolshevik terror.'²³ During the existence of Soviet power, genocidal crimes were committed on the basis of ethnic-racial characteristics. From a social perspective, genocide was mainly directed against the intellectual and leadership classes. In 1929, the penal authorities arrested 1,142 supporters of the Musavat party and 474 supporters of the Ittihad party – some of them were killed, and some were exiled to the Far North.²⁴ The state crimes committed by the USSR in the Baltic states after the 1940s, including crimes against humanity and even possible genocide crimes,²⁵ seem insignificant in terms of extent and systematicity compared to the crimes committed in Azerbaijan.

One of the directions of the Soviet government's illegal annexation of Azerbaijan was changing the alphabet.²⁶ The two alphabet changes in 1929 and 1939, from the Latin alphabet

16 Philip Marshall Brown, *Sovereignty in Exile* (1941) 35 (4) AJIL 668.

17 Constitutional Act on State Independence of the Republic of Azerbaijan 'Azərbaycan Respublikasının Dövlət Müstəqilliyi haqqında Konstitusiyası Aktı' (adopted 18 October 1991) <<https://azerbaijan.az/portal/History/HistDocs/Documents/en/09.pdf>> accessed 18 February 2023.

18 Heiko Krüger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Bakı Universiteti 2012) 19.

19 Bahtiyar Refiyev, *The Underwater Part of the Iceberg* (Azerneshr 1995) 14-9.

20 Memmedzade (n 14) 154.

21 Lauri Mälksoo, 'Soviet Genocide? The Communist Mass Deportations in the Baltic States and International Law' (2001) 14 *Leiden Journal of International Law* 757.

22 Constitutional Act (n 18).

23 Khaleddin Ibrahimli, *History of Azerbaijani Emigration* (Elm ve Tehsil 2012) 35.

24 Refiyev (n 20) 40.

25 Mälksoo (n 22).

26 *History of Azerbaijan* (Elm 2000) 210.

to the Cyrillic alphabet, served to further the Russification policy and were again a violation of the Hague Regulations (Art. 43 (respect for public life and rules) and Art. 46 (protection of the personal rights of the civilian population). Accusing, insulting, and killing religious leaders and intellectuals (in 1936-1937, 29,000 intellectuals of Azerbaijan were killed as 'enemies of the people' with the false evidence of the Armenian-Russian investigative team)²⁷ had become common.

According to the Hague Convention of 1907, the population of the occupied territory has inalienable rights (Arts. 42-47). This right was further developed in the Geneva Conventions of 1949. According to Art. 49 of the 1949 Geneva Convention on the Protection of Civilian Population during a military conflict, individual or mass expulsion or deportation of protected persons from the occupied territory to any territory, regardless of the reasons, is prohibited.²⁸ As a result of deportation carried out in 1948-1953, more than 150 thousand Azerbaijanis were deported from Armenia to Azerbaijan.²⁹ This process was continued in the following years.³⁰ These events were a violation of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Art. 2 (c))³¹ as well as Art. 2 (a-b). According to Art. 2 (a-b),

Genocide is the destruction of any national (the victims of genocide were citizens of the Azerbaijan Democratic Republic, ethnic, racial or religious group (Turkish Muslim population), as a group, causing serious bodily injury to members of such a group; it is considered as one of the actions committed to intentionally create living conditions for such a group aimed at its physical destruction in whole or in part.

Azerbaijanis were deported, and Armenians from abroad were resettled on a massive scale.³² In 1988-1991, the last deportation of Azerbaijanis from their historical, ethnic lands in the Armenian SSR was carried out. According to Art. 49 of the Fourth Geneva Convention on the Protection of Civilian Population during the military conflict of 1949, the occupying state cannot transfer a part of its civilian population to the occupied territory.³³ The area of the territory where the Azerbaijanis were deported was more than 9,800 km².³⁴ This was an area equal to a third of the territory of the Armenian SSR.

27 Ibid 375, 385-6; E Sadiqov, 'Khojali Genocide Crime, Intention and International Law Manifested in the Framework of General Plan and Policy' (2014) 37 International Law and Problems of Integration 93.

28 Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (adopted 12 August 1949 Geneva) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>> accessed 18 February 2023.

29 Atakhan Pashayev, 'Relocation' in *Deportation of Azerbaijanis from their Historical-Ethnic Lands in the Territory of Armenia* (Azerbaiyan Ensiklopediyasi NPB 1998) 66; Vaqif Arzumanli, 'Deportation, Genocide, Refugee' in *Deportation of Azerbaijanis from their Historical-Ethnic lands in the Territory of Armenia* (Azerbaiyan Ensiklopediyasi NPB 1998) 100; *History of Azerbaijan* (Elm 2003) 151; *XX century History of Azerbaijan* (Chashi oglu 2004) 383; Elekberli E, 'Ancient Turko-Oghuz homeland "Armenia"' in *Deportation of Azerbaijanis from their Historical-Ethnic Lands in the Territory of Armenia* (Azerbaiyan Ensiklopediyasi NPB 1998) 167.

30 Pashayev (n 30) 66.

31 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) (signed 9 December 1948, entered into force 12 January 1951) <<https://www.un.org/en/genocideprevention/genocide-convention.shtml>> accessed 18 February 2023.

32 Arzumanli (n 30) 97.

33 Geneva Convention IV (n 29).

34 İ Memmedov and S Esedov, 'Azerbaijanis of Armenia and their Bitter Fate' in *Deportation of Azerbaijanis from their Historical-Ethnic Lands in the Territory of Armenia* (Azerbaiyan Ensiklopediyasi NPB 1998) 141.

2 THE NATURE OF INTERNATIONAL LAW DURING THE PERIOD OF OCCUPATION

The rules of the Hague Convention bind only the participating states. In the early years, the USSR, the successor of Soviet Russia, did not accept the Hague Conventions of 1907 but declared that they would apply them only on the basis of the principle of reciprocity. However, in 1955, it accepted those conventions on the condition that the subsequent convention changes do not conflict with international treaties of the USSR. As a result, the Hague Conventions formed the general basis of the 1949 Geneva Conventions and their protocols, which developed international humanitarian law as a whole.³⁵ Regarding its legal nature, it is appropriate to first refer to Art. 2 of the Convention. The rule expressed in Art. 1 and the Convention as a whole create obligations for the contracting states and all parties to the conflict if they are parties to the Convention. Of course, this article has a negative impact on the legal significance of the Convention, but the rules established by the Convention emerged as a customary norm. Back in 1899, at the suggestion of F. Martens, a provision was included in the preamble of the IV Hague Convention that 'the population and combatants are under the protection of international law, this rule is formed from established customs, humanitarian laws and public consciousness among civilized nations'³⁶. Martens' idea that '... the rule that the population and combatants are under the principles and protection of international law... emerges from the public consciousness' is related to the practice of *clausula si omnes*. That is, the signing of the Convention was the recognition of the existing practice. M.E. O'Connell, speaking about the Hague Conventions, notes that the Hague Conventions of 1907 are not only binding for the parties to the agreement but also widely recognised as customary norms.³⁷ In this sense, the status of individual states are parties to the IV Hague Convention of 1907 cannot exclude responsibility for the violation of the obligation established in Art. 3. According to Art. 3 of the Hague Rules, a party to the conflict that violates the relevant rules must pay for the damage, if it is substantial. That party is responsible for all actions carried out by persons within its military forces.³⁸

The rules established by the Fourth Hague Convention of 1907, along with most other conventions, are recognised as legal norms, general practice, and an expression of international customary norms as a source of international law.³⁹ Although the mechanism of procedural protection is weak, the Hague Rules as an existing norm of international humanitarian law are still being applied today in other *ad hoc* and permanent international courts (international criminal court, Art. 5.1) in the practice of states, starting with the Nurnberg (1945) and Tokyo (1945) Tribunals. The Statutes of the Nuremberg and Tokyo Tribunals were, in many cases, based on the Hague Rules. The Charter of the Nuremberg Tribunal states that the Charter is not an arbitrary exercise of the power of the victorious nations but an expression of international law that existed before its establishment. The judgment of the Nuremberg Tribunal states that the norms of the Rules of the Laws and Customs of War on Land (Convention IV of 1907) were binding for all states as customary international law until 1939.⁴⁰ It is not accidental that the government had to state the fact

35 IN Artchibasov and SA Egorov, *Armed Conflict: Law, Politics, Diplomacy* (Mejdunarodniye otnosheniya 1989).

36 Hague Convention IV (n 10); Geneva Convention IV (n 29).

37 Mary Ellen O'Connell, 'Historical Development and Legal Basis: Legal Sources' in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (3rd edn, OUP 2013) 27.

38 Hague Convention IV (n 10).

39 Diethrich Shindler and Jiri Toman (eds), *The Laws of Armed Conflicts* (3rd edn, Martinus Nijhoff Publishers 1988) 69.

40 *Judgment of the Nuremberg International Military Tribunal 1946* (1947) 41 AJIL 248-9; 'Nürnberg trials' (Encyclopedia Britannica, 6 January 2023) <<https://www.britannica.com/event/Nurnberg-trials>> accessed 18 February 2023.

that the directive of the leader of Soviet Russia to occupy Baku was illegal.⁴¹ Chicherin, the Commissar of Foreign Affairs of the RSFSR, who considered the recognition of the ADR in the international world, wrote to Lenin, who considered the occupation of Baku necessary: ‘The act of violence against Azerbaijan (course-author.) will set our friends against us in international relations.’

3 INTERNATIONAL ATTITUDE TO RUSSIA'S MILITARY AGGRESSION

After the occupation of ADR by Russia, A. Topchubashov, the head of the Azerbaijani delegation at the Paris Peace Conference, submitted a note to the Supreme Council of the Allied Powers, the governments of France, England, the US, and Italy, and the embassies of foreign countries in Paris about the occupation of the sovereign state of Azerbaijan and requested a peace conference to assist Azerbaijan in restoring the country's independence.⁴²

However, these notes and appeals were not only fruitless – they were also not answered.⁴³ Although there were disagreements with Soviet Russia in British political circles on the eve of Azerbaijan's invasion by Russia, Prime Minister Lloyd George was against confronting Russia. With this, Soviet Russia received an international guarantee for the occupation of Azerbaijan.⁴⁴ The occupation of Azerbaijan by Soviet Russia was greeted with silence by the British government. The same attitude was shown by other allied states. In the directive sent by the US foreign minister to the ambassador in Italy, he expressed ‘America's satisfaction with the annexation of the states formed on the borders of the former Russian Empire to Russia, except for Finland, Poland and Armenia.’⁴⁵ Like Great Britain and the US, France, and Italy welcomed the occupation of Azerbaijan by Russia with silence. The invasion of Russia once again showed the expectation of international law being valued by the political interests of individual superpowers. During this period, after the Ottoman Empire, which defended Azerbaijan, was overthrown, Turkey could not prevent the fall of the APC. Iran welcomed the fall of statehood in North Azerbaijan. Only Georgia considered the occupation of APC by Russia as the beginning of the occupation of the entire South Caucasus.⁴⁶

4 ADR GOVERNMENT IN EXILE AND DIPLOMATIC MISSIONS

The government of Azerbaijan, both individually and together with other Caucasian delegations, repeatedly addressed the League of Nations, the heads of the allied states, and the London, Genoa, and Hague conferences held in 1922-1923 regarding the *de jure* recognition of the Caucasian Republics and their support in the struggle against Russian occupation and presented notes and appeals to the Lausanne conferences, asking for help.⁴⁷ These notes and appeals were not always without effect. As a result of the serious protests of the Caucasian governments in exile in Europe, the Western allies did not agree with the attempts of Soviet Russia to sign the Treaty of Lausanne on behalf of the Soviet republics, and as a result, the

41 Vladimir Lenin, *About Azerbaijan* (Azerbaycan Devlet Neshriyyati 1970) 164.

42 Jamil Hasanli, *Alimardan bey Topchubashov* (ADA 2013) 452-9; Firuz Kazımzade, *Fight for Transcaucasia* (1917-1921) (Tarih ve Kuram Yayınları 2016) 329.

43 İsmayil Musa, ‘The Collapse of People's Republic of Azerbaijan: The Position of Great Powers and Neighboring States’ (2016) 2 *News of Baku University, Series of Humanitarian Sciences* 47.

44 Qafarov V, *Azerbaijan Issue in Turkish-Russian Relations 1917-1992* (Azerneshr 2011) 345.

45 Kazımzade (n 43) 329.

46 Musa (n 44) 48, 50-1.

47 *History of Azerbaijan* (n 27) 76.

Treaty of Lausanne was signed only by Soviet Russia on 24 July 1923.⁴⁸ According to the agreement reached between M. A. Rasulzadeh and A. Topchubashov during his visit to Paris in 1928, the Azerbaijani delegation in Paris accepted the Azerbaijani National Center in Istanbul as the main competent authority in order to unite the national forces and made a statement that it would act together with it.⁴⁹ With this statement, Topchubashov, who was the head of the delegation of the ADR at the Paris Peace Conference, as well as the chairman of the Parliament of Azerbaijan (who also has the powers of the head of state), authorised the chairman of the main party in the parliament, Rasulzadeh, to form the government. Unlike the Baltic states (Latvia and Lithuania did not have a government-in-exile during the Soviet occupation, and the Estonian government-in-exile established in 1953 was not accepted by that country's missions abroad),⁵⁰ the government-in-exile of the ADR had full legitimacy.

Even after the military aggression, the ADR government continues to operate abroad. During his activity in Europe, Topchubashov applied to the French Ministry of Foreign Affairs to extend the visas of Azerbaijani students to continue their studies at European universities. Also, he asked to issue one-year cards to Azerbaijani citizens who did not have Russian nationality but Azerbaijan nationality, and he received the consent of the French government on these issues.⁵¹

Inability to renew diplomatic missions (for example, the French government did not issue a diplomatic visa to Topchubashov after February 1923 and cancelled his diplomatic immunity as the head of the Azerbaijani delegation),⁵² making military crimes against Azerbaijan diplomats by Russia had a negative impact on the activities of the government in exile. Russia's pressure against diplomats is directed against the countries where they are located. As a result of Russia's pressure on the Republic of Turkey, Rasulzadeh used his personal kinship relations to continue the activities of the government in exile and transferred his activities to Poland, using the financial support of the Polish government for a while. After Rasulzadeh's death in 1953, the delegation of the Musavat party continued the function of the emigration government in Turkey until the state independence was restored in Azerbaijan in 1991. It played a role as the main political force in the formation of the government during the restoration of state independence. Currently, the Musavat party continues its activities in the Republic of Azerbaijan. As mentioned earlier, the non-recognition (of the governments in exile) of the occupied countries by third countries does not mean the 'loss' of their international legal subjectivity. According to the doctrine, the existence of the government-in-exile is one of the factors opposing the legalisation of annexation.⁵³ International law (for example, the 1907 IV Hague Convention on the Rules of War on Land Regulations on the Law and Customs of War on Land (Appendix) Art. 43 (respect for public life and rules), Arts. 46 and 50 (personal and property of the civilian population protection of rights)⁵⁴ and the IV Geneva Convention of 1949), the generally recognised principle that 'sovereignty does not transfer to the occupying state during occupation' confirms the

48 Hasanli (n 43) 509.

49 Vugar İmanov, *Ali Merdan bey Topchubashi (1865-1934): Leader Representation of the Independent Azerbaijan Republic* (Boğazichi Universitesi Yayinlari 2003) 217.

50 Lauri Malksoo, *Soviet Annexation and State Continuity: The International Legal Status of Estonia, Latvia and Lithuania in 1940-1991. and after 1991: A Study of the Tension between Normativity and Power in International Law* (Tartu UP 2005) 180-1.

51 Hasanli (n 43) 479-80.

52 Ibid 511.

53 Karl Doehring, 'State' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law, vol 10 States, Responsibility of States, International Law and Municipal Law* (Elsevier Science 1987) 427.

54 Hague Convention IV (n 10).

relevant rule. This position was also accepted in the decisions of international tribunals⁵⁵ in the doctrine of international law.⁵⁶

The existence of a government-in-exile is only one component of the occupied state. As mentioned, the state does not automatically cease to exist. The state is not just an external expression of territory and power; it is much bigger. It consists of men and women, in which sovereignty resides. As long as the idea of sovereignty lives in their hearts, so does their state.⁵⁷ Illegal annexation does not mean the loss of international legal subjectivity of the occupied state. Only in the case of the disintegration of the population and the disintegration of the society does the loss of state identity occur. Regardless of the existence or effectiveness of the government-in-exile, the long-term struggle of the Azerbaijani people for self-determination during the Soviet era creates an objective basis for the continuity of the ADR.

5 CONSTITUTIONAL BASIS OF THE RESTORATION OF INTERNATIONAL LEGAL SUBJECTIVITY OF THE REPUBLIC OF AZERBAIJAN AS A CONTINUITY OF THE ADR

The Declaration of the Supreme Soviet of the Republic of Azerbaijan on restoring the state independence of the Republic of Azerbaijan dated 30 August 1991, which resulted in the restoration of Azerbaijan's independence under the influence of the people's movement after the war crimes of the USSR leadership on 20 January 1990.⁵⁸

First of all, the declaration mentions the existence of the Republic of Azerbaijan as an independent state recognised by the international community from 1918 to 1920, and in the Constitutional Act dated 18 October 1991 (Art. 1) on 27-28 April 1920. The invasion of Azerbaijan by the 11th army of the RSFSR, the occupation of the territory of the republic, the overthrow of the ADR, which is a subject of international law, and the occupation of independent Azerbaijan by Russia are considered.⁵⁹ Bringing foreign military intervention to attention has been an issue related to the continuity of the state. For comparison, it should be noted that in the context of state continuity, the Resolution of the Supreme Soviet of the Estonian SSR is more specific than the Declaration of the Supreme Soviet of the Republic of Azerbaijan on restoring the state independence of the Republic of Azerbaijan and the Constitutional Act of 18 October 1991.⁶⁰ The reference to the identity of the Republic of Azerbaijan in the Constitutional Act of 18 October 1991 on State Independence of the Republic of Azerbaijan requires clarification. Although direct succession is referred to in the Constitutional Act on State Independence of the Republic of Azerbaijan (the Republic of Azerbaijan is the successor of the Republic of Azerbaijan that existed from 28 May 1918 to 28 April 1920, Art. 2), the result of the general content of the act is that the modern Republic of Azerbaijan is the successor of the ADR and reminds the concept of identity without continuity.

55 International Military Tribunal in Nuremberg 1947; International Military Tribunal for the Far East in Tokyo 1948 (n 12).

56 Picciotti (n 11); Greenwood (n 11) 244-5.

57 Brown (n 17) 667-8.

58 Declaration On the Restoration of Independence of the Republic of Azerbaijan 'Azərbaycan Respublikasının dövlət müstəqilliyinin bərpası haqqında' (adopted 30 August 1991) <https://republic.preslib.az/en_d1.html> accessed 18 February 2023.

59 Constitutional Act (n 18).

60 Declaration On the Restoration of Independence of the Republic of Latvia 'Par Latvijas Republikas neatkarības atjaunošanu' (adopted on 4 May 1990) <<https://www.archiv.org.lv/index3.php?id=1139>> accessed 18 February 2023.

In particular, as stated in Art. 1 of the Constitutional Act, on 27-28 April 1920, the aggression of the XI army of the RSFSR against Azerbaijan, the occupation of the territory of the republic, the opinion of overthrowing of the ADR (which is the subject of international law), and the occupation of independent Azerbaijan by Russia also creates the basis for Art. 3 of the Treaty on the Organization of the USSR dated 30 December 1922, which states that the part pertaining to Azerbaijan is invalid⁶¹ from the moment of its signing.

On the other hand, the preamble of the Constitutional Act of 18 October 1991 on State Independence of the Republic of Azerbaijan directly refers to the Declaration of Independence adopted by the Azerbaijan National Council on 28 May 1918, which was the basis for the declaration of the Azerbaijan People's Republic. It is noted that the Supreme Soviet of the Republic of Azerbaijan adopted this act based on the Declaration of Independence adopted by the National Council of Azerbaijan on 28 May 1918, the succession of the democratic principles and traditions of the Republic of Azerbaijan (it should be read as continuity-author).⁶² The reference to the Declaration of Independence is both symbolic and restores the state foundations established in that act.

6 NATIONAL SYMBOLS OF THE ADR AND THE REPUBLIC OF AZERBAIJAN: THE IDENTITY THAT PROVIDES THE BASIS FOR CONTINUITY

Although the universally recognised normative regulation and practice on the continuity and identity of the state's international legal entity have not been formed, the legal policy of self-recognition and attachment to political institutions are of great importance during the restoration of state independence. Acceptance of the attributes of the previous independent state whose international legal subjectivity was cut off (whose identity was 'silenced') means acceptance of its legitimacy by the will of the people (population) and is also the position of the restored state itself, and this is one of the main signs of continuity.

Legal status arises from the attitude towards oneself.⁶³ The Declaration of the people of Azerbaijan dated 30 August 1991, and the position declared at the constitutional level (Constitutional Act dated 18 October) refer to the continuity and identity of the subject of international law of its restored state. The constitutive signs of the state in the Montevideo Convention of 1933 and its power attributes and symbols also justify the continuity. Although the attributes and symbols of power are regulated by constitutional (state) law, they are also of international legal importance. As one of the constitutive signs of the state in the Montevideo Convention of 1933, the single language factor is of great importance in the formation of the status of the population as a nation (state). The state language of the ADR and the Republic of Azerbaijan and the consistent location of the administrative centre (capital) of the government can be mentioned as factors justifying continuity. These attributes showing identity are under legal protection both in the Republic period and in the modern period (Arts. 21 and 22 of the Constitution of the Republic of Azerbaijan). Of course, the main state symbols are the state flag of the Republic of Azerbaijan, the state coat of arms of the Republic of Azerbaijan, and the state anthem of the Republic of Azerbaijan (Art. 23.I of the Constitution of the Republic of Azerbaijan). Art. 23.III of the Constitution of the Republic of Azerbaijan states that the image of the state flag of the Republic of Azerbaijan, the state coat of arms of the Republic of Azerbaijan, and the music and text of

61 Constitutional Act (n 18).

62 Ibid.

63 Krystyna Marek, *Identity and Continuity of States in Public International Law* (Librairie Droz 1968) 580.

the National Anthem of the Republic of Azerbaijan are determined by constitutional law.⁶⁴ The state flag and other attributes of the Republic of Azerbaijan are the institutions of the Azerbaijan People's Republic.

The long-term occupation did not change the status of the Republic of Azerbaijan. It is noted in the literature of international law that after the occupation of the Baltic states, the status of the subject of international law, their existing substantive law, legal system, and citizenship were not lost from a legal point of view until 1940.⁶⁵ Professor H. Keslen notes that legal conclusions cannot be created simply from facts, based on the principle that 'illegal activity does not create law'. Legal conclusions should be drawn only from legal norms that have an effect on the facts in the creation of legal norms.⁶⁶ Therefore, the international law of that time, which continues to this day, does not accept illegal annexation resulting from the fact of military aggression. For the Republic of Azerbaijan, the state symbols of the ADR determine its legal status as evidence of the identity of the subject of international law.

7 THE TERRITORY OF THE REPUBLIC OF AZERBAIJAN (UTI POSSIDETIS JURIS IN THE CASE OF THE AZERBAIJAN PEOPLE'S REPUBLIC)

The principles of *uti possidetis juris* (Latin: as [you] possess under law) have been established in the agreements created with the collapse of the USSR (for example, in the Agreement on the establishment of the CIS of 8 December 1991 'for the obligation of the inviolability of the existing borders within the framework of the union'⁶⁷). After the collapse of the USSR, the vast majority of its states were re-recognised *de jure* by the international community. Taking into account the Agreement on the establishment of the CIS of 8 December 1991, member of the UN sub-commission on the protection of minorities and prevention of discrimination and director of the Royal Swedish Institute for Human Rights, A. Eide notes that in the former USSR, it was possible to determine the borders of the allied republics based on the principle of *uti possidetis juris* at the level of the United Nations. This means that the borders of the newly created independent republics should be determined based on the borders of the former allied republics.⁶⁸

However, it should be noted that the principle of 'illegal action does not create rights' should be taken as a basis against the 1920 Russian act of military aggression. The Agreement on the establishment of the CIS of 8 December 1991, which seems to be the basis for agreement at the level of the United Nations (the commitment of the high parties to the agreement to recognise and respect the inviolability of the existing borders and the territorial integrity of each other within the framework of the union (Art. 5)), cannot be accepted because it contradicts the Constitutional Act of 18 October 1991 on the State Independence of the Republic of Azerbaijan (Art. 2).

64 Constitution of the Republic of Azerbaijan 'Azərbaycan Respublikasının Konstitusiyası' (adopted 12 November 1995) <<https://president.az/en/pages/view/azerbaijan/constitution>> accessed 18 February 2023.

65 Marek (n 64) 581; Boris Meissner, *Sowjetunion und Haager LKO: Gutachten und Dokumentenzusammenstellung* (Universität Hamburg 1950) 7-8.

66 Hans Kelsen, *Principles of International Law* (2nd edn, Holt, Rinehart and Winston Inc 1967) VII.

67 Agreement establishing the Commonwealth of Independent States (Belovezhskaya Agreement) (signed 8 December 1991 Minsk) <<https://cis.minsk.by/reestr2/doc/1#text>> accessed 18 February 2023.

68 Asbjorn Eide, 'Territorial integrity of States, minority protection and guarantees for autonomy arrangements: approaches and roles of the United Nations' in European Commission for Democracy through Law, *Local Self-Government, Territorial Integrity and Protection of Minorities: Proceedings of the UniDem Seminar, Lausanne, 25-27 April 1996* (CoE 1996) 282.

The Agreement establishing the CIS of 8 December 1991 may seem significant in terms of formalising the fall of an empire. However, in a number of articles, it creates the impression of encouraging a return to the USSR. Namely, it is possible to connect one of the reasons why the Baltic states did not join. The limitation of the 'recognition and respect of the unity framework' in Art. 5 seems to encourage the accession, thinking that it would be threatened later (for example, by Georgian separatism) if it did not join before. The separatism promoted by Russia and the forced accession of the Republic of Azerbaijan to this agreement after being subjected to open military aggression by the neighbouring state to avoid being left out of the 'privilege' took place within the framework of the 'union on the one hand' and the leadership of the Republic of Azerbaijan in the spirit of a 'Soviet man' as a requirement during the accession. Still, numerous reservations in the 1994 accession act of Moldova,⁶⁹ which was faced with the problem of Transnistria separatism, questioned its legal nature. Art. 12 of the agreement provides for the fulfilment of international obligations arising from the agreements and contracts of the former USSR for the members of the organisation, which is contrary to the Constitutional Act of 18 October 1991 on the state independence of the Republic of Azerbaijan. Art. 4 of the Constitutional Act refers to the validity of the 1978 Constitution of the Republic of Azerbaijan (Azerbaijan USSR) in places that do not conflict with the provisions of the Constitutional Act of 18 October 1991 on state independence. Part 2 of Art. 7 of the Constitutional Act states that during the period when Azerbaijan was a part of the USSR (it would be more correct to say illegally annexed), the property created at the expense of the national income and natural and other resources of the Republic of Azerbaijan, which were usurped in the amount corresponding to the contribution of Azerbaijan in the creation of this property was transferred to the Republic of Azerbaijan under the contract. The justification for this article comes from the preamble of the Constitutional Act. In the preamble of the Constitutional Act, attention is drawn to the 'exploitation of Azerbaijan's natural resources and the looting of national resources, referring to the colonial policy against the Republic of Azerbaijan for 70 years'.⁷⁰

In international law (Appendix of the 1907 Hague Convention on the Law and Customs of War on Land Territory Art. 42 – according to the principle of 'the sovereignty of the occupied territory does not pass to the occupying state'), the determination of borders by the principle of *uti possidetis juris* does not apply to the Republic of Azerbaijan, but to Azerbaijan, the SSR is valid in the relationship. The declaration of 1 December 1920 under the leadership of N. Narimanov regarding the transfer of Nakhchivan and Zangezur to Armenia and the right of the peasants-farmers of Nagorno-Karabakh to self-determination has no value from the point of view of international law. H. Kruger, while justifying the belonging of Nagorno-Karabakh to Azerbaijan, rightly notes that neither Narimanov nor the Azerbaijan Revolutionary Committee, nor Stalin alone had the power to initiate the concession of the territory in terms of international law. Kruger's position up to this point is completely in line with international law. But then, the author notes that only the central government in Moscow had the authority to solve this issue as a new sovereign (author) institution in the Caucasus.⁷¹ According to the codification act of customary international law (Appendix of the 1907 Hague Convention on the Law and Customs of War on Land Art. 42 – the principle of 'the sovereignty of the occupied territory does not pass to the occupying power'), there is no basis for confirming the sovereignty of the central government in the Caucasus in Moscow. There is no doubt that the statement of N. Narimanov, the representative of the Soviet regime appointed by military aggression, was made to promote the change of political power in Armenia. As a result of this, Nagorno-Karabakh remained in Azerbaijan, and

69 Belovezhskaya Agreement (n 68).

70 Constitutional Act (n 18).

71 Krüger (n 19) 20-1.

the Moscow government's 'sovereignty' in relation to Nakhchivan was neutralised at the initiative of Turkey (by the agreement of Gyumri, Moscow, and Kars). However, Zangezur was handed over to Armenia illegally in violation of the Hague Convention of 1907.

8 CONCLUSIONS

The IV Hague Convention of 1907 and the rules on the law and customs of war in land territory adopted as its annex further promote the creation of new norms in relation to the administration of the occupied territories, the civilians in that territory, the combatants, and the methods and means of conducting international conflicts. One of the very important provisions of the IV Hague Convention is the regulation of the occupied territory and property rights in that territory. In particular, the occupying power can exercise the right to use the property only temporarily. The generally recognised norm on the non-transfer of property, including territories, also prohibits any change of territory. With the invasion of 1920, Soviet Russia not only changed the administrative territorial structure of the ADR but also appropriated part of the territories historically belonging to the Azerbaijani people and gave the rest to Armenia and Georgia on the occasion of the establishment of Soviet power. Art. 55 of the Rules on the Laws and Customs of War on Land of the IV Hague Convention of 1907 states that the occupying power can only recognise for itself the right of administration and use of the buildings, immovable property, forest, and agricultural areas of the other hostile power in that territory. According to the rules of use, management should be carried out in such a way that the basic values of those types of property are protected. Today, the territory of the Republic of Azerbaijan has 86.6 thousand km² under its authority. When viewed in the context of disputed and non-disputed territory as a continuation of the ADR, a different political and legal picture is visible. According to the official information of the Azerbaijan government published in the 'Address-Calendar' of 1920, 97,297.67 km² of the 113,895.97 km² territory of the ADR was its undisputed territory. Only 16598.30 km² was disputed. The territory-border (peace) agreement between the Republic of Azerbaijan and Armenia stipulates that the 97.3 thousand km² undisputed territory of the ADR should be recognised unconditionally for the Republic of Azerbaijan as well. The 97.3 thousand km² undisputed territory of the Azerbaijan People's Republic was also declared at the Versailles conference of that state before the illegal annexation of the RSFSR, the borders of the Azerbaijan People's Republic were recognised by agreements signed with the bordering Ottoman state, Georgia, Iran, and the Mountainous Republic, except Armenia, in 1920. It came under the protection of the Statute of the League of Nations (Art. 10), which entered into legal force on 10 January, and the 1907 Hague Convention on the Law and Customs of War on Land. The concept of the 'generally accepted' territory of Armenia, which was changed by the Russian occupation of 1920 and created by the collapse of the USSR in 1991, is not valid from the point of view of international law. Territorial border recognition for Armenia by the Republic of Azerbaijan can be possible only as a result of the popular vote of the Azerbaijani people. International legal order and justice must be ensured by accepting the existing borders (*restitutio integrum*) until Russia's military aggression against the ADR. Unfortunately, Russia, which violates all the fundamental principles of international law, does not want as always to recognise international law in the twenty-first century and intends to occupy the territories of Ukraine located in its neighbourhood.

The concept of the successor or identity of the Azerbaijan People's Republic of Azerbaijan for the modern state consists of the following: 1) raising a claim on the reparation and satisfaction obligation of the Republic of Azerbaijan to the Russian Federation for a large number of crimes committed against international law on the territory of the Azerbaijan state (for deportation; war and genocide crimes); 2) solving the individual criminal liability of

officials in the context of ongoing crimes; 3) ensuring responsibility for illegal expropriation and confiscation of property; 4) return of illegally annexed territories, etc.

In the case of military aggression, the non-formulation of the international legal regulation of the continuity of the state can be linked to the political interests of the superpowers. But there is a way out. It is well-known that many international standards originate from the domestic law of states with advanced legal practice. In order to solve this problem, the preparation of an international convention can be carried out considering the experience of state law of states that have been subjected to military aggression (including Latvia, Lithuania, Estonia, the Republic of Azerbaijan, etc.). In particular, the draft of the convention that could be prepared within the framework of the International Law Commission (the bases of the international legal regulation of the continuity of the state in the event of military aggression) could include:

1. Military aggression and illegal annexation;
2. National liberation struggles;
3. The existence of a government-in-exile of a state subjected to military aggression;
4. The scale and systematicity of international crimes committed against the struggling people (international law);
5. The legislative attitude of the nation subjected to military aggression and illegal annexation.

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