

*Nurana Mammadova**

LEGAL BINDINGNESS OF SECURITY COUNCIL RESOLUTIONS: “SECURITY COUNCIL RESOLUTION 853 (1993)”

Abstract

Keeping peace is one of the notable duties of the Security Council of United Nations. Security Council fulfills this duty with direct intervention to the conflicts breaching peace, with the adoption of decisions or recommendations concerning such conflicts. One of such conflicts has occurred between the Republic of Azerbaijan and the Republic of Armenia at the end of 1980's and the beginning of 1990's. Security Council has adopted 4 resolutions concerning this conflict in 1993, and these resolutions have not been enforced yet. That is why, it is important to define, in the international law, their binding or non-binding character for their enforcement. In this article, the conditions for the legal bindingness of the resolutions of Security Council (hereinafter referred to as “SCR”) and their appearance or non-appearance in the SCR 853 on Nagorno-Karabakh were analyzed.

Annotasiya

Birləşmiş Millətlər Təşkilatının Təhlükəsizlik Şurasının diqqətəlayiq vəzifələrindən biri sülhün qorunmasıdır. Təhlükəsizlik Şurası bu vəzifəsini sülh əleyhinə olan münaqişələrə birbaşa müdaxilə, həmin münaqişələrlə bağlı qərar və tövsiyələr qəbul etmək və s. yollarla yerinə yetirir. Sülh əleyhinə olan belə münaqişələrdən biri 1990-cı illərin əvvəlində Azərbaycan Respublikası və Ermənistan Respublikası arasında baş vermişdir. Bu münaqişə ilə bağlı Təhlükəsizlik Şurası 1993-cü ildə 4 qətnamə qəbul etmiş, lakin bu günə qədər bu qətnamələr yerinə yetirilməmişdir. Buna görə də beynəlxalq hüquq sferasında bu qətnamələrin məcburi yoxsa qeyri-məcburi xarakterli olmasının müəyyənləşdirilməsi onların həyata keçirilməsi üçün böyük əhəmiyyət daşıyır. Bu məqalədə Təhlükəsizlik Şurası qətnamələrinin məcburiliyinin şərtləri və həmin şərtlərin Təhlükəsizlik Şurasının Dağlıq Qarabağla bağlı 853 sayılı qətnaməsində əks olunub-olunmaması araşdırılmışdır.

Contents

Introduction	234
Conditions for the bindingness of SCR, and how these conditions are provided in the SCR 853?	235
A. Breach of Peace.....	236
B. Language of SCR	237
C. “Acting under Chapter VII of the Charter of UN”	241
Conclusion	241

* Baku State University, 3rd year LL.B student.

Introduction

As a result of the purposeful aggression policy of Armenia in the period of 1990-1992, the Nagorno-Karabakh region (according to the administrative territorial division of Azerbaijan until 1991, this area included the districts of Shusha, Khojavand, Askeran, Hadrut, Aghdere and Khankandi) being inseparable part of Azerbaijan, total area of which is 4,400 square kilometers was occupied.¹ Although this conflict has other historical aspects, it has begun with the obvious claims of Armenians to the territory of the Republic of Azerbaijan in 1988 and the first victims of this conflict were two Azerbaijani young persons killed by Armenians near the town of Askeran on 22 February 1988, because of their peaceful demonstration against the decision of the regional soviet of Nagorno-Karabakh Autonomous Oblast (*hereinafter referred to as NKAO*) (NKAO was established in 1923 by USSR in Nagorno-Karabakh that was previously and historically the territory of the Republic of Azerbaijan).²

After this beginning point of the conflict, from the perspective of law, the following main events happened: 1) on 1 December 1989 Supreme Soviet of Armenian SSR had adopted a decision on the unification of Armenian SSR and Nagorno-Karabakh; 2) on 10 January 1990 the Presidium of Supreme Soviet of USSR had adopted a decision on the non-compliance of the above mentioned decision of the Supreme Soviet of Armenian SSR with the Constitution of USSR, because the unification of the Nagorno-Karabakh which is the territory of the Azerbaijan SSR without the consent of Azerbaijan SSR was unlawful; 3) on 18 October 1991 the Republic of Azerbaijan declared its independence; 4) and on 26 November 1991 the Supreme Soviet of the Republic of Azerbaijan adopted a law on the cancellation of NKAO.³

As the Republic of Azerbaijan declared its independence, the territories that belonged to it before the establishment of USSR had to be considered the territory of independent Republic of Azerbaijan based on principle of "uti-possidetis". Accordingly, Nagorno-Karabakh was the territory of the Republic of Azerbaijan before the establishment of USSR and that is why it had to belong to the Republic of Azerbaijan. However, the Republic of Armenia had separatist intentions about the Nagorno-Karabakh region of the Republic of Azerbaijan. So, the conflict began to grow, and as a result, the territories of the Republic of Azerbaijan, namely, "on 26th of December 1991 Khankandi, on 26th of February 1992 Khojaly, on 8th of May 1992 Shusha, on 2nd of October 1992 Khojavand, on 17th of June 1993 Aghdere

¹ Amir Aliyev, *Azerbaijan in the Target of International Crimes: Legal Analysis*, 44 (2018).

² Cabinet of Ministers of the Republic of Azerbaijan, <https://cabmin.gov.az/az/page/69/> (last visited 13 Apr. 2019).

³ *Ibid.*

were occupied. In addition, seven adjacent districts of Nagorno-Karabakh – Lachin, (18.05.1992), Kalbajar (02.04.1993), Aghdam (23.07.1993), Fuzuli (23.08.1993), Jabrayil (23.08.1993), Gubadly (31.08.1993), Zangilan (29.10.1993) were completely or mostly occupied by Armenians.”⁴

United Nations Security Council (*hereinafter* - SC) has adopted 4 resolutions, namely Resolution 822 (30 April 1993), Resolution 853 (29 July 1993), Resolution 874 (14 October 1993) and Resolution 884 (12 November 1993) concerning these occupied territories of the Republic of Azerbaijan. Even though these resolutions were adopted in 1993, today is 2019 and 26 years has passed from their adoption, they still remain non-realized. That is why, thousands of victims of this conflict are still living beyond their childbirth homes and they cannot go to their homeland. This issue – the violation of rights of thousands of people makes the determination of the legal bindingness or non-bindingness of SCR on Nagorno-Karabakh necessary and essential. This article will address only one of these 4 resolutions – Resolution 853 of SC on Nagorno-Karabakh.

The SCR can be binding or non-binding.⁵ That is why, the main goal of this article is the determination of legal bindingness or non-bindingness of the above-mentioned resolution for its realization. For the determination of such an issue, this article will firstly define the conditions for binding force of SCR and then will analyze each of these conditions separately in relation to SCR 853 on Nagorno-Karabakh.

Conditions for the bindingness of SCR, and how these conditions are provided in the SCR 853?

The primary responsibility of the SC is the maintenance of international peace and security.⁶ The Charter of UN indicates that when SC makes a decision on the restoration or maintenance of the international peace and security, the members of the United Nations must carry out these decisions of the SC.⁷ In other words, unlike recommendations of the SC, its decisions are binding upon all the members of UN.⁸ It means, if the resolutions of SC on Nagorno-Karabakh have decision character, they are binding and must be realized obligatorily, but if they are of recommendation nature, they are not binding and they may be realized or not.

In the international law, the conditions for bindingness of SCR are not clearly defined by the articles or norms of international legal acts. However, such conditions can be defined on the base of the analysis of the Charter of

⁴ Aliyev, *supra* note 1, 44-45.

⁵ Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 5 *European Journal of International Law* 879, 880 (2005).

⁶ Malcolm N. Shaw, *International Law*, 1206 (6th ed. 2008).

⁷ UN Charter, art. 25 (1945).

⁸ Shaw, *supra* note 6, 1208.

UN, the decisions and advisory opinions of International Court of Justice (*hereinafter referred to as ICJ*), existing practice etc.

After analyzing the three above-mentioned sources – Charter of UN; the decisions and advisory opinions of ICJ; and existing practice, the following conditions can be defined for the bindingness of SCR:

- 1) Existence of any threat to the peace, breach of the peace, or act of aggression;
- 2) The language of the resolution.

Apart from these conditions, there is also one practical aspect which is about the inclusion of the sentence like “Acting under Chapter VII of UN Charter” to the operative paragraphs of the resolution. Detailed examination of the conditions and this practical aspect will define the binding or non-binding character of Resolution 853. That is why, firstly what they mean and secondly whether or not they appear in the SCR on Nagorno-Karabakh will be analyzed in the sections below.

A. Breach of Peace

This condition comes from the Article 24 of the Charter of UN, which says that maintenance of international peace and security is the primary responsibility of the SC. This means that if there is a threat or danger to the maintenance of peace, or the peace has already been breached, the SC has to take certain measures for the prevention of such a threat to the maintenance of peace or for the restoration of the already breached peace. That is why, for the determination of the bindingness of the SCR on Nagorno-Karabakh, firstly, the existence of such a threat to the maintenance of peace or such a breach of peace should be defined.

Before defining the above mentioned issues in the Nagorno-Karabakh conflict, it has to be noted that Resolution 853 has reaffirmed the Resolution 822 of SC on Nagorno-Karabakh, and in that resolution, the aggressor or invading party is defined as “local Armenian forces”,⁹ however, it has to be the Republic of Armenia. This issue will be analyzed in the following section clearly.

The territorial problem between Republic of Armenia and Azerbaijan Republic has historically existed and reached its peak point in 1990’s. Accordingly, Resolution 853 was adopted in 1993 – the time of 1990’s conflict. As to the information of the State Committee for Affairs of Refugees and Internally Displaced Persons of the Republic of Azerbaijan, during 1990’s,

Armenian military aggression has caused occupation of 17 thousand km² of the most fertile land, destruction of 900 settlements, 150 000 houses, 7000 public buildings, 693 schools, 855 kindergartens, 695 medical institutions,

⁹ Security Council Resolution 822, para. 4 (1993).

927 libraries, 44 temples, 9 mosques, 473 historical monuments, palaces and museums, 40 000 museum specimens, 6000 industrial and agricultural enterprises, 2670 km highways, 160 bridges, 2300 km water communications, 2000 km gas communications, 15 000 km power lines, 280 000 hectare forests, 1 000 000 hectare lands suitable for agriculture and 1 200 km irrigation systems of the Republic of Azerbaijan. As a result of military aggression by Armenia, 20 thousand Azerbaijanis were killed, 100 thousand people were wounded, 50 thousand people got injuries of various degrees and became disabled and 4011 people got lost. Armenian aggressors have destroyed with special brutality cultural objects that form Azerbaijani cultural heritage in the occupied territories. In these territories they have plundered and burnt 12 museums and 6 picture galleries, 9 palaces of historical importance.¹⁰

In Resolution 853, it has clearly noted such a breach of peace stating in the *Preamble* of the resolution that “Concerned that this situation continues to endanger peace and security in the region”. As a neutral party, such a note of the SC in the *Preamble* affirms that the peace and security was endangered by the reason of this conflict.

So, the first criteria for the bindingness of the resolutions of SC exists in Resolution 853 on Nagorno-Karabakh.

B. Language of SCR

The base of this condition is the Advisory Opinion on Namibia of ICJ.¹¹ In this opinion, ICJ has noted that the language of a resolution of the SC should be carefully analyzed before a conclusion can be made as to its binding effect and for the exercise of Article 25 of UN Charter, the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the SCR should be taken into consideration.¹² That is why, in this criteria of the bindingness, the language of the SCR on Nagorno-Karabakh will be analyzed.

The first issue concerning the language of this resolution is the use of “local Armenian forces” wording in the Resolution 822 which was reaffirmed by the Resolution 853. In that resolution, the invading party is defined as these local Armenian forces of the Nagorno-Karabakh, but in fact it has to be the Republic of Armenia, because of the reasons explained below.

¹⁰ State Committee for Affairs of Refugees and Internally Displaced Persons of The Republic of Azerbaijan, <http://www.qmkkd.gov.az/en/pages/15.html> (last visited 20 Mar. 2019).

¹¹ Advisory Opinion Concerning Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, International Court of Justice, para. 114 (1971).

¹² *Ibid.*

First of all, as it was noted in the “Breach of Peace” criteria, there was a huge damage to the Azerbaijan Republic as a result of this conflict, which in no way could be made by only the local forces of Nagorno-Karabakh. They were not militarily capable to do such a violence. Accordingly, in his report concerning the Nagorno-Karabakh conflict, David Atkinson - a member of the Parliamentary Assembly of the Council of Europe (*hereinafter* - PACE), a rapporteur on the Karabakh conflict for the PACE has noted:

This report concerns the armed conflict between Armenians and Azerbaijanis over the Nagorno-Karabakh region and its surrounding districts which are under the occupation of Armenian forces.¹³ According to the information given to me, Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large budgetary resources to this area.¹⁴

After this report, in the resolution 1416 PACE has noted that:

Considerable parts of the territory of Azerbaijan are still occupied by Armenian forces, and separatist forces are still in control of the Nagorno-Karabakh region.¹⁵

This is the fact of the recognition of the occupation of Nagorno-Karabakh by the Republic of Armenia in the level of Council of Europe. In addition to the above mentioned sentence, the Assembly has also reaffirmed the followings in that resolution: 1) secession of a regional territory from a state may only be achieved through a lawful and peaceful process based on the democratic support of the inhabitants of such territory but not in the wake of an armed conflict leading to ethnic expulsion and the de facto annexation of such territory to another state; 2) the occupation of foreign territory by a member state constitutes a grave violation of that state’s obligations as a member of the Council of Europe; 3) it also reaffirmed the right of displaced persons from the area of conflict to return to their homes safely and with dignity.¹⁶

There are also other facts defined by neutral parties that determines the personality of the occupier. For example, the International Crisis Group (*hereinafter* - ICG), which is a non-governmental and non-profit organization whose aim is the preventing war and shaping peace, has prepared the Europe Report No. 166, called “Nagorno-Karabakh: Viewing the conflict

¹³ Explanatory Memorandum of the Report on the topic “The Conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference”, para. 2 (2004).

¹⁴ Explanatory memorandum of resolution 1416 of PACE by the Rapporteur, para. 6 (2005).

¹⁵ PACE resolution 1416, para. 1 (2005).

¹⁶ *Id.*, para. 2 (2005).

from the ground” in 2005. In this report, firstly it has defined the number of the members of the military force of the Nagorno-Karabakh and then it has noted that “based on its population, Nagorno-Karabakh cannot sustain such a large force without relying on substantial numbers of outsiders; according to an independent assessment, there are 8,500 Karabakh Armenians in the army and 10,000 from Armenia.”¹⁷

Here, besides the provision of military personnel, provision of weaponry and assistance with military training should also be paid attention to. As ICG has defined,

*There is a high degree of integration between the forces of Armenia and Nagorno-Karabakh. Senior Armenian authorities admit that they give substantial equipment and weaponry. Nagorno-Karabakh authorities also acknowledge that Armenian officers assist with training and in providing specialized skill.*¹⁸

This is the another evidence of the very close relations of Nagorno-Karabakh and the Republic of Armenia in the military issues.

In addition to the above mentioned facts, ICG has also defined that the economy of Nagorno-Karabakh is closely tied to the Republic of Armenia and is highly dependent on its financial inputs.¹⁹ As the economy is one of the crucial factors for the existence of any community, such high dependence of the economy of Nagorno-Karabakh from Armenia means that it cannot exist without the economic assistance of the Republic of Armenia.

Another fact is the use of “Urges the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorno-Karabakh region of the Azerbaijani Republic” sentence by SC in the operative paragraphs of Resolution 853.²⁰ Such a sentence obviously shows that SC also recognizes influence of the Republic of Armenia on Nagorno-Karabakh.

So, all of these analyzed facts are the indications of the personality of the actual occupier – the Republic of Armenia. As it is stated in the Human Rights Watch (Helsinki report), Armenian military involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the government of Armenia and Azerbaijan.²¹

In the *Preamble* of the Resolution 853, the SC has reaffirmed the respect for sovereignty and territorial integrity of all States in the region, also the

¹⁷ International Crisis Group, “Nagorno-Karabakh: Viewing The Conflict from The Ground”. Europe Report No. 166, 9 (2005).

¹⁸ *Id.*, 10 (2005).

¹⁹ *Id.*, 12 (2005).

²⁰ Security Council Resolution 853, para. 8 (1993).

²¹ Human Rights Watch/Helsinki, *Seven Years of Conflict in Nagorno-Karabakh*, 127 (1994).

inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory.²² Inclusion of such sentences to the *Preambulas* of resolutions shows that SC draws attention to these principles of international law, which were violated in the related conflict. In early 1990's, the Republic of Armenia being irrespective to the principles of international law, broke the borders of Azerbaijan Republic, and used force for the separation of the Nagorno-Karabakh from Azerbaijan Republic and acquisition of it to the Republic of Armenia as discussed above. So, reaffirmation of these principles define precisely the intent of SC for the adoption of these resolutions, which is the provision of the respect for the territorial integrity and sovereignty of Azerbaijan Republic.

The SC in its 853 Resolution has noted that it “condemns the seizure of the district of Aghdam and of all other recently occupied areas of the Azerbaijan Republic, and further condemns all hostile actions in the region, in particular, attacks on civilians and bombardments of inhabited areas”.²³ The important point in this sentence is that the SC recognizes the seizure and occupation of Aghdam and other recently occupied territories of the Azerbaijan Republic and also it affirms that the civilians and inhabited areas were attacked.

One of the other main issues regarding the “Language Criteria” in this Resolution is the use of the word “to demand” that importantly affects the language of the Resolution. In the operative paragraphs of the Resolution 853, SC has noted that it “demands the immediate cessation of all hostilities and the immediate complete and unconditional withdrawal of the occupying forces involved from the district of Aghdam and all other recently occupied areas of the Azerbaijan Republic”.²⁴ In the Cambridge English Dictionary, the word “to demand” is defined as “to ask for something forcefully, in a way that shows that you do not expect to be refused”.²⁵ And in the English Oxford Living Dictionary this word is described as “to ask authoritatively or brusquely”.²⁶ This means that when SC made this Resolution, it had an exact intent of the realization of the request of this sentence and it ordered the immediate cessation of all hostilities and the withdrawal of all occupying forces from the occupied areas of Azerbaijan Republic.

The analysis of the language of the Resolution 853 of SC shows that this resolution has a binding character because of the correlated meanings of its sentences. The SC, firstly, reminds the principles of international law, condemns the seizure of the territories of the Azerbaijan Republic, and

²² Preambula of SCR 853, para. 8 and 9 (1993).

²³ *Supra* note 21, para. 1.

²⁴ *Id.*, para. 3.

²⁵ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/demand> (last visited 30 Mar. 2019).

²⁶ See at <https://en.oxforddictionaries.com/definition/demand> (last visited 30 Mar. 2019).

demands the immediate and unconditional withdrawal of all occupying forces therefrom. So, the second criteria for bindingness of SCR is provided in the Resolution 853 of the SC on Nagorno-Karabakh.

C. “Acting under Chapter VII of the Charter of UN”

When the resolutions of SC which are accepted by the world community as the binding ones are analyzed, many of them contains the sentence like “Acting under Chapter VII of the Charter of UN” in the *Preambula*. Concerning the Resolution 853 on Nagorno-Karabakh, it should be noted that such a sentence was not indicated in its *Preambula*. However, the ICJ in its advisory opinion on Namibia notes that:

*It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to “the decisions of the Security Council” adopted in accordance with the Charter.*²⁷

As it is mentioned above, article 25 of the Charter is about the realization of the decisions of SC and it definitely demands all the parties of the Charter to realize these decisions. Non-inclusion of the “Acting under Chapter VII of the Charter of UN” sentence to the Resolution 853 could make it non-binding one, but this opinion of ICJ denies such criteria for the bindingness of SCR. This means that non-inclusion of such a sentence to the resolution does not affect the bindingness of this resolution and does not make it non-binding one.

Conclusion

In this article, the conditions for the bindingness of the resolutions of SC are defined on the base of the Charter of UN (Breach of peace), practice and the advisory opinion of ICJ on Namibia (Language of SCR). The analysis of the practice and these conditions of bindingness shows that the SCR 853 on Nagorno-Karabakh can be defined as a binding resolution because of the following reasons: 1) the military aggression of the Republic of Armenia has caused the invasion of the Nagorno-Karabakh and 7 adjacent districts thereof, has caused the death of thousands people and has endangered the peace; 2) when the language of the resolutions is analyzed the recognition of the occupation by the SC and the exact intention of SC on the withdrawal of the armed forces from the occupied territories of the Azerbaijan Republic is obviously seen; 3) even though the sentence like “Acting under Chapter VII of the Charter of UN” is not noted in them, the advisory opinion of ICJ states that bindingness is not only applied to the Chapter VII enforcement actions

²⁷ *Supra* note 12, para. 113.

and non-inclusion of such a sentence does not affect the bindingness of the concerned resolution. This means that the conditions for bindingness of SCR are provided in the Resolution 853.

The bindingness of this resolution means that it must be realized by concerned parties of the conflict. Accordingly, the conclusion of this article is that this resolution has binding character and the parties to the discussed conflict has to carry out what this resolution demands from them.

At the end of this article, I want to note my two important suggestions regarding the above analyzed issues. The first suggestion of mine is the amendment of the “local Armenian forces” wording with the “military forces of the Republic of Armenia”, because of the facts that are defined in the “Language of SCR” criteria. Additionally, my second suggestion is the reconsideration of the Resolution 853 because of the fact that thousands of people have been made to leave their childbirth areas as a result of this conflict, and they still cannot go to those places, however, the binding character of this resolution can be proved by the international community as this article does, and this binding resolution can make the occupiers withdraw their forces from Nagorno-Karabakh.