

Hans-Joachim Heintze

Legal Opinion on the 1993 Resolutions of the UN Security Council

Concerning the Conflict between
Armenia and Azerbaijan and
the Following Legally Relevant Documents
of International Bodies

– The Humanitarian Dimension –



Berliner
Wissenschafts-Verlag

Hans-Joachim Heintze

Legal Opinion on the 1993 Resolutions of the UN Security Council

Concerning the Conflict between
Armenia and Azerbaijan and
the Following Legally Relevant Documents
of International Bodies

– The Humanitarian Dimension –



Berliner
Wissenschafts-Verlag

The Author

Prof. Dr. iur. Hans-Joachim Heintze, Ruhr University Bochum, Institute of International Law of Peace and Armed Conflict, was from 1996–1998 the President of the Association for the Study of the World Refugee Problem (Registered in Liechtenstein, Observer Status with ECOSOC and the Council of Europe). He is member of the German Society of International Law and the International Law Association.

Bibliografische Information der Deutschen Nationalbibliothek:

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

Dieses Werk einschließlich aller seiner Teile ist urheberrechtlich geschützt. Jede Verwertung außerhalb der engen Grenzen des Urheberrechtes ist unzulässig und strafbar.

© 2020 BWV | BERLINER WISSENSCHAFTS-VERLAG GmbH,
Markgrafenstraße 12–14, 10969 Berlin,
E-Mail: bwv@bwv-verlag.de, Internet: <http://www.bwv-verlag.de>

Druck: docupoint, Magdeburg
Gedruckt auf holzfreiem, chlor- und säurefreiem, alterungsbeständigem Papier.
Printed in Germany.

ISBN Print 978-3-8305-5026-6
ISBN E-Book 978-3-8305-4191-2

1. History of the relevant Resolutions of the Security Council

In 1993, as the humanitarian situation in and around the Nagorny-Karabakh Region¹ of the Republic of Azerbaijan worsened, the Security Council dealt with the conflict between the two states, focusing on human suffering.² After consultations held by the Security Council, its President expressed the deep concern at the devastating effects which created a real threat of starvation. The Council urged all countries to facilitate humanitarian assistance and called governments in the region to allow humanitarian supplies. With regard to a settlement of the conflict between Armenia and Azerbaijan that goes beyond humanitarian issues, the Security Council recalls that their full support for the Conference on Security and Co-operation in Europe (CSCE) efforts to achieve peace in the region. Such a reference to the CSCE is possible, since according to Art. 52 of the UN Charter the Security Council shall encourage of pacific settlements of local disputes through regional arrangements either on the initiative of the states concerned or by reference from the Security Council. Some scholars like Hummel/Schweizer argue, “after the ending of the hot phase of such a conflict, the OSCE can ... play a very important role in preventing and containing a conflict.”³

In a letter dated 31 March 1993 Azerbaijan draw the attention of the Security Council to the grave situation in the Province Kelbadjar geographical lies outside the Nagorny-Karabakh region, which was attacked by Armenia.⁴ On 6 April 1993 issued the President of the Security Council a note in connection with the item entitled „The situation relation to Nagorno-Karabakh“ and expressed its serious concern at the escalation of hostile acts as well as the access to humanitarian relief.⁵ The Security Council requested the UN Secretary General to submit urgently an assessment of the situation on the ground. In his report, he argued that the

1 In order to avoid confusion the widely referred terms “Nagorno Karabakh”, “Nagorny Karabakh” or “Nagorni Karabakh” will be used here, as appropriate. Annex to the letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia’s responsibility A/66/787 S/2012/289.

2 UN-Doc. S/25199, 29 January 1993.

3 W. Hummer/Ch. Schweizer in B. Simma et. al.(eds.), *The Charter of the United Nations*, 2nd ed., Oxford 2002, p. 833 f.

4 UN-Doc. S/25491, 30 March 1993.

5 UN-Doc. S/25539, 6 April 1993.

conflict poses a serious threat to the maintenance of international peace and security in the entire Transcaucasia region.⁶ One issue was the outflow of displaced persons from the fighting zone and the United Nations High Commissioner of Refugees (UNHCR) assessed the sudden emergency situation.

2. Resolution 822 (1993) of 30 April 1993

Against the background of this report of the Secretary General, the Security Council issued the Resolution 822 (1993). It is significant that the relations between the two states, the Republic of Armenia and the Republic of Azerbaijan are explicitly mentioned here. The Security Council expressed “grave concern at the displacement of a large number of civilians and the humanitarian emergency in the region.” According to the legal status of the preamble of a resolution, expulsion was one of the reasons why the Council articulated its „concern “that the situation between the two states „endangers peace and security in the region. “

This wording suggests adoption of the resolution under Chapter VII dealing with threats to peace. Such a reference, however, is not found in the resolution. The reason for this inconsistent attitude is obvious. Had the Security Council referred to Chapter VII and formally declared the situation a threat to peace, action against the disturber of peace should have been taken in order to restore peace. Then the Security Council would have had the obligation to induce the disturber of peace to behave in a law-abiding manner by means of sanctions. The Security Council wanted to avoid this consequence by handing over the problem to the CSCE, which was to initiate a peace process.

Nevertheless, the resolution contains legally binding obligations of both states, because § 1

- “demands the immediate cessation of all hostilities ...” and “a durable cease-fire”
- demands immediate withdrawals of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan
- urges according to § 2 immediately to resume negotiations for the resolution of the conflict
- calls for unimpeded access for international humanitarian relief.

6 UN-Doc. S/25600, para. 10, 14 April 1993.