

**Using Force for a Just Cause?:
Recovering Occupied Territory**

Murathan Arslan

Student ID: 200029076

Supervisor: Professor Neve Gordon

Abstract

As it is not usual after the adoption of the UN Charter for a state to retrieve its invaded lands, the issue of recovering occupied territory through use of force is not extensively examined in the academic field. However, in late 2020, the Caucasus region witnessed a major territorial change as a result of armed hostilities named as Second Karabakh War in 2020, where Azerbaijan recovered its previously occupied territory in the Nagorno Karabakh region. Since then, the legality of the use of force to recover occupied lands has been receiving adequate attention. This dissertation explores whether a state can legally use force to recover its occupied territory. The conditions allowing states to legitimately exercise force in an effort to liberate occupied territories, will be interrogated, while providing a distinction between *jus ad bellum* and *jus in bello*. The author will argue that recovering occupied territory should be considered under the *jus ad bellum* regime, specifically under the right of self-defence as regulated in article 51 of the Charter of the United Nations (UN Charter) but self-defence stops after hostilities between belligerent states cease even though the occupant state does not leave the occupation zone. The right of self-defence becomes applicable again when the occupant state destabilises the conflict zone. At that point, self-defence also covers the right of an occupied state to recapture its previously occupied territories.

I. Introduction

The conflict between Azerbaijan and Armenia over the disputed Nagorno-Karabakh region erupted on 27 September 2020.¹ The hostilities were named "Second Karabakh War" and they ended with a ceasefire agreement mediated by the Russian Federation with significant Azerbaijani gains, one of which is that Azerbaijan resealed the control of seven territories previously held by Armenia.² The Second Karabakh War raised various questions, including the legality of using force when recovering occupied land. In the past, Egypt and Syria attempted to recapture the Sinai Peninsula and the Golan Heights, which were occupied by Israel.³ Although these attempts failed, it was the first time in the Charter era that a state sought to justify its use of force under the argument of recapturing territory that had been previously occupied. In a similar vein, the possibility of Ukraine's re seizure of Crimea, which was occupied by Russia in 2014⁴, has arisen in the context of the recent Russian-Ukrainian War.⁵

This dissertation examines whether a state can legally use force to recover its occupied territory. The author will interrogate the conditions that allow states to legitimately exercise force in an effort to liberate occupied territories while providing a distinction between *jus ad bellum* and *jus in bello*. The reason for providing this distinction is to analyse the legal status of occupation

¹ 'Armenia and Azerbaijan fight over disputed Nagorno-Karabakh' *BBC News* (28 September 2020) <<https://www.bbc.co.uk/news/world-europe-54314341>> accessed 21 August 2022.

² 'Armenia, Azerbaijan and Russia sign Nagorno-Karabakh peace deal' *BBC News* (10 November 2020) <<https://www.bbc.co.uk/news/world-europe-54882564>> accessed 21 August 2022.

³ François Dubuisson and Vaios Koutroulis, 'The Yom Kippur War-1973' in Tom Ruys and Olivier Corten and Alexandra Höfer (eds), *Use of Force in International Law: A Case Based Approach* (OUP 2018) 189.

⁴ Mary Ellen O'Connell, 'The Crisis in Ukraine-2014' in Tom Ruys and Olivier Corten and Alexandra Höfer (eds), *Use of Force in International Law: A Case Based Approach* (OUP 2018) 855.

⁵ 'Russia invades Ukraine: Political, military leaders' reactions' *Reuters* (24 February 2022) <<https://www.reuters.com/markets/europe/leaders-key-quotes-after-russia-invades-ukraine-2022-02-24/>> accessed 21 August 2022.

in "prolonged conflicts". Although the ban on the use of force is comprehensive and forbids any type of military intervention except for reasons of self-defence⁶, wars still occur.

The debate surrounding the exercise of self-defence revolves around the conditions that render it legitimate.⁷ Herein the significance of distinguishing *jus in bello* and *jus ad bellum* comes into play. From the *jus in bello* aspect, as long as the occupation continues, the occupied state may invoke its right of self-defence to recover its occupied territory. On the contrary, from the *jus ad bellum* perspective, even if the occupation continues, self-defence may not be invoked to retrieve occupied territory once hostilities are ceded. Furthermore, the ability to exercise self-defence to recover occupied territory will be discussed, specifically focusing on the "immediacy" requirement.

The author will argue that recovering occupied territory should be considered under the *jus ad bellum* regime, specifically under the right of self-defence as regulated in Article 51 of the Charter of the United Nations⁸ (UN Charter) but self-defence stops after hostilities between belligerent states cease even though the occupant state does not leave the occupation zone. The right of self-defence becomes applicable again when the occupant state destabilises the conflict zone. At that point, self-defence also covers the right of an occupied state to recapture its previously occupied territories.

This dissertation is divided into nine sections, and the staging will be as follows. Chapter II is allocated for the literature review on "occupation", "self-defence", and "Nagorno Karabakh conflict". Following that, the methodology of the research will be provided in Chapter III. Subsequently, in Chapter IV, the legality of using force to recover occupied territory under *jus*

⁶ Ian Brownlie, *International Law and Use of Force by States* (Clarendon Press 1963) 251; Yoram Dinstein, *War, Aggression and Self-Defence* (CUP 2017, 6th edn) 197.

⁷ Brownlie (ibid); Stanimir A Alexandrov, *Self-Defense Against the Use of Force in International Law* (Kluwer Law International 1996); Dinstein (ibid).

⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter) Art 51.

in bello and *jus ad bellum* will be analysed. The few state practices on this issue will follow in Chapter V. In Chapter VI, the theory and practice provided in this dissertation will be jointly evaluated, where as a current issue and the possible practice of using force by Ukraine to recover its occupied territory will also be discussed. Finally, in Chapter VII, the main thesis will be summarised, and the applicability of self-defence to recover occupied territory after a new attack on the occupied state will be underlined.

II. Literature Review

"Occupation"⁹, "Self-Defence"¹⁰, and "Nagorno-Karabakh conflict"¹¹ are separately referred to in a wide range of literature.

Although occupation evokes an unlawful use of force, it may also be created lawfully. First, an occupation might have started before the UN Charter was adopted, such as the Annexation of Austria by Germany in 1938.¹² Second, Oppenheim noted that occupation may be necessary to counteractive the enemy state forces for its military success and, therefore, may be legal.¹³ However, in this scenario, there is an intention to leave the occupied territory after achieving the military aim. Quite the reverse, this research is involved in the occupation of prolonged duration, which started after 1945 and has not come to an end with a peace treaty yet.

⁹ Dapo Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts' in Elizabeth Wilmshurst (ed), *International Law and the Classification of Conflicts* (OUP 2012) 32; Philip Spoerri, 'The Law of Occupation' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014) 182; Hanne Cuyckens, 'The Law of Occupation' in Jan Wouters and Philip De Man and Nele Verlinden (eds), *Armed Conflicts and the Law* (Intersentia 2016) 417.

¹⁰ Alexandrov (n 7); Giovanni Distefano, 'Use of Force' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014) 545; Nico Schrijver, 'The Ban on the Use of Force in the UN Charter' in Marc Weller (ed), *The Oxford Handbook of The Use of Force in International Law* (OUP 2015) 465; Dinstein (n 6).

¹¹ Tim Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia A Legal Appraisal* (Kluwer Law International 2001); Heiko Krüger, *The Nagorno-Karabakh Conflict A Legal Analysis* (Springer 2010); Svante E Cornell, *The International Politics of the Armenian-Azerbaijani Conflict: The Original "Frozen Conflict" and European Security* (Palgrave MacMillan US 2017).

¹² Roderick Stackelberg, *Hitler's Germany: Origins, Interpretations, Legacies* (Routledge 1999).

¹³ Hersch Lauterpacht and Robert Jennings and Arthur Watts (eds), *Oppenheim's International Law* (London, 7th edn, Longmans 1948) 432.

Lassa Oppenheim distinguished occupation from invasion as the intention of exercising control over the invaded territory.¹⁴ Agreeing with Oppenheim, Hanne Cuyckens refers to the effective control test to individuate occupation from a regular state of international armed conflict and asserts the need for effective control over the occupied territory of the opposite party.¹⁵ Moreover, the criteria for counting a military intervention as occupation are formulated by Philip Spoerri as the necessary presence of foreign forces, the exercise of authority over the occupied territory and the non-consensual nature of the belligerent occupation.¹⁶ Despite the 1949 Geneva Conventions¹⁷ do not define “occupation”, Common Article 2¹⁸ states that the Conventions shall apply to all cases of partial or total occupation of the territory of a Party, even if the occupation meets with no armed resistance. Therefore, the definition of occupation set out in Article 42 of the 1907 Hague Conventions applies as customary international law, as confirmed by the International Court of Justice in the Armed Activities Case¹⁹ and in the Israeli Wall Advisory Opinion.²⁰ According to Article 42 of the 1907 Hague Conventions²¹ “a territory is considered occupied when it is actually placed under the authority of the hostile army”.

¹⁴ Lassa Oppenheim, *International Law: A Treatise* vol 2 (London, 2nd edn Longmans 1912) ch 167.

¹⁵ Cuyckens (n 9) 419.

¹⁶ Spoerri (n 9) 187.

¹⁷ Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31; Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85; Geneva Convention relative to the treatment of prisoners of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135; Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 187 (1949 Geneva Conventions).

¹⁸ *ibid* Common Article 2.

¹⁹ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* [2005] ICJ Rep 2005 (Armed Activities Case) paras 172-173.

²⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 2004 para 78.

²¹ James Brown Scott, *The Hague Conventions and Declarations of 1899 and 1907* (Washington DC, Carnegie Endowment for International Peace 1915) (Hague Regulations).

Although there is no reference to indirect occupation in the definition of occupation, it is accepted by international tribunals in *Armed Activities Case*²² and *Tadic Trial Judgment*²³ that if the whole or a part of the territory of a state is controlled not by another state but by a non-state actor, and that group is under the control of another state, it can be said that there is an occupation. In this scenario, there should be “overall control” of the non-state actors having “effective control” over the territory in question.²⁴ The situation in Nagorno-Karabakh was the most common example until November 2020 for indirect occupation, where Armenia had been in control of the self-proclaimed “Republic of Artsakh” in the Karabakh region, which is the internationally recognised territory of Azerbaijan.²⁵ Another example of indirect occupation is the control of the Russian Federation over the self-proclaimed “Donetsk People’s Republic” and “Luhansk People’s Republic” in the Donbas region, which is the internationally recognised territory of Ukraine.²⁶

An important point is the duration and end of the occupation. In general, an occupation ends "when an occupant withdraws from the territory or is driven out of it."²⁷ However, in practice, it is not always easy to determine whether an occupation has ended. First, the withdrawal of foreign troops does not happen instantly but gradually. Therefore, it is not easy to ascertain when the occupied state has started to exercise control over its formerly occupied territory. Second, an occupation might end even if foreign troops remain in the territory in question. For instance, the occupied state might consent foreign troops to remain in its territory upon a peace treaty or in case of the resurgence of hostilities in the territory.²⁸ In the case of indirect

²² *Armed Activities Case* (n 19) para 177.

²³ *Prosecutor v Tadic* (Judgment (Trial Chamber)) IT-94-1-T (1997) para 584.

²⁴ Sylvain Vité, ‘Typology of armed conflicts in international humanitarian law: legal concepts and actual situations’ (March 2009) 91 *International Review of the Red Cross* 69, 73-74.

²⁵ *ibid.*

²⁶ O’Connell (n 4).

²⁷ Oppenheim (n 14) ch 168.

²⁸ Cuyckens (n 9) 433.

occupation, the occupation ends when the occupied state starts to exercise power within the territory held by a non-state actor controlled by a foreign state.²⁹

Notwithstanding that occupation is temporary³⁰, long protracted occupations cause the problematic of its end due to the responsibilities of the occupant state towards the occupied civilian population as set out in Articles 43 and 55 of Hague Regulations³¹ and Articles 46/6 and 64 of Fourth Geneva Convention.³² To increase the importance of such responsibilities, Aeyal Gross is in favour of replacing "temporary" occupation with "indefinite" occupation. That way, the occupation will still not be "permanent", but its prolongation will be emphasised.³³ This approach would support the *jus in bello* argument to recover occupied territory. However, it would not be a significant contribution to the legality of such an action.

As World War II had catastrophic consequences, the United Nations was founded to repress the unrestrained use of force.³⁴ Therefore, article 2(4) of the UN Charter³⁵ is a milestone in international relations for the extensive ban on the use of force. The provision did not only prohibit wars but any type of military intervention. There are two exceptions to this rule. The first is the universally recognised right to self-defence, which is also covered by article 51 of the UN Charter.³⁶ The second is Chapter VII of the UN Charter, which permits the UN Security Council (UNSC) to employ force as a necessary measure to preserve or re-establish

²⁹ Akande (n 9) 48.

³⁰ Orna Ben-Naftali and Aeyal M Gross and Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23(3) *BerkeleyJInt'lL* 551.

³¹ Hague Regulations (n 21) Art 43, 55.

³² Geneva Convention relative to the protection of civilian persons in time of war (n 17) art 46/6 and 64.

³³ Aeyal M Gross, *The Writing On The Wall Rethinking The International Law of Occupation* (CUP 2017) 34.

³⁴ Elena Andreevska, 'The UN as a Dispute Settlement System: The Role of the Security Council' (2018) 1 *Journal of Political Administrative and Local Studies* 19, 23.

³⁵ UN Charter (n 8) art 2(4).

³⁶ *ibid* art 51.

international peace and security.³⁷ In light of these regulations, self-defence stands for the only legitimate way for a state to exercise force unilaterally.

As stated in article 51 of the UN Charter and customary international law, the conditions of self-defence are previous armed attack, necessity, and proportionality, as confirmed in the Nicaragua judgment.³⁸

Additionally, article 1(4) of the Additional Protocols to the 1949 Geneva Conventions states that "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" are legitimate.³⁹ However, this provision covers situations where a state occupies another state entirely, which leads the occupied state to lose its statehood. The people of the territory concerned aim to fight against foreign occupation through using force under the right of self-determination.⁴⁰ The Israeli occupation of the West Bank and the Gaza Strip is the most concrete example of this provision.⁴¹ Notwithstanding, this research explores situations where another state occupies a part of a state, but the statehood of the occupied state is not in dispute at the same time.

After the Union of Soviet Socialist Republics (USSR) seized power in the South Caucasus in 1920, controversies between the Armenian Soviet Socialist Republic (Armenian SSR) and Azerbaijani Soviet Socialist Republic (Azerbaijani SSR) about the status of Nakhchivan,

³⁷ *ibid* ch VII.

³⁸ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 1986 paras 176, 191.

³⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 08 June 1977, entered into force 07 December 1978) 1125 UNTS 3 (Additional Protocol).

⁴⁰ Ben Saul, 'The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources' (2015) 27 *Global Change, Peace and Security* 301.

⁴¹ Matthew Saul, 'The Right to Self-Determination and the Prolonged Occupation of Palestinian Territory' (01 January 2021) in Gentian Zyberi (ed), *Protecting Community Interests through International Law* (Intersentia 2021).

Zangezur and Karabakh arose. Nakhchivan gained an autonomous status within the Azerbaijani SSR under the Treaty of Kars⁴². On the contrary, the Armenian SSR became entitled to Zangezur, whereas the Autonomous Oblast of Nagorno-Karabakh was created within the Azerbaijani SSR. At the time, a few objections were raised. However, the situation in the region remained stable until the Gorbachev era in the Soviet Union. Although the USSR Supreme Soviet, on 18 July 1988, ruled that Nagorno-Karabakh may only leave the Union within the structure of Azerbaijani SSR according to Article 78 of the Soviet Constitution⁴³ because any territorial change to a Union republic was prohibited without its consent⁴⁴. However, the self-proclaimed Republic of Nagorno-Karabakh (the former name of the Republic of Artsakh) declared its independence on 06 January 1992.⁴⁵ The hostilities between Armenian and Azerbaijani forces had begun in 1988, which led to the First Karabakh War. The war ended after a ceasefire was brokered on 09 May 1994 through Russian mediation.⁴⁶

The ceasefire was broken several times, but the most serious one was in 2016. Both sides accused each other of hostilities, but the fray ended within four days with no territorial changes.⁴⁷ It was only in the last quarter of 2020 that the ceasefire was again broken, and the Second Karabakh War erupted. The hostilities between Armenian and Azerbaijani troops ended with major changes, including Azerbaijan's recovery of most of its previously occupied land.⁴⁸

⁴² Treaty of Kars between Georgian, Armenian and Azerbaijani Soviet Socialist Republics, Russian Soviet Federal Socialist Republic, and Grand National Assembly of Turkey (adopted 13 October 1921, entered into force 11 September 1922) Art 5, Original French text can be found at: <https://www.mfa.gov.tr/data/Kutuphane/Kurucu_Anlasmalar/1921-kars-anlasmasi.pdf> accessed 21 August 2022.

⁴³ USSR Constitution Article 78 cited in Potier (n 11) 16.

⁴⁴ USSR Supreme Soviet Decision SU/0209 B/5 (18 July 1988) cited in Potier (n 11) 16.

⁴⁵ 'State Independence Declaration of the Nagorno Karabagh Republic' (The Supreme Council of the Nagorno Karabagh Republic, 06 January 1992) <<http://president.nkr.am/en/nkr/nkr2>> accessed 21 August 2022.

⁴⁶ Potier (n 11) 1-8.

⁴⁷ Laurence Broers, 'The Nagorny Karabakh Conflict Defaulting to War' (2016) Chatham House Research Paper <<https://www.chathamhouse.org/sites/default/files/publications/research/NK%20paper%2024082016%20WEB.pdf>> accessed 21 August 2022.

⁴⁸ BBC News (n 2).

There have been numerous pieces written on the Nagorno-Karabakh Conflict *inter alia* from the possible statehood of the self-proclaimed Artsakh Republic⁴⁹ to displaced persons in the region.⁵⁰ However, except for Saed Bagheri⁵¹ the legality of using force for Azerbaijan to gain its occupied land back had not been discussed until the ceasefire brokered as a result of the Second Karabakh War.

Returning to the question about the legitimacy of using force to recover occupied territory, it appears that states had this right within the framework of international law until 1945. Oppenheim approached this issue as a means of ending a belligerent occupation, arguing that occupation can legitimately terminate if the occupier is chased away by natives without being able to reoccupy that land.⁵² His views held sway until the Kellogg-Briand Pact (1928), which dramatically limited the legality of using force. Hence, the General Treaty for the Renunciation of War, which was signed as part of the Kellogg-Briand Pact, required parties to renounce war as a legitimate instrument in resolving intra-state disputes, but at the same time, it did not completely prohibit the use of force. Self-defence was still asserted as a reservation by certain parties while declaring war was not considered necessary to engage in armed conflict legitimately.⁵³ Therefore, the treaty, in fact, did not serve as an instrument that could either ban or permit the use of force to recover occupied territory.

Following the adoption of the UN Charter, discussions over the legitimacy of using force have been extensive. However, the discussion about the legitimacy of using force to recover occupied territory has not received adequate attention in the scholarly literature. In contrast, self-defence

⁴⁹ Heiko Krüger, 'Nagorno Karabakh' in Christian Walter and Antje von Ungern-Sternberg and Kavus Abushov (eds), *Self-Determination and Secession in International Law* (OUP 2014) 214.

⁵⁰ Potier (n 11) 99.

⁵¹ Saed Bagheri, 'Self-Defense in Karabakh Conflict?' (2015) 3 *Russian Law Journal* 150.

⁵² Lassa Oppenheim and Arnold D McNair (ed), *International Law A Treatise* vol 1 (4th edn, Longmans 1928) 456.

⁵³ Michael N Shaw, *International Law* (9th edn, CUP 2021) 985.

was not considered by Röling to prevail over any other rule of international law.⁵⁴ Furthermore, while drafting a treaty on state responsibility, the UN International Law Commission took a stance on self-defence that it is a permissible form of "armed self-help" and is allowed only against unlawful attacks against the target state. In other words, the prohibition on the use of force is the general rule, and self-defence is an exception to it rather than a competing legal provision with it.⁵⁵ Accordingly, this approach limited states to invoke self-defence to retrieve occupied land.

Feinberg discusses the use of force by the occupied state to recapture its occupied territory, claiming that a comprehensive ban on the use of force does not leave an open door to recover occupied territory.⁵⁶ In contrast, prior to the Second Karabakh War, Bagheri argued that the occupied state can exercise self-defence to recover its occupied territory when peaceful dispute settlement means are exhausted.⁵⁷ Nonetheless, none of these views found any support from academics and state practice. Moreover, it was not discussed deeply in the literature until the Second Karabakh War in 2020.

Since the Second Karabakh War, a few scholars have returned to the issue.

In general, there are two views on using force to recapture occupied land. The first one is the restrictive view asserted by Tom Ruys and Felipe Rodriguez Silvestre, who argue that an occupied state cannot invoke self-defence to recover its occupied territory if a part of its territory is under the occupation of another state for "a prolonged duration" after the end of hostilities and to reinvoke self-defence to recover occupied territory a new attack from the occupant state

⁵⁴ Bert V A Röling, 'The Ban on the Use of Force and the U.N. Charter' in Antonio Cassese (ed), *The Current Legal Regulation of The Use of Force* (Martinus Nijhoff Publishers 1986) 3.

⁵⁵ Draft Articles on State Responsibility, Report of the International Law Commission, 32nd Session, [1980] II (2) *ILC Ybk* 1, 54.

⁵⁶ Nathan Feinberg, 'The Legality of the Use of Force to Recover Occupied Territory' (1980) 15 *IsrLRev* 160.

⁵⁷ Bagheri (n 51).

is needed.⁵⁸ This argument was supported in another publication⁵⁹ as well as by other scholars.⁶⁰

Akande and Tzanakopoulos contest this restrictive view. They claim that the occupied state may always invoke the right of self-defence to recover its occupied territory unless there is a peace agreement.⁶¹

These two views rely on different branches of international law. On the one hand, Ruys and Rodriguez Silvestre base their argument on *jus ad bellum*, which prohibits the use of force according to Article 2(4) of the UN Charter.⁶² The argument further limits the right to recover occupied land to one of the exceptions of using force, i.e. self-defence. At that stage, such a right arises only after a new attack from the occupying state. On the other hand, Akande and Tzanakopoulos ground their argument on *jus in bello*, i.e. international humanitarian law. That view considers occupation a continuing armed attack and therefore allows the occupied state to exercise self-defence anytime.

The views on recovering occupied land by force approach the topic from very different aspects. Therefore, the applicability of *jus ad bellum* and *jus in bello* in the context of occupation will be examined in this research. After concluding the topic in *jus ad bellum*, self-defence will be interpreted in a way to permit states to recover their occupied territory.

III. Methodology

⁵⁸ Tom Ruys and Felipe Rodriguez Silvestre, 'Military Action to Recover Occupied Land: Lawful Self-defence or Prohibited Use of Force? The 2020 Nagorno Karabakh Conflict Revisited' (2021) 97 Int'ILStud 665.

⁵⁹ Bence Kis Kelemen, 'Right to Self-Defense to Recover Occupied Territory? A Glance at the Nagorno-Karabakh Conflict' (2020) 2 Pécs Journal of International and European Law 6; Tom Ruys and Felipe Rodriguez Silvestre, 'Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno-Karabakh War' (2021) 32 EJIL 1287.

⁶⁰ Bernhard Knoll-Tudor and Daniel Mueller, 'At Daggers Drawn: International Legal Issues Surrounding the Conflict in and around Nagorno-Karabakh' (EJIL:Talk!, 17 November 2020) <<https://www.ejiltalk.org/at-daggers-drawn-international-legal-issues-surrounding-the-conflict-in-and-around-nagorno-karabakh/>> accessed 21 August 2022.

⁶¹ Dapo Akande and Antonios Tzanakopoulos, 'Legal: Use of Force in Self-Defence to Recover Occupied Territory' (2022) 32 EJIL 1299.

⁶² UN Charter (n 8) art 2(4).

The main thesis statement is formed on the bases of academic literature published by well-known scholars in international law. The main components of self-defence will also be analysed in order to find a gateway to the legality of using force to recover occupied land, where several case laws will be in focus. In addition, state practice in the Yom Kippur War of 1973 and the Second Karabakh War of 2020 will be examined to recognise how the literature is embraced.

IV. Is using force allowed to recover occupied territory?

The question of using force to recapture occupied land focuses on the applicable law to the situation. On the one hand, Akande and Tzanakopoulos are at the stance that the state of occupation is a continuing attack, allowing the occupied state to recourse to self-defence to recover its occupied territory.⁶³ On the other hand, other scholars regard this question as a matter of *jus ad bellum* since the principle of non-use of force prevails over other rules of international law, and it applies to armed conflicts as well.⁶⁴ According to that view, even though there is no peace deal between belligerent states, to recourse force to recapture occupied land, there is a need for a prominent attack from the occupying state targeting the either occupied or unoccupied territory of the occupied state.⁶⁵

Invoking self-defence years after an occupation had not been widely discussed by scholars until the Second Karabakh War. Before that, Dinstein based his argument on the absolute distinction between peace and war, in other words, *jus ad bellum* and *jus in bello*.⁶⁶ However, this argument is linked to belligerent rights instead of the right to self-defence, which is outlawed with the adoption of the UN Charter.⁶⁷ Attempts in the post-Charter era to rely on belligerent rights to

⁶³ Akande and Tzanakopoulos (n 61) 1300.

⁶⁴ Kis Kelemen (n 59); Ruys and Rodriguez Silvestre (n 58).

⁶⁵ *ibid.*

⁶⁶ Dinstein (n 6) 11-17.

⁶⁷ Constantinos Yiallourides and Markus Gehring and Jean-Pierre Gauci, 'The Use of Force in Relation to Sovereignty Disputes over Land Territory' (2018) BIICL, paras 158-161 <https://www.academia.edu/36976310/The_Use_of_Force_in_relation_to_Sovereignty_Disputes_over_Land_Territory> accessed 21 August 2022.

restart the hostilities with no official end failed. For instance, Egypt's claim of invoking belligerent rights against Israel was dismissed by the UNSC.⁶⁸ Therefore, it is not possible to accept Dinstein's view on the use of belligerent rights as long as the occupation continues.⁶⁹

However, in the post-Charter era, there is still the question of which rules to apply to the recovery of occupied land, *just ad bellum* or *jus in bello*. Feinberg was one of the first scholars to discuss this issue in the post-Charter era. In contrast with Egypt and Syria's justifications of military acts as self-defence, Feinberg approached the issues under *jus ad bellum* and took a more restrictive stance on interpreting the UN Charter. In his view, articles 2(4) and 51 of the UN Charter⁷⁰ never leave an open door for any state to recourse military action against another state in no case, and for the application of self-defence, the basic requirements should be met. To put it in another way, there should be an armed attack, and the target state should react immediately, proportionately and necessarily.⁷¹ To support his view, Feinberg relied on several sources from Hans Kelsen⁷² to Eduardo Jiménez de Aréchaga⁷³. Especially although Kelsen is prominent on an absolute ban on the use of force, he also acknowledged that the self-help mechanism could be limited only by an international organisation under two requirements. The first is that the organisation should provide a dispute resolution mechanism, and the other one is that it should have an effective enforcement mechanism.⁷⁴ Due to political disagreements between major actors of the international order, especially the permanent members of the

⁶⁸ UNSC Res 95 (1 September 1951) UN Doc S/RES/95.

⁶⁹ Yiallourides and Gehring and Gauci (n 67) paras 158-161.

⁷⁰ UN Charter (n 8) art 2(4) and 51.

⁷¹ Feinberg (n 56) 164-167.

⁷² Hans Kelsen, *The Law of the United Nations. A Critical Analysis of its Fundamental Problems* (The Lawbook Exchange Ltd 1950) 170.

⁷³ Eduardo Jiménez de Aréchaga, 'International Law in the Past Third of a Century (Volume 159)' in *Collected Courses of the Hague Academy of International Law* (1979) <http://dx.doi.org/10.1163/1875-8096_pplrdc_A9789028603592_01> accessed 21 August 2022.

⁷⁴ Kelsen (n 72) 270.

UNSC, it is not possible to say that the UN has an effective enforcement mechanism that may completely ban the unilateral use of force.

The result reached by Feinberg by interpreting Article 2(4) of the UN Charter⁷⁵ and the fifth paragraph of the principle of non-use of force in the UN Friendly Relations Declaration⁷⁶ is that military action to recover occupied territory is not an exception to the prohibition on the use of force.⁷⁷ It is also important to consider that Feinberg published his views in the aftermath of the Yom Kippur War when Egypt and Syria did not reach their aim to recover their occupied lands.

A less restrictive but still restrictive opinion on the recovery of occupied territories was expressed by Tom Ruys and Felipe Rodriguez Silvestre after the Second Karabakh War, as a result of which Azerbaijan could restore its sovereignty in its internationally recognised but formerly occupied territories. The aforementioned scholars acknowledge *jus ad bellum* as the applicable law to the issue.

According to Ruys and Rodriguez Silvestre, article 51 of the UN Charter⁷⁸ alludes to self-defence under the condition of "if an armed attack occurs" and even though it is unlawful, the continuation of occupation would not constitute the occurrence of an armed attack. Therefore, prolonged occupations cannot be regarded as continued armed attacks, so self-defence to recover occupied territory requires an immediate attack from the occupant state since the general rule of self-defence applies in this case.⁷⁹ Nevertheless, it is also acknowledged that if an occupied state recovers the territory over which it holds a legitimate title but exercises force unlawfully, there is still no obligation to return that territory to the former occupant state. The

⁷⁵ UN Charter (n 8) art 2(4).

⁷⁶ The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (adopted 24 October 1970) A/RES/2625(XXV) (UN Friendly Relations Declaration) para 5.

⁷⁷ Feinberg (n 56) 170.

⁷⁸ UN Charter (n 8) art 51.

⁷⁹ Ruys and Rodriguez Silvestre (n 58) 672-692.

unlawful act would be compensated under the law of state responsibility.⁸⁰ This argument might sound contradictory. However, Ruys and Rodriguez Silvestre aim not to widen the scope of self-defence while respecting the right of states to exercise full power over their internationally recognised territory, i.e. territorial integrity.

On the contrary, Akande and Tzanakopoulos expressed their view on this issue after the Second Karabakh War. According to this view, occupation, as the direct consequence of an unlawful armed attack is a continuing armed attack, does not bar the occupied state from invoking its right to self-defence regardless of the time of occupation. Among the three requirements of lawful self-defence, the immediacy requirement comes to the forefront, especially in occupations of prolonged duration. From the point of view of Akande and Tzanakopoulos, a prolonged occupation constitutes a continuing attack itself, and for this reason, there is no reason to question the immediacy of the attack.⁸¹ Notwithstanding the application of the right to self-defence, even after a long period of time will create uncertainty in international relations, and ceasefire agreements will lose sense. Therefore, it is not possible to assume the *jus in bello* argument as applicable.

In contrast with the *jus in bello* argument with respect to self-defence to recover occupied territory, the majority of scholars are at the stance that *the jus ad bellum* regime is the regulatory regime in international relations. For this reason, the legality of using force to recover occupied territory can only be interpreted in line with the exceptions to the prohibition of the use of force, namely self-defence. Additionally, since the application of self-defence is limited so is the time to recourse force to retrieve occupied land.

⁸⁰ Ruys and Rodriguez Silvestre (n 58) 718.

⁸¹ Akande and Tzanakopoulos (n 61).

The principle of non-use of force to settle territorial disputes as formulated in the UN Friendly Relations Declaration⁸² also comes into question. With respect to the settlement of territorial disputes, there is the principle of non-use of force as well as the customary rule to settle disputes through pacific methods.⁸³ This was acknowledged by the Ethiopia-Eritrea Claims Commission as well.⁸⁴ This principle is not more than underlining the general rule on the prohibition of the use of force. However, it can also be said that the principle of non-use of force to settle territorial disputes signals that *jus ad bellum* prevails *jus in bello* in terms of prolonged occupations. To put it differently, where an occupation has been ongoing since the cessation of hostilities, the occupied state may not invoke self-defence to recover its occupied territory. In this case, the occupied state must fulfil all requirements of self-defence to exercise it lawfully and to liberate its occupied land as a result of it.

V. What is the state practice?

As referred to in Chapter II, in the post-Charter era, there was no evident state practice of using force to recapture occupied territory prior to the Second Karabakh War. Until then, the only attempts on this issue had been the Egyptian and Syrian claims in the Yom Kippur War.

To emphasise, this research focuses only on the attempts to recover occupied territories, where the occupation had started after 1945 when the UN Charter was adopted.

- **The Yom Kippur War (1973)**

To understand why the Yom Kippur War erupted, the 1967 Six-Day War should be reviewed since they are linked to each other. Israel afforded the most advantage in the 1967 Six Day War by capturing the Sinai Peninsula, the Gaza Strip from Egypt, the Golan Heights from Syria, the

⁸² UN Friendly Relations Declaration (n 76) art 1 para 5.

⁸³ Ruys and Rodriguez Silvestre (n 59) 1292.

⁸⁴ Eritrea Ethiopia Claims Commission, *Partial Award: Jus Ad Bellum-Ethiopia's Claims 1-8* (19 December 2005) reprinted in (2009) 26 UNRIAA 457 (Eritrea Ethiopia Claims) para 10.

Shebaa Farms from Lebanon, and the West Bank and Jerusalem from Jordan.⁸⁵ Differing from the West Bank and East Jerusalem, the other territories were recognised as the sovereign lands of Egypt, Syria and Lebanon, respectively. However, Israel did not return the control of those territories despite the resolution of the UNSC on the withdrawal of Israeli armed forces.⁸⁶ For this reason, Israel became the occupying state on the aforementioned lands.

Turning to 1973, Egypt and Syria started to express their dissatisfaction with the ineffectiveness of the UNSC resolution⁸⁷, and the non-occurrence of the withdrawal led these states to seek their rights by their own means. The war started with an attack by joint Arab forces on 06 October 1973 and lasted until 24 October 1973. Although Egypt and Syria failed to recover their occupied lands, it is noteworthy that some states relied on this argument and attempted to realise it for the first time in the post-Charter era.

Prior to the Yom Kippur War, in 1968, Egyptian President Gamal Abdul Nasser underlined the importance of liberating the occupied territories of his country and mentioned that Egypt may even resort to force for this cause as a legal means.⁸⁸ In the same year, Syrian President Al-Atassi stated that using armed force is the only solution to end the turmoil in the Middle East.⁸⁹ Later, months before the Yom Kippur War, on 14 June 1973, Egyptian President Anwar Al-Sadat expressed the armed struggle as the only way to recapture their occupied territory.⁹⁰ The most significant statement regarding Egypt's use of force against Israel in 1973 was made by him before the UN General Assembly on 29 October 1975, and for the first time, Egypt relied on article 51 of the UN Charter. Al-Sadat defended that the right to self-defence also covered

⁸⁵ Dubuisson and Koutroulis (n 3) 189.

⁸⁶ UNSC Res 242 (22 November 1967) S/RES/242.

⁸⁷ *ibid.*

⁸⁸ Israel Ministry for Foreign Affairs Information Division, *Backward to War, Forward to Peace* (Jerusalem, Government Printer 1969) 10.

⁸⁹ *ibid.* 15.

⁹⁰ UN Monthly Chronicle (November 1973) 40-41.

the right to liberate their territories from occupants.⁹¹ Contrasting with Egypt's statement at the beginning of the Yom Kippur War that Israel attacked Egyptian forces in areas on the Gulf of Suez⁹², Egypt attempted to justify its action as self-defence, in other words, under *jus ad bellum*. Moreover, Syria also relied on *jus ad bellum*, claiming that its act was a response to the attack from Israel, which was also covering the right to liberate the Golan Heights from the Israeli occupation.⁹³ Neither Egypt nor Syria could achieve their aims. Nevertheless, these statements can be viewed as the first state practice to justify using force to recover occupied territory.

The position of third states was either neutral or in favour of Egypt and Syria. However, the supporters of these Arab states abstained from providing a legal justification except India⁹⁴ and the Soviet Union⁹⁵. They both asserted that Egypt and Syria were in full conformity with the inherent right of self-defence and aimed to recapture their occupied lands legitimately.⁹⁶

Since the Yom Kippur War did not result in the withdrawal of Israeli forces from the Sinai Peninsula and the Golan Heights, Egypt and Syria's arguments on recovering occupied territory through the use of force were not questioned in the aftermath of the war.

- **The Second Karabakh War (2020)**

Almost half a century later, the world witnessed the Second Karabakh War resulting in Azerbaijan gaining back control over its previously occupied territories. In Chapter II, the history of the Nagorno Karabakh Conflict was explained. The Second Karabakh War is the most recent occurrence in this conflict and started on 27 September 2020.⁹⁷

⁹¹ UN Doc A/PV.2388 (29 October 1975) p 16.

⁹² UN Doc A/9190 (06 October 1973) p 1.

⁹³ UNSC Verbatim Record (9 October 1973) UN Doc S/PV.1744.

⁹⁴ *ibid.*

⁹⁵ UNSC Verbatim Record (12 October 1973) UN Doc S/PV.1745.

⁹⁶ UNSC (n 93); UNSC (*ibid.*).

⁹⁷ BBC News (n 1).

Before the hostilities began on 27 September 2020, Armenia was the occupying power in the Nagorno-Karabakh region, as well as in the surrounding districts Aghdam, Jabrail, Fuzuli, Kalbajar, Gubadli, Lachin and Zangilan of Azerbaijan.⁹⁸ It is clear that Armenia is the direct occupant state in the aforementioned districts. In addition, Armenia's control over the self-proclaimed Artsakh Republic is an example of indirect occupation, as explained in Chapter II. Therefore, Armenia was the occupant of Azerbaijan's territory, as confirmed by the UN General Assembly⁹⁹ and the European Court of Human Rights.¹⁰⁰

Armenia was the first to make a statement at the beginning of the hostilities of 2020.¹⁰¹ The Prime Minister of the Republic Nikol Pashinyan alleged Azerbaijan of attacking the self-proclaimed Artsakh Republic and ordered to react by using force against Azerbaijan. Although this statement may be regarded as the use of the right to self-defence, there are three points not compatible with the components of self-defence. First, there is a duty on the attacked state to report the measures it has taken related to self-defence to the UNSC according to article 51 of the UN Charter.¹⁰² Armenia did not provide any information on the measures taken, although it claimed that Azerbaijan violated the prohibition on the use of force. Second, the Azerbaijani attacks claimed by Armenia did not target Armenian territory. Instead, they were limited to the self-proclaimed Artsakh Republic, which is, in fact, the internationally recognised territory of Azerbaijan. Even the collective self-defence possibility cannot be regarded due to the lack of Armenian recognition of the self-proclaimed Artsakh Republic. Third, even though the claims of Armenia for either individual or collective self-defence could be accepted, Armenia did not

⁹⁸ 'Military Occupation of Azerbaijan by Armenia' *The Rule of Law in Armed Conflicts, Geneva Academy* <<https://www.rulac.org/browse/conflicts/military-occupation-of-azerbaijan-by-armenia#collapse4accord>> accessed 21 August 2022.

⁹⁹ UNGA Res 62/243 (25 April 2008) UN Doc A/RES/62/243.

¹⁰⁰ *Chiragov v Armenia* App no 13216/05 (ECtHR, 16 June 2015) para 186.

¹⁰¹ 'Prime Minister Nikol Pashinyan's speech in the National Assembly', *The Prime Minister of the Republic of Armenia* (27 September 2020)

<<https://www.primeminister.am/en/statements-and-messages/item/2020/09/27/Nikol-Pashinyan-Speech/>> accessed 21 August 2022.

¹⁰² UN Charter (n 8) Art 51.

apply this right in conformity with the necessity requirement stated in article 51 of the UN Charter.¹⁰³ Armenia's use of force was not limited to the Nagorno Karabakh region. Major Azerbaijani cities outside the conflict zone, such as Ganja and Barda, were also hit with bombs by Armenia.¹⁰⁴

In contrast, Azerbaijan submitted a letter to the UN Secretary-General on 28 September 2020 about the measures taken by Azerbaijan against the attack of Armenia targeting the Nagorno-Karabakh region, which is internationally recognised land of Azerbaijan as confirmed by the UNSC Resolutions 822¹⁰⁵, 853¹⁰⁶, 874¹⁰⁷, 884¹⁰⁸ of 1993.¹⁰⁹ Since no resolution was concluded by the UNSC on the situation in the Nagorno Karabakh region, Azerbaijan continued to exercise its right to self-defence.

Only two countries, namely Turkey and Pakistan, made statements in favour of Azerbaijan. On the one hand, the Ambassador of Pakistan to Azerbaijan asserted that Azerbaijan had the right to self-defence even before an attack from Armenia in order to liberate its territories from occupation.¹¹⁰ On the other hand, the Permanent Representative of Turkey to the UN stated that Azerbaijan lawfully invoked its right to self-defence within its sovereign territory against the

¹⁰³ *ibid.*

¹⁰⁴ 'Nagorno-Karabakh conflict: Major cities hit as heavy fighting continues' *BBC News* (04 October 2020) <<https://www.bbc.co.uk/news/world-europe-54407436>> accessed 21 August 2022; 'Karabakh war leaves civilians shell-shocked and bitter' *BBC News* (14 October 2020) <<https://www.bbc.co.uk/news/world-europe-54522278>> accessed 21 August 2022; 'Nagorno-Karabakh conflict: Missile strike on Azeri town kills 21 civilians' *BBC News* (28 October 2020) <<https://www.bbc.co.uk/news/world-europe-54722120>> accessed 21 August 2022; 'Armenia: Cluster Munitions Kill Civilians in Azerbaijan' *Human Rights Watch* (30 October 2020) <<https://www.hrw.org/news/2020/10/30/armenia-cluster-munitions-kill-civilians-azerbaijan>> accessed 21 August 2022.

¹⁰⁵ UNSC Res 822 (30 April 1993) S/RES/822 (1993).

¹⁰⁶ UNSC Res 853 (29 July 1993) S/RES/853 (1993).

¹⁰⁷ UNSC Res 874 (14 October 1993) S/RES/874 (1993).

¹⁰⁸ UNSC Res 884 (12 November 1993) S/RES/884 (1993).

¹⁰⁹ Letter dated 27 September 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/75/357 S/2020/948 (28 September 2020).

¹¹⁰ 'Pakistan reiterates support for Azerbaijan's 'self-defense' against Armenian occupation' *Yeni Şafak* (14 October 2020) <<https://www.yenisafak.com/en/news/pakistanreiterates-support-for-azerbajians-self-defense-againstarmenian-occupation-3551697>> accessed 21 August 2022.

attack from Armenia.¹¹¹ These two stances are highly different from one another as Pakistan's view can be put under the *jus in bello* regime while Turkey preferred to remain in the *jus ad bellum* regime.

Unlike Ruys and Rodriguez Silvestre regard the joint statement by Russia, France and the USA¹¹² not as a support for Azerbaijan's attempt to retrieve its occupied land¹¹³, it was not an opposition to it either.

Differing from classical self-defence acts, Azerbaijan could, in actuality, recover most of its occupied territory from Armenia. As mentioned previously, Azerbaijan became the first country in the post-Charter era to recover its occupied land through use of force. At this stage, it is noteworthy to pay attention to the official declaration of Azerbaijan on its acts in the Second Karabakh War. According to a letter submitted to the UN General Assembly by the Permanent Representative of Azerbaijan to the UN addressed to the UN Secretary-General on 12 January 2021, Azerbaijan relied on its right to self-defence after a new aggression from Armenia to the Azerbaijani soil.¹¹⁴

Although no other state expressed its view on the issue, the global community seemed to have acknowledged the justification of Azerbaijan to recover its occupied territory. The reason for that is probably not to encourage other occupied states to break ceasefires in conflict zones and to start using force. Hence, the strict reading of the UN Charter allowed the world countries to respect the territorial integrity of Azerbaijan, to acknowledge its military activities to liberate

¹¹¹ Letter dated 16 October 2020 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General, UN Doc A/75/525 S/2020/1024 (19 October 2020).

¹¹² Statement of the Presidents of the Russian Federation, the United States of America, and the French Republic on Nagorno-Karabakh (01 October 2020) <<https://ge.usembassy.gov/statement-of-the-presidents-of-the-russian-federation-the-united-states-of-america-and-the-french-republic-on-nagorno-karabakh/>> accessed 21 August 2022.

¹¹³ Ruys and Rodriguez Silvestre (n 59) 1291.

¹¹⁴ Letter dated 12 January 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/75/709 S/2021/39 (13 January 2021) (Letter from Azerbaijan to the UN).

occupied territories as far as possible under the *jus ad bellum* regime as well as to demonstrate not a general rule but an exceptional way to recover occupied lands.

VI. Is it fair to favour security over justice?

The Second Karabakh War embodied a *fictio*, probably nobody ever thought it could be implemented. Under the ban on the use of force of the UN Charter with limited exceptions subject to strict requirements, Azerbaijan could liberate its territories from foreign occupation. This incident fuelled the debate on whether a state may recourse armed force to retrieve illegally occupied land. As Ruys and Rodriguez Silvestre stated, “The question seemingly finds us caught between the Scylla of injustice and the Charybdis of insecurity.”¹¹⁵

On the one side of the coin, under the current international law, occupied states may feel themselves deprived of the mechanism of self-help. Even those who disfavour the idea of recovering unlawfully occupied land, acknowledge the fact that the current *jus ad bellum* regime may seem to favour the occupant, and this situation may seem unfair.¹¹⁶ On the other side of the coin, the 20th century witnessed radical changes in the outlawry of war¹¹⁷ and a remarkable decline in inter-state armed conflicts.¹¹⁸ Therefore, it is viewed that with regard to occupation, protecting the territorial *status quo* serves better for the objective of the ban on the use of force.¹¹⁹

The lack of concrete regulation on using force to recover occupied territory causes a dilemma, and this phenomenon can be assimilated into a pair of scales. On the one arm of balance, there is "justice", which is expected from law, as well as from international law. This was formulated

¹¹⁵ Ruys and Rodriguez Silvestre (n 59) 1296.

¹¹⁶ *ibid.*

¹¹⁷ Oona Hathaway and Scott J Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Penguin Books Ltd 2017); Steven Pinker, *Enlightenment Now: The Case for Reason, Science, Humanism and Progress* (Penguin Books Ltd 2018) 163-164.

¹¹⁸ Ruys and Rodriguez Silvestre (n 59) 1296.

¹¹⁹ *ibid.*

as “territorial integrity” in article 2(4) of the UN Charter.¹²⁰ In contrast, on the other arm of balance, there is “peace”, or more realistically “, security”. This was formulated as “international peace and security” in article 1(1) of the UN Charter.¹²¹ Although there is no hierarchy among the provisions of the UN Charter, practically, the purposes of the UN stated in article 1 of the UN Charter¹²² stand above the principles stated in article 2 of the UN Charter¹²³. In other words, *inter alia*, “the principle of non-use of force against the territorial integrity of a state” serves the UN’s purposes, one of which is “to maintain international peace and security”.

The right of a state to recover its occupied land and the ban on the use of force come with the same importance at once, and international law had to favour one over the other as a legal policy. In addition to the comparison provided above, there are three more reasons to agree that global peace is favoured so much, whereas preserving the unlawfully created territorial *status quo* is still more important than using force for a just cause. First, it is argued that the objective of the ban on the use of force is achieved by protecting the territorial *status quo* and not by extending the scope of the right to self-defence, especially with respect to the time of it.¹²⁴ This argument was also confirmed by the Eritrea-Ethiopia Claims Commission.¹²⁵ Moreover, as reaffirmed in the UN Friendly Relations Declaration¹²⁶ protecting the territorial *status quo* created unlawfully, for instance, with occupation, does not lead to any legal entitlement to the territory concerned, which is compatible with the *ex injuria jus non oritur* principle.¹²⁷ Second, the right to life is recognised as the “supreme right” by the UN Human Rights Committee¹²⁸ and this approach is in conformity with the preamble of the UN Charter, where “the faith in

¹²⁰ UN Charter (n 8) art 2(4).

¹²¹ UN Charter (n 8) art 1(1).

¹²² UN Charter (n 8) art 1.

¹²³ UN Charter (n 8) art 2.

¹²⁴ Ruys and Rodriguez Silvestre (n 59) 1297.

¹²⁵ Eritrea Ethiopia Claims (n 84) para 10.

¹²⁶ UN Friendly Relations Declaration (n 76) art 1(11).

¹²⁷ Ruys and Rodriguez Silvestre (n 58) 733-734.

¹²⁸ UN Human Rights Committee (HRC), General comment no 36 Article 6 (Right to Life) (3 September 2019) CCPR/C/GC/35 para 2.

fundamental human rights” is emphasised.¹²⁹ A joint reading of the preamble and the first two articles of the UN Charter will lead to the understanding that maintaining global peace and security is preferred against territorial integrity in cases where the right to life of individuals as a right above all is of concern. Third, the state practice should also be taken into consideration¹³⁰ and it does not challenge the framework of the present *jus ad bellum* regime, and states which attempted to recover their occupied territories relied on the right to self-defence, probably since they also believed that extending the scope of self-defence with no time constraint might be used against them in the future as well. Thus, they favoured the maintenance of international peace and security.

It can be said that after all the catastrophic experiences, the world order is now designed to minimise the use of force and promote the maintenance of peace. However, it does not bring us to the outcome that states may never utilise armed force to recover their occupied territories. To emphasise, if a territory is occupied and the hostilities between belligerent states had come to an end, the occupied state may only recourse force when there is a new and imminent attack from the occupant state within the whole internationally recognised territory of the occupied state, and the use of force should be immediate, necessary, proportionate, and the occupied state should report their measurements to the UNSC immediately.

While the discussion on recovering occupied territory by use of force has been going on, the President of Ukraine, Volodimir Zelensky, has recently announced that they aim to liberate Crimea from the Russian occupation.¹³¹ At this point, the history of occupation in the Donbas Region and on the Crimean Peninsula needs to be recalled.

¹²⁹ UN Charter (n 8) Preamble.

¹³⁰ Kis Kelemen (n 59).

¹³¹ ‘Ukraine war must end with liberation of Crimea – Zelensky’ *BBC News* (10 August 2022) <<https://www.bbc.co.uk/news/world-europe-62487303>> accessed 21 August 2022.

The then President of Ukraine, Viktor Yanukovich, opposed developing closer ties with European countries and advocated for better relations with Russia. His move received public backlash, and Ukrainian citizens started to gather in the main square of Kyiv. The peaceful protests began in November 2013 and spread to the rest of the country by the end of January 2014. The Ukrainian government responded to them in brutal ways, which led to casualties. As a consequence of that, the Ukrainian Parliament discharged Yanukovich from office on 22 February 2014.¹³² However, he had already requested military assistance from the Russian Federation¹³³ and Russian troops started to leave their bases near Sevastopol, Crimea, to reach the regional parliament of Crimea.¹³⁴ On 15 March 2014, pro-Russian Crimean parliament declared the independence of Crimea from Ukraine after a problematic referendum. The parliament of the self-proclaimed Republic of Crimea requested to join the Russian Federation, and Russian President Vladimir Putin announced the annexation of Crimea to the Russian Federation on 18 March 2014.¹³⁵

Meanwhile, in the Donbas region of eastern Ukraine, it was reported that Russia was patronising pro-Russian separatist groups. These groups took control over the Donetsk and Luhansk regions. With support from Russia, the local parliaments held independence referenda. Following that, the Donetsk People's Republic and the Luhansk People's Republic declared

¹³² 'Timeline: Political crisis in Ukraine and Russia's occupation of Crimea' *Reuters* (08 March 2014) <<https://www.reuters.com/article/us-ukraine-crisis-timeline-idUSBREA270PO20140308>> accessed 21 August 2022.

¹³³ 'Letter dated 03 March 2014 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General' (03 March 2014) UN Doc S/2014/146, Annex (statement of VF Yanukovich).

¹³⁴ UNSC Verbatim Record (03 March 2014) UN Doc S/PV.7125, 13 (Ukraine).

¹³⁵ Claire Phipps and Ben Quinn, 'Ukraine Pulls Forces Out of Crimea as Russia Takes Over Military Bases' *The Guardian* (London, 24 March 2014) <<https://www.theguardian.com/world/2014/mar/24/ukraine-crimea-russia-military-bases-live>> accessed 21 August 2022.

their independence from Ukraine unilaterally on 12 May 2014. Nonetheless, Russia has been in close ties with those groups and controlling them.¹³⁶

In light of the incidents explained above, one can say that Russia is the occupant state of Ukraine. As mentioned in Chapter II, Russia is the direct occupant in Crimea and the indirect occupant in the Donbas region. Since there had been an established territorial *status quo* since then, Ukraine did not aim to restart hostilities to recover its occupied lands. However, the situation changed on 24 February 2022 after Russia attacked Ukraine.¹³⁷ The hostilities between Ukraine and Russia have been going on since then, and it is obvious that Ukraine is invoking self-defence in its fight against Russian troops. However, as President Zelensky of Ukraine stated, Ukraine aims to recapture control over Crimea and Donbas again.¹³⁸

Considering the current *jus ad bellum* regime and state practice, Ukraine did not prefer to develop a new argument to justify its aim to recover occupied lands. Instead, it chose to justify its aim within the scope of the right to self-defence.

In general, peace and justice can be likened to two balance arms, which weigh the same. However, one of them should be favoured in order to prevent parallel practices in the global order. As a consequence of the heavier impacts of wars due to technical developments in the arms industry, the UN aimed to outlaw war as well as the use of force. For that reason, initiating armed force, in other words attacking, is not favoured anymore, even though it is for a just cause. Therefore, in the post-Charter era, states never attempted to justify their aims or actions to recover their occupied territories under *jus in bello*. Instead, they relied on existing rules of the *jus ad bellum* regime and provided justifications under their right to self-defence. In the

¹³⁶ 'How the Donetsk and Luhansk People's Republics were established' *The Week* (16 June 2022) <<https://www.theweek.co.uk/news/world-news/europe/957078/how-the-donetsk-and-luhansk-peoples-republics-were-established>> accessed 21 August 2022.

¹³⁷ Reuters (n 5).

¹³⁸ BBC News (n 131).

context of the current war in Ukraine, it can be argued that the idea of recovering occupied land under self-defence after an immediate attack from the occupant state, is gaining more and more acceptance, which might lead to a new customary international law.

VII. Conclusion

The ban on the use of force has been challenged by various states for different reasons. Although the right to recover occupied territory through armed force is seen as an existent phenomenon, no state has challenged the principle of non-use of force to recover occupied territories since the adoption of the UN Charter. Instead, they relied on their right to self-defence.

In the pre-Charter era, the law of occupation was straightforward, and the discussion was around the legality of the war, in other words, the lawfulness reasons for starting a war. Ending an occupation was also a foreseeable process to determine and an applicable way to liberate occupied territories. However, at the same time in the 20th century, wars started to damage civilian lives more than ever, and atrocities became prolonged consequences of wars, where they reached their peak in World War II.

In the aftermath of World War II, article 2(4) of the UN Charter¹³⁹ was expected to be the preventer of foreign occupations. In spite of that, things did not go as they were aimed and from Europe to Asia and the Middle East, wars erupted in the post-Charter era, and many of them resulted in a ceasefire where the occupant state remained in the territory in question. To solve this, peaceful methods have been invoked. Nonetheless, they do not seem effective, so that many occupations are still in force.

The issue of using force to recover occupied territories did not receive adequate attention from scholars even after the Yom Kippur War. Feinberg approached attempts to use force to recover

¹³⁹ UN Charter (n 8) art 2(4).

occupied territories as unlawful under the UN Charter.¹⁴⁰ This was probably due to Egypt and Syria's failure in 1973. In contrast, Azerbaijan's recovery of its formerly occupied lands in the Nagorno-Karabakh region raised attention among legal scholars, and their views started to be placed under two major arguments. On the one hand, occupations of prolonged duration are seen as a continuing armed attack from the occupying state, and therefore the hostilities between belligerent parties have not ceased yet. In other words, *jus in bello* is the applicable regime to occupations. The supporters of this view defend that occupied states may invoke their right to self-defence to recapture their occupied land.¹⁴¹ On the other hand, those who are against the *jus in bello* approach are at the stance that once hostilities cease, the occupied state may not invoke its right to self-defence anymore to recover its occupied territories since the cease of hostilities marks the end of the application of *jus in bello* regime. At that point, *jus ad bellum* regime becomes applicable under the new territorial *status quo*, even though the occupation is regarded as illegal under international law. However, the recovery of occupied territories under self-defence after a new and immediate attack from the occupant state is acknowledged as a lawful act.¹⁴²

When it comes to state practice, the statements of states who attempted or achieved to retrieve their occupied territories signal the reliance on the right to self-defence as formulated in the UN Charter. The state practice does not provide any tendency to develop a new practice or widen the scope of self-defence. In Azerbaijan's recovery of its occupied territories in the Nagorno-Karabakh region, it was seen that Azerbaijan justified its action only under its right to self-defence after a recent attack from Armenia.¹⁴³ While the discussion on Azerbaijan's action is still going on, the recent attack of Russia on Ukraine raised the possibility of recovery of the

¹⁴⁰ Feinberg (n 56).

¹⁴¹ Akande and Tzanakopoulos (n 61).

¹⁴² Ruys and Rodriguez Silvestre (n 58) (n 59).

¹⁴³ Letter from Azerbaijan to the UN (n 114).

occupied Crimea and Donbas. In this context, Ukraine is applying self-defence against Russia within its sovereign territory, indicating that Ukraine may now retrieve its previously occupied land legitimately.

Both the legal doctrine and the state practice demonstrated that peace is favoured over justice as a response to the mass atrocities which caused millions of human lives in World War II. Although the UN Charter could not eliminate war entirely, it has limited the extent of wars. The UN aimed an entire peace in the world order, and for that sake, in some cases, it sacrificed justice, *inter alia* the right to recapture occupied territories of a state. However, despite the absolute ban on the unilateral use of force except for self-defence, there was no objection to Azerbaijan's recovery of its occupied territories under self-defence to an attack from the occupant state, Armenia.

The result reached is that there are only two exceptions to the ban on the use of force under the current international regime, the right to self-defence, and a UNSC decision for armed intervention. If a state wants to utilise force unilaterally, the only lawful means is to apply it under self-defence. Therefore, the liberation of territories from foreign occupation in the post-Charter era gained legality within the scope of lawful self-defence, which requires a new and immediate attack from the occupant state.

In conclusion, justifying the use of force to recover occupied land under the *jus ad bellum* regime seems to be accepted by states. In the aftermath of the Second Karabakh War, other states, some of whose territories are under occupation, such as Ukraine, made statements to express their aims to retrieve their occupied lands. So far, it seems like Azerbaijan has opened the door for other states to recover occupied territories, which might lead to a new customary international law.

Bibliography

- **Primary Sources**

Arbitral Tribunal Decisions

Eritrea Ethiopia Claims Commission, *Partial Award: Jus Ad Bellum-Ethiopia's Claims 1-8* (19 December 2005) reprinted in (2009) 26 UNRIAA 457 (Eritrea Ethiopia Claims)

European Court of Human Rights Decisions

Chiragov v Armenia App no 13216/05 (ECtHR, 16 June 2015)

International Court of Justice Decisions

Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda) [2005] ICJ Rep 2005

Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 1986

International Criminal Tribunal for the former Yugoslavia Decisions

Prosecutor v Tadic (Judgment (Trial Chamber)) IT-94-1-T (1997)

Treaties

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter)

Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31

Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85

Geneva Convention relative to the treatment of prisoners of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135

Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 187

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 08 June 1977, entered into force 07 December 1978) 1125 UNTS 3 (Additional Protocol)

UN Security Council Resolutions

UNSC Res 95 (1 September 1951) UN Doc S/RES/95

UNSC Res 242 (22 November 1967) S/RES/242

UNSC Res 822 (30 April 1993) S/RES/822 (1993)

UNSC Res 853 (29 July 1993) S/RES/853 (1993)

UNSC Res 874 (14 October 1993) S/RES/874 (1993)

UNSC Res 884 (12 November 1993) S/RES/884 (1993)

USSR Law

USSR Constitution Article 78 cited in T Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia A Legal Appraisal* (Kluwer Law International 2001) 16

USSR Supreme Soviet Decision SU/0209 B/5 (18 July 1988) cited in T Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia A Legal Appraisal* (Kluwer Law International 2001) 16

- **Secondary Sources**

Articles

Akande D and A Tzanakopoulos, 'Legal: Use of Force in Self-Defence to Recover Occupied Territory' (2022) 32 EJIL 1299

Andreevska E, 'The UN as a Dispute Settlement System: The Role of the Security Council' (2018) 1 *Journal of Political Administrative and Local Studies* 19

Bagheri S, 'Self-Defense in Karabakh Conflict?' (2015) 3 *Russian Law Journal* 150

Ben-Naftali O and A M Gross and K Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23(3) *BerkeleyJInt'lL* 551

Feinberg N, 'The Legality of the Use of Force to Recover Occupied Territory' (1980) 15 *IsrLRev* 160

Kis Kelemen B, 'Right to Self-Defense to Recover Occupied Territory? A Glance at the Nagorno-Karabakh Conflict' (2020) 2 *Pécs Journal of International and European Law* 6

Ruys T and F Rodriguez Silvestre, 'Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno-Karabakh War' (2021) 32 *EJIL* 1287

Ruys T and F Rodriguez Silvestre, 'Military Action to Recover Occupied Land: Lawful Self-defense or Prohibited Use of Force? The 2020 Nagorno Karabakh Conflict Revisited' (2021) 97 *Int'lLStud* 665

Saul B, 'The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources' (2015) 27 *Global Change, Peace and Security* 301

Vité S, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations' (March 2009) 91 *International Review of the Red Cross* 69

Books

Akande D, 'Classification of Armed Conflicts: Relevant Legal Concepts' in E Wilmshurst (ed), *International Law and the Classification of Conflicts* (OUP 2012)

Alexandrov S A, *Self-Defense Against the Use of Force in International Law* (Kluwer Law International 1996)

Brownlie I, *International Law and Use of Force by States* (Clarendon Press 1963)

Cornell S E, *The International Politics of the Armenian-Azerbaijani Conflict: The Original “Frozen Conflict” and European Security* (Palgrave MacMillan US 2017)

Cuyckens H, ‘The Law of Occupation’ in J Wouters and P De Man and N Verlinden (eds), *Armed Conflicts and the Law* (Intersentia 2016)

Dinstein Y, *War, Aggression and Self-Defence* (CUP 2017, 6th edn)

Distefano G, ‘Use of Force’ in Adrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014)

Dubuisson F and V Koutroulis, ‘The Yom Kippur War-1973’ in T Ruys and O Corten and A Höfer (eds), *Use of Force in International Law: A Case Based Approach* (OUP 2018)

Gross A M, *The Writing On The Wall Rethinking The International Law of Occupation* (CUP 2017)

Hathaway O and S J Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Penguin Books Ltd 2017)

Jiménez de Aréchaga E, ‘International Law in the Past Third of a Century (Volume 159)’ in *Collected Courses of the Hague Academy of International Law* (1979) http://dx.doi.org/10.1163/1875-8096_pplrdc_A9789028603592_01 accessed 21 August 2022

Kelsen H, *The Law of the United Nations. A Critical Analysis of its Fundamental Problems* (The Lawbook Exchange Ltd 1950)

Krüger H, ‘Nagorno Karabakh’ in C Walter and A von Ungern-Sternberg and K Abushov (eds), *Self-Determination and Secession in International Law* (OUP 2014)

Krüger H, *The Nagorno-Karabakh Conflict A Legal Analysis* (Springer 2010)

Lauterpacht H and R Jennings and Arthur Watts (eds), *Oppenheim’s International Law* (London, 7th edn Longmans 1948)

O’Connell M E, ‘The Crisis in Ukraine-2014’ in T Ruys and O Corten and A Höfer (eds), *Use of Force in International Law: A Case Based Approach* (OUP 2018)

Oppenheim L, *International Law: A Treatise*, vol 2 (London, 2nd edn Longmans 1912)

Oppenheim L and A D McNair (ed), *International Law A Treatise* vol 1 (4th edn, Longmans 1928)

Pinker S, *Enlightenment Now: The Case for Reason, Science, Humanism and Progress* (Penguin Books Ltd 2018)

Potier T, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia A Legal Appraisal* (Kluwer Law International 2001)

Röling B V A, 'The Ban on the Use of Force and the U.N. Charter' in Antonio Cassese (ed), *The Current Legal Regulation of The Use of Force* (Martinus Nijhoff Publishers 1986)

Saul M, 'The Right to Self-Determination and the Prolonged Occupation of Palestinian Territory' (01 January 2021) in G Zyberi (ed), *Protecting Community Interests through International Law* (Intersentia 2021)

Schrijver N, 'The Ban on the Use of Force in the UN Charter' in M Weller (ed), *The Oxford Handbook of The Use of Force in International Law* (OUP 2015)

Scott J B, *The Hague Conventions and Declarations of 1899 and 1907* (Washington DC, Carnegie Endowment for International Peace, 1915)

Shaw M N, *International Law* (9th edn, CUP 2021)

Spoerri P, 'The Law of Occupation' in A Clapham and P Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014)

Stackelberg R, *Hitler's Germany: Origins, Interpretations, Legacies* (Routledge 1999)

Official Sources

International Court of Justice

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 2004, para 78

International Law Commission

Draft Articles on State Responsibility, Report of the International Law Commission, 32nd Session, [1980] II (2) *ILC Ybk* 1, 54

United Nations

Letter dated 03 March 2014 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General' (03 March 2014) UN Doc S/2014/146, Annex (statement of VF Yanukovych)

Letter dated 27 September 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/75/357 S/2020/948 (28 September 2020)

Letter dated 16 October 2020 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General, UN Doc A/75/525 S2020/1024 (19 October 2020)

Letter dated 12 January 2021 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/75/709 S/2021/39 (13 January 2021)

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (adopted 24 October 1970) A/RES/2625(XXV) (UN Friendly Relations Declaration)

UN Doc A/PV.2388 (29 October 1975)

UN Doc A/9190 (06 October 1973)

UNGA Res 62/243 (25 April 2008) UN Doc A/RES/62/243

UN Human Rights Committee (HRC), General comment no 36 Article 6 (Right to Life) (3 September 2019) CCPR/C/GC/35

UN Monthly Chronicle (November 1973)

UNSC Verbatim Record (9 October 1973) UN Doc S/PV.1744

UNSC Verbatim Record (12 October 1973) UN Doc S/PV.1745

UNSC Verbatim Record (03 March 2014) UN Doc S/PV.7125

Other Official Sources

Israel Ministry for Foreign Affairs Information Division, *Backward to War, Forward to Peace* (Jerusalem, Government Printer 1969)

‘Prime Minister Nikol Pashinyan's speech in the National Assembly’, *The Prime Minister of the Republic of Armenia* (27 September 2020)

<<https://www.primeminister.am/en/statements-and-messages/item/2020/09/27/Nikol-Pashinyan-Speech/>> accessed 21 August 2022

‘State Independence Declaration of the Nagorno Karabagh Republic’ (The Supreme Council of the Nagorno Karabagh Republic, 06 January 1992) <<http://president.nkr.am/en/nkr/nkr2>> accessed 21 August 2022

Statement of the Presidents of the Russian Federation, the United States of America, and the French

Republic on Nagorno-Karabakh (01 October 2020) <<https://ge.usembassy.gov/statement-of-the-presidents-of-the-russian-federation-the-united-states-of-america-and-the-french-republic-on-nagorno-karabakh/>> accessed 21 August 2022

Research Papers

Broers L, ‘The Nagorny Karabakh Conflict Defaulting to War’ (2016) Chatham House Research Paper

<<https://www.chathamhouse.org/sites/default/files/publications/research/NK%20paper%2024082016%20WEB.pdf>> accessed 21 August 2022

Yiallourides C and M Gehring and J P Gauci, ‘The Use of Force in Relation to Sovereignty Disputes over Land Territory’ (2018) BIICL

<https://www.academia.edu/36976310/The_Use_of_Force_in_relation_to_Sovereignty_Disputes_over_Land_Territory> accessed 21 August 2022

Web Sources

‘Armenia and Azerbaijan fight over disputed Nagorno-Karabakh’ *BBC News* (28 September 2020) <<https://www.bbc.co.uk/news/world-europe-54314341>> accessed 21 August 2022

‘Armenia, Azerbaijan and Russia sign Nagorno-Karabakh peace deal’ *BBC News* (10 November 2020) <<https://www.bbc.co.uk/news/world-europe-54882564>> accessed 21 August 2022

‘Armenia: Cluster Munitions Kill Civilians in Azerbaijan’ *Human Rights Watch* (30 October 2020) <<https://www.hrw.org/news/2020/10/30/armenia-cluster-munitions-kill-civilians-azerbaijan>> accessed 21 August 2022

‘How the Donetsk and Luhansk People’s Republics were established’ *The Week* (16 June 2022) <<https://www.theweek.co.uk/news/world-news/europe/957078/how-the-donetsk-and-luhansk-peoples-republics-were-established>> accessed 21 August 2022

‘Karabakh war leaves civilians shell-shocked and bitter’ *BBC News* (14 October 2020) <<https://www.bbc.co.uk/news/world-europe-54522278>> accessed 21 August 2022

Knoll-Tudor B and D Mueller, ‘At Daggers Drawn: International Legal Issues Surrounding the Conflict in and around Nagorno-Karabakh’ (EJIL:Talk!, 17 November 2020) <<https://www.ejiltalk.org/at-daggers-drawn-international-legal-issues-surrounding-the-conflict-in-and-around-nagorno-karabakh/>> accessed 21 August 2022

‘Military Occupation of Azerbaijan by Armenia’ *The Rule of Law in Armed Conflicts, Geneva Academy* <<https://www.rulac.org/browse/conflicts/military-occupation-of-azerbaijan-by-armenia#collapse4accord>> accessed 21 August 2022

‘Nagorno-Karabakh conflict: Major cities hit as heavy fighting continues’ *BBC News* (04 October 2020) <<https://www.bbc.co.uk/news/world-europe-54407436>> accessed 21 August 2022

'Nagorno-Karabakh conflict: Missile strike on Azeri town kills 21 civilians' *BBC News* (28 October 2020) <<https://www.bbc.co.uk/news/world-europe-54722120>> accessed 21 August 2022

'Pakistan reiterates support for Azerbaijan's 'self-defense' against Armenian occupation' *Yeni Şafak* (14 October 2020) <<https://www.yenisafak.com/en/news/pakistanreiterates-support-for-azerbajjans-self-defense-againstarmenian-occupation-3551697>> accessed 21 August 2022

Phipps C and B Quinn, 'Ukraine Pulls Forces Out of Crimea as Russia Takes Over Military Bases' *The Guardian* (London, 24 March 2014) <<https://www.theguardian.com/world/2014/mar/24/ukraine-crimea-russia-military-bases-live>> accessed 21 August 2022

'Russia invades Ukraine: Political, military leaders' reactions' *Reuters* (24 February 2022) <<https://www.reuters.com/markets/europe/leaders-key-quotes-after-russia-invades-ukraine-2022-02-24/>> accessed 21 August 2022

'Timeline: Political crisis in Ukraine and Russia's occupation of Crimea' *Reuters* (08 March 2014) <<https://www.reuters.com/article/us-ukraine-crisis-timeline-idUSBREA270PO20140308>> accessed 21 August 2022

'Ukraine war must end with liberation of Crimea – Zelensky' *BBC News* (10 August 2022) <<https://www.bbc.co.uk/news/world-europe-62487303>> accessed 21 August 2022