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## Armenia and Azerbaijan's Struggle with Occupation in Nagorno-Karabakh

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**ARMENIA AND AZERBAIJAN'S  
STRUGGLE WITH OCCUPATION IN  
NAGORNO-KARABAKH**

## INTRODUCTION

For over a quarter of a century, tense ceasefire, punctuated by bloody violence,<sup>1</sup> has entrenched South Caucasus neighbors Armenia<sup>2</sup> and Azerbaijan<sup>3</sup> in a “frozen conflict” over Nagorno-Karabakh.<sup>4</sup> Armenia’s occupation of Nagorno-Karabakh<sup>5</sup>

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1. *Nagorno-Karabakh Profile*, BBC (Apr. 6, 2016), <http://www.bbc.com/news/world-europe-18270325> (describing the recent violence in Nagorno-Karabakh as beginning “[i]n 1988, towards the end of Soviet rule,” when Azerbaijan and Armenia started “a bloody war which left the de facto independent state in the hands of ethnic Armenians when a truce was signed in 1994. . . . Both sides have had soldiers killed in sporadic breaches of the ceasefire.”).

2. *The World Factbook: Armenia*, C.I.A. (Aug. 20, 2018), <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/am.html>.

3. *The World Factbook: Azerbaijan*, C.I.A. (Aug. 20, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html>.

4. Emily Tamkin, *Azerbaijan's President Calls for Renewed Nagorno-Karabakh Talks. It's Not That Simple.*, FOREIGN POL’Y (Mar. 15, 2017), <http://foreignpolicy.com/2017/03/15/azerbaijans-president-calls-for-renewed-nagorno-karabakh-talks-its-not-that-simple/> (defining a frozen conflict as “one in which both sides are at a tense but calm standstill.” However, Nagorno Karabakh’s Ombudsman for Human Rights stated that the conflict is “‘not frozen,’ . . . [noting that] in the past 10 months . . . 20 soldiers from the Nagorno Karabakh side were killed, and 95 were wounded. He said he knew that the Azeri side suffered losses, as well.”); Alan Hope, *United Nations at Crossroads*, TREND NEWS AGENCY (Sept. 19, 2017), <https://en.trend.az/world/other/2798457.html> (disparaging the U.N. as “an overstaffed well-oiled bureaucratic machine” unable to resolve the “frozen conflicts in Nagorno Karabakh”); *What Were US Legislators Doing Paying an Illegal Visit to Nagorno-Karabakh?* — *Eurasia Crossroads*, TREND NEWS AGENCY (Dec. 19, 2017), <https://en.trend.az/azerbaijan/2837801.html> (“Nagorno-Karabakh is the breakaway province of Azerbaijan which has been stuck in limbo — a so-called frozen conflict — since just after the collapse of the Soviet Union.”); cf. LAURENCE BROERS, *THE NAGORNY KARABAKH CONFLICT: DEFAULTING TO WAR 3* (Chatham House 2016), available at <https://www.chathamhouse.org/publication/nagorny-karabakh-conflict-defaulting-war> (“[I]noculated by the language of ‘frozen conflict’, regional and global powers have overlooked a dispute that could embroil them all in a major new war.”); but see *Karabakh Conflict Is Not Frozen*, *French Ambassador Says*, ARKA NEWS AGENCY (Dec. 12, 2017), [http://arka.am/en/news/politics/karabakh\\_conflict\\_is\\_not\\_frozen\\_french\\_ambassador\\_says/](http://arka.am/en/news/politics/karabakh_conflict_is_not_frozen_french_ambassador_says/) (quoting Jonathan Lacôte, French Ambassador to Armenia, as finding it “hard to include the Nagorno-Karabakh conflict among the ‘frozen’ conflicts” because of the reflection of the conflict among the public and the continuing fighting, “add[ing] that 57 soldiers have died at the line of contact since the beginning of 2017.”).

is far from successful,<sup>6</sup> and the destructive disorder in the contested region stands in disturbing juxtaposition with the international law of occupation, which is “primarily motivated by *humanitarian* considerations.”<sup>7</sup> According to Article 42 of the 1907 Hague Regulations, a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”<sup>8</sup> The international law of occupation still applies in situations of partial territorial occupation, and even if the occupier “meets with no armed resistance.”<sup>9</sup> Under the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”) and its Additional Protocol I, an occupier

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5. Eugene Kontorovich, *Symposium on Occupation Law: The Necessary Non-Normativity and Temporal Indeterminacy of Occupation Law*, OPINIO JURIS (Aug. 30, 2017), <http://opiniojuris.org/2017/08/30/the-necessary-non-normativity-and-temporal-indeterminacy-of-occupation-law/> (“International law . . . regards Armenian control [of Nagorno-Karabakh] as an occupation. . . .”); see also NONA MIKHELIDZE & NICOLETTA PIROZZI, CIVIL SOCIETY AND CONFLICT TRANSFORMATION IN ABKHAZIA, ISRAEL/PALESTINE, NAGORNO-KARABAKH, TRANSNISTRIA AND WESTERN SAHARA, MICROCON 16 (2008), available at <https://ssrn.com/abstract=1307808> (“The long lasting ethno-political conflict between Azerbaijan and Armenia . . . resulted in the Armenian occupation of about 20% of Azerbaijan’s territory, including Nagorno-Karabakh and seven adjacent districts. . . .”).

6. David M. Edelstein, *Occupational Hazards: Why Military Occupations Succeed or Fail*, 29 INT’L SECURITY 49, 49–51 (2004), <https://muse.jhu.edu/article/171547> (arguing that a successful occupation “secure[s] the interests of the occupying power and prevent[s] the occupied territory from becoming a source of instability,” while recognizing that “[d]espite relatively successful military occupations of Germany and Japan after World War II, careful examination indicates that unusual geopolitical circumstances were the keys to success in those two cases, and historically military occupations fail more often than they succeed.”).

7. *Occupation and International Humanitarian Law: Questions and Answers*, INT’L COMM. RED CROSS (Aug. 4, 2004), <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm> (emphasis added).

8. Convention (IV) Respecting the Laws and Customs of War on Land art. 42, Oct. 18, 1907, 36 Stat. 2277, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3741EAB8E36E9274C12563CD00516894> [hereinafter 1907 Hague Regulations].

9. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 49, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, available at <https://ihl-databases.icrc.org/ihl/INTRO/380> [hereinafter Geneva Convention].

has the duty to implement humanitarian safeguards to protect the welfare of the occupied people.<sup>10</sup>

Unfortunately, the Nagorno-Karabakh occupation is plagued by the question of whether the international law of occupation even applies.<sup>11</sup> This uncertainty underlies a corrupt occupation<sup>12</sup> permitting international human rights violations in and around

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10. See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, available at <https://www.icrc.org/eng/resources/documents/misc/additional-protocols-1977.htm> [hereinafter Protocol I].

11. Kontorovich, *supra* note 5 (observing, first, that the non-enforcement “of occupation law by the international community almost entirely exempts” Nagorno-Karabakh from the international law of occupation, and second, that Armenia views its “control as an exercise of the self-determination of the Karabakh population”—not as an occupation—although international law rejects this argument); see also Thomas De Waal, *Solve the Nagorno-Karabakh Conflict Before It Explodes*, N.Y. TIMES (Apr. 7, 2016), <https://www.nytimes.com/2016/04/08/opinion/solve-the-nagorno-karabakh-conflict-before-it-explodes.html> (explaining that international inaction is based on a “hope among the international community . . . that the problem can be left alone.”).

12. Corrupt occupation is the author’s term and is intended to be more of a critique of the international law of occupation and less of the state actors. In the case of Nagorno-Karabakh, Armenia does not view its control as an occupation of the territory and its people; relying on the 1991 referendum and subsequent creation of Nagorno-Karabakh’s central government, it considers the territory to be independent, including from the sovereignty of either Armenia and Azerbaijan. See *Nagorno-Karabakh: A Plan for Peace*, INT’L CRISIS GROUP 3–5 (Oct. 11, 2005), <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-azerbaijan/nagorno-karabakh-plan-peace>. Conversely, Azerbaijan considers Armenia to be acting illegally in its occupation of Nagorno-Karabakh. See Press Release, General Assembly, General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, Demanding Withdrawal of All Armenian Forces (Mar. 14, 2008), <https://www.un.org/press/en/2008/ga10693.doc.htm> [hereinafter General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan]. Although Azerbaijan recognizes Nagorno-Karabakh as occupied, it launches attacks in the region, citing self-defense. *Nagorno-Karabakh: A Plan for Peace*, *supra*, at 5–6.

Nagorno-Karabakh,<sup>13</sup> and escalating population resettlement<sup>14</sup> despite ongoing violence.<sup>15</sup> Consequently, the occupation stokes the military tensions of both countries<sup>16</sup>—endangering civilians<sup>17</sup> and international stability.<sup>18</sup> Based on these struggles, the

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13. See *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 6 (“From the very beginning, the [Nagorno-Karabakh] conflict degenerated into violence and ethnic cleansing . . . [and] [n]either country has shown any willingness to address the human rights violations that occurred . . . .”); *id.* at 7 (citing that “Armenia not only forcibly displaced Azeris from Armenia, Nagorno-Karabakh and seven districts around it, but also took control of 11,722 square kilometres of Azerbaijan” in contravention of Azeris’ basic human rights, such as freedom of movement) (citations omitted); see also *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 135 (2015) (finding Armenia in violation of complainant Azerbaijani refugees’ Articles 1, 8 and 13 rights under the European Convention on Human Rights based in part on their inability to return to their homes since the Nagorno-Karabakh conflict began); see also *Press Country Profile — Armenia*, EUR. CT. H.R. (July 2017), [http://www.echr.coe.int/Documents/CP\\_Armenia\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Armenia_ENG.pdf) (“There are currently more than one thousand individual applications pending before the [European] Court [of Human Rights] which were lodged by persons displaced during the Nagorno-Karabakh conflict.”).

14. Rupen Janbazian, *Building a Border Village in Artsakh: Arajamugh Village Expansion Project Makes Headway*, ARMENIAN WKLY. (Aug. 11, 2017), <https://armenianweekly.com/2017/08/11/arajamugh-village-expansion-project-makes-headway/>; see THOMAS DE WAAL, *BLACK GARDEN: ARMENIA AND AZERBAIJAN THROUGH PEACE AND WAR* 49 (2013); see also General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12 (describing Azerbaijan’s representative’s accusations against Armenia of attempting “to consolidate the occupation through illegal activities . . . [including] an outrageous policy of massive illegal settlement of Armenians in the occupied territories.”).

15. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4; see also *Chiragov*, 2015-III Eur. Ct. H.R. at 218–19 (finding a “continued presence of Armenian and Armenian-backed troops, ceasefire breaches on the Line of Contact, [and] an overall hostile relationship between Armenia and Azerbaijan . . .”).

16. General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12; see also BROERS, *supra* note 4, at 3 (warning that Nagorno-Karabakh’s current situation is one where “regional and global powers have overlooked a dispute that could embroil them all in a major new war.”); *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4.

17. *Nagorno-Karabakh Truce Holds, but Residents Fear Renewed Violence*, REUTERS (Apr. 6, 2016), <http://www.reuters.com/article/uk-nagorno-karabakh-ceasfire/nagorno-karabakh-truce-holds-but-residents-fear-renewed-violence-idUSKCN0X30DV>.

18. See generally EVERETT PRICE ET AL., HELSINKI COMMISSION REPORT, IN BRIEF: THE NAGORNO-KARABAKH CONFLICT (Stacy Hope ed., 2017), *available at*

international law of occupation should be reformulated to clarify occupier responsibility and to close current gaps in providing humanitarian aid,<sup>19</sup> hopefully preventing another corrupt occupation from occurring in the future.

Part I of this Note introduces Nagorno-Karabakh and discusses the historical importance of the region to the relationship between Azerbaijan and Armenia, noting the events that have led up to its occupation. Part II defines occupation and discusses the purposes of the international law of occupation. Part III analyzes corrupt occupation, focusing on the law's misuse in Nagorno-Karabakh. Part IV proposes a solution to mitigate some of the negative effects of corrupt occupation in an occupied territory: adding an occupier-intent element to Article 6 of the Fourth Geneva Convention that requires an occupier to provide comprehensive humanitarian protections. An analysis of the advantages and disadvantages of the proposed solution follows. Part V applies the reformulation to Nagorno-Karabakh. Although these changes to the international law of occupation may not resolve the political, territorial and humanitarian issues plaguing the contested Nagorno-Karabakh region, they would potentially encourage steps towards peace and help prevent future corrupt occupations resulting in prolonged conflicts. Finally, this Note concludes that the international community has an opportunity to learn from the unfortunate outcome in Nagorno-Karabakh and to improve the international law of occupation.

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[https://www.csce.gov/sites/helsinkicommission.house.gov/files/Report%20-%20Nagorno-Karabakh%20-%20Design%20FINAL\\_0.pdf](https://www.csce.gov/sites/helsinkicommission.house.gov/files/Report%20-%20Nagorno-Karabakh%20-%20Design%20FINAL_0.pdf) (warning that the Nagorno-Karabakh conflict “poses a serious threat to stability in the South Caucasus region and beyond.”); *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at i (“[T]he long running Nagorno-Karabakh conflict [is] the most significant obstacle to stability in the South Caucasus . . . .”); De Waal, *supra* note 11.

19. A literal reading of the Fourth Geneva Convention states that only the Articles referred to in Article 6—1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143—remain in force during an occupation. Geneva Convention, *supra* note 9, art. 6.

## I. A BRIEF HISTORY OF NAGORNO-KARABAKH

Nagorno-Karabakh, which translates to “mountainous black garden,”<sup>20</sup> is a landlocked region within the territorial boundaries of southwestern Azerbaijan,<sup>21</sup> and is surrounded by a militarized buffer zone.<sup>22</sup> The area’s fractured geography is further complicated by the physically separate territory of Azerbaijan, the Nakhichevan Autonomous Republic, located to the south and west of Nagorno-Karabakh and Armenia.<sup>23</sup>

*Map of the South Caucasus*<sup>24</sup>



20. *Nagorno-Karabakh Profile*, *supra* note 1; DE WAAL, *supra* note 14, at 8 (explaining that the region’s name “itself suggests the fruitful crossbreeding of cultures,” with “Karabakh” originating as a “a Turkish-Persian fusion, most commonly translated as ‘Black Garden’” and “Nagorno” meaning “mountainous” in Russian).

21. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4.

22. De Waal, *supra* note 11 (“The 1994 truce left the Armenian side in control not just of the disputed province, but also of a section of Azerbaijani territory around Nagorno-Karabakh . . . regard[ed] as a protective buffer zone . . . .”); *see also* Chiragov v. Armenia, 2015-III Eur. Ct. H.R. 219 (2015) (noting the Armenian government’s argument that its control over the area of Lachin between Armenia and Nagorno-Karabakh “was of military strategic importance and that there was a need to deliver food, medicine and other supplies into Nagorno-Karabakh.”).

23. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 14, 22.

24. Current map of the South Caucasus region and its neighbors. “This map is for reference only and should not be taken to imply political endorsement of its content.” *Id.* at app. A.



Historically, Nagorno-Karabakh was a well-known and sought-after region.<sup>25</sup> While Armenia lays historical claim to the land dating back to the ninth century BC, the territory was variously controlled by the Persian, Ottoman, and Russian empires until the end of the Russian Tsarist regime.<sup>26</sup> In 1918, Azerbaijan, with Turkey's aid, invaded and took control of Nagorno-Karabakh.<sup>27</sup>

### *A. Soviet Rule and Subsequent Conflict*

Five years later, Soviet leader Joseph Stalin<sup>28</sup> deemed Nagorno-Karabakh an autonomous district of Azerbaijan under the authority of the United Soviet Socialist Republics (USSR).<sup>29</sup> The USSR established a regional parliament and appointed government officials, overseen by the Soviet Republics.<sup>30</sup> Although the area maintained a majority ethnic Armenian population, Azerbaijanis coexisted in the region.<sup>31</sup>

As the USSR dissolved in the 1980s, however, suppressed tensions over conflicting claims of territorial ownership of Nagorno-Karabakh<sup>32</sup> exploded between Armenia and Azerbaijan. In 1988,

25. DE WAAL, *supra* note 14, at 8 (describing Nagorno-Karabakh's "allure, . . . famous for its mixed Christian-Muslim population; for the independence of its rulers, whether Christian or Muslim; for being fought over by rival empires; for its forests and monasteries; for producing warriors and poets; for its grapes, mulberries, silk, and corn.").

26. *Nagorno-Karabakh Issue*, MINISTRY FOREIGN AFF. REP. ARM., <https://www.mfa.am/en/nagorno-karabakh-issue> (last visited Dec. 27, 2017); *see also* DE WAAL, *supra* note 14, at 8.

27. *Nagorno-Karabakh Issue*, *supra* note 26; *cf.* DE WAAL, *supra* note 14, at 126.

28. *See generally* ROBERT SERVICE, *STALIN: A BIOGRAPHY* (2006).

29. Janbazian, *supra* note 14.

30. SERVICE, *supra* note 28, at 204 (despite fierce opposition from Armenia, Stalin decided that giving Nagorno-Karabakh to Azerbaijan would be the most pragmatic political choice, meant to engender support for Communism in Asia and cool military threats from Turkey, Azerbaijan's ally).

31. HUMAN RIGHTS WATCH, *AZERBAIJAN SEVEN YEARS OF CONFLICT IN NAGORNO-KARABAKH* xx (1994), *available at* <https://www.hrw.org/sites/default/files/reports/AZER%20Conflict%20in%20N-K%20Dec94.pdf> (citing the 1989 census demographics of Nagorno-Karabakh as "approximately 75 percent ethnic Armenian . . . and 25 percent ethnic Azeri," with the Oblast's capital being "largely Armenian, while Shusha, Karabakh's pre-Soviet center, was comprised mostly of Azeris."); *see generally* DE WAAL, *supra* note 14.

32. *See* DE WAAL, *supra* note 14, at 126–27 (clarifying that the "dispute [over Nagorno-Karabakh] date[s] back little more than one hundred years. . . . The

Nagorno-Karabakh's oblast<sup>33</sup> parliament voted to join Armenia.<sup>34</sup> The vote sparked widespread violence<sup>35</sup> between Azeri and Armenian forces, which attempted to take control of the area.<sup>36</sup> The waning USSR, unwilling to risk a conflict with Azerbaijan's allies—particularly Turkey<sup>37</sup>—consistently ignored Nagorno-Karabakh's petitions to join Armenia.<sup>38</sup> In 1991, a referendum, boycotted by the Azeri residents,<sup>39</sup> declared the region's independence.<sup>40</sup> Azerbaijan officially refused to recognize even "the validity of the poll,"<sup>41</sup> and not a single State recognized Nagorno-Karabakh's subsequently proclaimed autonomy.<sup>42</sup> By 1992, the conflict over the region's independence escalated into full-scale war.<sup>43</sup> The fighting killed between 20,000 to 30,000 soldiers and

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roots . . . can be traced back to the period when the Ottoman and Russian Empires were in their dying phases and both Armenians and Azerbaijanis discovered the idea of national self-determination."); *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 3 (explaining that "Both [Armenia and Azerbaijan] sustain the notion of ethnic continuity in Nagorno-Karabakh to justify their right to sovereignty today," a dispute that began to fester after the drawing of the Soviet borders).

33. An oblast is "a political subdivision of Imperial Russia or a republic of the U.S.S.R. or of the Russian Federation." *Oblast*, MERRIAM-WEBSTER (2018), <https://www.merriam-webster.com/dictionary/oblast>.

34. *Nagorno-Karabakh Profile*, *supra* note 1.

35. Although this Note focuses on the conflict within Nagorno-Karabakh, devastating violence occurred before and as a result of the conflict outside of the region. For an in-depth account of the genocidal acts imprinted on Armenia and Azerbaijan, see DE WAAL, *supra* note 14.

36. *Id.*

37. SERVICE, *supra* note 28, at 204.

38. See DE WAAL, *supra* note 14, at 292.

39. See *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 148–49 (2015).

40. *Declaration on Proclamation of the Nagorno Karabagh Republic*, OFF. NKR PRESIDENT, <http://www.president.nkr.am/en/nkr/nkr1> (last visited Sept. 6, 2017).

41. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 4.

42. EUR. CT. H.R., EXTRA-TERRITORIAL JURISDICTION OF STATES PARTIES TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS 3, n.3 (Feb. 2016), [http://www.echr.coe.int/Documents/FS\\_Extra-territorial\\_jurisdiction\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf) [hereinafter EXTRA-TERRITORIAL JURISDICTION OF STATES PARTIES TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS]. ("The self-proclaimed independence of the 'NKR' has not been recognised by any State or international organisation."); *Chiragov*, 2015-III Eur. Ct. H.R. at 215 (noting that "the 'NKR' is not recognised by any State or international organization.").

43. *Nagorno-Karabakh Profile*, *supra* note 1.

civilians, and displaced over one million people, including Azerbaijanis fleeing Nagorno-Karabakh and Armenians fleeing Azerbaijan.<sup>44</sup>

### *B. Attempting Peace Amid Instability*

The presidents of Azerbaijan and Armenia signed a Russia-brokered ceasefire agreement in 1994,<sup>45</sup> leaving Nagorno-Karabakh under de facto Armenian control.<sup>46</sup> That same year, the Organization for Security and Co-Operation in Europe (OSCE)<sup>47</sup> formed the Minsk Group,<sup>48</sup> tasked with facilitating a peace agreement between Azerbaijan and Armenia.<sup>49</sup> The United States, France, and Russia, who serve as the Minsk Group's co-chairs,<sup>50</sup> do not recognize the self-proclaimed independence of Nagorno-Karabakh, yet are opposed to relinquishing the area to Azerbaijan's control.<sup>51</sup> Critics surmise that a

44. *Id.*; *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4; De Waal, *supra* note 11.

45. *Nagorno-Karabakh Profile*, *supra* note 1.

46. EUR. CT. H.R., AZERBAIJANI REFUGEE'S RIGHTS VIOLATED BY LACK OF ACCESS TO THEIR PROPERTY LOCATED IN DISTRICT CONTROLLED BY ARMENIA 2 (2015), available at <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5110589-6301087&filename=003-5110589-6301087.pdf> ("By the end of 1993, ethnic Armenian forces had gained control over almost the entire territory of the former NKAO [Nagorno-Karabakh Autonomous Oblast] as well as seven adjacent Azerbaijani regions.").

47. The Organization for Security and Co-operation in Europe (OSCE) "is the world's largest regional security organization. The OSCE works for stability, peace and democracy for more than a billion people, through political dialogue and through practical work to build and sustain peace and stability." Ambassadors from each of its 57 member states regularly meet to discuss strategies for preventing and managing global conflicts. *What Is the OSCE?*, OSCE (Aug. 2018), <https://www.osce.org/whatistheosce/factsheet?download=true>.

48. On March 23, 1995, the OSCE formed a group of delegates called the OSCE Minsk Group to address the conflict in Nagorno-Karabakh and "to obtain conclusion by the Parties of an agreement on the cessation of the armed conflict in order to permit the convening of the Minsk Conference. . . ." *Mandate*, OSCE MINSK GROUP, <https://www.osce.org/minsk-group/108308> (last visited Oct. 5, 2018).

49. *Who We Are*, OSCE MINSK GROUP, <http://www.osce.org/mg/108306> (last visited Oct. 5, 2018).

50. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4 ("[T]he OSCE Minsk Group has a co-chairmanship institution, comprised of Russian, the US and French co-chairs, which began operating in 1996.").

51. General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12.

Minsk-negotiated peace agreement is impossible, claiming that it remains in Russia's best interests to maintain instability between Armenia and Azerbaijan.<sup>52</sup> Others accuse the co-chairs of shirking more proactive roles in the hopes that the conflict will resolve itself.<sup>53</sup> The Armenian and Azeri governments add to this

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52. See Clete Stevens, *The 'Putin Parachute' – Russian Influence in U.S. by Way of Armenia*, INT'L POL'Y DIG. (July 7, 2018), <https://intpolicydigest.org/2018/07/07/the-putin-parachute-russian-influence-in-u-s-by-way-of-armenia/> (Armenia depends “on Russian military support for a conflict with Azerbaijan that Russia continues to stoke, funding and supporting both sides of the disagreement. Russia's interests are clearly to keep Azerbaijan and Armenia in strife, inflating a demand for Russian military presence in the region and consolidating Russian forces closer to the West.”); see also PATRICIA CARLEY, NAGORNO-KARABAKH: SEARCHING FOR A SOLUTION, A UNITED STATES INSTITUTE OF PEACE ROUNDTABLE REPORT 1 (1998) (“Stalin knew that by including the disputed and by then majority Armenian-populated region wholly within the boundaries of the new Soviet Republic of Azerbaijan, it would forever remain a sore spot between the two republics that would ensure Moscow's position as power broker.”); De Waal, *supra* note 11 (while Russia is not the “real villain[,] [f]or sure, the Kremlin has played a role in manipulating the ethno-territorial conflicts. . . . And Russia continues to sell weapons to both Armenia and Azerbaijan.”).

53. General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12; *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 8 (“A main criticism of the Minsk Group is that it facilitates but is loath to apply pressure”) (citation omitted); *Karabakh Conflict Is Not Frozen*, *French Ambassador Says*, *supra* note 4 (quoting the French Ambassador to Armenia as “fully loyal to its co-chair's commitments within the Minsk Group. But solely the parties [to this conflict] can achieve the settlement of the conflict.”); Nasimi Aghayev, *Nagorno-Karabakh: A Threat to Stability and US Interests*, HILL (July 2, 2014), <http://thehill.com/blogs/congress-blog/foreign-policy/211096-nagorno-karabakh-a-threat-to-stability-and-us-interests> (calling on the U.S. government to “be more active and forthright in leading the global community to condemn Armenia for the occupation, and demand that it abide by international law.”); cf. *U.S. Relations With Azerbaijan*, U.S. DEPT. ST. (Nov. 8, 2017), <https://www.state.gov/r/pa/ei/bgn/2909.htm> (“The United States strongly supports efforts to peacefully resolve the Nagorno-Karabakh conflict and [for Azerbaijan to] reopen the closed border with Armenia, and promote regional stability, peace, and prosperity,” while failing to state whether it would be making such efforts). In some instances, U.S. politicians have publicly undermined the nation's neutrality in its Minsk peace-making role, see, e.g., Stevens, *supra* note 52 (“[American] [p]oliticians have been known to visit Armenian separatists despite vociferous objections from the State Department. . . . Additionally, the U.S. recently granted an entrance visa to the de-facto leader of the rebel state.”).

unlikely of a political peace agreement,<sup>54</sup> as deep-seated animosity hardens between the two nations.<sup>55</sup>

Since Nagorno-Karabakh's declaration of independence, Azerbaijan has forbidden any traveler with a Nagorno-Karabakh Republic passport stamp from entering its borders.<sup>56</sup> In addition, media outlets report that Azeri authorities outright deny Armenian citizens entry to Azerbaijan.<sup>57</sup> The Azeri national soccer team even refused to host the Armenian team in Azerbaijan's capital, Baku,<sup>58</sup> during an international qualifying round to avoid the appearance of cooperating with the Armenian government.<sup>59</sup>

Meanwhile, Armenia has taken public steps to resettle previously-populated areas throughout Nagorno-Karabakh.<sup>60</sup> In April 2017, Nagorno-Karabakh Republic government officials opened a new settlement in the Nagorno-Karabakh region,<sup>61</sup> part of an overarching strategy to repopulate the area.<sup>62</sup> Financial and material support comes from the regional and national Armenian government,<sup>63</sup> as well as the Armenian Cultural Association of America Artsakh Fund of the Eastern U.S.,<sup>64</sup> an American-

54. See De Waal, *supra* note 11 ("What is missing in the South Caucasus is the political will to engage with a plan that involves doing a deal with the enemy.").

55. See *id.* ("More than 20 years on, nationalist hatreds have not abated. In fact, they've been fed over the years by official propaganda on both sides."); Haykuhi Barseghyan & Shahla Sultanova, *History Lessons in Armenia and Azerbaijan*, INSTIT. WAR & PEACE REPORTING (Mar. 2, 2012), <https://iwpr.net/global-voices/history-lessons-armenia-and-azerbaijan> (highlighting the incendiary and discriminatory comments about Armenia and Azerbaijan in the other country's government-approved school textbooks).

56. *Azerbaijan International Travel Information: Entry, Exit, and Visa Requirements*, U.S. DEPT. ST. — BUREAU CONSULAR AFF., <https://travel.state.gov/content/passports/en/country/azerbaijan.html> (last visited Sept. 6, 2017).

57. *Azerbaijan Doesn't Allow Armenians in the Country*, PANARMENIAN NETWORK (May 7, 2008), <http://www.panarmenian.net/eng/world/news/25889/>.

58. See DE WAAL, *supra* note 14, at 5.

59. Fariz Ismailzade, *NGOs in Azerbaijan Criticized for Contacts with Karabakh*, 3 EURASIA DAILY MONITOR 170 (2006), available at <https://jamestown.org/program/ngos-in-azerbaijan-criticized-for-contacts-with-karabakh/>.

60. Janbazian, *supra* note 14.

61. *Id.*

62. *Id.*

63. Chiragov v. Armenia, 2015-III Eur. Ct. H.R. 169–70 (2015).

64. Janbazian, *supra* note 14; see *Donate to Artsakh*, ARM. CULTURAL ASS'N AM. (2017), <https://acaainc.org/artsakh/>.

based organization that “sponsors projects both in the Republic of Armenia and the Diaspora.”<sup>65</sup> Because Nagorno-Karabakh’s government is not internationally recognized, Armenia provides the residents with Armenian passports known as Artsakh passports, which include a special stamp signifying the Nagorno-Karabakh territory.<sup>66</sup> Nagorno-Karabakh is currently home to approximately 146,600 people, an estimated 95% of whom are ethnic Armenian.<sup>67</sup> While Armenia financially and politically supports resettlement, Azerbaijan considers it to be illegal instigation.<sup>68</sup>

Unsurprisingly, the tensions over Nagorno-Karabakh sporadically erupt in violence.<sup>69</sup> In March 2016, Azerbaijan’s troops and the Nagorno-Karabakh Republic’s militia fought near the Talysh-area settlements<sup>70</sup> in the southeast of Azerbaijan.<sup>71</sup> A 12-year-old Armenian boy, as well as three other civilian residents,

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65. *About*, ARM. CULTURAL ASS’N AM. (2017), <https://acaa-inc.org/about/>.

66. Residents of the Nagorno-Karabakh Republic are issued “Karabakh passports [that] are fully identical with Armenian ones except that they will contain a special stamp notifying their carriers’ place of residence.” *Karabakh Residents to Use Armenian Passports*, ASBAREZ (Sept. 9, 1998), <http://asbarez.com/37213/karabakh-residents-to-use-armenian-passports/>. According to the deputy speaker of the Armenian parliament, Albert Bazeyan, issuing Armenian passports to Nagorno-Karabakh residents “does not violate Azerbaijan’s territorial integrity. ‘Karabakh has never been part of Azerbaijan,’ he claimed.” *Id.*

67. See *Nagorno-Karabakh Profile*, *supra* note 1; see also *General Information*, OFF. NKR PRESIDENT, <http://www.president.nkr.am/en/nkr/generalInformation/> (last visited Sept. 6, 2017) (stating that of the estimated 146,600 people living in Nagorno-Karabakh in 2013, 95% of the population was Armenian, and the remaining 5% consisted of “Russians, Ukrainians, Greeks, Georgians, Azerbaijanis and others.”); *The World Factbook: Azerbaijan*, *supra* note 3 (estimating in 2009 that “the separatist Nagorno-Karabakh region is populated almost entirely by ethnic Armenians . . .”).

68. General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12.

69. *Nagorno-Karabakh Profile*, *supra* note 1; De Waal, *supra* note 11.

70. See G. Melvin Howe et al., *Azerbaijan*, *ENCYCLOPEDIA BRITANNICA* (July 24, 2018), <https://www.britannica.com/place/Azerbaijan> (referring to “[t]he Talysh, or Talishi” as an “Iranian people who form the bulk of the local population” in rural, southeastern Azerbaijan).

71. *Nagorno-Karabakh Truce Holds, but Residents Fear Renewed Violence*, *supra* note 17.

were killed during military shelling.<sup>72</sup> Dozens of soldiers perished on both sides.<sup>73</sup>

## II. WHAT IS OCCUPATION?

Within the framework of international law, “occupation . . . exists when a state exercises actual authority over the territory, or part of the territory, of an enemy state.”<sup>74</sup> However, its application has changed as humanitarian norms of customary international law solidified during the nineteenth century.<sup>75</sup> First, this section describes occupation law’s historical origins, beginning with the right of conquest, then belligerent occupation, and finally the emergence of individual rights leading to the first codifications of occupation law. Second, this section outlines modern international occupation law by focusing on the Fourth Geneva

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72. Bronwen Latimer, *Haunting Photos Show the Devastation of Nagorno-Karabakh’s Ongoing Conflict*, WASH. POST (May 11, 2016), [https://www.washingtonpost.com/news/in-sight/wp/2016/05/11/haunting-photos-show-the-devastation-of-nagorno-karabakh-ongoing-conflict/?utm\\_term=.7a419993bach](https://www.washingtonpost.com/news/in-sight/wp/2016/05/11/haunting-photos-show-the-devastation-of-nagorno-karabakh-ongoing-conflict/?utm_term=.7a419993bach).

73. *Nagorno-Karabakh Profile*, *supra* note 1.

74. *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 180–81 (2015) (citations omitted). The Court further elaborates that “[t]he requirement of actual authority is widely considered to be synonymous to that of effective control.” *Id.* See also Orna Ben-Naftali et al., *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 BERKELEY J. INT’L L. 551, 560 (2005), <https://scholarship.law.berkeley.edu/bjil/vol23/iss3/2/> (defining occupation as “the effective control of a power . . . over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory.”) (quoting Eyal Benvenisti, *THE INTERNATIONAL LAW OF OCCUPATION* 4 (1993)); but see Adam Roberts, *What is a Military Occupation?*, 55 BRITISH Y.B. INT’L L. 249, 249 (1985), <https://doi.org/10.1093/bybil/55.1.249> (“Michel Veuthey has gone so far as to say that ‘the concept of ‘occupation’ is juridically inoperative or disputed in practically all contemporary conflicts, including those involving guerrilla warfare.”) (quoting MICHEL VEUTHEY, *GUERRILLA ET DROIT HUMANITAIRE* 355 (2nd ed., 1983)).

75. Grant T. Harris, *The Era of Multilateral Occupation*, 24 BERKELEY J. INT’L L. 1, 4 (2006), <https://scholarship.law.berkeley.edu/bjil/vol24/iss1/1/> (“The traditional international law of occupation is a subset of the law of war, also termed international humanitarian law or the laws of armed conflict. . . . Occupation began to be distinguished from acquisition of territory in the latter half of the eighteenth century, yet the concept of military occupation was mostly developed after the Napoleonic Wars. . . . International humanitarian law became increasingly codified over time.”) (citations omitted); see also Protocol I, *supra* note 10 (In 1977, Additional Protocol I was “adopted by States to make international humanitarian law more complete and more universal, and to adapt it better to modern conflicts. . . . Protocol I deals with international armed conflicts.”).

Convention and the Additional Protocol I of 1977 ("Additional Protocol").<sup>76</sup>

*A. Overview of the Origins of the International Law of Occupation*<sup>77</sup>

During the mid-nineteenth century, the idea of "belligerent occupation" emerged as a separate and distinct concept<sup>78</sup> from the traditional "right of conquest."<sup>79</sup> Belligerent occupation is the possession or control over a territory<sup>80</sup> without conferring ownership to the occupier.<sup>81</sup> Sovereign rights to the territory remain with the "ousted government," while the military occupier maintains limited administrative control of the occupied territory.<sup>82</sup>

76. Protocol I, *supra* note 10.

77. For a detailed history, see Eyal Benvenisti, *The Origins of the Concept of Belligerent Occupation*, 26 L. & HIST. REV. 621 (2008), [https://www.researchgate.net/publication/228161576\\_The\\_Origins\\_of\\_the\\_Concept\\_of\\_Belligerent\\_Occupation](https://www.researchgate.net/publication/228161576_The_Origins_of_the_Concept_of_Belligerent_Occupation).

78. Jean L. Cohen, *The Role of International Law in Post-Conflict Constitution-Making: Toward a Jus Post Bellum for "Interim Occupations"*, 51 N.Y.L. SCH. L. REV. 496, 503 (2006), [https://www.researchgate.net/publication/267721492\\_The\\_Role\\_of\\_International\\_Law\\_in\\_Post-Conflict\\_Constitution-Making\\_Toward\\_a\\_Jus\\_Post\\_Bellum\\_for\\_Interim\\_Occupations](https://www.researchgate.net/publication/267721492_The_Role_of_International_Law_in_Post-Conflict_Constitution-Making_Toward_a_Jus_Post_Bellum_for_Interim_Occupations) ("[T]he first codification of the law of belligerent occupation was prepared by Dr. Francis Lieber during the American Civil War in an 1863 text. . . . [The concept's] original articulation . . . is attributed to Emmerich de Vattel, although the first usage of the concept was by a German publicist in 1844.").

79. See generally SHARON KORMAN, *THE RIGHT OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE* 39–40 (1996).

80. Convention (II) With Respect to the Laws and Customs of War on Land art. 43, July 29, 1899, 32 Stat. 1803, 403 T.S. 247, 259, *available at* <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/150?OpenDocument&redirect=0> [hereinafter "1899 Hague Convention"] ("Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.").

81. *Id.* art. 43 ("The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."); see Cohen, *supra* note 78, at 503.

82. Benvenisti, *supra* note 77, at 622. This cuts against the traditional international conquest, where a foreign belligerent state could occupy another state and then assume governmental control of the territory. See also KORMAN, *supra* note 79, at 123.



In the Enlightenment era,<sup>83</sup> philosophical and social thought supporting individual free will and rights began to undermine the State's absolute control, particularly through military conquest.<sup>84</sup> Jean-Jacques Rousseau's<sup>85</sup> *The Social Contract*<sup>86</sup> espoused the rights of people leading up to the French Revolution<sup>87</sup> in 1789.<sup>88</sup> In his 1797 œuvre, *The Law of Nations*, Swiss diplomat and jurist, Emer de Vattel,<sup>89</sup> asserted that contemporary

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83. *Enlightenment*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/event/Enlightenment-European-history> (last visited Nov. 12, 2017) (The Enlightenment was "a European intellectual movement of the 17th and 18th centuries in which ideas concerning God, reason, nature, and humanity were synthesized into a worldview that gained wide assent in the West and that instigated revolutionary developments in art, philosophy, and politics."). See KORMAN, *supra* note 79, at 31.

84. KORMAN, *supra* note 79, at 36 ("The rejection of the patrimonial principle, according to which the people could be bartered about at the will of the ruler, represents the international version of (the radical wing) of the French Enlightenment's attack upon the domestic absolutism of the *ancien régime*."). However, there were exceptions to the restrictions against patrimonial conquest, including forceful acquisition of infidel and barbarian nations. *Id.* at 47–56.

85. See G. D. H. Cole, *Introduction*, in JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND DISCOURSES BY JEAN-JACQUES ROUSSEAU* (G. D. H. Cole ed. trans., 1923), available at <http://oll.libertyfund.org/titles/rousseau-the-social-contract-and-discourses>.

86. *Id.* ("Sovereignty, being nothing less than the exercise of the general will, can never be alienated. . .").

87. *French Revolution*, HISTORY, <http://www.history.com/topics/french-revolution> (last visited Oct. 3, 2018) ("Like the American Revolution before it, the French Revolution was influenced by Enlightenment ideals, particularly the concepts of popular sovereignty and inalienable rights . . . [T]he movement played a critical role in shaping modern nations by showing the world the power inherent in the will of the people.").

88. See KORMAN, *supra* note 79, at 37 ("Vattel's assertion of the rights of peoples against the rights of rulers . . . was later to become known [as] the doctrine of the self-determination of peoples. This doctrine, which became in 1789 the ideology of the French Revolution . . . spread across Europe to an extent that made it impossible for the patrimonial principle to be restored or incorporated as it had previously been into international law or morality."); see generally LORI FISHER DAMROSCH & SEAN D. MURPHY, *INTERNATIONAL LAW: CAES AND MATERIALS* 307 (6th ed. 2014).

89. EMER DE VATTEL, *THE LAW OF NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS, WITH THREE EARLY ESSAYS ON THE ORIGIN AND NATURE OF NATURAL LAW AND ON LUXURY* (Béla Kapossy & Richard Whitmore eds., Liberty Fund 2008) (1797), available at <http://oll.libertyfund.org/titles/vattel-the-law-of-nations-lf-ed>.

“principles countenanced by reason and conformable to humanity”<sup>90</sup> were antithetical to the “monstrous”<sup>91</sup> patrimonial norm of one nation conquering another nation’s territory by force and declaring ownership over the conquered people without their consent.<sup>92</sup> An international consensus of protecting occupied peoples’ rights, however, would not develop for over a century.<sup>93</sup>

The 1899 Second Hague Convention’s Regulations Concerning the Laws and Customs of War on Land codified occupation law,<sup>94</sup> mandating that a conquering, foreign state should follow the conquered state’s national legislation, as opposed to its own.<sup>95</sup> The 1907 Hague Regulations repeated the mandate in Article 43.<sup>96</sup> The relevant law is expressed in one sentence, focusing on

90. *Id.*

91. *Id.*

92. KORMAN, *supra* note 79, at 36 (“According to Vattel, the patrimonial principle was no part of the law of nations, for people could not be ‘acquired’ by a conqueror. . . .”).

93. *See* Convention (II) With Respect to the Laws and Customs of War on Land art. 43, July 29, 1899, 32 Stat. 1803, 403 T.S. 247, 259, *available at* <https://ihl-databases.icrc.org/ap-plic/ihl/ihl.nsf/INTRO/150?OpenDocument&redirect=0> [hereinafter 1899 Hague Regulations] (requiring international protections for inhabitants of occupied territories).

94. 51 States are parties to the 1899 Hague Regulations. *Id.*

95. *Id.* (“The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”).

96. 1907 Hague Regulations, *supra* note 8, art. 43; *see* Gregory H. Fox, *The Occupation of Iraq*, 36 GEO. J. INT’L L. 195, 235 (2005) (prior to the twentieth century, warfare was conducted almost exclusively between armies, avoiding civilian involvement. Therefore, belligerent “occupations were of relatively short duration, during which occupants, by and large, retained existing legislation as much as possible. The final codifications of occupation law adhered to this minimalist conception of the occupier’s role.”); Harris, *supra* note 75, at 4–5 (“The bedrock of the international law of occupation is found in the 1907 Hague Regulations, which establishes occupation as a question of fact. . . .”); Solomon Ukhuegbe & Alero Fenemigho, *Article 43 of the Hague Regulations of 1907 Revisited: The Past and the Future of Belligerent Occupation in International Law*, 16 U. BERLIN L.J. 266, 267 (2015), [https://www.academia.edu/26851994/ARTICLE\\_43\\_OF\\_THE\\_HAGUE\\_REGULATIONS\\_OF\\_1907\\_REVISITED\\_THE\\_PAST\\_AND\\_THE\\_FUTURE\\_OF\\_BELLIGERENT\\_OCCUPATION\\_IN\\_INTERNATIONAL\\_LAW](https://www.academia.edu/26851994/ARTICLE_43_OF_THE_HAGUE_REGULATIONS_OF_1907_REVISITED_THE_PAST_AND_THE_FUTURE_OF_BELLIGERENT_OCCUPATION_IN_INTERNATIONAL_LAW) (asserting that “the core of this regime [governing the exercise of military authority over hostile territory] is article 43 of the Regulations annexed to the Hague Convention IV concerning

the restoration of civilian normalcy after an occupier establishes power: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."<sup>97</sup>

A few years later, states largely followed Article 43 during World War I.<sup>98</sup> After World War II, many states publicly agreed that territorial conquest by force could no longer be an accepted international legal norm.<sup>99</sup> Thus, belligerent occupation became the accepted international stabilizing mechanism in wartime,<sup>100</sup> limiting and eventually replacing the ancient right of conquest.<sup>101</sup>

### *B. The International Law of Occupation's Purposes and Questions*

Building on the rules of belligerent occupation after World War II,<sup>102</sup> the Fourth Geneva Convention and its Additional Protocol are considered the most recent codifications of the international

the Laws and Customs of War on Land, which prescribes limits for the occupant or Occupying Power, 'a mini constitution' of some sort.").

97. 1907 Hague Regulations, *supra* note 8, art. 43.

98. See Ukhuegbe & Fenemigho, *supra* note 96, at 267 ("During that war and the period immediately following, State practice was generally consistent with the [Hague] Convention regime.").

99. KORMAN, *supra* note 79, at 133.

100. Ben-Naftali et al., *supra* note 74, at 563 (describing the four features of belligerent occupation recognized by contemporary occupation law: "(a) the occupation is undertaken by a belligerent state; (b) it is over a territory of an enemy belligerent state; (c) it occurs during the course of war or armed conflict; and, (d) before any armistice agreement is concluded. Also, the occupation extends only to those areas over which the occupant exercises effective control.") (citations omitted).

101. See generally KORMAN, *supra* note 79, at 133 ("The demise of the right of conquest in the twentieth century" gave way to the law of belligerent occupation).

102. The Allied states' occupation of German and Japanese territory shaped the 1949 Fourth Geneva Convention's regulation of international occupation. See Harris, *supra* note 75, at 6 ("The Fourth Geneva Convention of 1949 was crafted as a result of the World War II experience to better extend the protections of the laws of war to civilians and to further address the rights and duties of occupying powers.") (citations omitted); see generally KORMAN, *supra* note 79, at 214–48.

law of occupation.<sup>103</sup> Moreover, the 1977 Additional Protocols allowed sovereign states that were previously colonies during World War II to contribute to and become parties to the Fourth Geneva Convention and its Additional Protocols.<sup>104</sup> Together, these treaties reflect international occupation law's shift towards addressing humanitarian<sup>105</sup> and sovereignty<sup>106</sup> concerns

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103. Amanda Alexander, *International Humanitarian Law, Postcolonialism and the 1977 Geneva Protocol I*, 17 MELB. J. INT'L L. 15, 16 (2016) ("[T]he 1977 Additional Protocols to the Geneva Conventions, are the core of contemporary international humanitarian law."); Cohen, *supra* note 78, at 511 (Security Council Resolution 1483, recognizing the United States and British forces in Iraq as occupying powers, is viewed as "the latest and most authoritative restatement of several basic principles of contemporary occupation law" and "[c]alls upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and The Hague Regulations of 1907. . . ."). As of 2017, 196 States have ratified the Fourth Geneva Convention, including Armenia and Azerbaijan. See Geneva Convention, *supra* note 9. The Convention and its Additional Protocols' promotion of self-determination and humanitarianism is also supported by the U.N. Charter and other binding resolutions. See, e.g., G.A. Res. 2625 (XXV) (Oct. 24, 1970); U.N. Charter arts. 1, 55; International Covenant on Civil and Political Rights art. 1(1), Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

104. *Protocols I and II Additional to the Geneva Conventions*, INT'L COMM. RED CROSS (Jan. 1, 2009), <https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm> ("[M]ost of the countries that became independent after 1945 'inherited' the Geneva Conventions from the former colonial powers – the adoption of the Protocols was also an occasion for them to contribute to developing the law."). 174 States are parties to the 1949 Geneva Conventions and to Additional Protocol I. While Armenia is a party to both, Azerbaijan is only a party to the Geneva Conventions. See Protocol I, *supra* note 10.

105. See Cohen, *supra* note 78, at 511 ("In the context of an occupation that results in regime change, this orientation suggests that the identity of the trustee has shifted from the ousted sovereign to the civilian population. This implies a new focus on the welfare and basic rights of the civilian population, guided by the principle of humanity." (quotations omitted)).

106. See Gregory H. Fox, *Humanitarian Occupation*, 07–41 WAYNE ST. U. L. SCH. LEGAL STUDIES RES. PAPER SERIES 1, 8 (2008), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1032661](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032661) (finding that the U.N.'s involvement in the Bosnia-Kosovo occupation "suggest[s] humanitarian occupation is a profound expression of support for maintaining existing borders and demographic profiles."); see also Fox, *The Occupation of Iraq*, *supra* note 96, at 236–37 (in the effort to prevent annexation, "[t]he occupier thus assumes only as much of the displaced sovereign's authority as is necessary to administer the territory, but no more. General legislative competence remains with the displaced regime as the continuing de jure authority over the territory.").

by encompassing more occupation situations outside of traditional belligerent occupation<sup>107</sup>—such as indiscriminate attacks on civilians<sup>108</sup>—and applying “new rules on international armed conflicts” to shield civilians from harm.<sup>109</sup> However, vulnerable gaps remain that threaten the law’s well-intentioned purposes.<sup>110</sup>

### 1. Preserving State Sovereignty

In the Fourth Geneva Convention, Article 4 codifies the preservation of the occupied government’s authority over the occupied territory, stating that the territory’s legal status remains unaffected by occupation.<sup>111</sup> The occupied state’s sovereignty is further protected by Articles 47 and 49.<sup>112</sup> Both articles restrict how an occupying state may eventually acquire legal title to occupied territory. Article 49 prohibits an occupier from short-circuiting

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107. Ben-Naftali et al., *supra* note 74, at 566–67 (The Fourth Geneva Convention reflected the “international recognition of the need to apply occupation laws to situations outside traditional belligerent occupation [which] has taken root in contemporary international law.”).

108. Protocol I, *supra* note 10, art. 51(5), (6).

109. Alexander, *supra* note 103, at 16; *see also* Ben-Naftali et al., *supra* note 74, at 566 (“[T]he Protocol promoted humanitarian concerns over military necessity.”).

110. Harris, *supra* note 75, at 21 (“Occupants act in a lacuna of international law because there is no body of law regulating the conditions of the devolution of sovereignty to the occupied population. . . . Simultaneously, the demise of *debellatio* has left a gap in international law that cannot be filled by the interstitial laws of occupation.”).

111. Protocol I, *supra* note 10, art. 4 (“[T]he occupation of a territory” does not “affect the legal status of the territory in question.”); *see* KORMAN, *supra* note 79, at 217 (“There is not an atom of sovereignty in the authority of the occupant. . . .”) (quoting L. Oppenheim, *The Legal Relations Between an Occupying Power and the Inhabitants*, 33 L.Q. REV. 363, 365 (1917)), affirming the “long-established principle of customary international law . . . that mere conquest or military occupation of territory cannot produce a transfer of title to the conqueror, this requiring some further legal act, such as formal annexation or cession under a treaty of peace.”).

112. Geneva Convention, *supra* note 9, arts. 47, 49; *see* KORMAN, *supra* note 79, at 219 (“That the rights of the occupying power do not include the right of annexation—or the right to exercise sovereignty over the occupied territory—is made clear in Articles 47 and 49 of the Fourth Geneva Convention.”).

sovereignty<sup>113</sup> by forbidding forcible, unjustified transfers or deportations of native civilians,<sup>114</sup> as well as prohibiting the occupier from repopulating the state with its own civilians.<sup>115</sup> Article 47 continues to confer the protections of the Fourth Geneva Convention to the occupied population, even in the event of a purported annexation by the foreign occupier.<sup>116</sup> For the first time, the international law of occupation directly addresses the need to protect the rights of the occupied people, separate from the occupied state's rights.<sup>117</sup> Article 6 ensures the continued application of Articles 47 and 49 during an occupation, even after military fighting has ceased.<sup>118</sup>

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113. U.N. Charter, arts. 1, ¶ 2, 55.

114. Geneva Convention, *supra* note 9, art. 49 ("Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . are prohibited, regardless of their motive," although evacuations for security reasons are permitted).

115. *Id.* ("The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."); KORMAN, *supra* note 79, at 219 (similar to Article 47, Article 49 "prohibits with respect to occupied territory an important expression of territorial sovereignty—in this case, the right to establish permanent civilian settlements.").

116. Geneva Convention, *supra* note 9, art. 47 ("Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.").

117. See KORMAN, *supra* note 79, at 219 ("Article 47, while it takes account of the possibility, if not the legality, of annexation of the whole or part of the occupied territory, guarantees, in such a case, that protected persons are not deprived of their rights under the Convention – an indication that sovereignty may not, even in the event of a purported annexation, be acquired by the occupant in respect of the inhabitants (and hence, in the case of inhabited territory).").

118. KORMAN, *supra* note 79, at 220 ("Article 6(3) applies 47 and 49 even after the close of military operations."). Professor Korman contends that the prohibition against territorial acquisition is irrespective of the original military action's legality. *Id.* at 223–24 ("[T]he old doctrine that unilateral annexation – whereby the occupying power extends its own civil administration over the conquered territory, incorporating it into the body of its own state territory – serves to bring a war which is *materially* over, *legally* or *formally* to a close, has today been officially repudiated."). Cf. U.N. Charter, art. 2, ¶ 4 ("[F]orce shall not be used or threatened against the territorial integrity or political independence of any state" covers before the end of military operations by prohibiting use of force in acquiring territory); G.A. Res. 2625 (XXV), *supra* note

## 2. Protecting Civilian Welfare

Article 10 of the Fourth Geneva Convention clarifies that none of the provisions should be interpreted as undermining any humanitarian relief that an organization may provide to aid an occupied population.<sup>119</sup> In the Additional Protocol, Article 48 requires the occupier to differentiate between civilians and combatants, and then Article 50 obligates protecting those civilians during military attacks.<sup>120</sup> Similarly, Articles 62 and 63 of the Additional Protocol provide protections to civil defense organizations, such as the Red Cross, and prohibit occupiers from interfering in performing their duties to protect civilians and provide relief.<sup>121</sup>

The Additional Protocol articles 69, 70 and 71 specify the type of relief that an occupier state should provide for occupied civilians identified in the Fourth Geneva Convention.<sup>122</sup> For example, Article 69 requires that the occupier provide “clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.”<sup>123</sup> The Additional Protocol calls for implementing the Fourth Geneva Convention provisions immediately, as well as providing relief.<sup>124</sup>

Thus, the international law of occupation tasks the occupier with the responsibility of protecting the occupied people, while

103 (“The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter.”).

119. Geneva Convention, *supra* note 9, art. 10 (“[P]rovisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.”).

120. Protocol I, *supra* note 10, arts. 48, 51; *see also* Alexander, *supra* note 103, at 29 (noting that Article 48 codified a humanitarian “principle of protection and of distinction” foundational to regulating armed conflicts. Viewing Articles 48 and 51 together, “the protection of civilians was established as a fundamental principle of international humanitarian law.”) (citation omitted).

121. Protocol I, *supra* note 10, arts. 62, 63.

122. *Id.* art. 68 (“The provisions of this Section apply to the civilian population as defined in this Protocol and are supplementary to Articles 23, 55, 59, 60, 61 and 62 and other relevant provisions of the Fourth Convention.”).

123. *Id.* art. 69.

124. *Id.* (“Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.”).

receiving none of the glory in legal title to the occupied state.<sup>125</sup> Without a subsequent peace treaty or other binding legal document, the occupier cannot claim sovereignty over occupied territory.<sup>126</sup> A lawful occupation limits the occupier's meddling<sup>127</sup> in the occupied territory's internal affairs to the extent needed to protect the occupying armed forces and the occupied state's people.<sup>128</sup>

### 3. Leaving Humanitarian and Sovereignty Responsibilities Open to Question

However, the Fourth Geneva Convention and the Additional Protocol<sup>129</sup> leave questions open about an occupying state's re-

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125. AEYAL GROSS, *THE WRITING ON THE WALL: RETHINKING THE INTERNATIONAL LAW OF OCCUPATION* 18 (2017) ("Sovereignty and title to an occupied territory are not vested in the occupying power. This principle derives from the inalienability of sovereignty, which cannot be breached through the actual or threatened use of force. Under contemporary international law and in view of the principle of self-determination, the said sovereignty is vested the population under occupation."). The current international law of occupation is thus distinguishable from previously acceptable methods of acquiring title to occupied land, including right to conquest following war or conflict, and *terra nullius*, where "lands inhabited by non-Christian or 'backward' peoples were regarded by the European powers as being automatically open to acquisition by conquest." KORMAN, *supra* note 79, at 41–42; Fox, *Humanitarian Occupation*, *supra* note 106, at 4 ("[O]ccupiers under humanitarian law do not assume 'sovereign' powers over territory. . . ."); cf. PETER STIRK, *THE POLITICS OF MILITARY OCCUPATION* 230 (2009) ("Military occupation pushes sovereignty to the point at which its existence and meaning are precarious. All that is left is a hollow shell whose significance lies in a negative fact: the occupier is not sovereign.").

126. KORMAN, *supra* note 79, at 219–20 ("The basis of these rules [specifically Articles 47 and 49] is that military occupation, being a temporary rather than a permanent state of affairs, (citing Adam Roberts, *Prolonged Military Occupation*, 84 AM. J. INT'L L. 44, 47 (1990)) gives to the occupant a provisional right of administration only, pending the final peace settlement, and does not displace the sovereignty of the conquered." (emphasis omitted)).

127. Harris, *supra* note 75, at 23 ("[T]he law of occupation, especially the Hague Regulations, placed emphasis on 'the state elites as the primary beneficiaries [of the law] and on the minimal involvement of the occupant in the management of the affairs of the population under its temporary rule.'").

128. *Id.* at 24 ("[C]ontemporary expectations of governance and occupation directly conflict with the law of occupation's mantra to permit only minimal meddling into the daily lives of occupied populations.").

129. Although the Additional Protocol attempts to answer some of these questions and is considered customary international law, see Alexander, *supra*



sponsibilities regarding the occupied people's welfare, particularly in the case of prolonged occupation.<sup>130</sup> Part of the compromise arranged to garner states' support of the Fourth Geneva Convention included leaving the duration of occupation open-ended.<sup>131</sup> This concession to the Allied powers—the United States, France, the United Kingdom, and the USSR<sup>132</sup>—who were unsure of when their occupations of the Axis states would end, creates uncertainty regarding the temporariness of occupation.<sup>133</sup> Although an occupation is generally considered to be a temporary status,<sup>134</sup> the codified laws do not specify a limit for

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note 103, at 16 (“Today, much of the Additional Protocols are considered to be customary international law and binding on all states. Indeed, the ICRC’s 2005 study on customary international humanitarian law closely follows the requirements of the Additional Protocol I.”), it was not universally accepted by States. As of 2017, 174 states have ratified the Additional Protocol I out of the 196 that have ratified the Fourth Geneva Convention. Notably, Azerbaijan and the United States are two of the missing parties. Armenia, France and the Russian Federation have ratified both. *See* Protocol I, *supra* note 13, art. 10; *see also* Alexander, *supra* note 103, at 28 (observing that before drafting the Additional Protocols, “there was not much state practice that would suggest that there were customary laws protecting civilians. Nevertheless, this deficiency did not deter delegates from stating that there were such laws.”). Therefore, it is questionable whether all States considered themselves bound by all parts of the Protocol during an occupation.

130. *See* Kontorovich, *supra* note 5 (“[O]ne reason the Geneva Convention may not have anticipated prolonged occupations is that its drafters did not conceive of situations where occupation would not promptly lead to annexation, or a peace deal on terms acceptable to both parties.”); Alexander, *supra* note 103, at 49–50 (noting the “many paradoxes and ambiguities” in the Additional Protocol I, and the “many provisions that were, deliberately, left open to different interpretations . . . Yet, the rules continued to stand in the documents, until, after years of being shunned, they were called upon as a resource, interpreted in their most humane light, and then declared to be binding law by international lawyers at the end of twentieth century.”).

131. *See* Kontorovich, *supra* note 5 (noting that the international law of occupation “did not apparently include making long-term occupation more difficult.”).

132. The Allies, who had made secret treaties to divide up Axis territory post-war, were exposed and denounced as imperialists by Russia. KORMAN, *supra* note 79, at 137 (citation omitted).

133. *Id.*

134. KORMAN, *supra* note 79; *compare* GROSS, *supra* note 125, at 18 (“Occupation is temporary, and may neither be permanent nor indefinite.”), *with* Kontorovich, *supra* note 5. *Cf.* STIRK, *supra* note 125, at 43 (arguing that while military occupation may be temporary, it is not “defined by the brevity of the

how long a territory can remain occupied.<sup>135</sup> The application of the principle of self-determination<sup>136</sup> further complicates the questions of when occupation should end and who may be in power post-occupation.<sup>137</sup>

Moreover, an occupier's humanitarian responsibilities decrease as an occupation continues,<sup>138</sup> creating a perverse incentive for the occupier to prolong its control.<sup>139</sup> Article 6 of the Fourth Geneva Convention begins with a mandate that "the application of the present Convention shall cease one year after the general close of military operations ends," but then specifies provisions for an occupier to follow "for the duration of the occupation."<sup>140</sup> The exceptions hold the occupier to forty-three of the Fourth Geneva Conventions' provisions, while exempting it from

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occupation or invalidated by prolonged occupation. As the concept of occupation crystallised, prolonged occupation was a recognized, if infrequent, occurrence.").

135. Kontorovich, *supra* note 5.

136. GROSS, *supra* note 125, at 18 ("The occupying power is entrusted with the management of public order and civil life in the territory under its control. Given the principle of self-determination, the people under occupation are the beneficiaries of this trust, and their dispossession and subjugation is thus a violation of this trust.").

137. Although Article 6 of the Fourth Geneva Convention requires that the occupier follow certain provisions, there is no mention of when an occupation should end or to whom power may be transferred. Geneva Convention, *supra* note 9.

138. *Id.*

139. See Kontorovich, *supra* note 5 (explaining that under "the Fourth Geneva Convention, Art. 6 exempts occupying powers from certain restrictions in prolonged occupations. When the conventions were adopted, the Allied Powers were engaged in preexisting occupations of Germany and Japan. In the drafting of the conventions, the U.S. expressed concern that the new norms would apply to its existing occupations. Art. 6 was in part a concession to this concern.").

140. Geneva Convention, *supra* note 9, art. 6 (requiring that "the Occupying Power shall be bound, for the duration of the occupation . . . by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143."). Specific Articles that provide humanitarian protections are missing from this list of occupier responsibilities, *inter alia*: Article 16 mandates that the wounded, sick, infirm, and expectant mothers receive special protection and respect; Article 17 requires both parties to strive to agree to the removal of vulnerable persons from "besieged or encircled areas," and to allow the "passage of ministers of all religions, medical personnel and medical equipment on their way to such areas"; and Article 18 prohibits civilian hospitals from "be[ing] the object of attack. . . ."

one-hundred seventeen—some arguably key civilian protections.<sup>141</sup>

### III. CORRUPT OCCUPATION

The international law of occupation's purposes of protecting the occupied state's sovereignty and the occupied people's welfare are so far removed from the actual situation in Nagorno-Karabakh<sup>142</sup> that the territory's status has become one of corrupt occupation. Corrupt occupation arises when the territory should be considered occupied, but the gaps in the current international law of occupation are exploited by both occupier and occupied States, effectively rejecting the applicable law.<sup>143</sup> Armenia's de facto occupation of the territory for the past quarter of a century<sup>144</sup> and Azerbaijan's violent response fail to comply with

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141. See *id.* and accompanying text.

142. Azeris and Armenians are victims of humanitarian violations each year when hostilities over Nagorno-Karabakh reignite, see *Nagorno-Karabakh Truce Holds, but Residents Fear Renewed Violence*, *supra* note 17.

143. This situation is related to Professors Ben-Naftali, Gross and Michaeli's "illegal occupation," when the "the boundaries between normal order (i.e., sovereign equality between states) and the exception (i.e., occupation) are blurred." Ben-Naftali et al., *supra* note 74, at 551. However, illegal occupation refers to "the breach of trust by the occupier." *Id.* at 553–56, 586; see also GROSS, *supra* note 125, at 160–62 (condemning the Israeli government's "pick-and-choose" method of applying occupation law as illegal). The difference between corrupt and illegal occupation hinges not so much on whether the occupied or occupying state are abiding by international law, but rather whether contravention of the law implies the need to reframe the law itself. In the case of Nagorno-Karabakh, the area's convoluted history of ownership, see *supra* Part II, lends legitimacy to both Armenia and Azerbaijan's contrasting views of sovereignty. Labeling the occupation as "illegal" would only serve to incite further conflict between the two States, leaving the international law of occupation open to misuse in future situations. Moreover, the International Committee of the Red Cross notes that once a territory's factual situation amounts to an occupation, the law of occupation applies "whether or not the occupation is considered lawful . . . indeed whether it is called an 'invasion,' 'liberation,' 'administration,' or 'occupation.'" *Occupation and International Humanitarian Law: Questions and Answers*, *supra* note 7. Therefore, the author has chosen to view this corrupt occupation as inviting reformulation of the applicable international law to the occupation's factual circumstances, as opposed to analyzing its legality.

144. Far from acting in a limited capacity in the occupied territory, the Armenian government controls the territory and its residents through the Nagorno-Karabakh's government, see *supra* notes 63, 66 and accompanying text.

modern international occupation law,<sup>145</sup> creating a corrupt occupation rife with danger and instability.<sup>146</sup> This section discusses the immediate and long-term effects of corrupt occupation in Nagorno-Karabakh and the applicable occupation law.

*A. Death, Destruction, and Displacement—The Immediate Effects of Corrupt Occupation in Nagorno-Karabakh*

The conflict over Nagorno-Karabakh killed, injured or displaced over a million people,<sup>147</sup> and the subsequent corrupt occupation permits violence to continue.<sup>148</sup> The widespread harm to civilians during the initial military conflict contradicts the Fourth Geneva Convention's articles requiring protection of the occupied population.<sup>149</sup> As Armenia asserted control over the region, the fighting displaced residents from their homes<sup>150</sup> in contravention of Article 69's requirement that the occupying power provide shelter and necessities to the occupied people.<sup>151</sup> To date, neither ethnic Azerbaijanis who were displaced from Nagorno-Karabakh<sup>152</sup> nor ethnic Armenians who were displaced from Azerbaijan have been allowed to return to their homes.<sup>153</sup> Moreover, the outbursts of military violence by Azeri and Armenian troops have taken the lives of thousands of civilians.<sup>154</sup> These dangerous and unstable conditions prevent Nagorno-Karabakh

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145. See U.N. Charter art. 2, ¶¶ 3, 4; Protocol I, *supra* note 10, art. 51.

146. See *supra* notes 54–56 and accompanying text.

147. *Nagorno-Karabakh Profile*, *supra* note 1; De Waal, *supra* note 11.

148. Latimer, *supra* note 72; *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 7.

149. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 7; see also Cohen, *supra* note 78, at 502.

150. *Nagorno-Karabakh Profile*, *supra* note 1; see also *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 6.

151. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4.

152. *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 135 (2015).

153. *Sargsyan v. Azerbaijan*, 2015-III Eur. Ct. H.R. 11, 32 (2015).

154. *Nagorno-Karabakh Profile*, *supra* note 1. In addition to the deaths in Nagorno-Karabakh, the Armenian take-over sparked ethnic cleansing riots against Armenians in Sumgayit, Azerbaijan. DE WAAL, *supra* note 14, at 40–41. Additionally, “[a]s a result of the repression carried out in Armenia, 220 Azerbaijanis had been killed, 1,154 wounded and approximately 250,000 expelled.” General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12.

civilians from normal living, undermining the purpose of occupation law to protect and support the civilian population.<sup>155</sup>

*B. The Long-Term, Negative Effects of Corrupt Occupation in Nagorno-Karabakh*

Over time, the corrupt occupation in Nagorno-Karabakh has spawned confusing international jurisprudence concerning occupation. Moreover, failure to adhere to occupation law has entrenched a sense of injustice on both sides, fueling Azerbaijanis and Armenians with bitterness and hatred that is passed from one generation to the next.<sup>156</sup>

1. Spawning Confusing International Jurisprudence

The corrupt occupation and displacement of both Armenians and Azerbaijanis have resulted in ill-fitting international judicial opinions. Although the Fourth Geneva Convention does not specify that an occupying state needs to be physically present in the occupied territory for the international laws of occupation to apply,<sup>157</sup> the European Court of Human Rights placed heavy emphasis on an occupier's physical presence in the case of *Chiragov v. Armenia*.<sup>158</sup>

In *Chiragov*, six Azerbaijani refugees and their families who were displaced from their homes in Nagorno-Karabakh brought suit against Armenia for violating their right to property under the European Convention on Human Rights.<sup>159</sup> The Court applied a "boots on the ground" test<sup>160</sup> to determine if Armenia was currently occupying Nagorno-Karabakh, which required Armenian troops' physical presence.<sup>161</sup> Although the Court had received conflicting reports about the number and type of military

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155. Harris, *supra* note 75, at 24 (critiquing "the law of occupation's mantra to permit only minimal meddling into the daily lives of occupied populations" as counterintuitive to the occupier's expectations of governing the civilian population).

156. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 3.

157. See Geneva Convention, *supra* note 9.

158. *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 180 (2015).

159. *Id.*

160. *Id.*

161. *Id.* ("Military occupation is considered to exist in a territory, or part of a territory, if the following elements can be demonstrated: the presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign."); see also GROSS, *supra* note 125, at 111–13 ("The Court thus again established a link between occupation and effective control,

forces in Nagorno-Karabakh,<sup>162</sup> it ultimately recognized that Armenia was exercising effective control through extensive financial, political and military involvement.<sup>163</sup>

In an era when technology and transportation easily allow one state to control another from afar in a de facto occupation, the “boots on the ground” rule is confusing and unnecessary.<sup>164</sup> Nagorno-Karabakh is a case where the Armenian government funnels money,<sup>165</sup> administrative support,<sup>166</sup> and military assistance<sup>167</sup> into the occupied territory to maintain control from afar. This ill-fitting jurisprudence allows for increased violence and a lack of accountability.<sup>168</sup>

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but went a step further and stated that ‘physical presence of foreign troops is a sine qua non requirement of occupation,’ adding that ‘occupation is not conceivable without ‘boots on the ground’ and, therefore, forces exercising naval or air control do not suffice.”).

162. *Chiragov*, 2015-III Eur. Ct. H.R. at 212 (“The material available to the Court does not—and could not be expected to—provide conclusive evidence as to the composition of the armed forces that occupied and secured control of Nagorno-Karabakh and the seven surrounding districts between the outbreak of war in early 1992 and the ceasefire in May 1994.”).

163. *Id.* ¶ 186 (concluding that Armenia exercises effective control over Nagorno-Karabakh and the surrounding territories through its “military, political, financial and other support. . .”).

164. *See* GROSS, *supra* note 125, at 111–13 (arguing that the European Court of Human Rights “position ignores political and technological changes that allow for occupation to take other forms, and was apparently not necessary for making the judgement about Armenia’s responsibility.”).

165. *Chiragov*, 2015-III Eur. Ct. H.R. at 169, 216 (based upon evidence of Armenia loaning—without plan for repayment—and Armenian organizations donating millions of dollars annually to Nagorno-Karabakh, the Court concluded “that the ‘NKR’ would not be able to subsist economically without the substantial support stemming from Armenia.”).

166. *Id.* ¶ 182 (determining that, despite presenting an independent government, Nagorno-Karabakh’s “political dependence on Armenia is evident not only from the mentioned interchange of prominent politicians, but also from the fact that its residents acquire Armenian passports for travel abroad. . .”).

167. *Id.* ¶ 180 (finding that “the Republic of Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date. This military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue, and the evidence, not the least the 1994 military co-operation agreement, convincingly shows that the armed forces of Armenia and the ‘NKR’ are highly integrated.”).

168. GROSS, *supra* note 125, at 246–47 (applying a ‘boots on the ground’ test to determine occupation “enables the occupying state that ‘disengaged’ but remained in control . . . to use greater force against the occupied population”

## 2. Deteriorating Relations Between Caucasus Neighbors

Corrupt occupation of Nagorno-Karabakh has also resulted in deteriorating relations between Armenia and Azerbaijan.<sup>169</sup> Recent military clashes,<sup>170</sup> coupled with unilateral resettlement of Nagorno-Karabakh,<sup>171</sup> further deepen the acrimonious schism between the neighboring countries.<sup>172</sup> Moreover, Nagorno-Karabakh and the surrounding militarized regions comprise approximately one-fifth of Azerbaijan's territory,<sup>173</sup> a physical re-

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while simultaneously shedding accountability); YEHOUDA A. SHENHAV, *BEYOND THE TWO-STATE SOLUTION: A JEWISH POLITICAL ESSAY* 19 (2012) ("As colonial history has taught us, occupation can be administered from a distance, without permanent military presence and without settlers."). I would argue that this interpretation is not at odds with the International Committee of the Red Cross's statement that "it is solely the facts on the ground that determine [the international law of occupation's] application." *Occupation and International Humanitarian Law: Questions and Answers*, *supra* note 7. Even without a physical military presence in Nagorno-Karabakh, the fact remains that the government and territory is under its control.

169. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 15 (warning against "a cycle of growing hostilities" between Armenia and Azerbaijan as "[n]othing has been done on the ground [in Nagorno-Karabakh] to build confidence and trust, demilitarise and demobilise, or resume trade and communications"); MIKHELIDZE & PIROZZI, *supra* note 5, at 57 (predicting that the years of conflict and violent occupation "make conflict settlement impossible. There are certain societal beliefs, imaginations, and interpretations around collective memories of confronted parties that are unlikely to change in the foreseeable future.").

170. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4.

171. General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, *supra* note 12; *see also* Janbazian, *supra* note 14; DE WAAL, *supra* note 14, at 49.

172. *Karabakh Conflict Is Not Frozen, French Ambassador Says*, *supra* note 4; 'Frozen Conflict or a War in Bain-Marie' — *Diario de Noticias Publishes Article on NK Conflict*, ARMENPRESS (Dec. 25, 2017), <https://armenpress.am/eng/news/917344/%E2%80%98frozen-conflict-or-a-war-in-bain-marie%E2%80%99—diario-de-noticias-publishes-article-on-nk-conflict.html> ("Our main enemies are all Armenians in the world," said, in 2012, Ilham Aliyev, president of Azerbaijan since 2003, when he succeeded his father. 'Armenia, as a country, has no value at all. It is a colony, a territory artificially created in Azerbaijan's lands. . . .").

173. MIKHELIDZE & PIROZZI, *supra* note 5, at 16.

minder for Azerbaijan of what it has lost. The unresolved conflict<sup>174</sup> negatively affects cross-boundary relationships among multiple generations of Armenians and Azerbaijanis.<sup>175</sup> Armenia's Prime Minister Nikol Pashinian, brought the deep-seated distrust and bitterness between the two countries to the fore during his address of the seventy-third United Nations General Assembly in New York.<sup>176</sup> Mr. Pashinian shamed Azerbaijan for its "disrespect towards the [OSCE Minsk] negotiations," and then warned that "Karabakh must not be a part of Azerbaijan, unless one wants to trigger a new genocide of Armenian people."<sup>177</sup>

#### IV. REFORMULATING THE INTERNATIONAL LAW OF OCCUPATION TO PREVENT ITS CORRUPTION

The corrupt occupation of Nagorno-Karabakh poses an opportunity for reconsidering the international law of occupation to prevent this situation from repeating.<sup>178</sup> One possible solution is

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174. *Id.* at 17 (asserting that Nagorno-Karabakh "is one of the world's most militarized places."); see Tamkin, *supra* note 4 (observing that, far from resolution, "[e]ach side maintains the other started last spring's fighting" during the violent military outburst in 2016, violating the Nagorno-Karabakh cease-fire).

175. Sabine Freizer, *Nagorno-Karabakh: "Putting the Freeze on a Frozen Conflict,"* INT'L CRISIS GROUP (Dec. 25, 2007), <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-azerbaijan/nagorno-karabakh-putting-freeze-frozen-conflict> ("Constant state propaganda on both sides keeps their [Armenia and Azerbaijan's] publics opposed to any concession, let alone reconciliation" of the Nagorno-Karabakh conflict); De Waal, *supra* note 11; Barseghyan & Sultanova, *supra* note 55; see generally *Frozen Conflict or a War in Bain-Marie* — *Diario de Noticias Publishes Article on NK Conflict*, *supra* note 172.

176. *Karabakh Must Not Be a Part of Azerbaijan, Armenia's PM Tells UN General Assembly*, MASSISPOST (Sept. 26, 2018), <https://massispost.com/2018/09/karabakh-must-not-be-a-part-of-azerbaijan-armenias-pm-tells-un-general-assembly/>.

177. *Id.*

178. Scrutiny of the international law of occupation is critical because the unfortunate effects of the Nagorno-Karabakh occupation are not unique. The recent occupations of the West Bank and Gaza, and Western Sahara produced similar results. See GROSS, *supra* note 125, at 123 (positing that prolonged occupations, including the one in Nagorno-Karabakh, "attest that indeterminacy about the status of a territory as occupied is typical of many if not most occupations, at least after World War II. The debates . . . which brought the indeterminacy of occupation to the forefront, is thus a continuation of, rather than an exception to the rule."); see generally MIKHELIDZE & PIROZZI, *supra* note 5.



to reformulate Article 6 of the Fourth Geneva Convention<sup>179</sup> to consider an occupier's intent and require an occupier to abide by the complete list of humanitarian duties for protecting the occupied people.

*A. Adding an Occupier-Intent Element and Expanding Humanitarian Responsibilities in Article 6*

First, the Fourth Geneva Convention is an ideal medium to implement changes to occupation law because of its widespread acceptance and primacy in defining the international law of occupation.<sup>180</sup> Second, Article 6 would be an appropriate vehicle for applying an intent element and broadening an occupier's duties, as it currently suggests that occupation is a temporary situation in a post-conflict State,<sup>181</sup> and limits how the Convention applies to the occupier.<sup>182</sup> A reformulation may state (author's revision in italics):

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179. Article 6 of the Fourth Geneva Convention states:

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations. In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Geneva Convention, *supra* note 9, art. 6.

180. *See supra* Part II.

181. Article 6 of the Fourth Geneva Convention addresses the temporality of occupation. Geneva Convention, *supra* note 9, art. 6. *See also* Ben-Naftali et al., *supra* note 74, at 594 ("Article 6 of the Fourth Geneva Convention relates most directly to the temporal limits of occupation and thus merits special attention.").

182. Reading the treaty's plain text, the Fourth Geneva Convention states that only the Articles referred to in Article 6—1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143—remain in force during an occupation. Geneva Convention, *supra* note 9, art. 6; *see also* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, ¶ 125 (July 9), <https://www.icj-cij.org/en/case/131/advisory-opinions> (according to the International Court of Justice, "provisions applying

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations, *unless it is the intent of the Occupying Power to continue the occupation, in which case all the provisions of the following Articles of the present Convention apply to said Occupying Power.*

Therefore, if it is an occupier's intent to continue occupying a territory post-military conflict, the occupied people would be entitled to the complete humanitarian protections listed under the Fourth Geneva Convention. If the occupier does not intend to continue occupation, then it would no longer be held to all of the provisions one year after the conflict.

### 1. Determining Occupier Intent

Determining an occupier's intent would depend on several factors, including the duration of the occupation, whether the occupier has a reasonable plan to cede control, the occupier's objectives for the occupation, the occupied people's welfare, and the presence of the occupier.<sup>183</sup> The occupier-presence factor would subsume the *Chiragov* "boots on the ground" rule, considering the occupier's physical presence as having some weight, but not determinative of an occupier's intent.<sup>184</sup>

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during military operations leading to the occupation and those that remain applicable throughout the entire period of occupation" differ) (citing Article 6 of the Geneva Convention). *But see* Ben-Naftali et al., *supra* note 74, at 595 (The Court's "textual interpretation, leading to the conclusion that long-term occupations reduce the responsibilities of occupying powers vis-à-vis the occupied civilian population, is an absurd conclusion.").

183. This is not meant to be an exhaustive list; it merely reflects the factors that have appeared as considerations in judicial determinations of occupation, see *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 135 (2015), and that prioritize humanitarian concerns, see Cohen, *supra* note 78, at 502 (describing a humanitarian theory of occupation's development).

184. As the European Court of Human Rights ultimately determined in *Chiragov*, an occupier does not need to be physically present to exert a presence—meaning control—over the occupied territory. See *Chiragov*, 2015-III Eur. Ct. H.R. at 216; cf. *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 110 (June 27), <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> (finding that although the United States' provision of "heavy subsidies and other support" to a rebel group did not overcome its independence, sufficient evidence of aid could establish a relationship of complete dependence, and therefore, legal responsibility). Illegal resettlement by the occupier could also

If an occupier intends to continue an occupation, subject to the Fourth Geneva Convention, the occupier would have two legal options:<sup>185</sup> (1) cede control by agreement; or (2) continue the occupation and be responsible for all the rights and duties enumerated in the Fourth Geneva Convention and its Protocols.

## 2. Increasing Humanitarian Protections for the Occupied People

The occupier-intent element would provide the occupied people with as much humanitarian support as possible by applying *all* of the Fourth Geneva Convention provisions—not just articles 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143—for as long as the occupation continues.<sup>186</sup> This comprehensive application is critical to ensuring humanitarian protection as “[t]he specific prohibitions in articles 27–34 and 47–78 of the Fourth Geneva Convention overwhelmingly involve the protection of individual rights. Collectively, these provisions have been described as a ‘bill of rights for the occupied population.’”<sup>187</sup> The additional protections for the occupied people would include establishing protected “hospital and safety zones” that are organized, supplied and run by either a State or humanitarian organization,<sup>188</sup> prioritizing the protection of the most vulnerable individuals in the occupied state,<sup>189</sup> and perhaps most critically,

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be considered a means of asserting control. *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 182, ¶¶ 119, 139 (recognizing Israel’s effective control of the Occupied Palestinian Territory partly through its mechanism of forced resettlement).

185. No doubt an occupier could still opt to defy the Convention and forge an illegal path. However, the clarity of who is an occupier and the full-scale responsibilities, plus increased third-party involvement in humanitarian aid, would potentially apply additional pressure on an occupier comply with the treaty laws.

186. Geneva Convention, *supra* note 9, art. 6. Professor Gross shares the view “that people living under occupation should be entitled to the full scope of rights enumerated in international law.” GROSS, *supra* note 125, at 395; *see also* STIRK, *supra* note 125, at 43 (noting that “prolonged occupation would require the occupying power to pay more attention to the needs of the inhabitants. . .”).

187. Fox, *The Occupation of Iraq*, *supra* note 96, at 270 (citation omitted).

188. Geneva Convention, *supra* note 9, arts. 14–15, 20–23.

189. *Id.* art. 16 (“The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect” as well as providing protection for “other persons exposed to grave danger”).

that these protections will not be implemented in a discriminatory fashion.<sup>190</sup>

Theoretically, distributing comprehensive aid non-discriminately may create a safer and more stable environment; therefore, occupied people would be less likely to leave their homes.<sup>191</sup> Preventing displacement would avoid the many legal and societal problems that otherwise accompany forcing people from their homes, including violations of property rights and creating refugees.<sup>192</sup> Also, maintaining the occupied population will avoid creating a population vacuum that can be easily filled with the occupier's citizens.<sup>193</sup> Additionally, the benign presence of international humanitarian support, such as from the International Committee of the Red Cross and other organizations,<sup>194</sup> could act as a neutral monitor and reporter on the status of the occupied people. Finally, stabilizing the occupied state's original de-

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190. *Id.* art. 13 (requiring that humanitarian protections be offered to the entire occupied population "without any adverse distinction based, in particular, on race, nationality, religion or political opinion").

191. Creating an unsafe environment and withholding aid in a discriminatory fashion appears to have the opposite effect. *See Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 224-25 (2015) (noting the refugee applicants' argument that "the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono ethnic areas which resemble the terrible concept of ethnic cleansing" in the Lachin area adjacent to Nagorno-Karabakh, preventing them from returning to their homes).

192. *Nagorno-Karabakh: A Plan for Peace*, *supra* note 12, at 6.

193. *See SHENHAV*, *supra* note 168, at 59-60; *compare* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 182, ¶¶ 119-20 ("The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law," citing Article 49 of the Geneva Convention), *with* DE WAAL, *supra* note 14, at 49 (describing the story of one Azerbaijani man whose former home in Shusha, the pre-Soviet capital of Nagorno-Karabakh, was found inhabited by an Armenian woman and her daughter, after the "Karabakh Armenian authorities . . . encourage[ed] people who had lost their homes to move up to Shusha. . .").

194. Geneva Convention, *supra* note 9, art. 59 ("If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population. . . . which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.").

mographics would guarantee a more legitimate referendum reflective of the inhabitants, if that becomes part of resolving the occupation.<sup>195</sup>

### 3. Encouraging an Occupier to Cede Control

The intent element places an occupier on notice that it is expected to either relinquish control, or plan for providing complete humanitarian protection to the occupied people. The additional humanitarian requirements, along with the potential increased international scrutiny from third-party organizations, could deter an occupier from maintaining control for an extended period.

Because of the added humanitarian responsibilities under the Fourth Geneva Convention, ensuring necessities for the occupied population, as well as the underlying systems for delivering those necessities—such as hospitals and roadways—would increase the occupier's financial and resource burdens.<sup>196</sup> Ultimately, an occupier may be forced to reconsider its priority of maintaining the occupation based on the sheer cost or the political backlash from diverging domestic resources to a foreign region.

With the increased resources required to protect the occupied people, an occupier may also be more likely to seek third-party aid to help alleviate the burden.<sup>197</sup> Greater involvement from humanitarian organizations could also pressure the occupier to ultimately cede control, without harming the occupied population through violence or sanctions. Third-party organizations could also help boost the occupation into the international community spotlight. Therefore, humanitarian organizations may not be the only ones who call for resolution of an occupation; broadcasting their work and the current situation could also prompt a global response.

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195. See Catriona Drew, *The East Timor Story: International Law on Trial*, 12 E.J.I.L. 651, 662 n. 59 (2001) (noting that recent examples of states declaring independence through self-determination “favours the referendum as a means of ascertaining the free will of the people.”).

196. See generally Geneva Convention, *supra* note 9.

197. See Protocol I, *supra* note 10, art. 5 (requiring parties to a conflict to assign a “Protecting Power,” which could be “the International Committee of the Red Cross or . . . any other organization which offers all guarantees of impartiality and efficacy” to apply the protections in the Geneva Convention).

Thus, applying an occupier-intent analysis and expanding an occupier's humanitarian responsibilities would help fulfill occupation's dual purposes of maintaining state sovereignty and protecting the civilian welfare.<sup>198</sup>

#### 4. Risking Enabling a Prolonged Occupation

A potential negative side-effect of requiring an occupier to provide the full amount of humanitarian aid to an occupied people would be that it enables the prolongation of an occupation. An occupier may be able to spend its resources on military and defense while humanitarian organizations protect the people.<sup>199</sup> Furthermore, an occupied people may not demand an end to an occupation as vociferously if they feel safe<sup>200</sup> and have access to necessities, such as food<sup>201</sup> and medical care.<sup>202</sup> Moreover, the occupier-intent element does not mandate an end to an occupation<sup>203</sup>; therefore, the international community would still be responsible in helping to resolve the occupation.

#### V. APPLYING THE REFORMULATED ARTICLE 6 TO NAGORNO-KARABAKH

Applying the occupier-intent element to the occupation of Nagorno-Karabakh, Armenia intended to continue its occupation, and thus should be subject to the full set of humanitarian duties under the Fourth Geneva Convention and its Protocols.

First, the amount of time that the occupation has continued would depend on when the inquiry was posed after the general close of military operations with the 1994 ceasefire.<sup>204</sup> However, with the benefit of hindsight, the now decades-old occupation<sup>205</sup> would weigh in favor of Armenia intending its continuation. Second, Armenia's plan was to maintain control over the region,

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198. See *supra* Part II.B.

199. Additional Protocol I prohibits an occupier from diverting resources intended for humanitarian assistance "if such diversion or requisition would be harmful to the civilian population." Protocol I, *supra* note 10, art. 63.

200. Geneva Convention, *supra* note 9, arts. 14–15.

201. *Id.* arts. 23, 36, 50, 55, 59.

202. *Id.* arts. 50, 55, 59.

203. Ben-Naftali et al., *supra* note 74, at 613 (calling for "the international community to promulgate clear time limitations for the duration of an occupation" and detailing some possibilities for how to do so).

204. *Nagorno-Karabakh Profile*, *supra* note 1.

205. Kontorovich, *supra* note 5; MIKHELIDZE & PIROZZI, *supra* note 5, at 16.

even if from afar.<sup>206</sup> Third, although the occupation began with Armenia supporting a referendum organized by the Nagorno-Karabakh oblast's government,<sup>207</sup> it has remained firmly involved in Nagorno-Karabakh and its government through military, financial, and political support.<sup>208</sup> More recently, Armenian officials have stated that the occupation's objectives include that Nagorno-Karabakh not return to Azerbaijan.<sup>209</sup> Fourth, the occupied people live in uncertain conditions, often threatened with military attacks.<sup>210</sup> Finally, while there are conflicting reports about whether Armenian troops are present in Nagorno-Karabakh,<sup>211</sup> Armenia does provide military resources.<sup>212</sup> All five factors weigh in favor of Armenia's intent to continue occupying Nagorno-Karabakh. Therefore, it should provide the complete humanitarian protections under the Fourth Geneva Convention and its Protocols to the occupied people.

Envisaging that Armenia would have provided this comprehensive humanitarian assistance since the beginning of the occupation, it may have saved many of the original Nagorno-Karabakh residents from displacement or harm. Also, creating safe zones and providing essential resources<sup>213</sup> likely would have prevented the creation of a militarized buffer zone.<sup>214</sup> Ensuring a secure, livable environment for all the residents—Armenian,

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206. *Chiragov v. Armenia*, 2015-III Eur. Ct. H.R. 216 (2015).

207. *Nagorno-Karabakh Profile*, *supra* note 1.

208. *Chiragov*, 2015-III Eur. Ct. H.R. at 216.

209. Siranush Ghazanchyan, *No Alternative to Karabakh Being Outside Azerbaijan — Armenia's President*, ARM. PUB. RADIO (Oct. 16, 2017), <http://www.armradio.am/en/2017/10/16/no-alternative-to-karabakh-being-outside-azerbaijan-armenias-president/> (following a meeting with Azerbaijan's president, organized by the OSCE Minsk Group co-chairs on October 16, 2017, in Geneva, Switzerland, Armenia's president announced that any solution would require the Nagorno-Karabakh region to be outside of Azerbaijan territory); *Karabakh Must Not Be a Part of Azerbaijan, Armenia's PM Tells UN General Assembly*, *supra* note 176 (recounting that less than a year later, Armenia's prime minister darkly forewarned that there would be another Armenian genocide if Nagorno-Karabakh became part of Azerbaijan).

210. *Nagorno-Karabakh Truce Holds, but Residents Fear Renewed Violence*, *supra* note 17.

211. *Chiragov*, 2015-III Eur. Ct. H.R. at 212.

212. *Id.* at 216.

213. Geneva Convention, *supra* note 9, arts. 14–15, 20–23.

214. *See supra* Part I.

Azerbaijani and others—would have been challenging,<sup>215</sup> but the assistance of humanitarian organizations could have aided in protection and peace-keeping. Furthermore, the presence of international humanitarian organizations could have provided neutral monitoring and reporting of the occupation. Currently, the OSCE has taken on this role; however, it is a limited effort.<sup>216</sup> Maintaining the region's population demographics and avoiding the inter-ethnic violence and harmful displacement may have helped facilitate a long-term resolution to the occupation.

Although providing additional humanitarian assistance to the Nagorno-Karabakh population may have further enabled Armenia's occupation, this criticism rings hollow when comparing this hypothetical with the current prolonged occupation without comprehensive aid. Instead, it seems that the Nagorno-Karabakh civilians could have only benefitted from Armenia's obligation to provide the complete humanitarian protections under the international law of occupation.

## CONCLUSION

The corrupt occupation of Nagorno-Karabakh and its surrounding areas results in displaced civilians, chaotic military violence, poor judicial law-making, and hostile international relations.<sup>217</sup> Analyzing the international law of occupation's purposes and its humanitarian requirements illustrates that there is a need for change.<sup>218</sup> Reformulating the international law of occupation by revising Article 6 of the Fourth Geneva Conventions with an occupier-intent element and expanding an occupier's responsibilities to encompass all the provisions of the Fourth Geneva Convention could prevent another similar corrupt occupation.<sup>219</sup> Not only would the reformulation expand and

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215. See *Chiragov*, 2015-III Eur. Ct. H.R. at 220 (acknowledging that although the Armenian "Government has had to provide assistance to hundreds of thousands of Armenian refugees and internally displaced persons . . . requir[ing] considerable resources, the protection of this group does not exempt the Government from its obligations towards another group, namely Azerbaijani citizens like the applicants who had to flee during the conflict.").

216. Currently, the OSCE monitors the border with Azerbaijan based on a pre-scheduled agreement with the Nagorno-Karabakh Republic. *OSCE Conducts Monitoring of the Artsakh-Azerbaijan Line of Contact*, ARM. PUB. RADIO (Nov. 14, 2018), <http://www.armradio.am/en/840>.

217. See *supra* Part III.

218. See *supra* Part II.

219. See *supra* Part IV.



emphasize an occupier's duty to provide humanitarian protections to the occupied people, but also potentially increase international involvement to resolve an occupation.<sup>220</sup> In the case of Nagorno-Karabakh, both are sorely needed.

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220. *Id.*

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