

KHAZAR UNIVERSITY

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Master of Arts in Theory and History of International Relations

MASTER THESIS

The analysis of the Second Karabakh war from the perspective of Just War
Theory

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ABSTRACT

The process of resolving the Nagorno-Karabakh conflict has been fruitless for many years, despite the mediation of international organizations and major powers. Unrealized legal documents and successive provocations by Armenia led to the Second Karabakh War.

The 1994 ceasefire had been deliberately violated over the years, the international legal documents recognizing the occupation and demands on unconditional withdrawal of Armenian armed forces from the occupied Nagorno-Karabakh and other surrounding territories of Azerbaijan have not been implemented, and no solution to the conflict has been agreed for 30 years it reduced confidence that it could be resolved by negotiations. As a result, all this led to the start of a large-scale war in September 2020.

Given this situation, the research focuses on the analyzing the 44-day second Karabakh war in the autumn 2020 from the perspective of the Just War Theory and examines the application of the principles of the relevant theory in this war.

The chapters of this study examine the short history of the conflict, the Second Karabakh war, and the basic principles of the theory of just war. The following sub-chapters assess the course, end, and consequences of the Second Karabakh War from the perspective of JWT.

This study differs from previous studies in that the Nagorno-Karabakh issue is developed from the perspective of all three basic principles of the JWT. The main purpose of this study is to analyze the war that took place one and half year ago

through JWT and to clarify the inevitability of the war for the sides.

The assessment of the war in accordance with the principles of the JWT determined whether the parties complied with these principles or not. While the

Armenian side was waging a war that violated basic principles, Azerbaijan joined a just war to defend its lands and territorial integrity. To have a just cause; to have a military resolution as the last resort in the settlement process; to possess the right and legitimate intention; to have a prospect to attain the desired goal; to use proportional means to attain the desired goal-The war of the Azerbaijani side, which substantiated all this, was clarified by facts. Finally, all "just" and "unjust" wars that end human life, no matter how justified, are condemned.

Keywords: Just War Theory, Second Karabakh War, Jus ad bellum, Jus in bello, Jus post bellum

ABSTRAKT

Dağlıq Qarabağ münaqişəsinin həlli prosesi uzun illərdir ki, beynəlxalq təşkilatların və böyük dövlətlərin vasitəçiliyinə baxmayaraq, nəticəsiz qalıb. Reallaşdırılmamış hüquqi sənədlər və Ermənistanın ardıcıl təxribatları İkinci Qarabağ müharibəsinə gətirib çıxardı.

1994-cü ildə əldə edilən atəşkəs bu illər ərzində dəfələrlə qəsdən pozulmuş, işğal tanıyan beynəlxalq hüquqi sənədlər və Ermənistan silahlı qüvvələrinin Azərbaycanın işğal olunmuş Dağlıq Qarabağ və digər ətraf ərazilərindən qeyd-şərtsiz çıxarılması tələbləri yerinə yetirilməmiş, münaqişənin həlli yolu tapılmamışdır. 30 ildir razılaşdırılmış olmasının rəğmən konfliktin həll edilməməsi, bu məsələnin danışıqlarla həll olunacağına inamı azaldı. Nəticədə bütün bunlar 2020-ci ilin sentyabrında genişmiqyaslı müharibənin başlanmasına səbəb oldu.

Bu vəziyyəti nəzərə alaraq tədqiqat 2020-ci ilin payızında baş verən 44 günlük ikinci Qarabağ müharibəsinin Ədalətli Müharibə Nəzəriyyəsi prizmasından təhlilə yönəlib və bu müharibədə müvafiq nəzəriyyənin prinsiplərinin tətbiqi araşdırılır.

Bu tədqiqatın fəsilərində münaqişənin qısa tarixi, İkinci Qarabağ müharibəsi və ədalətli müharibə nəzəriyyəsinin əsas prinsipləri araşdırılır. Aşağıdakı alt fəsilər İkinci Qarabağ Müharibəsinin gedişatını, sonunu və nəticələrini Ədalətli müharibə nəzəriyyəsi perspektivindən qiymətləndirir.

Bu tədqiqat əvvəlki tədqiqatlardan onunla fərqlənir ki, Dağlıq Qarabağ məsələsi Ədalətli müharibə nəzəriyyəsinin hər üç əsas prinsipi nöqtəyi-nəzərindən işlənib. Bu araşdırmanın əsas məqsədi il yarım əvvəl baş vermiş müharibəni təhlil etmək, ədalətli müharibə nəzəriyyəsi vasitəsilə və tərəflər üçün müharibənin qaçınılmazlığını aydınlaşdırmaq və əsaslandırmaqdır.

Müharibənin Ədalətli müharibə nəzəriyyəsi prinsiplərinə uyğun qiymətləndirilməsi tərəflərin bu prinsiplərə əməl edib-etmədiyini müəyyənləşdirdi. Ermənistan tərəfi əsas prinsipləri pozan müharibə apararkən, Azərbaycan öz torpaqlarını və ərazi bütövlüyünü müdafiə etmək üçün ədalətli müharibəyə qoşuldu. Haqlı səbəbə malik olmaq; həll prosesində son çarə kimi hərbi cavaba baş vurmaq; haqlı və qanuni niyyətə malik olmaq; arzu olunan məqsədə çatmaq üçün perspektivə malik olmaq; arzulanan məqsədə çatmaq üçün mütənasib vasitələrdən istifadə etmək -Azərbaycan tərəfinin bütün bunları əsaslandırılan müharibəsi faktlarla aydınlaşdırıldı. Nəticə olaraq isə, insan həyatına son qoyan bütün “ədalətli” və “ədalətsiz” müharibələr nə qədər haqlı olursa olsun, pislənir.

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THE LIST OF ABBREVIATIONS

JWT	Just War Theory
UN	United Nations
ICRC	International Committee of Red Cross
OSCE	Organization for Security and Co-operation in Europe
OIC	Organization of Islamic Cooperation
CSTO	Collective Security Treaty Organization
USSR	United Soviet Socialist Republics
NKAO	The Nagorno-Karabakh Autonomous Oblast
SSRA	The Soviet Socialist Republic of Armenia

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INTRODUCTION

The war between Azerbaijan and Armenia, which began on September 27 and lasted for 44 days, was called the Second Karabakh War. How the course and consequences of the war will affect the two countries, as well as the situation in the region, is one of the most important issues at the moment. Another important point is whether the war and its consequences are fair to the parties.

The war, which has occupied the agenda of the world media, has clearly shown the world that the age of armed war is not over, with its unwritten laws, horrific aspects and the death of civilians living outside the war zone. The first sparks of the war, which ended in a ceasefire in May 1994, began in the 1980s. The reason for the conflict was the attempt of Armenia to annex sovereign territories of Azerbaijan. As a result of war between 1988-1994 Armenia occupied Nagorno-Karabakh and 7 surrounding regions, which are internationally recognized as the territory of Azerbaijan. Hundreds of people have been killed in recent years as Armenia repeatedly violated the ceasefire during the post-occupation ceasefire and retaliated. Not only during the war, but also during the humanitarian ceasefire, when Armenia targeted a large number of civilians (Rahimov, 2020) once again demonstrated that Armenia's conduct of war was neither in line with the principles of JWT nor ethics of war. The occupation of internationally recognized lands, the killing of civilians during both the war and the ceasefire, the failure to comply with legal documents demanding the return of the occupied territories, and finally the need to respond to Armenia's new claims of aggression (Rzayev, 2020) led to a new war. This research work examines whether the war is fair to the Azerbaijani side in accordance with the principles of a just war theory.

Relevance of Study

The subject of the thesis is about the Second Karabakh War, which ended less than 1,5 year ago. Analyzing the subject through JWT, which dates back to ancient times and is still valid today, reflects a synthesis of theory and practice.

As stated, since the Second Karabakh War took place in the past, there is a great need to examine the issue from different angles and on different grounds. Analysis of a recently concluded war from the JWT perspective will be an important resource for political practitioners and academics alike.

Research question and hypothesis

This study attempts to find the answer to the questions covering all three dimensions of the JWT mentioned below:

- Whether the military use of force was in line with the *jus ad bellum* principle (to have a just cause; to have a military resolution as the last resort in the settlement process; to possess the right and legitimate intention; to have a prospect to attain the desired goal; to use proportional means to attain the desired goal) of JWT?
- Was the war carried out in line with the *jus in bello* principle (in the right way and ethical manner) of JWT?
- Whether the *jus post bellum* principles (to protect all innocent civilians; to protect the environment; ready for the conciliation process) of JWT have been properly applied in the post-conflict phase?

Purpose of study

The first object in this thesis work is analyzing the second Karabakh war from the perspective of Just war theory

To achieve this goal, the following tasks have been set:

- 1) Look through the brief history of conflict
- 2) To analyze the implementation of international documents adopted in connection with the conflict

- 3) The study the main reasons of this war
- 4) To study the adherence of Azerbaijan to the principles of JWT during and after the Second Karabakh War

Significance of study

The subject of this thesis has not been studied by many academics because it is related to the very recent past. Dividing the topic into two parts, the second Karabakh war and the JWT have been sufficiently commented on by many authors. An example is Hans Gutbrod's research on the Just War tradition in the Second Karabakh War.

Literature review

So far, many different, articles, books and opinions have been written and voiced on both the Nagorno-Karabakh conflict and Just War Theory. Although the theory and the war in question have been studied separately by many authors, there are very few sources that assess the Second Karabakh War from the perspective of the JWT. These are listed below. Studies on the theory, principles and just unjust wars include Michael Walzer, Jeff McMahan, Jeffrey P. Whitman, Richard Werner, Steve Viner, S. Brandt Ford, Bradley Jay Strawser, Emily Pollard, Michael L. Gross and e.t.c (Fritz Allhoff N. G., 2021) All these authors research what is JWT, its principles, dimensions, but not

The Second Karabakh War We can show the researches and writings of Vasif Huseynov (Huseynov, Vasif, 2020), Dr. Laurence Broers (Broers, 2021), Rovshan Ibrahimov, Mehmet Fatih Oztarsu (Rovshan Ibrahimov, Mehmet Fatih, 2022)n Since the subject of this thesis is related to a war that took place one and half year ago, there is little research and sources on it. In short, there are only a

few studies that cover the Second Karabakh War and Just War Theory under the same title. One of them is an article by Hans Gutbrod (Gutbrod, 2021) entitled *Assembling The Moral Puzzle - Just War Tradition and Karabakh*. In this article, Hans Gutbrod assesses the Karabakh conflict from the perspective of JWT and examines whether the Just War Tradition is suitable for revealing modern conflicts and evaluating wars. As a result, Hans Gutbrod Referring to Michael Walzer's opinion that "just war theory is designed to sustain a constant scrutiny and an imminent critique", concludes that the Nagorno-Karabakh conflict is considered to have overcome this mission.

And based on these, it can be said that this thesis case differs from previous studies on the same topic in its complexity and coverage of all three principles of the JWT.

Methodology

The main issue raised in this thesis is the analysis of the JWT perspective of the Second Karabakh War. Based on this, the research in this study is analyzed from a theoretical framework. The qualitative methods was used in the study. The theory used in the analysis, the use of various interviews, the historical view of the event under study, the study of documents from the basis of the methodology. In this study, both primary and secondary data types were applied in data collection. A qualitative approach has been applied in this thesis to more effectively studying the topic and clarify the issues raised. Specifically Observation and Secondary types of qualitative methods were used in this study. The research begins with a brief history of the Nagorno-Karabakh conflict. In parallel with the explanation of the theory of the Just War mentioned in the title of the research work, the processes that took place before, during and after the Second Karabakh War were evaluated by this theory.

Research novelty

As mentioned earlier, there are very few sources on the same topic, as the subject of this thesis is related to the recent past. There is an incompleteness with the available sources. Thus, these articles analyze the previous two main principles of Just War Theory. However, the concept of "Jus post bellum" introduced in the last 20 years is not included. Therefore, this war, which took place exactly one and half year ago, needs to be assessed on the basis of all three principles of JWT.

Structure of thesis

The thesis consists of an introduction, four main chapters, conclusion, and bibliography. The introductory part of the thesis contains "Relevance of the study", "Research question and hypothesis", "Purpose of the study", "Significance of the study", "Literature review", "Methodology", and "Research novelty" sections.

First Chapter of the thesis consist of three sub-chapters. Second Chapter has four sub-chapters, third and fourth ones have two sub-chapters. The conclusion part of the thesis also contains two parts: Executive Summary and Research Outcomes. Last but not least, the thesis comprises list of bibliography used by the author.

CHAPTER 1

CAUSES OF NAGORNO-KARABAKH CONFLICT

1.1 Historical background of conflict

Armenia-Azerbaijan conflict started at the end of 1987 with the attacks against Azerbaijanis in Khankandi (Stepanakert in the Soviet era) and Armenia, which resulted in the abandonment of the Azerbaijani population from their homeland. On February 20, 1988, at the meeting of the People's Deputies of the Nagorno-Karabakh Autonomous Region, the representatives of the Armenian community of the province decided to apply to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR about the transfer of DKÖV from the Azerbaijan SSR to the Armenian SSR. On February 22, 1988, near the town of Askaran, located on the Khankandi-Aghdam highway, Armenians fired at the civilian Azerbaijani demonstrators who objected to the above-mentioned decision of the DKÖV People's Deputies Council. As a result, two Azerbaijani youth who died were the first victims of the problem.

Twenty-six Armenians and Azerbaijanis were killed as a result of the Sumgait events on February 26-28, 1988. It should be noted that one of the active participants in these events was the Armenian Eduard Grigoryan, who lived in the city of Sumgait, who personally took part in the massacres in the regions where Armenians lived. By the decision of the Supreme Court of the Azerbaijan SSR dated December 22, 1989, Grigoryan was sentenced to 12 years in prison. The court decided that Grigoryan should be one of the organizers of the defeats and massacres. The testimonies of the witnesses and the victims of the incident proved that there was a list of the apartments where the Armenians lived in Gregorian, and he, together with the other three Armenians, was calling the people to acts of

revenge against the Armenians with his own participation. In fact, the Sumgayit events, which were mandatory for the Armenian administration as a means of initiating extensive anti-Azerbaijani sanctions and acquitting aggressive steps against Azerbaijan, had already been planned and prepared.

In 1988-1989, Azerbaijanis were forced to emigrate from Armenia. At least 216 Azerbaijanis were killed and 1,154 Azerbaijanis were injured during the mass deportation action. Refugees from Armenia, about 200,000 people, had to come to Azerbaijan. On September 23, 1989, the Supreme Soviet of the Azerbaijan SSR approved the Constitutional Law of the Azerbaijan SSR "On the sovereignty of the Azerbaijan Soviet Socialist Republic". In Article 5 of this law, it was written that the administration was applied to all lands of the country, including the Nakhchivan Autonomous Republic and the Nagorno-Karabakh Autonomous Region, which are an integral part of Azerbaijan, and that the borders of the Azerbaijan SSR with other allied republics can only be changed by mutual agreement of the relevant republics.

On December 1, 1989, the Supreme Soviet of the Armenian SSR approved the decision on the reunification of the Armenian SSR and Nagorno-Karabakh. On January 10, 1990, the General Committee of the USSR Communist Party prepared a law stating that the decisions taken by the Supreme Soviet of the Armenian SSR on the Nagorno-Karabakh issue on December 1, 1989 and January 9, 1990 were not in conformity with the USSR Constitution. The law stated that the reunification of the Armenian SSR and Nagorno-Karabakh without the consent of the Azerbaijan SSR is illegal.

On January 20, 1990, Mikhail Gorbachev, with the approval of the Soviet administration, the troops of the Soviet army launched a military attack on Baku. As a result of their unprecedented brutality, hundreds of Azerbaijanis were killed and injured. In 1991, the central judicial bodies of the former USSR arrested dozens of Armenian armed groups operating outside Nagorno-Karabakh. So

much so that the Chaykand village of the Khanlar district of Azerbaijan was turned into a crime center by Armenian armed groups. From here, attacks were carried out on neighboring villages and roads, and the local Azerbaijani population was kept in fear and panic. Between 1989 and 1991, 54 local residents in Chaykand and the surrounding areas became victims of Armenian armed groups. In 1992, Azerbaijan succeeded in taking the Goranboy region under its control. On August 30, 1991, the Supreme Soviet of Azerbaijan, based on its Constitution dated September 23, 1989, re-declared the independence gained by the Azerbaijan Democratic Republic in 1918. On September 2, 1991, at the joint session of the Nagorno-Karabakh Province and Shaumyan Provincial People's Deputies' Soviets, a circular was issued on the creation of the "Nagorno-Karabakh Republic" within the borders of the DKÖB and Shaumyan region of Azerbaijan.

The Declaration "On the State Independence of the Republic of Azerbaijan" adopted on October 18, 1991 formed the basis of the political and economic independence of the Republic of Azerbaijan. On November 26, 1991, the Supreme Soviet of the Republic of Azerbaijan approved the law "On the dissolution of the Nagorno-Karabakh Autonomous Region of the Republic of Azerbaijan". At the end of 1991, at the beginning of 1992, the military intervention phase of the problem began. Armenia, taking advantage of the political civil instability caused by the disintegration of the Soviet Union and the internal conflicts that broke out in Azerbaijan, by receiving military support from foreign countries. (MFA, n.d.)

1.2 Dead-End Negotiations

The fact that the Karabakh problem turned into a conflict and became a serious problem threatening peace in the Caucasus pushed both regional states and international organizations to seek solutions. Along with the important states of the region such as Russia, Iran and Turkey, international organizations such as the UN, OSCE and OIC have taken initiatives for a solution and offered suggestions to the parties. From the initiatives of the regional states Russia's initiative was successful in achieving a ceasefire between the parties in 1994. However, attempts could not be made to solve the problem that was thought after the ceasefire. The UN intervened in the problem during the periods when the hot conflicts increased and the invasion attempts of the Armenians seriously threatened the territorial integrity of Azerbaijan, and the Security Council decided to stop the occupation.

After the independence of Azerbaijan, the Nagorno-Karabakh problem was included in the framework of the OSCE, which has no experience in solving any problem and is responsible for ensuring security in Europe. Thus, this problem was indirectly removed from the UN platform and the solution of the Nagorno-Karabakh problem has been made more complex. With the resolutions 822, 853, 874 and 884 taken by the United Nations Security Council due to the Armenian occupations, the inviolability of the territorial integrity of Azerbaijan, in which Armenia is a party in the conflict and the occupied was emphasized that the lands should be abandoned immediately and unconditionally. In the aforementioned resolutions of the UN Security Council, the discomfort felt by the Armenian occupations was expressed, the inviolability of the internationally accepted borders, the weapons principles of the inadmissibility of the seizure by force, respect for the independence and territorial integrity of all states were stated. According to the United Nations, the number of displaced persons in Azerbaijan exceeds half a million. (Hajar, 2003) Most of these people fled the region in the 1990s because of the Nagorno-Karabakh war between Azerbaijan and Armenia.

The conflict in Chechnya has also forced thousands of people to leave their homes. In March 1992, Azerbaijan was admitted to the UN membership. Azerbaijan has activated its Permanent Mission to the UN in New York right after its accession to the UN.

After becoming a UN member, Azerbaijan applied to the UN it demanded that the aggressive policy of Armenia be opposed and that the invading attempts of this country be stopped. Based on this application of Azerbaijan, UN representatives visited the region and submitted the report they prepared to the UN Secretary General. Thereupon, the Secretary General supported the OSCE's initiatives in resolving the problem and was ready to help OSCE to declare establish peace in the. (Abdullayev E. , 1998) After the Armenians occupied the city of Shusha in 1992, Azerbaijan applied to the UN. On 12 May, the UN Security Council discussed the Karabakh issue and made a statement. In the statement made, the situation in Karabakh became critical.

Discomfort was expressed and the necessity of helping civilians who were forced to leave their homes was emphasized. The parties were called upon to abandon the conflict and abide by the principles of the UN. At the same time, it was considered as a positive step that the Council published the letter of Azerbaijan's permanent representation to the UN as an official document. In this letter, it is pointed out that the military operations undertaken by Armenia are an attempt to disrupt the territorial integrity of an independent state. (Abdullayev E. , 1998) Armenia also tried to take counter steps after the increase of Azerbaijan's initiatives at the UN. In August 1992, upon the initiatives of Armenia, the UN Security Council discussed the Karabakh issue again and a new statement of the Security Council was published. In this statement, the parties were invited to a ceasefire and the UN's discomfort with the escalation of the situation in the region was expressed. (Hajar, 2003)

In October 1992, a new UN statement on the problem was published. However, this document was not different from the previous ones in terms of content. The statement expressed dissatisfaction with the escalation of the situation and the loss of a large number of civilians, and it was stated that the OSCE supported the initiatives to solve the problem.

It was emphasized that the negotiation process for a solution should start immediately and invited the parties to take steps in this direction.

On April 4, 1993, the Kalbajar district of Azerbaijan was occupied by the Armenians. In this case, Azerbaijan applied to the UN and demanded that the attacks of the Armenians be stopped and that Armenia be sanctioned as the aggressor. Thereupon, the statement of the UN Secretary-General was published on 6 April. The statement expressed dissatisfaction with the escalation of tensions between Armenia and Azerbaijan and the attack of "local Armenian forces" on Kalbajar. The statement emphasized the principle of protecting the territorial integrity of all states and called on the parties to take the necessary steps for the peace process to reach positive results within the framework of the OSCE. (Abdullayev E. , 2004)²⁰⁵ When evaluated in terms of the definition of the problem, the lack of emphasis on the invading attempts of Armenia and the fact that the occupation of Kalbajar is based on the "indigenous peoples living in Karabakh".

The statement that it was carried out by "Armenian forces" revealed that the UN's approach to the problem was not objective. Although Azerbaijan presents sufficient evidence to prove that the Armenian armed forces directly participated in the attack and that Azerbaijan's borders with Armenia, with the exception of Karabakh, were attacked. The UN could not accept this situation.

On April 30, 1993, the UN Security Council adopted Resolution 822 on the Armenia-Azerbaijan, Karabakh conflict. The decision was drawn up on the basis

of statements made by the Secretary-General in January and April 1993. In the decision, it was stated that stability and peace in the region were under threat, the discomfort felt over the increase in the number of people who were forced to migrate, and the necessity of eliminating the consequences of the extraordinary situation in Kalbajar was stated. The UN Security Council has supported the parties to ensure a permanent ceasefire in the region, invading attempts and military interventions.

UN called on Armenia to stop the operations and demanded that the offensive forces be removed from Kalbajar and all occupied areas of Azerbaijan. Although the fact of occupation of Azerbaijani lands was accepted in the resolution of (Abdullayev E. , 2004) Security Council, it did not specify by whom this occupation was carried out.

It was emphasized that the operations were carried out only by “local Armenian forces”. Such a determination kept Armenia out of the problem and accepted that only Azerbaijan and the separatist local Armenians were the parties to the disagreements. The fact that the problem was evaluated in this way in the adopted decision aroused the reaction of the Azerbaijani side. (Hajar, 2003)

On July 23, 1993, Armenian armed forces intensified their attacks on Aghdam district of Azerbaijan and occupied this district. With this occupation, Armenia showed that it did not care about the previous resolution of the UN Security Council and ignored this institution. At the UN Security Council meeting at the end of July, Armenia discussed the Azerbaijan-Karabakh issue again and adopted Resolution 853 (Annex 3.). In this decision, the request of the Council to remove the occupying forces from Aghdam and all other occupied regions of Azerbaijan was put forward. In the decision, the discomfort felt that the Azerbaijani citizens living in the region were forced to migrate from the occupied regions. It was stated that for the solution of the problem, a long-term permanent ceasefire should be established between the parties. 208 The Security Council has once again stressed

the importance of the territorial integrity of states and the inviolability of their borders, making the OSCE faster to accelerate the peace process and stressed that he appreciated his efforts. Between Armenia and Azerbaijan On July 23, 1993, Armenian armed forces intensified their attacks on Aghdam district of Azerbaijan and occupied this district. With this invasion, Armenia ignored the previous resolution of the UN Security Council and showed disregarded this institution.

At the UN Security Council meeting at the end of July, Armenia discussed the Azerbaijan-Karabakh issue again and adopted Resolution 853 (Annex 3.). In this decision, the request of the Council to remove the occupying forces from Aghdam and all other occupied regions of Azerbaijan was put forward. living in the region

Discomfort was expressed about the forced migration of Azerbaijani citizens from the occupied regions. It was stated that for the solution of the problem, a long-term permanent ceasefire should be established between the parties. (Raftar, 2005) The Security Council once again emphasized the importance of the territorial integrity of states and the inviolability of their borders, emphasizing that it appreciated the OSCE's attempts to accelerate the peace process. Agreed between Armenia and Azerbaijan (Annex 5.). These decisions were also not different in content from previous decisions. The UN was inviting the government of the Republic of Armenia to take advantage of its own effectiveness in order for the Armenians of the Nagorno-Karabakh region to comply with the Council's resolutions. (Hajar, 2003)

In the documents adopted by the UN on the problem, no sanctions were envisaged to punish the aggressor. The resolutions of the Security Council were also advisory rather than binding. Considering the basic accepted principles of international law and the principles accepted by the UN charter, it can be said that the UN has sufficient grounds for peace in the region.

The peaceful measures taken by the Security Council within the framework of the Nagorno-Karabakh problem were not sufficient and the Armenians continued the occupation despite the decisions taken. The Security Council, which did not take into account the repeated applications of Azerbaijan and the fact that Armenia presented enough evidence that it seriously threatened the peace in the region, did not feel the need to take any coercive measures.

By occupying Azerbaijani lands, Armenia has openly violated the UN Law. The Declaration of International Law of the UN General Assembly on Cooperation and Friendly Relations between States, in accordance with the United Nations Charter No. 2625 of 24 October 1970, states that states generally use force for offensive purposes in their relations, in solving problems, or for any other reason. prohibits them from threatening to use it. The declaration also prohibited states from making propaganda in line with wars of aggression. According to the resolution, “all states shall refrain from organizing or encouraging the organization of irregular force or armed forces, including legionnaires, in order to raid the territory of another state is in charge. All states are free from organizing, inciting, aiding or participating in civil conflict or terrorist activities in the territory of another state or consenting to organized activities in their own territory to carry out such acts.

The resolution prohibited the use of force not only for the violation of states' own borders, but also for the violation of international border lines. Considering these norms, some deterrent and coercive measures should be taken for Armenia to abandon its stance, and it is necessary to maintain peace in the world and its maintenance would be an effective method both in terms of the effective application of international law rules. The Security Council did not resort to coercive measures against Armenia, despite the fact that Armenia's attacks against Azerbaijan were clear enough and approximately 20% of the Azerbaijani territory

is still occupied by Armenians. In the decisions it has taken, the Council has refrained from defining Armenia as an aggressor state. (Abdullayev E. , 2004)

The Nagorno-Karabakh problem was defined as a regional problem until 1992 and remained largely under the control of the Russian Federation. However, after the membership of Azerbaijan and Armenia to the Organization for Security and Cooperation in Europe (OSCE) in 1992, the Nagorno-Karabakh conflict gained an international character, and Russia, as well it also made mediation attempts with various international security organizations such as the USA, France, Turkey and Iran. OSCE representatives were sent to the region to solve the problems between the two states, Azerbaijan and Armenia, which were members of the Organization for Security and Cooperation in Europe (OSCE) on January 30, 1992, and the situation was determined and they were held in Prague on February 27-28, 1992. At the meeting, it was accepted that Karabakh belongs to Azerbaijan.

The recognition that Nagorno-Karabakh belongs to Azerbaijan was of great importance for Azerbaijan. The reason why OSCE is considered important for Azerbaijan is that the Minsk Conference was established at the end of March 1992 for the peaceful resolution of the Nagorno-Karabakh conflict within the framework of this organization. The most important of the founding purposes of the Minsk Group is to resolve the Nagorno-Karabakh issue. France, Russia and the USA are guiding the Minsk group. Apart from these countries, the Minsk Group includes Belarus, Germany, Italy, Portugal, Netherlands, Sweden, Finland, Turkey, Armenia and Azerbaijan.

Since February 1992, the Nagorno-Karabakh conflict has been handled in accordance with the principles of this organization (OSCE). For this purpose, the special mission of the OSCE arrived in Azerbaijan in mid-February. At the 7th meeting of the OSCE held in Prague on 27-28 February, the observations of special officials in the conflict zone were evaluated. After that, it confirmed that Nagorno-Karabakh belongs to the Republic of Azerbaijan. In the document, a

decision was taken to resolve the problem peacefully, provided that the borders are not changed.

On March 24, 1992, the OSCE Council of Ministers of Foreign Affairs discussed the problem that arose in the Karabakh region of Azerbaijan and adopted a resolution to call an international peace conference on Karabakh in order to provide a peaceful solution to the problem. The conference was planned to include the USA, Turkey, France, Germany, Italy, Czechoslovakia, Belarus, Sweden, Azerbaijan and Armenia. in May 1992.

The decision determining the convening of the conference, the conditions of the meeting and the powers of the chairman was adopted by the OSCE Executive Committee. The resolution envisaged that the countries participating in the conference would take part in the process of solving the problem and that the conference would be held in Minsk, the capital of Belarus, and the final document would be signed. (Abdullayev E. , 1998) Meanwhile, Armenia offered to accept the Karabakh Armenians as a separate party at the conference. Azerbaijan, on the other hand, opposed this and stated that the Karabakh Armenians could only attend the conference together with the representatives of Azerbaijan. Since accepting the Karabakh Armenians as a party would constitute a de facto situation and this demand was a step towards dividing Azerbaijan, the Azerbaijani government did not accept these demands of the Armenians. (Qasimov, 1997) International conference for the peaceful settlement of the Nagorno-Karabakh conflict the first agreement on the establishment of the OSCE and the opening of the OSCE representation in Azerbaijan was reached on March 31, 1992, during the meeting of the Chairman of the OSCE Council of Ministers of Foreign Affairs Irdi Dinstbirom and the Speaker of the Azerbaijani Parliament Ya gub Mamedov. In this meeting, Azerbaijan stated that the representatives of the Azerbaijani and Armenian people of Nagorno-Karabakh could be represented in a possible conference only within the Azerbaijani delegation.

On June 1, 1992, the first phase of the negotiations started in Rome through the Minsk Group. These meetings, which were held with the participation of all members of the group, were a preparation for the Minsk Conference, which was planned to be held at the end of June. Here, too, Armenia tried to impose the Karabakh Armenians as a separate party. Azerbaijan objected to this with the same reason and emphasized that Karabakh Armenians could participate in the talks together with the Azerbaijani delegation. The Armenians, on the other hand, were not content with this and did not go to Rome. Although the Armenians did not participate, negotiations were held and the accepted documents indicated that the military units from Lachin and Shusha there are articles about the removal of the refugees and the return of those who had to migrate due to conflicts to their homes.

On June 15, the second round of negotiations began. In these meetings, the Armenians put forward the demand that Turkey be excluded from the negotiations. At the same time, since the Azerbaijani forces pressed the Armenian forces in the Goranboy and Aghdara regions of Armenia, the situation in this region was the result that was prepared requested to be included in the document. Azerbaijan objected to this and no result could be obtained from these negotiations. In addition, the 60-day ceasefire agreement presented to the parties was also rejected by the Armenians. (Abdullayev E. , 2004) Armenia, UN Security Council not only did not attach any importance to its decisions, but also rejected all demands brought by the OSCE. Since it did not face any sanctions due to its uncompromising attitude, Armenia accelerated its attacks.

On August 9, 1993, when the Minsk Group started to negotiate the "Emergency Measures Plan" with the parties, Armenia accelerated its attacks and occupied the Gubadli, Jabrayil and Fizuli regions of Azerbaijan. The fact that Armenia did not give up its occupying stance despite all attempts and that the international

community did not pay enough attention to the problem. It was not possible to establish peace in the region in this situation.

OSCE Heads of State Summit held in Lisbon on 2 December 1996, despite Armenia's opposition, the plan, which was accepted with the approval of all other 53 countries members and which envisaged the evacuation of the occupied Azerbaijani lands and providing the highest level of autonomy to Karabakh within Azerbaijan, was immediately accepted by Azerbaijan, but rejected by Armenia.

After the 1996 Lisbon summit, new negotiations of the OSCE Minsk Group were held in April 1997. It was not possible to accept any decision from these meetings. However, the Minsk Group co-chairs increased their efforts to solve the problem after this period and a continuity was observed in these efforts.

In June 1997, the co-chairs presented the first proposal to resolve the issue.

This proposal, called the "Comprehensive Agreement" on the solution of the Karabakh conflict, consisted of two agreements in a package. The first agreement involved the cessation of armed conflict. The second agreement covered the arrangements for determining the status of Karabakh. The cease-fire agreement envisaged the continuation of the existing ceasefire and the removal of the armed forces from the occupied areas in a two-stage plan. In the first phase of the plan, it was to be ensured that the parties retreat to the designated lines along the conflict line and a buffer zone was created.

In the buffer zone created, the leading units of the OSCE's multinational peacekeeping force would be deployed. After that, the second phase of the plan, the Armenian forces would be returned to the borders of the Republic of Armenia, the Karabakh forces would be returned to the borders of the Nagorno-Karabakh Autonomous Region, and the Azerbaijani forces would withdraw to the lines recommended by the High Planning Council. In general, such a plan could be considered as a step that could contribute significantly to the solution of the

problem. However, the mechanism of how the implementation of this two-stage withdrawal plan would be carried out was not fully and clearly laid out. In addition, it was not mentioned what kind of sanctions would be applied if the plan was not followed.

In the second agreement, which will determine the status of Karabakh, the territorial integrity of Azerbaijan and Armenia and the inviolability of their borders were stated as the basic principle. It was accepted that Karabakh was dependent on Azerbaijan, and it was stated that self-determination for Karabakh would be possible after it was determined by agreement between the Azerbaijan Republic and Karabakh authorized institutions, appreciated by the Minsk conference and harmonized with the Constitutions of Azerbaijan and Nagorno-Karabakh. (Abdullayev E. , 2004) Azerbaijan presented the Comprehensive Agreement Proposal as the main basis for the negotiations announced his acceptance. The proposal included the direction of the negotiations rather than the solution of the problem and drew a general framework. Since there was no final agreement offer, Azerbaijan declared that it accepted the offer despite its many shortcomings. Armenia did not accept this offer. (Xalq, 1997) The removal of Armenia from the table further strengthened Azerbaijan's hand. Thus, it became clear once again that Armenia is the party that is against the solution of the problem through negotiations. This attitude of Armenia has revealed that the obstacle to peace in the region is the terrorist Armenians in Armenia and Karabakh.

After the Comprehensive Agreement Proposal was not accepted by Armenia, in September 1997, OSCE prepared a new package of proposals under the name of "Phase-Progressive Solution Plan" and presented it to the parties. The phased solution plan was a more acceptable plan for Azerbaijan. On October 1, Azerbaijan officially announced that it accepted the proposal as the basic document for starting negotiations (Abdullayev E. , 2004).

According to the Progressive Solution Plan proposal, the solution of the problem is in two stages would be carried out. In the first stage, it was planned to stop the conflict and eliminate the consequences of the conflict. In the second stage, before the OSCE Minsk Conference, it was aimed to determine the status of Karabakh depending on Azerbaijan. The Phased Solution Plan is better than the previously presented solution proposals.

It was a superior plan. In this proposal, it was stated that 7 occupied districts outside Karabakh should be evacuated. Armenian armed units were to be immediately removed from the districts of Kalbajar, Aghdam, Fuzuli, Cabrayil, Qubadli and Zangilan. Lachin's situation would be determined in the second stage. Another positive aspect of this plan was that it emphasized that it was possible to impose sanctions on parties that did not comply with the agreed articles. Although the Phased Solution Plan, which was found and accepted by the Azerbaijani side in many aspects, was not an ideal solution proposal, it was an acceptable plan as a suitable ground for a solution. Karabakh separatist Armenian gang leaders in talks

The fact that it was not seen as a party caused this plan to be considered as a more appropriate plan for Azerbaijan. Despite all the efforts, the Armenian side did not accept this plan and hopes for a solution were once again in vain. Co-chairmen of the Minsk Group in late 1997

They presented to the parties a new variation of the Phased Resolution Plan that accepted the Karabakh separatist Armenian gang leaders as a party. As such, the plan met with a strong reaction from the Azerbaijani side, and the President of Azerbaijan declared that they would definitely not accept the plan in this way. (Hajar, 2003)

Although the then-Armenian President Levon Ter Petrosyan warmly welcomed the decision taken by the OSCE Minsk Group in 1997, which included the

withdrawal of Armenians from only a part of the occupied territories, the peace process came to a halt with the election of Robert Kocharyan to the presidency in 1998. (Kasim, 2009)

Ter-Petrosyan resigned on 3 February 1998 when his views on Karabakh were not supported by the Armenian Parliament. Prime Minister Kocharyan won the presidential elections as a result of the second round held on 30 March 1998.

Petrosyan's resignation meant, in a sense, to go back to the beginning in the solution of the Karabakh problem. Because Robert Kocharyan, one of the representatives of the separatist Karabakh Armenians, was elected as the head of state of Armenia and Kocharyan was uncompromising about the solution. (Abdullayev E., 2004)

The General State Project was presented to the parties by the Minsk Group co-chairs in November 1998. The project was based directly on the principles of determining the status of Karabakh. Accordingly, the parties would sign an agreement on the status of Karabakh and this agreement would confirm that Karabakh was the state that adopted the republican form of government. According to the project, Karabakh would form a common general state with Azerbaijan within the internationally recognized borders of Azerbaijan.

The parties, Azerbaijan and “Karabakh” state institutions would sign an agreement to determine the limits of mutual delegation of authority, and this agreement would be on an equal footing with the provision of the Constitution.

Apart from the transfer of authority to be made with the agreement, it was proposed to establish a joint commission consisting of the President, the Prime Minister, the heads of parliament and their representatives in order to determine the limits of certain powers to be used jointly continuity of liaison and partnership required for the realization of the project

In order to coordinate the works, it was envisaged that Azerbaijan and Karabakh representatives would be established mutually in Baku and Stepanakert. Although the purpose of these mutual representations was to ensure coordination in the implementation of the project, this meant that Karabakh was recognized as an independent state in a sense. In the document prepared, Karabakh directly cooperates with foreign states in commercial, scientific, cultural and sports fields, have the right to develop relationships. Apart from this, the Karabakh administration would take part in the determination and implementation of Azerbaijan's foreign policy on matters related to its own interests, and foreign policy decisions on such issues would be adopted with the approval of both parties. The project brought another interesting application in terms of foreign policy. Accordingly, the Karabakh government would be able to have representatives in Azerbaijani embassies or consulates in states with its own interests. It also gave the Karabakh government the right to send representatives within the Azerbaijani delegation to international negotiations on matters of interest. This project, which will give almost complete independence to Karabakh, was met with great reaction in Azerbaijan and Azerbaijan announced that it would definitely not accept this project.

In the following periods, Minsk group co-chairs visited the region and negotiations were held. Negotiations were generally conducted within the framework of these three proposals presented. Due to Armenia's intransigent stance, none of these proposals of the Minsk group could be realized and no progress was made on the solution. In the face of its uncompromising attitude, international organizations have from time to time condemned Armenia's attitude and warned it to give up the occupation like the aggressor. However, these organizations were content with only warning statements. To date, no sanctions have been applied against a state that occupies approximately 20% of the territory of another state.

1.3 Triggering events and beginning of the war

Nikol Pashinyan, who came to power after the Velvet Revolution, tried to bring the Nagorno-Karabakh issue to the negotiating table. However, in the wake of provocations in recent years, interviews and statements by Armenian officials since early 2019 have exacerbated the situation.

In April 2016, the Azerbaijani counterattack against the military provocation of Armenia was very effective. The Azerbaijani army was able to save many strategic heights and settlements by destroying the enemy's military equipment and manpower with a rapid attack. However, the continuation of the 4-day war and the Azerbaijani army, its successful advance alarmed Armenia. Russia, which stepped in at the request of the Armenian government, called on the Azerbaijani side to stop the war and did not allow the occupied lands to be completely liberated. Russia's intervention in the events took away the opportunity for Azerbaijan to fully maintain its sovereignty and territorial integrity from that date on.

The Armenian government did not hesitate to announce its new plans for the occupied territories, ignoring international law or calls for the continuation of peace talks.

In 2017, the de facto president of Nagorno-Karabakh, Bako Sahakyan, said in his speech that they had identified the settlement of neighboring territories as a priority for 2017-2020 (International Crisis Group, 2019). He noted that the settlement of the territories along the Araz is of great importance for the development of the "liberated" territories. In this context, the statement of Artur Vanetsyan, who visited the Fizuli region in early 2019, became a clear fact indicating the intention of Armenia. Noting that there is no talk of returning the territories, Vanetsyan also spoke about the plan to "settle the territories along the Araz" (Turan Information Agency, 2019) It turns out that the talks for Armenia were only formal, and according to international documents, they not only

returned the territories of Azerbaijan, but also announced new plans for them, inciting the other side to war.

The next step in the peace talks, which showed that international legal documents were not taken seriously, was the announcement of the construction of the third road connecting Armenia and Nagorno-Karabakh.

So far, there has been only one road connecting Nagorno-Karabakh and Armenia. This first road was built in 1998, four years after the ceasefire was signed, in an area recognized by the international community as Azerbaijani territory. This road is the shortest distance between Armenia and Karabakh and passes through the Lachin corridor. It is clear that this road was built to establish direct contact with Nagorno-Karabakh after strengthening control in the occupied territories.

The construction of the second road between Armenia and Karabakh was completed in 2017. This second road, which passed through a large part of the occupied territories, further shortened the distance between Yerevan and Khankendi. The construction of this road, which increased Armenia's control over Karabakh, undermined confidence in further settlement in Nagorno-Karabakh and, logically, the return of these lands to Azerbaijan.

And, of course, this was not the end. In 2019, the Armenian government announced its preparations for the construction of a new third road (Kucera, 2019). The next road, which is planned to be built in 2020, will be 150 km long and will pass through Gubadli and Jabrayil, connecting Gafan and Hadrut. The statement made by the Secretary of the Security Council of Armenia Armen Grigoryan in 2019 showed that this plan has already been finalized. He said that a decision has already been made and the plan for the new 3rd road will be ready by the end of the year. (Kucera, 2019)

The next step in the peace talks is to show that international legal documents are not taken seriously. The construction of the third road connecting Armenia with

Karabakh has been discussed in Armenia for years, but it is no coincidence that this idea came to fruition during the reign of Nikol Pashinyan (Rusif Huseynov, 2020), who came to power after the Velvet Revolution. All these recent events, the statements of Armenian officials, showed that the peace talks, the roundtable discussions are all meaningless, and Armenia does not intend to stop its occupation policy.

The announcement of the construction of the new road was assessed by the European Parliament as an obstacle to a peaceful settlement of the conflict. (European Parliament, 2020) A joint statement issued by members of parliament called the departure a violation of international law and called on the parties to remain committed to peace talks. However, further attempts and new territorial claims once again showed that Armenia ignored this statement as well. War became inevitable.

The provocations, border violations, shootings at civilians and the army carried out by the Armenian armed forces in the Tovuz region on 12 July 2020 were an attempt to undermine the security of the region. During these attacks, Dondar Gushchu, and Aghdam villages of Tovuz were also targeted by Armenian artillery.

It was another attack of Armenians against civilians. However, despite these provocations, the fact that Armenia was protected by Russia, as it was four years ago, supported by the Russian political elite, and especially provided with weapons in large quantity situations caused him to feel safe. With this policy, Russia was trying to maintain its position in the South Caucasus and to show its influence on the energy security of the West.

On September 27, 2020, Armenia's provocation on the line of contact with Azerbaijan and its attempt to launch a military attack once again revealed that there is no other option for the Azerbaijani side but war. The inconclusiveness of the peace talks and the insistence of the Armenian side already precluded the

possibility of war, had made it mandatory. It was understood that Armenia, which has occupied the territory of an internationally recognized independent state for nearly 30 years and tried to prolong or suspend the negotiation process for various excuses, intended to rekindle the conflict and undermine regional security.

CHAPTER 2

THE CORE PRINCIPLES OF JWT IN SECOND KARABAKH WAR

2.1 Briefly about the JWT

In general, the question of whether justice is necessary in war or on what criteria this justice can be judged has been the subject of debate for many years. According to Amartya Sen, moral theories are not about achieving justice, but about preventing injustice. (Sen, 2009)

The just war tradition spans centuries, for as long as we have thought about war, we have thought about whether it should be undertaken at all and, if so, how. An important progenitor to just-war thinking, St Thomas Aquinas, queried whether war was always sinful and answered in the negative, espousing three criteria by which the justness of war could be established: sovereign authority, just cause, and rightful intention. More recent theorists tend to add consequentialist features to Aquinas's deontological ones. For example, war must be fought as a last resort, there must be a reasonable chance of success, and there must be proportionality between the expected costs and benefits of the war. Broadly speaking, though, war should only be fought against aggressors, whether in self-defense or through humanitarian intervention. This discussion helps us understand when we are allowed to fight, but it tells us nothing of how we are allowed to fight, the distinction between these two strains of thinking is critical to understanding just war theory. The point is made powerfully by Michael Walzer, who is worth quoting at length:

The moral reality of war is divided into two parts (Zupan, 2004). War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgment is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly. Medieval writers made the difference a matter of prepositions, distinguishing *jus ad bellum*, the justice of war, from *jus in bello*, justice in war. These grammatical distinctions point to deep issues. *Jus ad bellum* requires us to make judgments about aggression and self-defense; *jus in bello* about the observance or violation of the customary and positive rules of engagement (Walzer, 2015). The two sorts of judgment are logically independent. It is perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules. But this independence, though our views of particular wars often conform to its terms, is nevertheless puzzling. It is a crime to commit aggression, but aggressive war is a rulegoverned activity. It is right to resist aggression, but the resistance is subject to moral and legal restraint. The dualism of *jus ad bellum* and *jus in bello* is at the heart of all that is most problematic in the moral reality of war.

And there is a question like this, why is it wrong to begin a war? We know the answer all too well. People get killed, and often in large numbers. War is hell. But it is necessary to say more than that, for our ideas about war in general and about the conduct of soldiers depend very much on how people get killed and on who those people are. Then, perhaps, the best way to describe the crime of war is simply to say that there are no limits at either of these points: people are killed with every conceivable brutality, and all sorts of people, without distinction of age or sex or moral condition, are killed. This view of war is brilliantly summed up in the first chapter of Karl von Clausewitz's *On War*, and though there is no evidence that Clausewitz thought war a crime, he has certainly led other people to think so. It is his early definitions rather than his later qualifications that have

shaped the ideas of his successors, and so it is worth considering them in some detail.

Aquinas helps to explicate the requirements of *jus ad bellum*, but *jus in bello* has its own requirements. Proportionality shows up here as well, the difference being that soldiers must not use excessive force, as opposed to states not engaging in disproportionate conflicts. A central feature of *jus in bello* is the principle of discrimination, by which non-combatant immunity must be respected; non-combatants are not liable to attack and cannot be justly targeted. Most generally, though, *jus in bello* requires adherence to international humanitarian law and to the law of armed conflict. Not only do these bodies of law limit who may or may not be targeted, but they also speak to prohibited weapons, treatment of detainees, and other privileged categories. While *jus ad bellum* and *jus in bello* anchor the just war theory landscape, they hardly exhaust all the relevant questions. A relative newcomer on the scene, *jus post bellum* raises questions about what is owed after conflict is ended; neither *jus ad bellum* or *jus in bello* address the issue of whether forces owe post-conflict duties of reconstruction, restitution, and so on. But there are other ways in which just war theory viewed somewhat monolithically since Walzer's seminal work has been challenged in recent years. For example, a central assumption had been that of the moral equality of combatants, under which combatants cannot be held responsible for an unjust war in which they participate; this commitment follows straightforwardly from the independence that Walzer postulated between *jus ad bellum* and *jus in bello*. Jeff McMahan has powerfully challenged this claim and, with it, a fundamental premise of Walzer's conception. A broader issue faced by just war theory is the evolving nature of conflict. Walzer was largely writing in response to the Vietnam War, but many of the examples he invoked came from World War I and World War II. More generally, just war theory has tended to focus on conventional forces, such as would be deployed on traditional battlefields by warring nation states. Does conflict really work that way

anymore? Certainly it can, though it would be prudential which is not to say moral or legal for the weaker side to avoid such configurations. While a typology of such asymmetric conflict takes us too far afield, consider terrorism as an exemplar: terrorists necessarily target those who are not liable to attack and, therefore, eschew the edicts of *jus in bello*. In trying to prevent terrorism, are we still bound by *jus in bello*? Or do its rules crumble given the stakes? And a third way in which just war theory can be challenged pertains to emerging military technologies. Whereas Aquinas countenanced opposing foes amassing at the border, we can now deploy lethal drone strikes over Afghanistan from controllers' headquarters in the United States. Or, through cyberwarfare, even the notion of combatants becomes attenuated; unfortunately, so does our ability to honor the principle of discrimination against non-combatants. Are there ways in which these technologies call for a revision of the just war paradigm, or can they be accommodated within it/

According to him, the basic principles of a just war are sovereign power, a just cause and a right intention. (Fritz Allhoff N. G., 2013) The new generation of thinkers attributed this assessment to the vital values of the modern world, stating that war was possible only against the aggressor, whether for humanitarian or defensive purposes. Azerbaijan, in the occupied and internationally important documents - UN Security Council Resolutions 822, 853, 874, 884, Statements of the President of the UN Security Council, 2 in 1993 and 1 in 1995, adopted by the UN General Assembly 48/114, With the intention of reclaiming the territories enshrined in Resolutions 57/298, 60/285, and 62/243, the aggressor rightly waged war against the opponent, who acted as an aggressor to repatriate the people's representatives who had been forced to leave their homes for good reason. . It should be noted that Azerbaijan did this in accordance with paragraph 4 of the 10 main provisions of the Helsinki Final Act, proclaimed in 1975 and signed by it in 1992, based on the issue of territorial integrity of states.

Let's take a look at how the concepts of jus ad bellum, jus in bello and jus post bellum, which maintain their prestige in traditional war theories, manifest themselves in the war in question.

First of all, it should be noted that the fairness of the war in general is determined by the correct assessment of these three principles of Latin origin.

2.2 Jus ad bellum and Second Karabakh War

The terms of the Jus ad bellum principle define the initial and practical conditions of the traditional theory of just war and it is responsible for the following conditions of war:

- To have a just cause;
- To have a military resolution as the last resort in the settlement process;
- To possess the right and legitimate intention;
- To have a prospect to attain the desired goal;
- To use proportional means to attain the desired goal

These are combined in Jus ad bellum

- In the right way and ethical manner (Jus in Bello)
- To protect all innocent civilians; to protect the environment; ready for the conciliation process (Jus post bellum)

Thus, against the background of jus ad bellum, the study of the cause and purpose of the war is of great importance. Reason according to the theory of just war. self-defense against the aggressor, and the goal is to wage war for a just cause.

Against the background of jus ad bellum, one of the main components of the tradition of just war, war is considered fair only if it is waged for a just cause.

Although the evacuation of the occupied territories and the return of the occupied lands to Azerbaijan were resolved on paper, in fact, no real work was done in this direction. UN Security Council Resolution 822 on the occupation of Kalbajar in 1993, followed by Resolutions 853, 874 and 884, which confirmed the occupation of Aghdam, Jabrayil, Fuzuli, Gubadli and finally Zangilan, and demanded their return to Azerbaijan. Failure to comply with any of the documents is a known fact for many years. Not only that, the statements of the President of the UN Security Council, the resolutions of the UN General Assembly, the reports of the UN

Secretary General on the conflict are also on the list of ineffective legal documents.

Recall the requirements of some documents of international importance:

NATO's statement of 22 May 1992 does not accept any attempt to undermine the territorial integrity of Azerbaijan or any other country, but also calls for steps to be taken to de-escalate the conflict and withdraw troops from the occupied territories.

A statement issued by the President of the UN Security Council on April 6, 1993, reaffirmed the territorial integrity and sovereignty of the states in the region and demanded the withdrawal of troops from the occupied Kalbajar region.

Turkey, Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Pakistan at the ECO Summit on July 6-7, 1993 and in a statement adopted by the Presidents of Uzbekistan, based on the principle of non-use of force under the Helsinki Final Act, condemns the expansion of military operations and escalation in the direction of Agdam, Fizuli, Gubadli, Jabrayil, Aghdara, Armenia's aggressive policy against Azerbaijan.

Another document is the UN Security Council statement of 18 August 1993, which condemned the attack on the Fizuli region and demanded the withdrawal of the occupying forces from Fizuli, Kalbajar, Agdam and other occupied territories.

According to the EU statement of 9 November 1993, it condemned the violation of the ceasefire on 24 October of the same year and demanded the withdrawal of troops from the occupied territories.

April 26, 1995 Reaffirm previous statements of the UN Security Council, but, unfortunately, this step was only valid on paper. (Documents of International Organizations on Armenia-Azerbaijan Conflict)

The efforts of the OSCE Minsk Group to resolve the Nagorno-Karabakh conflict have not paid off. Thus, the cold approach to the results of the Budapest and Lisbon summits in 1994-1996 and the proposals of the Minsk Group to resolve the Nagorno-Karabakh conflict and the continuation of this approach in the next stages of the conflict settlement, in 1997 by the Minsk Group co-chairs. Despite Azerbaijan's acceptance of the proposed draft multilateral agreement, Armenia's rejection clearly demonstrated Armenia's approach to the peace process. In addition, the indifference of the OSCE Minsk Group, especially the co-chairs, to the conflict and the formal efforts to resolve it have led to the outbreak of conflict. Unfortunately, the activities of the Minsk Group after the April war were no different. The Geneva meeting of the Presidents on October 15, 2017, the Vienna meeting of the Council of Ministers in December 2017 and the Krakow meeting of Foreign Ministers in January 2018 were among the previous inconclusive steps.

Since 1996, various solutions to the conflict have been proposed, but the parties have not been able to agree. In 1996, only Armenia voted "against" the solution proposed at the OSCE Lisbon Summit. The proposal included the recognition of the territorial integrity of Azerbaijan and Armenia, the granting of Nagorno-Karabakh the highest level of self-government within Azerbaijan, and the guarantee of the security of Karabakh and its people.

Another solution proposed by the OSCE Minsk Group co-chairs to resolve the conflict was called a "step-by-step solution". According to this option, at the initial stage, the regions around Nagorno-Karabakh should be liberated from occupation, the OSCE should lead the peace process here, and the issue of returning refugees should be resolved. As a next step, the issue of the status of the Lachin corridor, Shusha and Karabakh had to be resolved. The presidents of Azerbaijan and Armenia issued a joint statement on the solution, but after the resignation of Armenian President Levon Ter-Petrosyan, the new president did not agree to the proposal.

The next option, which required Armenia to resolve the status issue along with the initial conditions of a phased solution, was called the "package solution".

In 1998, the co-chairs made a new proposal. According to this solution, called the "common state", Nagorno-Karabakh should have received the status of a state and territorial unit in the form of the Republic, and a common state should have been created within the internationally recognized borders of Azerbaijan. This proposal was rejected by Azerbaijan. The reason was that it contradicted the country's legislation and sovereignty.

The closest solutions to the modern era are the Madrid Principles of 2007 and the Lavrov Plan of 2012. The Madrid principles did not fully satisfy the interests of the Azerbaijani side. The Armenian side did not have an unequivocal approach to this solution. Finally, for the first time in Lavrov's plan, the heads of state were able to agree on the return of 5 districts. However, after the April fighting, this agreement lost its significance.

2.3 Jus in bello and Second Karabakh War

Jus in bello is to wage war in the right way and in an ethical manner. Jus in bello the first, it has a number of principles regulated by international law. Thus, the main one is related to the discrimination of those who fought in the war and those who did not take part in the war. Non-combatants are not directly responsible for the attack and cannot be the target. (Whitman, 2013) Issues such as the treatment of prisoners and the use of weapons are also important and unique rules of jus in bello. As I mentioned, one of the main rules of Jus in bello is not to target those who are not responsible for the attack, which has its legal basis under the Geneva Convention. (International Committee of the Red Cross, 2010) The convention defines the categories of people who should not be the target of fire - civilians, prisoners of war and, finally, the wounded, and is called "Protected Persons". Terrorist acts committed by Armenian terrorist groups against Azerbaijanis, founded in 1984, terrorist attacks on state-important infrastructure and the civilian population, did not subside during the war. (mfa.gov.az, 2020) Terrorism or massacre in Ganja and Barda not once, but several times a day during the end of the Second Karabakh War, or more precisely, in the days of the declaration of a humanitarian ceasefire, is a clear manifestation of this principle. is not a sign of violation, but clear evidence. (New York Times , 2020)

Thus, the deliberate killing of civilians by Armenians, not only in war-torn areas far from the front, but also in non-target areas (New York Times, 2020) shows that the principle of jus in bello has been violated. The Minsk Group co-chairs' silence on the massacres, their comparative support for Armenia on the basis of religion, Russia's assistance to Armenia with weapons and ammunition based on its accession to the Collective Security Treaty Organization and the Eurasian Economic Union, and its involvement in war and terrorism is one of the elements that encourages barbarism.

Jus in bello requires both sides to abide by international humanitarian law and the laws of armed conflict. According to Michael Walzer, the protection of the public life of the states involved in the war, the protection of the rights of soldiers on the battlefield and civilians in public life is one of the main moral issues of modern theory of just war. Despite the above-mentioned attacks, the attitude of the Azerbaijani side towards the civilian population remained unequivocal from the first days of the war until the end of the war. (mod.gov.az, 2020) According to the official statement of the Ministry of Defense of the Republic of Azerbaijan, they did not fire on the civilian population. (mod.gov.az, 2020)

In an interview with a number of foreign media outlets during the war, President Ilham Aliyev repeatedly noted that the war began in response to the constant attacks of the opposite side, and unlike Armenia, we do not target the civilian population, we respond on the battlefield. (president.az, 2020)

As mentioned above, the use of weapons in war is determined by the principle of just in bello. An analysis of such issues confirms the use of cluster bombs in the October 28 attack on the Azerbaijani city of Barda, which killed 21 civilians and wounded 70, and we are now moving closer to defining the "justice" of the war (Amnesty International, 2020)

2.4 Jus post bellum Second Karabakh War

Jus post bellum - In order to determine the conditions after the war and to analyze the outcome correctly, includes to protect all innocent civilians; to protect the environment; ready for the conciliation process it is necessary to return to the beginning of the war and assess the fairness of its consequences on the basis of the following criteria.

The 44-day war between Azerbaijan and Armenia can be judged on two counts according to the theory of a just war:

The first is an analysis of the reasons or motives of the parties for the war, and the second is the means used by them. As noted at the beginning of the article, there were enough reasons to resolve the conflict through war, and Azerbaijan fought the war for its occupied territories within the framework of international law, and the provisions of international documents adopted years ago were resolved. Unlike Azerbaijan, which waged the war only on the front and on the battlefield, the Armenian side tried to cover up its defeat with terrorist acts, and perhaps forget about it. However, it should be noted that the Armenian side has declared its destiny by this step, because according to the theory of a just war, only the weak and defeated side in the war uses "auxiliary" and unjust methods such as terrorism and guerrilla warfare. (Whitman, 2013)

The end of the 44-day war coincided with November 10, 2020.

According to the tripartite statement signed between the President of the Republic of Azerbaijan IH Aliyev, the Prime Minister of the Republic of Armenia NV Pashinyan and the President of the Russian Federation VV Putin, all military operations were suspended. The occupied Aghdam, Kalbajar and Lachin regions were successively evacuated and returned to Azerbaijan. A Russian peacekeeping contingent has been deployed in Nagorno-Karabakh along the line of contact and the Lachin corridor. (president.az, 2020)

Another paragraph of the statement deals with the exchange of prisoners of war, hostages and other detainees, as well as bodies. Azerbaijan is taking appropriate measures to implement this clause in accordance with the rules of international humanitarian law. (dtx.gov.az, 2020)

The fact that these principles were not observed by Armenia raised the issue of non-compliance with the provisions of the declaration in the post-war period. The reason for these suspicions was the video recorded by Ukrainian journalist Alexander Kharchenko some time ago, after the cessation of hostilities. Thus, images were spread that Amin Musayev and Bayram Karimov, who were wounded during the Shusha battles, were seen wounded and taken away by Armenian soldiers in an unknown direction. (BBC.com, 2020)

Although Azerbaijan has called on the International Committee of the Red Cross to address the issue, it has not yet achieved a successful outcome (sputnik.az, 2020) and the process of negotiations for the return of prisoners is still ongoing. (Türküstan.info, 2020)

The next step after the signing of the trilateral statement and the cessation of hostilities is to discuss the details at the negotiating table. The Azerbaijani side, which liberated a large part of its occupied territories by military means, certainly has certain advantages around the table. One of the issues of interest to the people of both sides since the announcement of the statement is the question of which nation will live in Karabakh and surrounding areas. The President of the Republic of Azerbaijan Ilham Aliyev clarified this issue both in his appeals to his people and in his interviews, saying that I am responsible for what I said and that Armenians living in Nagorno-Karabakh can be sure that their security will be ensured. (president.az, 2020)

I have repeatedly said that all those living in Nagorno-Karabakh will continue to live there in peace and dignity. Armenians are our citizens.

Thousands of Armenians live in different parts of Azerbaijan, mainly in Baku. Armenians living in Nagorno-Karabakh can be sure that their security will be ensured, their financial situation will be better, and they will live a better life than they are under the pressure of the junta regime in Nagorno-Karabakh today.

Contrary to the ethnic cleansing committed by Armenians against Azerbaijanis living in Nagorno-Karabakh, the Azerbaijani side called on Armenia to deceive the international community and stop the policy of ethnic cleansing. (mfa.gov.az) Despite the fact that all these calls went unanswered, the President of Azerbaijan, in interviews with various media outlets during the war, assured that the Armenians living in Nagorno-Karabakh are their citizens and guaranteed their safety. (president.az, 2020)

On the other hand, video footage was shown showing violence against Armenian captives during the war. Hugh Williamson, Europe and Central Asia director at Human Rights Watch, said (Press, 2020): "There can be no basis for violence and humiliation against prisoners of war." "It is clear that humanitarian law has an obligation to protect prisoners of war. The Azerbaijani government must ensure the immediate cessation of this treatment. ”

Although some detainees described in videos reviewed by Human Rights Watch said they were treated well in their subsequent interactions with their families, there were serious grounds for concern for their safety and well-being. International humanitarian law or the law on armed conflict requires the parties to an international armed conflict to treat prisoners of war humanely in all circumstances. The Third Geneva Convention protects prisoners of war "especially from acts of violence or intimidation, humiliation and public interest."

The Nagorno-Karabakh conflict between Armenia and Azerbaijan escalated with Azerbaijan's military attack on September 27, 2020. The fighting ended on November 10 with a truce with Russia.

CHAPTER 3

SECOND KARABAKH WAR AND INTERNATIONAL LAW

3.1 Rules of International Law Applied During War

In international law, there are rules that must be observed not only in peacetime, but also in case of war or armed conflict, and there are legal regulations that states are subject to. The set of laws applied during war or armed conflict, regulating the rights and obligations of warring parties during conflicts, and specifically envisaging the protection of non-combat persons, is now called "international law of armed conflicts" or "international humanitarian law". It is known as international humanitarian law before the establishment of the UN

On the other hand, this set of rules is discussed under the name of "law of war". Although the terms armed conflict and war exist as two different concepts in international law, the law of armed conflicts is applied in both cases. What is meant by the concept of armed conflicts is international armed conflicts (interstate war, limited non-combat armed conflicts and internationalized armed conflicts) and non-international armed conflicts (Pazarcı, 2015) In general terms, armed conflict encompasses "all disputes between two states that require the use of armed force". As for the definition of the concept of war, from a legal perspective, although there is no universally accepted definition, "the use of force is the most intense and comprehensive one with the most severe effects" (Keskin, 1998)

According to another definition, war is armed conflicts between states or the use of armed force by one state to gain superiority over the other (Elif Uzun, 2013). As it can be understood from the definitions in question, armed conflicts are broader than war. In this context, while all wars are also considered as armed conflicts, not all armed conflicts qualify as wars.

Care was taken not to use the concept of war in the documents and decisions prepared under the umbrella of the UN, which was established after the bloodiest war in the history of humanity, such as the Second World War, was replaced by expressions such as "armed conflict", "use of force", and war continued to exist as a different and exceptional situation than before. (Keskin, 1998) The point to be noted here is that the use of the term war was avoided even in Article 1 of the Treaty, which regulates the founding purposes of the UN. With the establishment of the UN, for the first time in international law, the right to use force or wage war (*jus ad bellum*) was prohibited (UN Treaty, m. 2/4) (Charter of UN, 1945) and states have been granted only the right of individual or collective self-defense (UN Treaty, art. 51) (Charter of UN, 1945). Undoubtedly, it was the understanding that the war should be prevented as desired after the destruction caused by two great wars. However, since it is possible for an armed conflict that started within the scope of self-defense to end in war, the concept of war has not completely disappeared from the field of international law, it has only changed in nature. In order for the law of armed conflict to enter into force, it is not necessary for a conflict to be of a war nature or to use force within the scope of the right of self-defense in violation of Article 2/4 of the UN Treaty or as per Article 51 (Charter of UN, 1945) In case of conflict, it is to regulate the rules of law that must be followed regardless of the parties to the conflict, its reasons and whether the parties are right, and to protect the victims of war and their basic rights.

Although the idea that wars between states should be bound to a certain rule has existed since ancient times, the first serious steps on the subject in international law were taken in the 19th century (Aslan, 2008). The inclusion of international law in the field of interest for the first time was the 1864 "Geneva Convention Concerning the Improvement of the Condition of the Wounded on the Battlefield" (Convention for The Amelioration of The Condition of The Wounded in Armies in The Field, 1864), the 1868 "Declaration Concerning the Cessation of the Wartime Use of Explosive Bullets Under 400 Grams" (Declaration Concerning

the Cessation of the Wartime Use of Explosive Bullets Under 400 Grams, 1868); 1899 laying down the rules of land warfare.

The Hague Conventions dated 1907 (Conventions Respecting to the Laws and Customs of War on Land with Annex of Regulations, 1899) and the 1907 Hague Conventions (Conventions Concerning to the Laws and Customs of War on Land, 1907) signed as a result of the extension of these agreements. The Conventions of 1899-1907, also known as The Hague law, are among the first official agreements in which war crimes were defined, and weapons and techniques of war prohibited to be used during conflicts were regulated. Hague law, the methods and tools that warring parties can use during conflicts.

It was born from the idea that it is not unlimited. Perhaps one of the most important developments in the law of armed conflicts after the Hague conventions is the 1949 Geneva Conventions ("Geneva Conventions Relative to The Protection of Civilian Persons in Time of War, 1949) and the Additional Protocols to these conventions, which were adopted after the end of the Second World War. (Protocols to the Geneva Convention, 1977) Almost all the UN member states With these conventions to which it is a party, a clear distinction is made between military and civilian targets, defense and defenseless areas, and international law rules and minimum behavior patterns to which the warring parties are bound during armed conflicts have been regulated; Obligations that ensure the protection of non-combatants and prohibit the use of weapons and methods that cause unnecessary suffering and death (Report on Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects, 1973) are envisaged. It should be emphasized that the Geneva Conventions must be applied during any international armed conflict, in case of war or in case of invasion of a state's territorial integrity.

In accordance with the above-mentioned international instruments, attacks directly targeting non-combatants and civilian settlements are strictly prohibited

acts. (Geneva Convention (I), 1949) In this context, humane treatment of persons not involved in armed conflicts, (Geneva Convention (I), 1949) not killing those who surrender, (Protocol I additional to the Geneva Conventions, 1977) appropriate treatment and treatment of the wounded and sick (Geneva Convention (I), 1949) , protecting the sick and wounded, prisoners from armed attacks (Geneva Convention (III), 1949) and providing them with humanitarian aid, (Geneva Convention (III), 1949) respecting the emblems and signs of voluntary aid organizations such as the Red Cross and Red Crescent, preventing the inappropriate use of these emblems, (Protocol I additional to the Geneva Conventions, 1977) their personnel, (Geneva Convention (I), 1949) health institutions (Geneva Convention (IV), 1949) and personnel, clergy (Protocol I additional to the Geneva Conventions, 1977) must be respected under all circumstances, and vehicles carrying medical supplies must not be exposed to attacks (Protocol I additional to the Geneva Conventions, 1977). In summary, military necessity, prevention of unnecessary pain and suffering, and proportionality are the basic principles on which the rules of the law of armed conflict are based. States are protected by the 1948 “UN Universal Declaration of Rights”, (Universal Declaration of Human Rights, 1948) the “European Convention on Human Rights” and the 1966 “International Covenant on Civil and Political Right.

They are responsible for ensuring their right to life. In other words, the protection of civilians, as a rule, is also evaluated on the basis of human rights law that is always applied (in time of peace or in time of war). In accordance with the Additional Protocol No. I of 1977 and the “The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict” of 14 May 1954, targeting historical monuments, works of art or religious sites constituting cultural heritage and attacking the natural environment through retaliation are prohibited. The “Convention for the Protection of the World Cultural and Natural Heritage” also prohibits the act of directly attacking the cultural and natural heritage.

One of the obligations contracted to the states in the international law of armed conflict is related to the use of weapons and techniques that cause unnecessary suffering and death. The use of incendiary and destructive weapons, mines, biological, chemical and nuclear weapons are among the prohibited weapons. To other international conventions accepted within this framework; “Protocol on the Prohibition of the Use of Asphyxiant, Toxic and Similar Gases and Bacteriological Means in Warfare” dated 1925 Geneva Protocol, 1972

Examples are the “Convention Banning the Production, Storage and Use of Biological Weapons”, and the 1993 “Convention on the Prohibition of the Development, Production, Storage and Use of Chemical Weapons and their Destruction”. Similarly, turn on civilians as a method of warfare.

It is forbidden to attack, destroy or render unusable the vital elements such as agricultural areas, agricultural products, drinking water facilities, warehouses and irrigation channels allocated for the production of foodstuffs and foodstuffs.

In conclusion, we can say that there are two basic principles of international law of armed conflicts, which come into play with the onset of conflicts and are applied until the end of the conflicts and the signing of the peace document. The first of these is the protection of the civilian population and civilian objects. The basic principle in the protection of civilians is their humane treatment and respect for basic human rights. In this context, states make a clear distinction between military and civilian objectives.

They should discriminate and should not make civilian elements the subject of attack in any way. Similarly, objects necessary for the survival of the civilian population must be protected. Damage to property other than for military necessity is against the law. Cultural assets and the natural environment are exempt from attack. The second important principle is the prohibition of the use

of weapons that cause unnecessary suffering and death. The application of this principle means that states have unlimited choice of weapons.

Violations of the above-mentioned laws of armed conflict constitute crimes. As a matter of fact, article 8/2 of the Rome Statute, which defines war crimes; Serious violations of the 1949 Geneva Conventions and violations of other international regulations and customary law applicable to armed conflicts are considered war crimes and criminal liability is foreseen for the perpetrators of these crimes.

3.2 War Crimes Committed by Armenia During the Second Karabakh War

The conflicts, which turned into war with the Azerbaijani side's counter-movement operation, following the attacks by the Armenian Armed Forces on the Azerbaijani Army positions and civilian settlements on the border line by viciously violating the ceasefire on September 27, 2020, ended with the signing of the Memorandum of Understanding between the parties on November 9, 2020. has reached. During these conflicts, which is described as the Second Karabakh War, Armenia suffered a great deal of violence arising from the gross violation of the rules of armed conflicts.

Have been found to have committed many war crimes acts. At this point, it is necessary to examine the war crimes acts committed by Armenia and to investigate whether the humanitarian law is applicable. In the light of official statements of the Azerbaijani authorities, official statements, national and international reports, and information reflected in the press, the border lines of the Armenian side during the war, as well as the border lines where the conflicts took place, are far from the conflict zones such as Shamkir, Ganja, Mingachevir, Barda, Gabala, Goranboy, Khizi and Absheron. It was observed that the cities were also attacked by densely populated cities, and these cities were subjected to heavy bombardment with banned cluster munitions and medium-range missiles. As a result of the cluster bomb and ballistic missile attacks, especially on the cities of Barde and Ganja, a total of 100 civilians, including children and the elderly, lost their lives, approximately 416 civilians were injured (Human Rights Watch, 2020), and nearly 3,000 civilian facilities were destroyed (Human Rights Watch, 2020). However, the production, trade and use of these weapons, 1925 Geneva Protocol and the 2008 “Cluster Munition Ban Convention”. Therefore, the Armed Forces of Armenia gravely violated the principles of the law of armed conflicts

by targeting civilian objects directly and using weapons that cause unnecessary suffering and death.

Among the civilian elements attacked, ambulances and medical facilities, there are also educational institutions and cemeteries. In addition, Armenia has deliberately attacked vital civil infrastructure facilities such as electricity, gas, water and communication stations, severely damaged the electricity and energy infrastructure, and as a result of these actions, some settlements have been left without electricity.

If we need to evaluate the above-mentioned actions from a legal point of view, the Armenian forces directly targeted civilian settlements with missiles and artillery fire, and deliberately and deliberately carried out an attack against the civilian population who did not take part in the conflict. In this sense, both the common article 3/1/a of the 1949 Geneva Conventions, as well as crimes that are included in the category of war crimes in violation of Article 8/2/b of the Rome Statute. In addition, by targeting civilians and civilian infrastructure elements, Armenia violates the 2nd article of the “European Convention on Human Rights” regulating the right to life, the 3rd article of the “United Nations Universal Declaration of Human Rights” and the 1966 “International Covenant on Civil and Political Rights”. Article 6; has also violated Article 14 of the “European Convention on Human Rights” on the prohibition of discrimination and Article 2 of the “United Nations Universal Declaration of Human Rights”. By committing acts of war crimes by bombing civilian facilities without military necessity and destroying property illegally, he also committed crimes in the nature of war crimes. has caused.

The use of weapons and methods prohibited by international law by Armenian forces during the war; Targeting medical facilities and vehicles in violation of Article 35 of the 1949 Geneva Convention No. I is another war crime. Similarly,

deliberate attacks on educational facilities in violation of Articles 51 and 52 of Additional Protocol No. I of 1977 are also considered war crimes.

One of the important factors for the lives of civilians during armed conflicts is the protection of the environment. However, the armed forces of Armenia did not refrain from attacks that would harm the cultural and natural assets of Azerbaijan in the battlefields, historical buildings of cultural and archaeological importance were destroyed, and terrorist activities were carried out against cultural heritage such as burning religious places and using them inappropriately.

In addition, Kalbajar committed environmental crimes such as deliberate burning of forests around Lachin and Aghdam, mass felling of trees, and rendering lands unusable,⁴⁹ with the addition of Additional Protocol No. It seriously violated the relevant provisions of the Hague Convention, as well as the 1972 Convention for the Protection of the World Cultural and Natural Heritage.

Another violation is the mounting of gun towers on armored ambulance vehicles with the Red Cross symbol on them. In accordance with the principle of loyalty, it is allowed to evacuate the wounded and dead of the armies of the fighting parties with the vehicles with the Red Crescent, Red Cross or Red crystal symbols on them, so that the armies of both sides respect the vehicles in question and do not harm the medical personnel in any way, including the smallest harassment fire. required. Armenian side.

Both Azerbaijan and Armenia did not do enough to protect non-combatants, and even seem to have targeted them in various ways.

Azerbaijan repeatedly targeted Stepanakert. International outlets reported indiscriminate shelling. Hospitals, schools, residential areas all were hit. President Aliyev's blanket denial of such shelling to the BBC, even in the plain light of evidence, indicates that he understood that this was a transgression. Armenia, in turn, appears to have targeted Azerbaijani cities, including Ganja,

Barda, and Terter. According to Human Rights Watch, both Armenia and Azerbaijan used cluster munitions to target residential areas.

On the other hand, by abusing its rights arising from these rules, it transformed these vehicles, which are prohibited from damage, into a threat and a military target, by means of a gun tower placed on vehicles with the Red Cross symbol, and thus violated Articles 18 and 38 of the Additional Protocol No. I of 1977., Article 12 of Additional Protocol No. II and Geneva Convention No. I of 1949 severely violated the relevant articles. Armenia's war crimes do not end there. Another illegal act that should be emphasized is Armenia's use of children in armed conflicts. International law of armed conflicts, children placed under special protection. The parties to the conflict should protect the children from all kinds of attacks and give them the necessary help and care when needed. Moreover, in accordance with Article 77 of Additional Protocol No. I, combatants should take all measures to prevent children who have not reached the age of fifteen from participating directly in the conflicts, and should avoid their recruitment into the military forces. However, the Armenian Armed Forces, in addition to using children in military activities, should not send children to Azerbaijani civilian settlements. their missile attacks result in their death. With such actions, the Armenian side also violates Article 38 of the "Convention on the Rights of the Child" and Article 8/2/b of the Rome Statute, which defines the use of children in military activities as a war crime.

All the actions outlined above, civil settlement by Armenia attacks targeting civilians directly, preventing the basic needs of civilians from being met by targeting vital infrastructure elements as a method of armed conflict, use of weapons prohibited by international law, organizing attacks on health facilities and vehicles, health personnel, Red Crescent, Red Cross or Red Crystal Not respecting the vehicles with the symbol, the use of children in armed conflicts, the

subject of attacks by people in the categories in special need of protection, and the realization of attacks that will damage the cultural and natural heritage are considered as war crimes. As mentioned earlier, only attacks on military targets and combatants are considered legitimate in times of conflict. Attacks against the civilian population and civilian elements are against international law. In other words, from the moment the war started, everyone with civilian status should be treated humanely and civilian objects should be protected against the effects of war. In particular, women and children, who are under special protection under the international law of armed conflict, should not be subjected to attack, and actions against their life and bodily integrity should be avoided. However, the people who died as a result of the attacks of the Armenian Armed Forces targeting civilian settlements and among the injured are women and children. Similarly, the resources that are indispensable for people's life should not be destroyed and actions that would harm the natural environment should not be taken. Armenians, on the other hand, by using the "scorched earth" tactic, which is a method encountered in old wars and prohibited by Article 54 of Additional Protocol I, caused serious damage to the natural environment, destroyed everything in the lands they had to leave, rendered them unusable, destroyed forests, set it on fire and turned the whole place into ruins.

CHAPTER 4

POST WAR PERIOD

4.1 The end and new horizon after war

The Second Karabakh War symbolizes the shelving of the Bishkek Protocol signed on May 5, 1994 and the change in the status quo created by this protocol in the region. While the diplomatic negotiations, which have been carried out in the region for 26 years, continue to be insoluble in the form of "neither war nor peace", a new equation has emerged with this war. Since the ceasefire signed following the First Karabakh war, the Azerbaijani army has achieved such great field gains for the first time and the occupied Nagorno-Karabakh and its surrounding seven districts have been liberated to a large extent. II. We can say that the Karabakh war was shaped around four main reasons. The first of these reasons is the status quo, which started in 1994 and has become increasingly unsustainable. The conflicts that took place in the form of two-year periods between 2010-2020 and the provocations of Armenia play a decisive role at this point. Likewise, diplomatic negotiations that have been carried out since 1994 have not produced a solution to the Karabakh conflict, nor have they brought stability and peace to the region. The second is the military capacity increase, which Azerbaijan has strengthened over the years compared to Armenia. The military capacity of Azerbaijan, which has been developed, diversified and strengthened over the years, has been one of the most important factors in the process leading to the Second Karabakh war. Azerbaijan's military expenditures and capacity increase over the years have caused the difference between Armenia and Armenia to increase in quantity and quality. This difference between the two states was clearly observed in the field as one of the determining factors in the Second Karabakh War. The third is that the diplomacy implemented by Azerbaijan and the global and regional conjuncture are appropriate, and the fourth

is that Turkey is effectively involved in the process in favor of Azerbaijan. Azerbaijan's balanced policy with other states, Russia's high dialogue with Azerbaijan and the problems with the pro-Western Armenian administration, the USA's passive focus on its internal problems and elections, Iran's inability to take action due to political and economic difficulties, France Turkey's lack of influence and Turkey's unconditional side with Azerbaijan are the main determinants of this conjuncture. However, Turkey's effective involvement in the process in favor of Azerbaijan was as a result of the clashes that took place in Tovuz on 12 July. Both for Turkey's energy geopolitics and energy supply security (Baku-Tbilisi-Ceyhan pipeline, Baku-Tbilisi-Erzurum pipeline, TANAP pipeline, Baku-Tbilisi-Kars railway) and Azerbaijan's energy sales, shipment and logistics Targeting Tovuz, which has strategic importance in the context of security, has led Ankara to take concrete steps. As a matter of fact, the joint exercises carried out by the two countries at the end of July and the beginning of August, and the subsequent increase in sales of Bayraktar TB2 SIHAs, ammunition, missiles and electronic warfare systems, which are Turkish Defense Industry products, to Azerbaijan are the most basic indicators of these concrete steps.

Between 27 September and 9 November 2020, that is, in the 44-day period from the start of the Second Karabakh War to just before the signing of the ceasefire, the Azerbaijani army liberated more than two hundred and ninety settlements. Among these settlements, there are strategic provinces such as Gubadli, Zangilan, and Fizuli, and numerous villages connected to them. In addition, many villages and settlements connected to Lachin, Khojali, Tartar and Khojavand were saved. The Azerbaijani army established superiority against the invading Armenian elements on the entire front line, and maintained its air superiority throughout the entire conflict, especially thanks to the UAV/SIHA and electronic warfare systems. The consecutive losses in the field broke the resistance of the Armenian forces, especially in the last period, the Azerbaijani army has started to gain comfortable gains. Finally, the liberation of Shusha province from Armenian

occupation forced the Yerevan administration to accept defeat. The Shusha region, which we can describe as the heart of the Nagorno-Karabakh region, is a strategic area where the main supply routes are located between Armenia and the Karabakh region. The basic aids and shipments provided by the Yerevan administration to the region passed through this region, and the transportation between the two regions was provided through the Shusha line. With the cut of this line by the Azerbaijani army, the expectation in the field was that the entire region would be liberated in about a week. The liberation of Shusha started to raise concerns about the influence of the third parties in the region, and on November 10, the parties reached an agreement with the mediation of Russia. The new equation that emerged in the region with the ceasefire would have been shaped very differently had it not been for Russia's intervention; all occupied territories would be liberated and Moscow's influence in the region would be greatly diminished. In short, the agreement in question caused significant changes in the geopolitics of the region and had important consequences for both the parties to the agreement and the third parties of the war.

If we look at what Azerbaijan has achieved with the agreement, first of all, it has preserved all the gains in the field at the diplomacy table; We can say that it provides the control of strategic provinces such as Gubadli, Zangilan, Jabrayil, Fizuli and Shusha and many settlements connected to them. He also gained control of the Kalbajar, Lachin and Aghdam regions without a fight, within the scope of the agreement. When we compare with the situation before September 27, about 80 percent of the occupied lands have been liberated, and the majority of the displaced civilians have the opportunity to return. Armenian soldiers had to withdraw from all Karabakh lands, Nagorno-Karabakh and all 7 districts. Although minor problems arose due to the different interpretation of the agreement and the existing shortcomings, the purpose was realized for a while. Finally, opening a corridor over Nakhchivan, which was never on the agenda before, is seen as an important plus for the Turkish World. The summary of the

gains for Azerbaijan is the invalidation of the Bishkek Protocol, the liberation of Karabakh and the net loss of Armenia.

In addition to the gains, when we look at the losses brought by the agreement for Azerbaijan and the issues that remain ambiguous, the first thing to note is that while the entire Karabakh could be liberated and the conflict could be ended without the arrival of the Russian military, the ceasefire was agreed to, and this situation still leads to the ongoing discourse of the "Uncertain Status of Karabakh". Secondly, there is the possibility that Russian soldiers are stationed on the territory of the country and that they may remain permanently within the scope of the agreement. The third negative situation is that the Nakhchivan corridor will be opened under the control of Russian intelligence and the situation of commercial activities here is extremely ambiguous. However, the ambiguity in the agreement on the future of Khojaly, Khankendi, Aghdere and Khojavand regions, which causes uncertainty of status in all of them, the absence of any provision regarding these regions, the absence of any statement about the future of Armenian civilians living in the region, how and when the region is subject to the Azerbaijani administration. The uncertainty about whether it will happen or not is the most negative aspect of the ceasefire agreement for the Baku administration. While these ambiguities are reflected in the Russian press as Armenian control in the region will continue, they are read by Yerevan as preventing total loss. In addition, it is seen as a significant loss that the occupied Gazakh district belonging to Azerbaijan was returned at first and removed at the last moment with diplomatic maneuvers under the terms of the agreement.

When we examine the gains of the ceasefire from Yerevan, the fact that all Karabakh lands were about to be lost, a situation that was better than the worst was achieved, and that a total loss was recovered over some ambiguities (especially regarding the Gazakh, Khojaly, Khankendi, Aghdere and Khojavand

regions) under the guarantee of Russia. If Russia had not intervened, military losses would have multiplied, all occupied territories would have been lost, and the political and economic turbulence of the Yerevan administration would have become even more difficult to manage. When we look at the losses, beyond the absolute defeat in the field, the 7 districts that it occupied and its independence, including some settlements in Nagorno-Karabakh, were completely lost, had to withdraw militarily from all occupied lands, and instability in domestic politics was fueled. This instability has also reached the dimensions of rebellion. In addition, he had to create a corridor between Azerbaijan and Nakhchivan over Zangazur. In short, he suffered a clear defeat and had to accept a scenario that was better than the worst.

When we look at the new situation in terms of Russia, the tertiary party of the ceasefire, and Turkey, which played an important role in the liberation of Karabakh, first of all, Russia's general policy towards the region was designed around the need to understand a new equation in which the current status quo is unsustainable and compromises on both sides. In this case, the return of 5 departments to Azerbaijan and the deployment of Russian peacekeepers to the region were expressed by Russian politicians and bureaucrats. As a result of the agreement reached, we see that an equation close to Russia's position has emerged, and especially the planned peacekeeping force has been deployed to the region. Long story short, Russia strengthened its influence in the region in line with this agreement. However, we should also underline that Azerbaijan has saved more departments than the plans and proposals in question. In this process, we see that Russia has gained some other gains in addition to its fortified influence with its military presence. Chief among these additional gains is the punishment of Prime Minister Nikol Pashinyan and the Yerevan administration, which followed pro-Western policies. Then, with the cutting of the border between Karabakh and Iran, the decrease in Tehran's influence in the region is an important additional gain for Russia. Moreover, the control obtained

by the Russian intelligence in the Nakhchivan corridor is read by Moscow as an opportunity to control the Armenian-Iranian trade carried out through the Zangazur corridor. Finally, the Baku-Moscow relations have been preserved and deepened further.

Finally, when we look at the new equation formed from Turkey's perspective, we see that Ankara plays an important role both in the process leading to the war and in the geopolitical equation formed after the war, and in this respect, it is concretely involved in the geopolitics of Karabakh. The UAV/SİHA, ammunition, and electronic warfare systems that Turkey provided to Azerbaijan in the Karabakh war played a game-changing role in the war process. The staff intelligence and technical/equipment support transferred to Baku were very effective in the superiority established against the Armenians in the field, especially in destroying the land elements and minimizing the losses. The Azerbaijani side maintained both military and psychological superiority throughout the conflict. In addition, the Ankara administration sided with Baku not only in military terms, but also in diplomacy and all other means. In this context, it has followed a preventive policy against Armenia's efforts to isolate Azerbaijan in the region and has also eliminated Yerevan's efforts to defame Baku's just struggle in international public opinion. Turkey's concrete support in different aspects compared to previous years was highly appreciated by Azerbaijan and created a feeling of gratitude. In this context, Turkey has gained an important place and influence in the geopolitics of the region through Azerbaijan. In addition, the superiority of Turkish-origin weapons over Russian-made weapons in the field has been an important source of prestige, and it has found a response in various countries, especially in Ukraine.

4.2 JWT principles after war: problems

In the last 20 provinces, both revisionists, all of them, after the end of the confusion, the third party has been awarded as a "consultant" as a "revisionist". Because, there are questions about the preparation of settlement agreements and the re-establishment of tattoos, punishment and revenge issues, when the defeated person knows what can be demanded.

However, only in the last years, the gap between "jus in bello" and "jus post bellum" has been started to be considered. The French philosopher Sesil Fabr eyd states that there is no significant work on the ethics of consolidation of warfare, especially in combat. Because philosophers are now claiming that there is a new regime called "jus ex bello" or "jus terminatio" that marks the end of armed disputes. David Rodin, the author of the concept of "jus terminatio", states that a frame jus ad bellum should be the fourth and independent component of jus in bello and jus post bellum. But it is possible to determine the framework that will guide the convergence of the combat in an honest way. It is only possible to start this by constantly analyzing the conditions that caused the war to take place. However, one point that should be known here is that it changes with the start of the war. Because there are more people who died in the war, it turns out that new wars are planned because of the enemy, new and possible impetus to be completed, and p. The mechanical practice of the "Ad bellum" principles can be brought to aberrant situations. The second and more important one is that the name bellum cannot represent the basic conditions of the warfare supplement. They apply to specific situations in which two opponent aim to minimize the combat damage and to take advantage of the victim defense force are balanced. Amartya Sen states in her book "The idea of Justice" that what ends wars is not to achieve justice, but to confront injustice. In order to achieve the idea of a bad idea, it should be taken into account that there are specialties between applying power and ending the use of power.

Jus Post Bellum expresses what should be done according to what criteria in order to reintegrate people into life after the war correctly.

As mentioned before, Jus post bellum covers what needs to be done after the war. At this point, it is necessary to bring back to life the geographies and people damaged by any war, and these should be done in a systematic way. Just war theory, from the opening of the war to its execution and the post-war period.

defines and regulates a just war process in international relations. The realization of wars between societies has theoretically triggered such studies and thought activities on the conditions of war. These theoretical developments have determined the criteria in the classical international law period. Because in the classical period of international law, there is no supreme authority or custom that prohibits the use of military force. The international law regulating war was prepared and became valid in much later periods. In this sense, it is useful to make a few explanations about the process that is called the modern legal period and developed mainly in the 20th century. The Briand - Kellogg Pact signed in 1928 was the first development to ban war and the use of military force in international relations. The League of Nations was established in 1920 and aimed for countries to solve their problems peacefully. However, this organization has not been successful in terms of its structure. The United Nations organization, which is still valid today and the most effective structure in this regard, was established in 1945. The United Nations organization stated that states would resolve their disputes through peaceful methods in international relations and revealed that the use of military force in foreign policy is prohibited. These all guaranteed by the UN Charter. The monopoly on the use of military force has been the United Nations Security Council. In this context, it can be said that theoretical studies in the classical legal process formed the infrastructure of binding international law that imposes sanctions today.

A number of objections found in the "revisionist" works of McMahan, Rodin, and others criticize the just war community. At the heart of this conflict with the traditional theory of just warfare is the moral equality of warriors. Alongside international law, traditionalists roughly argue that all soldiers on both sides of a war are legitimate targets and enjoy equal moral protection. Revisionists respond that soldiers fighting for an unjust cause are guilty of posing an unjustified threat and therefore enjoy no moral protection. To deny this would be like insisting that a criminal and the police chasing him are equally legitimate targets of violence. Whether they are ultimately right or not, many of the revisionists' arguments have a force of persuasion that leads to the question of how the conventional view has remained unquestioned for so long.

Extending this "law enforcement" analogy to war, others question the authority of soldiers to inflict actual lethal violence on one another. In law enforcement, we often feel that the police should warn offenders or give them the opportunity to surrender before they can be violently targeted. Revisionists argue that our moral duties to one another cannot be significantly altered by our leaders declaring a state of war. Therefore, we need more reasons to kill enemy soldiers than we usually think (Gross, 2006)

One possible consequence of the revisionists' arguments is the growing popularity of the position of contingent pacifism. A contingent pacifist believes it may be legitimate but actually maybe never is. As revisionists presented arguments for a new set of moral constraints on war, some philosophers began to realize how unlikely any war was to bear this high burden.

CONCLUSION

Executive Summary

The main purpose of this study was to analyze the 44-day Karabakh war from the perspective of JWT in order to determine whether the policy realized by the parties to the conflict is in accordance with the three basic principles of JWT (jus ad bellum, jus in bello, jus post bellum).

As noted at the beginning of this study, the war that began in September 2020 was the result of a conflict that had not been resolved for many years. The first sparks of the war, which ended in a ceasefire in May 1994, began in the 1980s. The reason for the conflict was the attempt of Armenia to annex sovereign territories of Azerbaijan. As a result of war between 1988-1994 Armenia occupied Nagorno-Karabakh and 7 surrounding regions, which are internationally recognized as the territory of Azerbaijan. Hundreds of people have been killed in recent years as Armenia repeatedly violated the ceasefire during the post-occupation ceasefire and retaliated. For decades, the issue of conflict has been raised at various regional and international conferences, but no concrete action has been taken.

For almost 30 years, Armenia's disregard for internationally adopted legal documents, the unfulfilled promises of the new government to resolve the conflict, and, finally, the new provocations and new territorial claims of Armenia in recent years have been the main reasons for the war.

Not only during the war, but also during the humanitarian ceasefire, when Armenia targeted a large number of civilians once again demonstrated that Armenia`s conduct of war was neither in line with the principles of JWT nor ethics of war.

Therefore, at the beginning of the study, it covered all three principles of the JWT and focused on a detailed analysis of the war. The war was examined in turn to ensure that Jus ad bellum, Jus in bello, and Jus post bellum complied with the basic rules. Thus, according to international documents, Azerbaijan at the beginning of the 44-day war

The impending end of the war was discussed after the parties clarified the facts of the war, both right and wrong. Finally, the signing and implementation of the 44-day war document was examined, and the results of this study were determined.

Research Outcomes

The main purpose of this study was to analyze the 44-day Karabakh war from the perspective of JWT in order to determine whether the policy realized by the parties to the conflict is in accordance with the three basic principles of JWT (jus ad bellum, jus in bello, jus post bellum).

The 44-day Second Karabakh war, which ended with the November 10 statement, had great consequences for the analyzing some realities . The results of the dissertation can be summarized as follows

This war was inevitable after a long and fruitless peace effort. Instead of the Armenian side to comply with international documents and evacuate the occupied territories. The new territorial claims, known as Azerbaijani territory, were unjustified

The Azerbaijani side was right to start fighting for the defense of its lands. Thus, the occupation lasted for many years and many negotiations and attempts were made to resolve it peacefully. In response, propaganda and new territorial claims justify the use of force and the use of military force. As a result, the possession of the right and legitimate intention clause is also proved. The Azerbaijani side intended to defend its lands and territorial integrity.

The phrase "in the right way and ethical manner", which explains the principle of Jus in bello, was misunderstood and sharply violated by Armenia during the war.

Armenia did not comply with the war to protect all innocent civilians, and this principle was grossly violated by targeting the population outside the war zone. The attack on settlements and the loss of lives of civilians of all ages are clear evidence of this. In addition, the targeting of a water reservoir and a electric station in Azerbaijan, as well as damage to the landscape by various types of missiles fired at civilians, showed that the principle of protecting the environment was not

taken seriously. In general, most of the weapons used in war, in addition to people, fighters and civilians, have caused considerable damage to the environment. Every party to a war, whether justified or unjustified, is responsible and guilty of the damage done to the environment. The Armenian side, which did not accept that it had lost by force until the end of the war and did not inform its people about the realities on the battlefield, was not ready for the conciliation process. That is why it was said that they would win until the last day.

Finally, it should be noted that no matter what theory explains or evaluates war, no event that puts an end to human life is just, and no war is justified.

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