

BOFAXE

COLLECTIVE SELF-DEFENCE OR JUST ANOTHER INTERVENTION? (Part 1) Some Thoughts on Turkey Allegedly Sending Syrian Mercenaries to Nagorno-Karabakh

Following the recent escalation between Azerbaijan and Armenia in the conflict over Nagorno-Karabakh, multiplying voices note that Turkey, Azerbaijan's closest ally, has been sending not only its military but also Syrian mercenaries to fight at the frontline against Armenia (see [here](#), [here](#), [here](#), and [here](#)) – an allegation which both Turkey and Azerbaijan have denied (see [here](#)). Notwithstanding the fact that many States have condemned this intervention and urged Turkey to stay out of the conflict (see [here](#) and [here](#)), this post examines the question of whether there could be a legal ground for Turkey's actions.

The conflict about Nagorno-Karabakh

Nagorno-Karabakh is a disputed area on the territory of Azerbaijan currently under the effective military control of Armenia. After a full-fledged war between 1991 and 1994, Azerbaijan and Armenia signed a cease-fire (see [here](#)). Since then, the OSCE Minsk Group initiated several attempts in order to reach a peaceful solution to this conflict. However, none of these attempts was successful. To the contrary, multiple violations of the cease-fire took place since 1994, most recently in 2016.

On 27 September 2020, both parties resumed hostilities. Armenia, being the first to declare war (see [here](#)), reported that the hostilities began as Azerbaijan launched an attack against military positions of Armenia. Azerbaijan on the other hand stated it merely responded to Armenia shelling its army positions and settlements along the entire front line (see [here](#)). The fighting continued until 10 October, when a second cease-fire signed by Armenia and Azerbaijan came into effect (see [here](#)). After multiple reports of cease-fire violations on both sides (see [here](#) and [here](#)), the United States, Armenia, and Azerbaijan released a joint statement, announcing another cease-fire taking effect on 26 October (see [here](#)). Again, reports of cease-fire violations emerged just minutes after the agreement came into effect (see [here](#)).

Prior to the resumption of hostilities on 27 September, allegations arose that hundreds of Syrian fighters recruited by Turkey were transferred to Azerbaijan (see e.g. [here](#)), while Turkish officials stated that Turkey would support Azerbaijan's right to self-defence (see [here](#) and [here](#)). As Turkey is not a belligerent party in the Nagorno-Karabakh conflict, the only possible ground of justification for its alleged interference is the one of collective self-defence.

Collective self-defence: looking back at *Nicaragua*

The "inherent" right to collective self-defence is recognized in [Article 51 UN Charter](#) as well as customary international law. The question was most famously dealt with by the International Court of Justice (ICJ) in its 1986 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua)* decision. The United States argued that their actions carried out on behalf of El Salvador, Honduras and, Costa Rica against Nicaragua were justified on the ground of collective self-defence. The ICJ ultimately decided against the US: it did not find an armed attack by Nicaragua that could have triggered such a right to self-defence.

In *Nicaragua*, the Court identified three requirements for the existence of a right to collective self-defence. First, there must be an armed attack against a member State. Second, the State under said attack must declare to be the victim of an armed attack and, third, request the help of another State. The additional criteria of necessity, proportionality, and of a reporting obligation to the Security Council do not determine the existence of a right to self-defence, but rather whether the act of self-defence was carried out in accordance with international law. Non-compliance with one of the latter criteria would, therefore, constitute an additional ground of wrongfulness.