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How Can International Law Principles of Territorial Integrity and Non-Intervention Unlock the Armenia-Azerbaijan Peace Process

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Despite earlier optimism, the Armenia-Azerbaijan peace talks are still ongoing and may be at a standstill. One of the stumbling blocks on the path to an agreement on a peace treaty is Yerevan's unwillingness to explicitly recognize, in writing, Azerbaijan's territorial integrity (although Armenian prime minister Nikol Pashinyan has made oral pronouncements to that effect several times). However, even this step—written recognition—should not be understood to be sufficient. More specific legal, binding commitments are required in addition, such as constitutional changes, the cessation of unilateral financial support to the ethnic-Armenian secessionist entity, and the deployment of Armenian soldiers in any part of sovereign Azerbaijani territory, including liberated Karabakh and Eastern Zangezur as well as in the area that falls within the zone of deployment of the Russian peacekeeping contingent as defined by the terms of the 10 November 2020 tripartite statement that ended the Second Karabakh War

Territorial Integrity and Minority Rights

An important feature for any future peace treaty text between Armenia and Azerbaijan is that it should not leave unresolved any key issues for future discussion; it should thus be neither piecemeal nor have an interim character. A second important feature is that it should not leave any room for abusive textual disputations in the future; textual ambiguity could provide a pretext for renewing the hopes of the Armenian *miatsum* movement that was the root cause of the conflict between Armenia and Azerbaijan. A third important feature of any peace treaty text is to ensure its full legal compliance

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with the requirements of a “treaty” under the Vienna Convention on the Law of Treaties (1969) and be ratified by the parliaments of both states and be deposited with the United Nations.

Considering the devastating history of Armenia’s occupation of sovereign Azerbaijani lands, ensuring Armenia’s adherence to and respect for Azerbaijan’s territorial integrity is a critical issue for Baku. Apart from the formality and structure of a final peace treaty, Azerbaijan has been clear in wanting Armenia to explicitly recognize Karabakh as part of Azerbaijan and waive any direct or indirect claims to it. Thus, Azerbaijan requires Armenia’s explicit and unconditional recognition in the treaty of the territorial integrity of Azerbaijan, including the former Nagorno-Karabakh Autonomous Oblast (NKAO) and the seven surrounding regions.

Reports indicate that Armenia is opposed to such explicit and unconditional language. Rather, Yerevan wants it to be qualified with a statement referring to the “rights and security of Armenians in Karabakh” (or something similar), which is, effectually, an exception to the general territorial integrity principle. This new proposed blanket formulation (“rights”) suggests that Armenia seeks to go beyond the “minority rights” formulation under the Council of Europe’s Framework Convention for the Protection of National Minorities (1998), which would open the door for a future argument to be made about a people’s right to self-determination or remedial secession. Yerevan seems to want to hope that its adoption would lend political, albeit not legal, legitimacy for starting another secession attempt by the Karabakh Armenians from Azerbaijan down the road.

This is opposed by Azerbaijan, which may be willing to entertain a formulation that encompasses the term “minority rights” so long as it the scope is understood to be limited to cultural and educational rights, as established in international law, including the Framework Convention for the Protection of National Minorities (1998)—i.e., a formulation that excludes an opportunity for secession. In addition, in Azerbaijan’s view, the new Armenian formula excludes the rights of ethnic-Azerbaijanis who lived in the former NKAO prior to their expulsion in the period revolving around the First Karabakh War, not to mention the minority rights of ethnic-Azerbaijanis who lived in parts of Armenia in the same timeframe.

The EU has recently proposed a new formula to bridge the parties’ political and legal sensitivities: “unequivocal commitment to the 1991 Alma-Ata Declaration and the respective territorial integrity of Armenia (29,800 km2) and Azerbaijan (86,600 km2).” However, this formula is a partial compromise, which may prove to be legally problematic in practice in the future unless corollary elements are incorporated.

The reality is that mere declarations about recognizing territorial integrity do not prevent future aggression in practice. Political statements by Armenia that recognize Azerbaijan’s territorial integrity to satisfy foreign audiences are not enough to prevent

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a future aggression for the simple reason that they are not legally binding. Considering such risks, the Armenia-Azerbaijan peace treaty should be based on the principles of territorial integrity and non-intervention *and* constitutional amendments in Armenia.

Understanding the Principles of Territorial Integrity and Non-Intervention

The principle of territorial integrity—one of the foundational principles in international law—means that one state will not invade and occupy the territory of another state. Here is the relevant section of the UN Charter: “All Members shall refrain in their international relations from the threat or use of force against the *territorial integrity* or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (emphasis added).

In terms of international security policy, this UN Charter formulation provides protection for weak states against more powerful ones. If one state violates the territorial integrity of another state—apart from its legal consequences—such illegal territorial acquisitions will not be recognized as legitimate by other states. To that end, in April 2008, the UN General Assembly adopted Resolution 62/243 titled “The Situation in the Occupied Territories of Azerbaijan” that “reaffirms that *no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan*, nor render aid or assistance in maintaining this situation” (emphasis added).

Likewise, the principle of non-intervention means that one state will not interfere in the internal affairs of another state by, for instance, financing and supporting separatist groups. Thus, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States, adopted by the General Assembly on 24 October 1970, provides the following formulation: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic, and cultural elements, are in violation of international law.”

These principles are complementary and essential for the resolution of the Armenia-Azerbaijan conflict. It would be a fundamental legal mistake to include one and not the other aforementioned principle in the final peace treaty. However, including these principles in the peace treaty requires more detailed elaborations and additional terms attached to them.

Amending Armenia’s Constitutional Documents and Laws

Armenia’s Declaration of Independence, its Constitution, and various laws envisage Azerbaijan’s Karabakh region as effectually *de jure* part of Armenia. Azerbaijan

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rightly perceives the relevant formulations in these foundational Armenian documents as constituting a territorial claim. Baku's legitimate concern is based on the assessment that, notwithstanding the fact that Armenia cannot enforce such provisions at present, their continued existence makes it possible for Yerevan to pursue its territorial expansion policy based on legal grounds in the future. To eliminate Armenia's territorial claims once and for all, all legal and jurisdictional links between the Republic of Armenia and any part of Azerbaijan (including the former NKAO) needs to be fully, explicitly, and unconditionally severed. Thus, in addition to Armenia's political statement about recognizing Azerbaijan's territorial integrity in the peace treaty, Yerevan should undertake important amendments to the Armenian constitutional order and legal system, with a view to repudiating those provisions that amount to territorial claims against Azerbaijan.

In particular, Armenia would need to deal with the issue of legal changes as part of the final peace treaty, particularly in the following four contexts:

First, Armenia's Declaration of Independence (1990) refers to the "joint decision of the Armenian SSR Supreme Council and the Artsakh National Council on the Reunification of the Armenian SSR and the Mountainous Region of Karabakh." This clearly indicates that the formulation is considered to be a foundational principle of Armenia's renewed statehood, since the "joint decision" ratified the merger of Armenia with a part of sovereign Azerbaijani lands, in violation of Azerbaijan's territorial integrity. Armenia's constitution (1995), in turn, takes the Declaration of Independence to be the foundational document for Armenia's modern statehood. This then inescapably means that the Armenian constitution conceives of Karabakh as, effectually, a *de jure* part of Armenia.

Moreover, Armenia's dualist legal system envisages the priority of its constitution over international law. Thus, even if a constitutional provision is in clear breach of international law, Armenia attaches more legal importance to its Constitution than to even the basic tenets of international law, particularly when it comes to Karabakh.

This will need to be addressed.

Second, in addition to its constitutional documents, Armenia's laws concerning military service, elections, trade, customs, currency, banking, infrastructure, energy, and utilities envisage Karabakh as a territorial extension of Armenia.

For instance, goods produced in the ethnic-Armenian secessionist entity located in Azerbaijan have long been considered as goods produced in the Republic Armenia for the purpose of export.

Or consider that Robert Kocharyan and Serzh Sargsyan—both former citizens of the Azerbaijan SSR of ethnic-Armenian origin born in Karabakh—were allowed to hold the

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highest political offices in Armenia, despite a prohibition on dual citizenship for holders of high political offices (basically, Armenia did not consider their "Artsakh" citizenship to be a legal impediment).

Or that military conscripts and contract servicemen from Armenia have been sent to carry out their duties in occupied Karabakh (a high-profile example was Pashinyan's son, who performed his military service in occupied Karabakh in 2020).

Or that Armenia has assigned Armenian telephone and postal codes for Karabakh.

Or that all banks operating in the occupied territories are licensed and supervised by the Central Bank of Armenia.

Thus, for all intents and purposes, Armenian law considers Karabakh to be part of Armenia. Annexation may not have been formal, but it is fair to say that annexation was and remains a part of the legal reality for Armenia. This has evident and significant implications for the peace treaty text. Armenia's recognition of Azerbaijan's territorial integrity must be accompanied by changes in Yerevan's constitutional documents and relevant laws resulting in the formal repeal of the "unification" of Karabakh and Armenia.

Third, Armenia should cease financing the local military administration in Karabakh, which is under its military and civilian control as per, *inter alia*, the holding in the landmark *Chiragov and Others v. Armenia* (2015) decision by the European Court of Human Rights. The fact is that Armenia annually transfers about $350 million (10 percent of its annual budget) to finance such activities in Karabakh. This is a massive financial and economic support, and a clear instance of financing separatism in Azerbaijan. The amount noted above includes the paying of salaries for all Armenian functionaries as well as military and auxiliary forces illegally stationed in Karabakh. Equally, Azerbaijan should be ready to gradually undertake the financing the salaries and pensions of civilian ethnic-Armenians legitimately residing in Karabakh in the future.

Fourth, Armenia should also withdraw its army units, formal and informal, from Karabakh and commit explicitly not to send its soldiers and contractors in disguise to serve in Karabakh. At present, according to a 22 April 2023 International Crisis Group report, Armenia has about 12,000 soldiers illegally stationed in Karabakh, which is a huge security risk for Azerbaijan. Yerevan argues that its army is not present in Karabakh, since the "Artsakh Defense Force" is not a part of the Armed Forces of Armenia. Aside from the aforementioned *Chiragov* case, another report by the International Crisis Group (1 June 2017) states that "Armenian and de facto Armenian-Karabakh military forces are intertwined, with Armenia providing all logistical and financial support, as well as ammunition and other types of military equipment." The presence of armed units under Armenia's control and direction in Karabakh clearly violates the principle of territorial integrity. All such forces should be withdrawn to Armenia.

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In short, unless the final peace treaty fully and specifically reflects these commitments by Armenia, the principles of territorial integrity and non-intervention will likely hang by a thread and become subject to contestation in the unlikely event geopolitical conditions favor Yerevan in the future. However, having the aforementioned specific commitments in the peace treaty in addition to the mutual recognition of territorial integrity would provide for objective legal criteria for evaluating any breaches of the territorial integrity principle and other terms of the peace treaty essential for the establishment of durable and peaceful relations between Armenia and Azerbaijan.

The International Court of Justice as the Arbiter of the Peace Treaty

Stability and objective legal verification of compliance with the peace treaty will be key issues in the implementation of the comprehensive peace treaty. In this respect, two additional important considerations should be a part of the peace treaty negotiations.

First, unlike the 10 November 2020 tripartite statement that ended the Second Karabakh War, a peace treaty will need to be ratified by the parliaments of both countries and deposited with the United Nations in compliance with the Vienna Convention on the Law of Treaties (Articles 2.1(a), 7.2(a) and 76-80). This would ensure that there are no unfounded objections to the binding legal character of the peace treaty in the future and that any withdrawal or termination of the treaty would have to be in compliance with international treaty law and UN depositary procedures.

Second, notably, one of the possible guarantees of the sustainability of a final peace treaty would be for both parties to accept the International Court of Justice's (ICJ) compulsory jurisdiction regarding the peace treaty's interpretation and enforcement. A critical positive outcome of such a judicialization process is that the parties would be cognizant of international judicial action in the event either party breaches the peace treaty or international law. This could eliminate a repeat of past legal unaccountability for gross violations of international law—in particular, military occupation and ethnic cleaning.

In short, the instauration of such a legal framework could serve as the foundation for a new political order that would serve as the foundation for a safer and more secure South Caucasus.

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