

**The "Declaration" of Armenia, Azerbaijan and Russia of 10 November 2020 on
the Karabakh conflict from the perspective of international law
A first, preliminary comment by Otto Luchterhandt**

The declaration was signed late in the evening of 9 November 2020 by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation. This took place simultaneously at the respective offices, through video transmission, on the part of Presidents Aliiev and Putin, and on the part of Armenian Prime Minister Pashinyan, outside the transmission of the image. Although the declaration consists of only nine (9) points, it has serious, even fateful significance and consequences for Nagorno-Karabakh, its Armenian population and also for the Republic of Armenia.

Although the content of the declaration varies greatly, it covers the entire breadth of the Karabakh conflict.

The trigger and decisive motive for this declaration is the desire to end the war between Azerbaijan and Armenia, which began on 27 September 2020 against Nagorno-Karabakh and has now entered its seventh week by means of an immediate ceasefire. Point 1 of the Declaration therefore provides for the complete cessation of fire and all military actions "in the zone of the Nagorno-Karabakh conflict" at midnight from 9 to 10 November 2020. At the same time, the Declaration was put into effect.

The other provisions of the declaration are partly related to the war, namely the return of internally displaced persons and other refugees to their homes, the exchange of prisoners and fallen soldiers (points 7-9), but they also regulate territorial issues of the administrative districts surrounding the former autonomous region of Nagorno-Karabakh, in so far as they had not yet been reconquered by Azerbaijani troops at that time, namely the return of the Agdam, Lachin and Kelbadjar districts to Azerbaijan (points 2 and 6), and the treatment of the road connections between Armenia and Karabakh ("Lachin Corridor") on the one hand (points 3 and 6) and between Azerbaijan and Nachitčevan by the Armenian province of Sjunik on the other (point 9).

Provisions concerning the establishment of an armed Russian peacekeeping mission and its deployment in the part of Nagorno-Karabakh which had not (yet) been occupied by Azerbaijani troops on 9 November 2020 are of particular importance (points 3-6).

(1) The legal nature of the "Declaration"

From the point of view of international law, the first question which arises is the legal nature of the declaration. There are three possible answers: 1. The declaration is not an international treaty, but a legally non-binding declaration of political will and intention by the three heads of state. 2. The declaration is an international treaty, a tripartite treaty between Azerbaijan, Armenia and Russia. 3. The declaration is a bilateral treaty between Armenia and Azerbaijan with the inclusion of Russia as the beneficiary third country.

To 1: What speaks against the qualification as a treaty is that the heads of state begin by saying that they have not "agreed" on something, but rather "declared" something, and that they-just as little-agreed on a truce, but only "proclaimed" it (point 1). In fact, the following provisions are not formulated as obligations, but rather as the definition of planned measures. With this style, the "declaration" is rather close to a common political "manifest," "memorandum" or "protocol". Perhaps the Heads of State have intentionally used the term "declaration" to avoid the impression of an international treaty.

On the other hand, however, the following must be considered: According to Art. 2 para. 1 lit. a of the Vienna Convention on the Law of Contract of 23 May 1969, the "designation" cannot be used to infer the legal nature of an agreement. Eventually, it depends on the content of what the actors actually wanted. The "Declaration" is a statement of points that are briefly and concisely formulated as measures to be taken, agreed upon by the three Heads of State. The points can be qualified as tasks whose realization they considered to be particularly important, urgent and imperative and therefore listed. In the linguistic use there is a moment of obligation, namely to actually carry out the measures formulated point by point. This indicates a contractual will to be legally bound. The fact that the measures are to have contractual character is further supported by point 5, where, referring to all the points, there is talk of the performance of "agreements" (dogovorennostej), a word derived from "dogovor", the

legal term for "contract". Also in the linguistic style of international legal treaties, point 1 designates Azerbaijan and Armenia as the "sides" (Стороны) which are to perform the agreed actions.

Finally, if one considers the fateful significance of the agreements for Azerbaijan and Armenia, their extraordinary political weight for both nations and in particular, for the Republic of Nagorno-Karabakh/Artsakh, there is no doubt that the content of the tripartite declaration should have and has the binding force of the international treaty on the basis of the will of the three Heads of State.

It remains to be clarified whether it is a tripartite or a bilateral contract.

The trilateral nature of the treaty is demonstrated by the fact that in contrast to the bilateral ceasefire agreements mediated by Russia in October, President Putin has now also co-signed the declaration and thus recognized its content as binding and authoritative for Russia as well. The fact that almost half of the provisions of the Treaty are devoted to the peace-making contingent to be led by Russia (points 3 to 6) can also be seen as an indication of Russia as a party to the Treaty.

However, Russia's status as a party to the agreement is clearly contradicted by the fact that according to point 4, only Armenia and Azerbaijan are entitled to terminate the agreement with respect to Russia's presence in Nagorno-Karabakh after five years, i.e. the termination of Russia's mandate for the peace-building contingent. If Russia, like Armenia and Azerbaijan, were a formal equal party to the agreement, the right to terminate would also have to be granted. But that is not the case.

It is therefore logical that only Azerbaijan and Armenia are referred to in point 1 as "sides i.e. contracting parties. As such, the Treaty assigns certain tasks to be carried out in a binding manner (points 1, 6 and 9).

As a result of the analysis of the Tripartite Declaration, it can be stated that it is not only a political document but also a legal document and that its legal content is a *bilateral international treaty*. In the following, it will be referred to as the Ceasefire Treaty.

Even though the Russian Federation does not have the status of a party to the treaty, it is not outside the treaty. Rather, it has the status of a "third state" within the meaning of Art. 2(1)(h) of the 1969 Vienna Convention on the Law of Treaties, which provides that another state may be entitled by treaty if the parties agree to grant it a right and this so-called third state agrees.

This is the case because the bilateral treaty authorizes and empowers the Russian Federation to set up a peacekeeping centre in Nagorno-Karabakh, to maintain an armed peacekeeping contingent, and to carry out this mandate within a period of five years. Russia, therefore is a third country. It has also declared its agreement with this status, as President Vladimir Putin expressed the agreement of the Russian Federation by signing a tripartite declaration.

(2) On the question of the status of Nagorno-Karabakh/Artsakh

The ceasefire agreement makes no statement about the status of the Republic of Nagorno-Karabakh/Artsakh. Nagorno-Karabakh appears in the treaty only as an object. Point 1 speaks about the "zone of the Nagorno-Karabakh conflict", point 3 about "the line of contact in Nagorno-Karabakh", point 6 about the "connection of Nagorno-Karabakh with Armenia", and point 7 promises the return of refugees to "the territory of Nagorno-Karabakh and the adjacent districts".

In points 3, 6 and 7, the term "Nagorno-Karabakh" is used not only in a geographical sense, but also unspeakable or implied in the sense of an administrative region, i.e. since its establishment as an autonomous region in 1923/1924 ("NKAO") it has always been called "Nagorno-Karabakh." Clearly, in this administrative sense, Nagorno-Karabakh is referred to in point 7, because the "Rayons" bordering "Nagorno-Karabakh" i.e. Agdam, Fizuli, Dzhebrail, Zangelan, Kubadli, Lachin and Kelbadshar, bordering NKAO.

The ceasefire agreement did not change the borders of the NKAO region of Nagorno-Karabakh. Although the Azerbaijani armed forces have advanced to the city of Shushi/Shusha, occupying the southern part of the NKAO area as far as the Hadrut region, this purely military fact has not changed the administrative boundaries of Nagorno-Karabakh. This is already evident from point 1 of the ceasefire treaty, because it does not regulate or determine the demarcation of borders, but only orders that the Armenian and Azerbaijani troops remain where they were 'accidentally' when the ceasefire treaty came into force. The "positions taken by them" within the meaning of point 1 of the ceasefire agreement do not mean a change in the administrative

borders of Nagorno-Karabakh, but rather a change in the geographical locations where the troops were stationed at zero on 10 November 2020.

The same applies to the provision in point 3 that Russian peacekeeping forces are deployed "along the line of contact in Nagorno-Karabakh" This is because the "line of contact" is the same as the line on which the Azerbaijani troops were stationed when the ceasefire agreement came into force. The "Line of Contact" cannot of course, have the legal and political status of an administrative border.

Accordingly, the right to return to their residence in Nagorno-Karabakh under the auspices of the UNHCR, as guaranteed in paragraph 7, extends to all Armenians who until their flight or expulsion, resided, for example, in Hadrut and in the villages and settlements in the part of Nagorno-Karabakh occupied by Azerbaijani troops.

Since the ceasefire agreement does not change the borders of the Nagorno-Karabakh region and has not taken any decision on the political and legal status of Nagorno-Karabakh, the status issue remains unresolved and open. This means that the parties to the conflict will have to negotiate on the status of Nagorno-Karabakh in the future and that as in the past, the mandate of the Minsk Group of the OSCE extends to accompanying and moderating this negotiation process.

(3) On the question of the binding nature of the bilateral contract

As the legal analysis provided above has shown a truce is a treaty under international law. The Treaty is also concluded effectively. The Prime Minister of the Republic of Armenia has signed the agreement. As Head of Government, he is authorized to lay down guidelines for government policy in accordance with Article 152 of the RA Constitution. This includes foreign policy as well. It follows from the Law of the Republic of Armenia on the conclusion of the International Treaties of March 2018 that in addition to the President of the Republic (see Article 132(2) of the Constitution RA), the Prime Minister is also entitled to conclude international treaties.

Under international law, military commanders may in principle, conclude agreements on the ceasefire and the cessation of hostilities. However, the content of the ceasefire agreement of 10 November 2020 goes far beyond the cessation of hostilities between the Azerbaijani and Armenian armed forces by ordering the return of the occupied territories, containing provisions on interstate transport links and formally including Russia as a third state and assigning it a peacekeeping mission. Thus the ceasefire

agreement falls within the category of "interstate treaties" which unlike intergovernmental agreements, may require the participation of other constitutional bodies other than the Head of Government. However, it is not necessary to discuss this further here because from the relevant point of view of international law, the ceasefire agreement concluded by the Prime Minister is effective and the Republic of Armenia is therefore bound by it as a contractual partner vis-à-vis the Republic of Azerbaijan. Armenia-just like Azerbaijan-must comply with the treaty.

(4) On the question of an "improvement" of the ceasefire agreement through concretisation

In view of the enormous upheaval in the Republic of Armenia, Nagorno-Karabakh and beyond in the entire Armenian diaspora over the ceasefire agreement, which is perceived as surrendering, the question is only too understandable whether there is a possibility of at least relaxing, if not suspending, at least amending the provisions of the Treaty that are perceived as intolerable.

If, from this point of view, one examines the individual provisions of the Treaty, it must be noted critically that almost all of the provisions of the Treaty have a serious flaw: They order simply and laconically more or less drastic selective measures for countless people, but leave many fundamental and operational practical problems open and in particular, contain almost no provisions and regulations on the procedures, steps and sequences in which the ordered measures are to be implemented. As has already been pointed out the most visible gaps are the provisions on the legal status of Nagorno-Karabakh, its administrative borders and the constitutional and administrative organs of the Republic of Artsakh, as well as the future of the integrated armed forces of the Republics of Nagorno-Karabakh and Armenia deployed in Nagorno-Karabakh. Although point 4 speaks of their "withdrawal" (vyvod), the treaty is silent on the whereabouts, deadlines and status of the armed forces. This is an expression of its provisional character.

Although the ceasefire agreement stipulates that the districts of Kelbadjar, Agdam and Lachin are to be "returned" by November 15 and 20 and December 1, it does not specify what the return actually consists of, and in particular what it means for the citizens of Nagorno-Karabakh, some of whom have been living in these districts for decades. The ceasefire treaty-except for the refugees' right of return (point 7)-does not

speak of legal guarantees at any point. The status of Shushi/Shusha and the rights of the Armenians living there, especially their religious practice, the fate of their property and property rights, and even provisions on the legal status of citizens who live beyond the "line of contact" but within the administrative borders of Nagorno-Karabakh (NKAO region) drawn during the Soviet era remain completely open.

This means: The ceasefire agreement has wide gaps and other very serious regulatory weaknesses, which under the circumstances of a peace treaty that has not yet been agreed, i.e. a legally protracted state of war, pose serious risks to life and limb, to freedom and property for countless people, but above all to the people of Nagorno-Karabakh. It follows from this, undeniably, that the ceasefire agreement must urgently and without delay be supplemented, made concrete and specific by practical regulations.

The Parliaments of the Republics of Armenia and of Nagorno-Karabakh must take the initiative. For this purpose, the National Assemblies must set up special commissions and beyond the circle of deputies, consult competent civil society personalities in order to develop legally sound and realistic proposals.

At the same time, this means that the National Assembly must abolish martial law as soon as possible, return to constitutional normality and begin work.

(5) On the problem of transport connection between Azerbaijan and Nachičevan through the Republic of Armenia/Sjunik (point 9)

A surprising provision of the ceasefire treaty is point 9 with the following wording:

***“All economic and transport links in the region will be unblocked. The Republic of Armenia guarantees the safety of the transport connection between the western districts of the Azerbaijan Republic and the Nakhchevan Autonomous Republic for the purpose of organizing the unimpeded movement of citizens, means of transport and loads in both directions. The control over the transport connection is exercised by the bodies of the Border Service of the FSB of Russia.*”**

In accordance with the agreement of the sides, the construction of new transport links connecting the Autonomous Republic Nachičevan with the western regions of Azerbaijan will be ensured.”

It is obvious that the provision is the "quid pro quo" for the provision on the "Lachin Corridor" between the Republic of Armenia and Nagorno-Karabakh (points 3 and 6).

Point 9 consists of four sentences: first, sentence 1 sets out a general provision: "all" links "in the region" are to be unblocked, i.e. in a geographical context different from that of "in the zone of the Karabakh conflict" (point 1). Second, sentences 2 and 3 concern transit from Azerbaijan to Nachičevan. We are talking about an already existing transport connection. Obviously, this refers to the magistral, which runs along the Arax River or along the border with Iran through the province of Sjunik, past the town of Megri, to Nachičevan. It is to be opened for persons, vehicles and "loads" i.e. the transit of Azerbaijanis to and from the Azerbaijani exclave of Nachičevan. Sentence 4 adds that "new" means further transport links from Azerbaijan through the province of Sjunik to Nachičevan are to be constructed. That provision is made under the express reservation that Armenia and Azerbaijan make an agreement to that effect. No new transport connections are specified. As a result, there may be connections other than roads, e.g. rail connections.

Current measures, i.e. those that can be implemented in a relatively short, foreseeable period of time, would be the lifting of the existing blockades announced in the first sentence, affecting both the economy, including the energy supply industry, and transport. As far as transport is concerned, not only road connections, but also regional rail transport should be considered. With this in mind, the phrase 'transport connections in the region' may be of future importance. More than that because of its indefinite generality, the phrase 'in the region which includes transport connections between Nachičevan and Armenia in the Ararat Valley, but especially the Transcaucasian railroad line from Armenia via Nachičevan and Sjunik to Azerbaijan and further to the Caspian Sea, justifies its use.

Since the provision on the unblocking of essential elements of the South Caucasus infrastructure in point 9 is first and foremost standardized as a general binding principle, all unblocking measures are given priority over the other transport projects referred to in point 9.

Even if only in point 4, with reference to the construction of further transport links, there is explicit mention of an "agreement" between Armenia and Azerbaijan, it is quite natural that the measures to unblock the links in the region and to expand transit traffic according to Nachičevan are also inconceivable without a large number of agreements between Armenia and Azerbaijan, and likewise, in the interest of cross-border

development of the entire region, it will be expedient, indeed indispensable, to include Iran as well.

(6) Final Remark

The Armistice Agreement is close to the surrender document. The harshness of its provisions and the dangers they pose, particularly to the Armenians of Karabakh and Nagorno-Karabakh, can only be mitigated and to a certain extent, prevented if the political leadership of Armenia and Karabakh pursues the following maxims and objectives:

First, the formulation of legitimate demands, practical regulatory proposals and procedural mechanisms aimed at closing the regulatory gaps, uncertainties and contradictions of the ceasefire agreement with the aim of protecting the basic human rights of the citizens of the Republic of Nagorno-Karabakh in the administrative NKAO borders.

Secondly, the Karabakh Armenians should have the courage, in full and unrestricted trust in the Russian Blue Helmet Mission, which is preserving peaceful life, to return to their former homes in Nagorno-Karabakh (NKAO region), to move back into the houses and apartments that are still habitable and to make the buildings destroyed or rendered uninhabitable during the war habitable again, using the humanitarian aid organized for Karabakh from the Republic of Armenia, from the diaspora and from other sides.

Third, stubbornly take all necessary political and diplomatic steps to persuade the member states of the OSCE Minsk Group and especially its three state coordinators - Russia, USA and France - to do everything in their power to ensure that the existence of the Armenian people of Nagorno-Karabakh is secured for the future.

Fourth, to organize on the part of the Republic of Armenia and the Armenian diaspora worldwide ongoing support for the Republic of Nagorno-Karabakh/Arcach, to restore and strengthen Nagorno-Karabakh's international ties with Armenia and beyond, to repair the war and bomb damage in Nagorno-Karabakh, and to promote the

reconstruction of Nagorno-Karabakh through international aid programs and foreign investment.

Appendix: Declaration of the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation

"We, the President of the Republic of Azerbaijan, I.G. Aliev, the Prime Minister of the Republic of Armenia, N.V. Pashinyan, and the President of the Russian Federation, V.V. Putin, have declared:

- 1) The complete cessation of fire and all military actions in the zone of the Nagorno-Karabakh conflict is announced from 0:00 a.m. on November 10, 2020 Moscow time. The Republic of Azerbaijan and the Republic of Armenia, hereinafter referred to as the sides, shall remain on the positions taken by them.
- 2) The Agdam district will be returned to the Azerbaijan Republic by 20 November 2020.
- 3) The peacekeeping contingent of the Russian Federation will be deployed along the lines of contact in Nagorno-Karabakh and along the Lachin Corridor, with 60 military personnel, 90 armored vehicles and 380 automotive and special technology units.
- 4) The Russian Federation's peacekeeping contingent is deployed in parallel with the withdrawal (vyvod) of the Armenian armed forces. The period of stay of the Peace-making Contingent of the Russian Federation shall be 5 years with automatic extension for a further 5-year period, unless one of the sides has declared 6 months before the end of the period for the termination of the application of that provision.
- 5) For the purpose of increasing the effectiveness of the control over the fulfillment of the agreements (dogovorennostej), a peace-making center for the control over the ceasefire is deployed.
- 6) The Republic of Armenia shall return the Kelbadzhar Rayon to the Republic of Azerbaijan by 15 November 2020 and the Lachin Rayon by 1 December 2020. The Lachin corridor (5 km wide) which will provide a link between Nagorno-Karabakh and

Armenia without touching the city of Shusha will remain under the control of the Russian Federation's peacekeeping contingent.

Under the agreement between the parties, a plan for the construction of a new route (maršruta dviženija) through the Lachin corridor will be established in the next three years, which will provide a link between Nagorno-Karabakh and Armenia, with the subsequent re-dislocation (peredislokaciej) of the Russian peacekeeping force to protect this route. The Azerbaijan Republic guarantees the safety of the movement in the Lachin corridor for citizens, means of transport and loads in both directions.

7) Internally displaced persons (vnutrennie peremeščennye lica) and refugees (bežency) return to the territory of Nagorno-Karabakh and neighboring districts under the control of the administration of the United Nations High Commissioner for Refugees (UNHCR).

8) The exchange of prisoners of war, hostages and other detained persons and the bodies of the victims is carried out.

9) All economic and transport links in the region are being unblocked. The Republic of Armenia guarantees the safety of the transport connection between the western districts of the Azerbaijan Republic and the Nakhchevan Autonomous Republic for the purpose of organizing the unimpeded movement of citizens, means of transport and loads in both directions. The control over the transport connection is exercised by the bodies of the Border Service of the FSB of Russia.

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