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Any Imminent Peace Treaty Between Armenia and Azerbaijan Determining The Status of Artsakh Would Be Void Under International Law

In his speech before the National Assembly on 13 April 2022, Prime Minister of Armenia Nikol Pashinyan announced the Armenian Government's plan to conclude a peace treaty with Azerbaijan "as soon as possible," and indicated that the basic principles of the peace treaty might include, *inter alia*, recognition of the territorial integrity of Azerbaijan and Armenia, and a clarification of the final legal status of Nagorno-Karabakh, hereinafter "Artsakh," regarding which Armenia would "lower its benchmark."ⁱ

We, the Board of Governors of the Armenian Bar Association (the "Board"), express our legal opinion that a treaty concluded between Armenia and Azerbaijan would be invalid, particularly as a determination of the legal status of Artsakh as a matter of international law.

First, the treaty would be unlawfully procured by Azerbaijan's threat and actual use of force. The Vienna Convention on the Law of Treaties ("VCLT"), to which Azerbaijan and Armenia are party, provides at Article 52, "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

Two of the principles of international law concerning the use of force embodied in the Charter of the United Nations are:

- Art. 2(3) "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."
- Art. 2(4) "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."

Prime Minister Pashinyan made clear in his speech that Armenia's failure to rapidly acquiesce to a peace treaty with Azerbaijan with the above content demanded by Azerbaijan would lead to Azerbaijan's renewed use of force against both Artsakh and the Republic of Armenia, presumably in Syunik.ⁱⁱ The facts support this fear: as confirmed by the Russian Federation peacekeeping mission, days after sending its proposal for a peace treaty, Azerbaijan's armed forces invaded Artsakh's Parukh village.ⁱⁱⁱ Furthermore, Azerbaijani soldiers remain on the Republic of Armenia's sovereign territory, which Azerbaijan invaded on 12 May and 16 November 2021.

Under these circumstances, any 'peace' treaty with Azerbaijan would have been procured by the threat of its use of force against Artsakh, in violation of Article 2(3) of the UN Charter, and against the Republic of Armenia, in violation of Article 2(4) of the UN Charter. The treaty would be void under VCLT Art. 52.

Second, the treaty would unlawfully deprive Artsakh's ethnically indigenous Armenian population of its right to self-determination. Article 53 of the VCLT provides, "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." One such peremptory norm of general international law is the right of peoples to self-determination.^{iv} That

right entitles them to “freely determine their political status and freely pursue their economic, social and cultural development.”^v

A treaty between Armenia and Azerbaijan, which purports to determine the legal status of Artsakh as a subordinate part of Azerbaijan, would deprive the Artsakh’s people of their right to self-determination, for two reasons.

- Neither Artsakh’s people nor its government is involved in the negotiation of the treaty, including in the determination of their political status.
- There is ample evidence that Azerbaijan would deny the people of Artsakh any meaningful say in their economic, social and cultural development. The government of the Azerbaijani SSR did so during Soviet times, including through its military response to the December 10, 1991 independence referendum conducted under applicable Soviet law in which 99.89% of the voters in Artsakh cast their ballots in favor of independence, all of which precipitated the current unresolved conflict. The current government of the Republic of Azerbaijan under Ilham Aliyev has for decades advanced State policy based on and promoting hatred toward the indigenous Armenians of Artsakh, as confirmed by the findings of the UN Committee on the Elimination of Racial Discrimination, the European Committee on Racism and Intolerance, and the European Court of Human Rights.

The Board’s Recommendation

In order to be legally valid under the VCLT, a peace treaty between Armenia and Azerbaijan must be concluded under the following circumstances:

1. Azerbaijan must, as a precondition to beginning negotiations free of coercion, formally renounce the use of force against the Republics of Armenia and Artsakh.
2. The treaty must not purport to determine the final legal status of Artsakh, deferring such determination until such time as relations have substantially improved between the peoples of Armenia, Azerbaijan, and Artsakh, and the government of Azerbaijan has taken credible steps to demonstrate its good faith towards the people of Artsakh, their human rights and their dignity.
3. The people of Artsakh must participate in the determination of the final legal status of the territory.

ⁱ. <https://www.primeminister.am/en/statements-and-messages/item/2022/04/13/Nikol-Pashinyan-Speech/>

ⁱⁱ. *Id.* (“[B]y surrendering, I might have saved thousands of lives, but by not surrendering, I actually became the author of decisions that resulted in thousands of victims. . . . But, dear colleagues, I am not saying this now to start a dialog about the past, I am saying this to start a dialog on the future. Because we have the same situation now in terms of content and **I do not want to repeat the same mistakes.**” [Emphasis added.]).

ⁱⁱⁱ. https://webcache.googleusercontent.com/search?q=cache:Q0F12wUstosJ:https://mil.ru/russian_peacekeeping_forces/bulletins/more.htm%3Fid%3D12414883%40egNews+&cd=2&hl=en&ct=clnk&gl=us

^{iv}. See Right of peoples to self-determination – UN Special Rapporteur study, E/CN.4/Sub.2/405(vol.I)* (June 20, 1978), ¶ 75, <https://www.un.org/unispal/document/auto-insert-186956/#:~:text=In%20present%2Dday%20legal%20theory,condition%20or%20prerequisite%20for%20the.>

^v. International Covenant on Civil and Political Rights, Art. 1(1).