

Nagorno-Karabakh and the Responsibility to Protect

Nagorno-Karabakh y la responsabilidad de proteger

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The terms of the Nagorno-Karabakh ceasefire agreement signed on 9 November 2020, following the Azeri offensive of 27 September 2020, are a cynical confirmation of victory for Vladimir Putin, and also partly for Recep Tayyip Erdogan, whose key role in this one-sided conflict is now an acknowledged fact¹. It is well known that the policy which, prior to its implementation in the Caucasus, he has already pursued in Syria, Libya and the Eastern Mediterranean, is founded on pan-Turkic ideology. He has, furthermore, called on several occasions for the project of extermination undertaken by his Ottoman ancestors to be completed, and for the “leftovers of the sword” (the descendants of the survivors of the genocide of 1915) to be finished off². “We chased them out of our lands like dogs. I said that we would chase them, that we would chase them like dogs, and we chased them, we chased them like dogs. (...) No-one can stop us. Everyone sees our strength, everyone understands what our iron fist is like. That is why we have driven them out and are perfectly right in doing that” is what Azerbaijan’s President Ilham Aliyev declared straight after signing the agreement, referring to the promise he had made in a televised address on 5 October 2020³. These statements echo the hate-filled anti-Armenian propaganda that is rife in Turkey and Azerbaijan, two states which mutually describe one another as “a single Nation”, and possess, in the case of the former, the second largest army in NATO⁴. While not a new phenomenon, this propaganda is becoming increasingly alarming, based as it is on a discourse reprising more and more openly the rhetoric which led to the genocide of the Armenians, as Hamit Boraszlan, a historian and specialist on Turkish politics, has pointed out⁵. To say nothing of the fact that it is being promoted, in Europe, by the “Grey Wolves”, an ultranationalist neo-fascist Turkish paramilitary organisation which has recently been

banned in France following acts of violence targeting the Armenian community⁶.

Added to this political cynicism is the irony of history. For it was in the context of the Oriental question, of which the Armenian question was a “by-product”, that the practice of what was termed humanitarian intervention originated (Garibian, 2009, pp. 35 ss.), the ancestor of a principle now enshrined in international law: the responsibility to protect (e.g. Bellamy, 2009; Hoffmann and Nollkaemper, 2012; Genser and Cotler, 2012). Part of this responsibility is the duty of each state – or, in the case of a clear failure to do so by the latter, the international community – to protect civilian populations, including in a preventive capacity⁷. The responsibility to protect is thus built on a non-absolutist approach to state sovereignty, which takes into account the overriding necessity of guaranteeing the safety of populations against large-scale violations of human rights (crimes of genocide, crimes against humanity, ethnic cleansing, war crimes). This same approach has guided the parallel development of international criminal justice. The whole system aims, in more general terms, to “maintain or restore international peace and security”. One can but point out the inaction regarding this matter of the UN Security Council – three permanent members of which are co-chairs of the Minsk Group tasked with finding a peaceful solution to the conflict in the Caucasus (the United-States, Russia and France). Irrespective of this, the freshly-signed agreement raises more questions than it answers. Three particularly urgent questions are linked directly to the responsibility to protect.

The first of these concerns the legal status of Nagorno-Karabakh, the clarification of which is crucial to stability in the region, and involves the thorny issue of reconciling two conflicting principles of international law: territorial integrity, on the one hand, and the self-determination of peoples on the other. While the latter is subject to a restrictive interpretation so as to avoid disturbing international relations, its corollary, namely remedial secession, offers a possible solution of last resort⁸. In exceptional cases, this may be the only means of survival for a population which has been the victim of grave and persistent violations of its fundamental rights. In the absence of a consensual solution, the case of Nagorno-Karabakh presents a new opportunity to put remedial secession to the test. This region, which was detached from Armenia during the sovietisation of the South Caucasus, was arbitrarily made part of the Soviet Socialist Republic of Azerbaijan in 1921 by Stalin, whose chief concern was to “divide and conquer”. It became an autonomous *oblast* in 1923. The Armenian Christian population would face discrimination and persecution which transformed the struggle for independence into a fight for survival. After proclaiming itself a democratic republic through a refe-

rendum in 1991 at the time of the collapse of the Soviet Union, Nagorno-Karabakh was fought over in a first war (1991-94); the conflict then remained “frozen” until the latest round of hostilities. Several warning reports have been published since, including by Genocide Watch⁹, which highlighted the risk of genocide or ethnic cleansing by Turkish-backed Azeri forces. The resulting sense of an “existential threat” has been referred to repeatedly by the Armenian Prime Minister, Nikol Pashinyan. The recognition of what is left of Nagorno-Karabakh may therefore be the best way to guarantee the security of this population.

Secondly, those responsible for war crimes must face judicial action. Serious violations of international humanitarian law have already been documented including, for example, the use of non-conventional weapons, the destruction of schools, maternity units, hospitals and churches, and even the execution and decapitation of Armenian prisoners. The Azeri forces have been assisted by at least a thousand Syrian jihadist mercenaries, sent as reinforcements by Ankara, as stated by the UN High Commissioner for Human Rights on 11 November 2020¹⁰. Judicial proceedings could be initiated at the international level through the use of two distinct mechanisms by the Security Council, acting on the basis of Chapter VII of the UN Charter: the creation of an ad hoc international jurisdiction, or a referral to the International Criminal Court. In this respect, the setting up of a commission of inquiry or a fact-finding mission, under the aegis of the United Nations, would be a useful first step.

Lastly, the question of the fate of refugees and local populations, and also of Armenian cultural treasures which have now fallen under Azeri control, presents a considerable challenge: reaching agreement on reparations and ensuring that human rights and the rights of minorities are guaranteed in the future, as well as establishing the terms of post-conflict co-existence, and achieving all this faced with three authoritarian states – Azerbaijan, backed by Turkey, under Russian supervision. Starting from 29 September, following an Armenian initiative, the European Court of Human Rights, which has previously ruled on disputes linked to the conflict in Nagorno-Karabakh¹¹, adopted interim measures, applying Rule 39 of the Rules of Court, in view of the “imminent risk of irreparable harm”¹². While tools for transitional justice also exist, their deployment, given the alarming and urgent state of the situation, would require the intervention of the international community. A community which, in this context, bears a decisive responsibility.

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Notas

- * This paper is a longer version of an op-ed published, in French, in the newspaper *Le Monde* on 6 December 2020.
- 1 See in particular the European Court of Human Rights (ECHR)’s decision on the request for an interim measure lodged by Armenia against Turkey on 4 October 2020, granted on 6 October 2020. On 1 December 2020, the Court decided to lift the interim measure in the case of *Armenia v. Turkey* (n° 43517/20), in view of the statement signed on 9 November declaring an end to hostilities in the Nagorno-Karabakh conflict. See also the content of the French Senate (18 November 2020) and National Assembly (3 December 2020) resolutions calling on the French government to, *inter alia*, recognize the Nagorno-Karabakh Republic. For an interesting reading of the role of Turkey and the symbols at stake, see Cheterian, 2020.
- 2 <https://www.genocidewatch.com/single-post/2020/05/11/turkey-erdogan-uses-leftovers-of-the-sword-anti-christian-hate-speech> (all internet references were accessed in March 2021). On the “leftovers of the sword”, see Ritter and Sivaslian, 2012, and the memoir of the Turkish lawyer Fethiye Cetin (2008).
- 3 The full speech is available at: <https://mincom.gov.az/en/view/news/1046/president-ilham-aliev-addressed-the-nation->.
- 4 For a contextualisation: Cheterian, 2018.
- 5 See his interview in *Philosophie Magazine*, 20 October 2020, available at: https://www.philomag.com/articles/hamit-bozarслан-la-logique-qui-conduit-au-genocide-armenien-est-loeuvre-dans-le-haut?fbclid=IwAR2GFrTfxMDIbzFZ4KypTFWpvTU_0f41Xo1tFSEnwUSEuw7-HQFqj0a1U4g, and in *L’Orient-Le Jour*, 26 October 2020, available at: <https://www.lorientlejour.com/article/1238182/hamit-bozarслан-le-discours-tenu-par-la-turquie-est-un-discours-de-genocide-.html>.
- 6 The dissolution of the “Grey Wolves” was pronounced by the Council of Ministers, on the proposal of the Minister of the Interior, on 4 November 2020, aggravating the controversy between Paris and Ankara.
- 7 See the website of the UN Office on Genocide Prevention and the Responsibility to Protect: <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.
- 8 See notably Cassese, 1995; Kohen, 2006; Kolb, 2013; van den Driest, 2013. For a philosophical perspective, see for example Seymour, 2007. See also the rich debate on secession published in *EJIL: Talk !*, the blog of the *European Journal of International Law* (contributions listed here: <https://www.ejiltalk.org/?s=remedial+secession>), as well as Paylan, 2020.
- 9 The genocide emergency alert on the war in Artsakh (Nagorno-Karabakh) was published on 6 November 2020: <https://www.genocidewatch.com/single-post/genocide-emergency-alert-on-the-war-in-artsakh-nagorno-karabakh>.

- 10 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494&LangID=E>.
- 11 In particular the judgements of the Grand Chamber in the cases *Sargsyan v. Azerbaijan*, n° 40167/06, and *Chiragov and others v. Armenia*, n° 13216/05 (16 June 2015). Note the extensive developments provided by Judge Pinto de Albuquerque, in his dissenting opinions, on the responsibility to protect (in *Sargsyan v. Azerbaijan*, §§ 21-35) and on the right to remedial secession (in *Chiragov and others v. Armenia*, §§ 38-49).
- 12 Cf. *Armenia v. Azerbaijan*, n° 42521/20; *Armenia v. Turkey*, n° 435177/20; *Azerbaijan v. Armenia*, n° 47319/20. The Court has also received numerous requests concerning alleged captives, lodged by the Government of either Armenia or Azerbaijan or by relatives of the captives.

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