

## **Karabakh/Artsak - Azerbaijani region or independent state?**

### **The core of the conflict, possible solutions and dangers**

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Nagorno Karabakh is a region in the Southern Caucasus covering an area of about 12,300 m<sup>2</sup> and with a population of 150,000 inhabitants, mainly of Armenian descent. The country is scarred by war: minefields with anti-personnel mines, embrasures and trenches showing former front lines, and ruins where people once lived.

#### **Historical background**

The region of Karabakh, *Artsakh* in Armenian, was already mentioned in ancient Greek writings. From the 11th century onwards, Muslim Turkish tribes came into the country via the north of Artsakh and called the region *Karabakh*, "black garden" in Azeri/Turkish.

In the mid-18th century, Karabakh came under Ottoman control and in 1804, it became part of the Russian Empire.

After the collapse of the Russian Empire, several wars between different peoples of the region (Turks, Georgians, Armenians and Azeris) were fought in order to define future borders. Turkey's military and political intervention led to the creation of Azerbaijan on 28 May 1918, an area with significant oil production at the time.

In 1918 and 1920, under the occupation by Turkish soldiers, there were repeated attacks on the Armenian population in Azerbaijan, which the latter perceived as a continuation of the genocide of the Armenians during the First World War. On the other hand, there were also acts of revenge against Muslims. These persecutions came to a temporary end on 28 April 1920 with the proclamation of the Soviet Republic of Azerbaijan.

Nariman Narimanov, the Chairman of the Azerbaijani Bolsheviks and first Prime Minister of the Soviet Republic of Azerbaijan, recognised Karabakh's membership of the Soviet Republic of Armenia on 30 November 1920.

#### **Russian concessions**

In the 1920s, the Soviet Union moved closer to Turkey, which included political concessions on the part of the Soviets, combined with the hope that Turkey would turn towards communism. Thus, in the Peace and Friendship Agreement between Soviet Russia and Turkey in 1921, the Soviet Union renounced Kars, Ardahan and other traditionally Armenian areas which are now in Turkey, including Mount Ararat.

In return, Nahitshevan, which was then mainly populated by Armenians, was ceded to the Soviet Republic of Azerbaijan. The idea was that Azerbaijan would have a 6 km long common border with Turkey.

As a result of this, the Armenian population was driven out by Turks and Azeris. Valuable, centuries-old cultural assets, such as Armenian cemeteries with their famous cross stones, were destroyed.

#### **An arbitrary division**

On 4 July 1921 the so-called Caucasian Bureau, which included the Communist Parties of the Soviet Republics of Georgia, Armenia and Azerbaijan, decided at a meeting in Tbilisi that Karabakh (90% Armenian population) should remain in the Soviet Republic of Armenia. The following day, at the

insistence of Atatürk and Narimanov, Stalin, in his capacity as People's Commissioner for Nationality Issues, revised this decision, with the result that Karabakh was declared an autonomous region of the Soviet Republic of Azerbaijan, in spite of protests from the Soviet Republic of Armenia.<sup>1</sup>

Prof. Otto Luchterhandt<sup>2</sup>: "This decision was based on the power of the Red Army in the Caucasus. [...] The population concerned was not consulted. There was no referendum." He called the final decision "despotic".<sup>3</sup>

In the years 1923-1929, the district of Red Kurdistan was established in an area between the Soviet Republic of Armenia and Karabakh. Kurdish tribes had settled there as early as the 18th century and gradually became the majority population. With the establishment of Red Kurdistan, the final expulsion of the Armenians living there began: Azeri Muslims were settled there and mixed with the Kurds. In this way, Karabakh with its Muslim minority and a direct border to Armenia became an enclave within Azerbaijan.

During the Soviet era, Karabakh and its Armenian population was discriminated against by the government of the Soviet Republic of Azerbaijan and the Azeris (there were no Armenian textbooks, Armenian schools were closed). Karabakh was only of geostrategic value for the government in Baku; there are no raw materials such as oil, so no investments were made in the region. In the 1970s increasing numbers of Muslim Azeris settled in Karabakh.

#### **The right of self-determination of peoples in practice**

In February 1988, tens of thousands of people took to the streets in Stepanakert (the capital of Karabakh) to demonstrate in favour of the unification of Karabakh with the Soviet Republic of Armenia. The Armenians in Karabakh first tried to achieve annexation to Armenia by means of Soviet constitutional law (a referendum). This failed because the decisions taken by the regional parliament of Karabakh in Stepanakert were declared unconstitutional by the bodies of the USSR and revoked.<sup>4</sup>

As a reaction to this peaceful expression of the will of the population of Karabakh, pogroms were instigated in Sumgaith by Azerbaijani leaders, resulting in further violence against Armenians in Azerbaijan.

On 14 March 1990, under the rule of Mikhail Gorbachev, the Soviet Constitution of 1977 was amended: instead of the dictatorship of the Communist Party, a confederation of states was to be created.<sup>5</sup>

On 3 April 1990, the Act on the Withdrawal of the 15 Republics from the Soviet Union was adopted. This law also gave a right to independence to the 20 autonomous so-called oblasts within the USSR. One of these autonomous regions was Karabakh.<sup>6</sup>

#### **War between Azerbaijan and Karabakh**

Azerbaijan declared independence on 30 August 1991, and Karabakh announced on 2 September 1991 that it would make use of the law on withdrawal as an autonomous region. This meant, on the one hand, that Karabakh would be allowed to remain in the USSR for the time being and, on the other, that it would be allowed to define its own status. It was thus no longer part of Azerbaijan.

A referendum was held in Karabakh on 10 December 1991 which was boycotted by the Azeris, who made up around 20% of the population.

“Do you agree that the proclaimed Republic of Nagorno-Karabakh is a sovereign state which independently determines its forms of cooperation with other states and communities?”

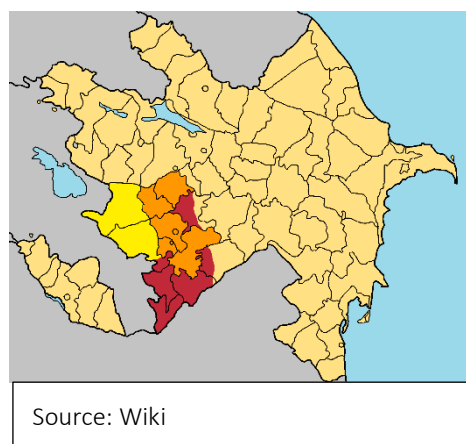
Over 99% of voters in Karabakh voted for independence (the turnout was 82%). This legitimised the decision of 2 September.

The Soviet Union existed until 21 December 1991, so the law of that time and the above-mentioned arrangement applied. Azerbaijan contested the validity of the referendum and referred to its territorial integrity.

To date, the Republic of Artsakh has de facto existed for over 30 years, but like other former autonomous regions of the USSR, has not been internationally recognised as a country.

Azerbaijan started a war with Karabakh as early as December 1991, which lasted until 1994 and cost the lives of 40,000 people on both sides.

After the end of the war in 1994, the course of the front was such that Azerbaijan controlled about 10% of Artsakh (orange), and the Artsakh Armenians, for their part, established a territorial connection (yellow) with Armenia and gained control of five Azerbaijani districts (red). Artsakh sees these regions as a buffer zone, a bargaining chip and as part of the territory of Azerbaijan. Around 1.1 million (350,000 Armenians and 750,000 Muslims) people have lost their homeland.<sup>7</sup>



### **Mediation, conflict resolution .... Minsk Group**

For over 25 years, negotiations have been held via the OSCE Minsk Group but no tangible solution has been reached. The reasons are many.

Over time, each side believes it can strengthen its negotiating position. Azerbaijan by stockpiling arms, Artsakh-Armenia by emphasising the de facto status. The subject of negotiations involves two principles of international law (the right of self-determination of peoples and the territorial integrity of a state) which are mutually exclusive. Any offer of negotiations leading to one of the two principles of international law leads away from a common solution.

The key is mutual trust, which is not possible without empathy. The Armenian genocide of 1915/16, but also the pogroms and persecutions in Azerbaijan are deeply rooted in people's minds.

### **Madrid Principles**

Nevertheless, the Minsk Group negotiated a solution with Armenia and Azerbaijan in 2007, the Madrid Principles. The seven Azerbaijani districts would be returned, the refugees and deportees would be allowed to return, the land connection between Armenia and Artsakh would be maintained. The inhabitants of Artsakh, including the Azerbaijanis and their descendants who demonstrably came from Karabakh, would vote in a referendum on their common status, which would then be recognised by all sides. In the meantime, international peacekeepers should be in position on Karabakh's borders (on Azerbaijani territory) and Baku would regain legal control over Karabakh until the referendum reveals the will of the people.<sup>8</sup>

### **Everything back to the start**

In this way, Artsakh's independence in 1991 would be null and void, Azerbaijan would have to tolerate foreign troops (peacekeepers) on its territory for a very long time (beyond the date of the referendum) (Cyprus conflict) and the referendum would result in independence or annexation to Armenia in the current situation (only inhabitants, fugitives and their descendants may participate).<sup>9</sup>

As a first step, stability and confidence-building measures, such as the establishment of mechanisms for investigating incidents at the so-called line of contact, should have been put in place by 2015. Armenia made a commitment, but Azerbaijan rejected these first steps.<sup>10</sup> Azerbaijan also rejected the withdrawal of snipers from the line of contact.

### **The current war**

The current outbreak of war is a disaster for Artsakh, Armenia and Azerbaijan, as well as for the OSCE, the EU and Russia. Emmanuel Macron has said that Azerbaijan has started the current escalation<sup>11</sup> and that Azerbaijan is deploying jihadist mercenaries in Karabakh.<sup>12</sup>

Azerbaijan is committing war crimes by attacking churches, for example the cathedral of Shushi, and cultural monuments. Towns and villages are being attacked with rockets and bombs. From 14 October onwards, a video circulated on the internet showing two Armenian soldiers being executed as prisoners of war by Azerbaijani soldiers. "Bellingcat" classifies the video as authentic.<sup>13</sup> Attacking civilians (in a town) and shooting captured soldiers are war crimes.

Turkey has organised jihadist mercenaries from Syria for Azerbaijan. Mercenaries are considered to be civilians rather than soldiers according to Article 47 of the First Additional Protocol of 1977 to the Geneva Convention<sup>14</sup>. If they are caught in acts of war, they face severe punishment.

In addition, Israeli cluster munitions of type M095 DPICM have been used by Azerbaijan.<sup>15</sup>

The production, storage and/or use of cluster munitions has been internationally banned since 1 August 2010. On 13 October, Israel's Supreme Court rejected a petition to ban arms sales to Azerbaijan as "lacking evidence".<sup>16</sup>

On 14 October, Qatar Airways was unable to deliver humanitarian aid from Los Angeles to Armenians because Turkey closed its airspace, contrary to the Chicago Convention<sup>17</sup>, at least for this civilian flight.<sup>18</sup>

### **The wildfire**

Turkey does not rule out taking military action on the side of Azerbaijan.<sup>19</sup> On 14. 10.2020 the Russians sent "a large number" of MIG 29s to Armenia, using Iranian airspace to do so.<sup>20</sup> The diversion was necessary because Turkey, Azerbaijan and Georgia had closed their airspace for the Russian fighters.<sup>21</sup>

### **Outlook**

Azerbaijan's gross human rights violations and war crimes are reminiscent of the case of Kosovo, which was separated from Serbia because of the serious human rights violations carried out by the latter. It should also be borne in mind that neither representatives of Artsakh nor representatives of the 1.1 million displaced persons are taking part in the negotiations in the Minsk Group.

Each side should now have seen that its negotiating position will not be strengthened over time. Artsakh and Azerbaijan are sending their young citizens, their future, to war. With an uncertain outcome.

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- <sup>1</sup> Luchterhandt Otto, Das Recht Berg-Karabaghs auf staatliche Unabhängigkeit aus völkerrechtlicher Sicht, Archiv des Völkerrechts 31. Bd., No. 1/2, UMWELTSCHUTZ / PROTECTION OF THE ENVIRONMENT (1993), pp. 30-81, Internetfundstelle <https://www.youtube.com/watch?v=3eNFflobMtk> und <https://www.youtube.com/watch?v=6qqfWQW2-dw>
- <sup>2</sup> Prof. Otto Luchterhandt war von 1991 bis 2008 Professor für Öffentliches Recht und Ostrecht an der Universität Hamburg und war Direktor der Abteilung für Ostrechtsforschung
- <sup>3</sup> Luchterhandt, Das Recht Berg-Karabaghs
- <sup>4</sup> Luchterhandt, Das Recht Berg-Karabaghs
- <sup>5</sup> ebenda
- <sup>6</sup> ebenda
- <sup>7</sup> Terrence Hopmann. OSZE-Jahrbuch 2014, Baden-Baden 2015, S. 187-201., <https://ifsh.de/file-CORE/documents/jahrbuch/14/Hopmann-dt.pdf>
- <sup>8</sup> <https://www.bpb.de/internationales/weltweit/innerstaatliche-konflikte/224129/nagorny-karabach>
- <sup>9</sup> Terrence Hopmann. OSZE-Jahrbuch 2014, Baden-Baden 2015, S. 187-201., <https://ifsh.de/file-CORE/documents/jahrbuch/14/Hopmann-dt.pdf>
- <sup>10</sup> Press Statement by the Co-Chairs of the OSCE Minsk Group, New York, 26.09.2015, <https://www.osce.org/mg/185746>
- <sup>11</sup> Tagesschau. de, 30.09.2020 <https://www.tagesschau.de/ausland/bergkarabach-tuerkei-101.html>
- <sup>12</sup> <https://www.dw.com/de/macron-in-berg-karabach-k%C3%A4mpfen-dschihadisten-aus-syrien/a-55126426>
- <sup>13</sup> <https://oc-media.org/evidence-mounts-of-war-crimes-in-nagorno-karabakh/>
- <sup>14</sup> Ersten Zusatzprotokolls von 1977 zur Genfer Konvention, angenommen am 08.06.1977, <https://www.admin.ch/opc/de/classified-compilation/19770112/index.html>
- <sup>15</sup> <https://www.amnesty.org/en/latest/news/2020/10/armenia-azerbaijan-civilians-must-be-protected-from-use-of-banned-cluster-bombs/>
- <sup>16</sup> <https://mirrorspectator.com/2020/10/15/israel-high-court-rejects-ban-on-arms-sales-to-azerbaijan-as-lacking-evidence/>
- <sup>17</sup> convention on international civil aviation, Chicago, 1944, [https://www.icao.int/publications/Documents/7300\\_orig.pdf](https://www.icao.int/publications/Documents/7300_orig.pdf)
- <sup>18</sup> ArmPress, 15.10.2020, <https://armenpress.am/eng/news/1031661>
- <sup>19</sup> Tagesschau. de, 30.09.2020 <https://www.tagesschau.de/ausland/bergkarabach-tuerkei-101.html>
- <sup>20</sup> Gagrule.net 14.10.2020, <https://gagrule.net/russia-sends-air-forces-to-armenia/>
- <sup>21</sup> <https://bulgarianmilitary.com/2020/09/29/russia-sent-three-of-its-mig-29-fighters-to-armenia-using-iranian-airspace/>