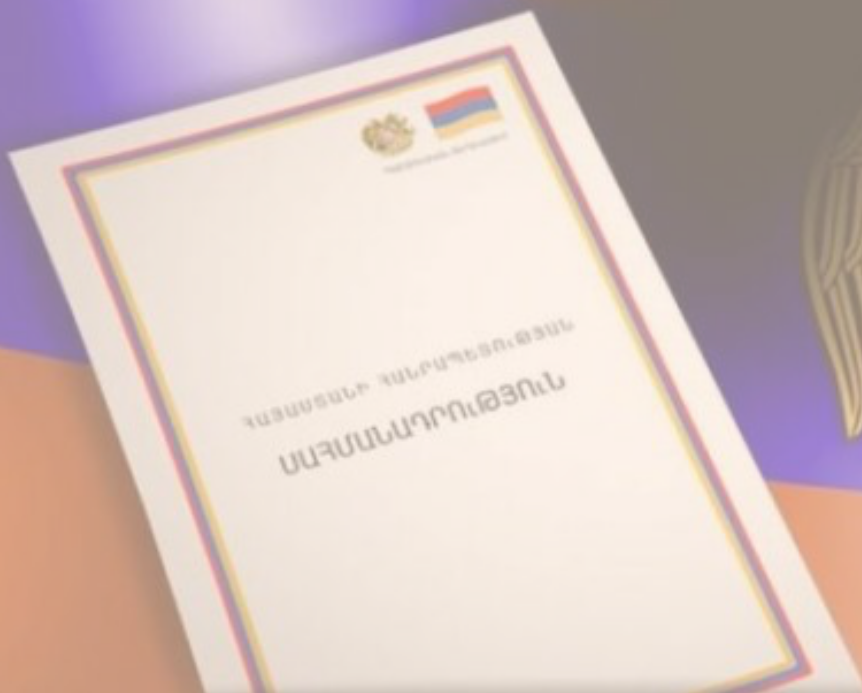




ARMENIA'S CONSTITUTIONALLY ENSHRINED TERRITORIAL CLAIMS AGAINST AZERBAIJAN: QUO VADIS?

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About the author

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Abstract

Armenia’s constitutionally enshrined territorial claims against Azerbaijan have often been overlooked and overshadowed by binary discussions around territorial integrity versus self-determination. However, as the two countries move closer to signing a peace treaty, these claims embedded in Armenia’s constitutional-legal framework are emerging as a major impediment to further progress in the negotiations. This report analyzes the legal and political foundations of Armenia’s territorial claims against Azerbaijan, explores how these claims have shaped Armenia’s policies and discourse towards Azerbaijan both before and after the 2020 war, and proposes strategies for addressing these constitutional constraints. The paper highlights the necessity of rescinding the 1989 “miatsum” declaration and advocates for practical policy-oriented solutions that would mitigate Azerbaijan’s concerns over unambiguous and unconditional recognition of its territorial integrity, enable Armenia to reclaim its constitution as a domestic matter, and facilitate a constructive resolution to the longstanding conflict.

Introduction

The negotiations between Armenia and Azerbaijan are approaching an endgame. Statements from senior officials of both countries suggest that the parties have achieved significant progress on the text of the peace treaty. On 1 July, Azerbaijani President Ilham Aliyev said that he believed Armenia and Azerbaijan “can finalize the text of the peace agreement, or at least basic principles, within several months.”¹ Days earlier, on 27 June, Armenian Foreign Minister Ararat Mirzoyan shared a similar assessment, saying the peace treaty was “almost finalized”.² He also added a touch of political sensationalism and finger-pointing to his statement by suggesting that if Azerbaijan agreed to Armenia’s proposals, the treaty could be signed “within a month”.

“ A central obstacle in this regard is Armenia’s constitutionally enshrined territorial claims against Azerbaijan, which undermine the very purpose of signing a peace deal. ”

While a significant achievement, it is important to note that finalizing the text of the peace agreement does not necessarily mean its immediate signing by the parties. A central obstacle in this regard is Armenia’s constitutionally enshrined territorial claims against Azerbaijan, which undermine the very purpose of signing a peace deal. President Aliyev said in early June that signing the peace treaty would be “simply impossible”, while the current Constitution of Armenia remained unchanged.³ Azerbaijani Foreign Minister Jeyhun Bayramov reiterated Baku position on 6 July, saying that the cessation of

¹ “Ilham Aliyev received credentials of incoming ambassador of Canada”, President.az, 1 July 2024, <https://president.az/en/articles/view/66351>

² “Statement of the Foreign Minister of Armenia during the joint press conference with Foreign Minister of Estonia”, 27 June 2024, https://www.mfa.am/en/press-conference/2024/06/27/Mirzoyan_Tsahkna/12714

³ “Ilham Aliyev received TURKPA delegation” (official transcript), President.az, 6 June 2024, <https://president.az/en/articles/view/66200>

Armenia’s territorial claims against Azerbaijan, enshrined in its numerous legal and political documents, was a “prerequisite” for signing the peace treaty.⁴

This report discusses the constitutional and legislative underpinnings of Armenia’s territorial claims against Azerbaijan, explores how these claims have shaped Armenia’s policies and discourse towards Azerbaijan both before and after the 2020 war, and proposes constructive policy solutions to address these constitutional constraints and advance the peace process. Specifically, it highlights the need to address the underlying issue, the 1989 “miatsum” declaration, upon which all other legislative acts and practices are built. The paper argues that rescinding this declaration would alleviate Azerbaijan’s concerns over unambiguous and unconditional recognition of its territorial integrity, enable Armenia to reclaim its constitution as a domestic matter, and facilitate a constructive resolution to the longstanding conflict.

⁴“Bayramov: Peace treaty discussions with Armenia are ongoing”, Report.az, 6 July 2024, <https://report.az/en/foreign-politics/bayramov-peace-treaty-discussions-with-armenia-are-ongoing/>

1. The 1989 “Miatsum” Declaration and its Metastasis in the Armenian Legislation and Political Practice (1990-2020)

1.1. *An elephant in the room*

“The legal and political ramifications of the 1989 “miatsum” declaration have long been treated as an elephant in the room not only by Armenian officials and authors but also, regretfully, by the journalists and third-party analysts.”

On 1 December 1989, the Supreme Soviet of the Armenian SSR, joined by ethnic Armenian deputies of the regional council of the Nagorno-Karabakh Autonomous Oblast (NKAO), adopted a fateful declaration “on the reunification of the Armenian SSR and Nagorno-Karabakh”.⁵ The declaration also stated that “The rights of citizenship of the Armenian SSR are extended to the population of Nagorno-Karabakh.” This unilaterally adopted and clearly unlawful⁶ document, dubbed the “miatsum” (Armenian for “unification”) declaration, was soon thereafter incorporated into the 1990 Armenian Declaration of Independence.⁷ To further complicate matters, the independence declaration planted yet another seed of instability under the newly independent Armenian statehood by introducing the notion of “Western Armenia” within the context of Armenia’s efforts to achieve international acceptance of a genocide narrative against Türkiye. Subsequently, the independence declaration was enshrined in the preamble of Armenia’s Constitution “as a basis [of] the fundamental principles of the Armenian Statehood and the nation-wide objectives”,⁸ thereby effectively cementing Armenia’s territorial claims against Azerbaijan and Türkiye in its legislative framework.

The legal and political ramifications of the 1989 “miatsum” declaration have long been treated as an elephant in the room not only by Armenian officials and authors but also, regretfully, by the journalists and third-party analysts. From the early 1990s until 2020/2021, legal-political analyses of the Karabakh conflict mainly revolved around unproductive arguments about which fundamental international norm should prevail: territorial integrity or self-determination.⁹ This dominant mental and narrative framework

⁵ Text of the “Resolution of the Supreme Soviet of the Armenian SSR and the National Council of Nagorno-Karabakh on the reunification of the Armenian SSR and Nagorno-Karabakh” (in Russian), <https://theanalyticon.com/ru/новости/постановления-вс-арм-сср-и-национальн/>

⁶ This decision contravened the Constitution of the USSR, in effect at the time, which stipulated that the territory of a Union republic could not be altered without its consent, and changes to the borders between Union republics required mutual agreement and ratification by the USSR Supreme Soviet. USSR Constitution (1977), Art. 78, <https://archive.org/details/constitutionussr1977/page/n43/mode/2up>

⁷ Armenian Declaration of Independence, 23 August 1990, <http://www.parliament.am/legislation.php?sel=show&ID=2602&lang=eng>

⁸ Constitution of the Republic of Armenia, <https://www.president.am/en/constitution-2015/>

⁹ For conventional legal analyses that focused on binary discussions of territorial integrity versus self-determination, prevalent during this period, see “Military occupation of the territory of Azerbaijan: a legal appraisal”, in Annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, A/62/491–S/2007/615,

essentially allowed the underlying issue – Armenia’s constitutionally enshrined territorial claims against Azerbaijan – to be swept under the carpet of international political and legal discourse, thus remaining largely overlooked and understudied until recently.

Successive Armenian political elites, both in government and opposition, have tried to avoid discussions – whether domestically or at international settings – about the legal-political legacy of the 1989 declaration. This was part of Armenia’s long-held strategy of deliberate ambiguity in its dispute with Azerbaijan over the Karabakh region. As I wrote previously, this policy of ambiguity aims to buy time at the talks through various deflection and delay tactics.¹⁰ It often manifests itself in markedly inconsistent and confusing positions, designed to enhance Armenia’s maneuverability at the talks and deflect international pressure by denying responsibility for its actions.

“ Armenia never officially recognized NKR as an independent state, never formally rescinded the 1989 declaration, and no Armenian leader has ever said in clear terms that this declaration was null and void. ”

In the early 1990s, Armenian officials, when confronted by Azerbaijani counterparts at international forums, suggested that the 1989 declaration was no longer in force following the declaration of independence of the “Nagorno-Karabakh Republic” (NKR) in 1991. Azerbaijan, on the other hand, emphasized that this interpretation is belied by the legal continuum between the 1989 “miatsum” and the 1990 independence declarations,¹¹ and subsequently, Armenia’s constitution. Armenia never officially recognized NKR as an independent state, never formally rescinded the 1989 declaration, and no Armenian leader has ever said in clear terms that this declaration was null and void. Therefore, NKR’s unilateral declaration of independence – a political “sleight of hand”¹² (as aptly described by Thomas de Waal) to exonerate Armenia of its responsibility for aggressive actions and reframe the conflict as one over the right to self-determination – could have no legal effect on Armenia’s own legislation. On the contrary, the occupied territories of Azerbaijan were in fact incorporated into Armenia, which had exercised “an effective control” over the territory, to borrow the term used by the ECtHR in its 2015 landmark ruling.¹³

<https://digitallibrary.un.org/record/611855?ln=en&v=pdf>; and Shahen Avakian, *Nagorno-Karabakh: Legal Aspects*, 5th edition, Moscow, 2015, <https://www.mfa.am/filemanager/Statics/nk-eng-2015.pdf>

¹⁰ Tabib Huseynov, *Returning Exclave and Border Villages: A Strategic Imperative to Unlock the Armenia-Azerbaijan Peace Process*, Baku, Institute for Development and Diplomacy (IDD) Working Paper, 15 March 2024, https://idd.az/media/2024/03/15/idd_working_paper_-_tabib_huseynov_-_15_march_1.pdf

¹¹ Letter dated 10 February 1994 from the Chargé d'affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, S/1994/155, <https://digitallibrary.un.org/record/182322?ln=en&v=pdf>

¹² Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, New York University Press, 2003, p. 161

¹³ “Military occupation of Azerbaijan by Armenia”, RULAC Geneva Academy, 9 October 2022, <https://www.rulac.org/browse/conflicts/military-occupation-of-azerbaijan-by-armenia>

1.2. A conspiracy of silence

“ Though it may sound categorical, foreign journalists and analysts have largely treated Armenia’s constitutionally enshrined territorial claims against Azerbaijan with ignorance, negligence, and perhaps even willful complicity. ”

Following the footsteps of their political leaders, Armenian authors and media have also been complicit in a politically motivated conspiracy of silence regarding the legal validity and ramifications of the 1989 declaration for many years. Whether analyzing their constitution or discussing constitutional reforms, Armenian legal analysts either completely ignored this issue or provided cryptic justifications for their perpetual territorial claims. The latter group argued that the preamble of Armenia’s Constitution, and thus the 1990 Declaration of Independence and the 1989 “miatsum” declaration it references, formed an “existential foundation”¹⁴ of Armenia’s constitutional order and could not be altered.¹⁵

Though it may sound categorical, foreign journalists and analysts have largely treated Armenia’s constitutionally enshrined territorial claims against Azerbaijan with ignorance, negligence, and perhaps even willful complicity. It is therefore no surprise that there are virtually no sources – either in English or Russian – analysing the 1989 declaration in Armenia’s constitutional-legal framework from a neutral third-party perspective. The few existing sources are either Azerbaijani diplomatic documents¹⁶ or analyses that barely scratched the surface, because they stayed within the confines of the well-trodden and binary debate over the primacy of territorial integrity over self-determination.¹⁷ However, some recently published reports have addressed the legal-political legacy of the 1989 declaration in Armenia’s constitutional-legal framework in greater detail.¹⁸

One of the most telling examples of a conspiracy of silence surrounding the legal and political ramifications of the 1989 “miatsum” declaration is the 1998 change of power in Armenia. Then President Levon Ter-Petrossian was forced to resign by the hardliners in his entourage, led by prime-minister Robert Kocharyan, who subsequently was elected president. At the time, the Constitution of Armenia required a presidential candidate to have resided in Armenia during the 10 years preceding the election and to have been a

¹⁴ Arthur S. Ghambaryan, “Declaration of independence of Armenia: an impressive guarantee of public protection” (in Russian), *Juridical Analytical Journal*, 15(2), 36-44, <https://journals.ssau.ru/yuazh/article/view/8939>

¹⁵ Anahit Manasyan, “The Issue of the Development of the Preamble to the Armenian Constitution: From Theory to Practice”, The National Institute of Justice of Moldova, 2019, https://www.academia.edu/41420015/The_issue_of_the_development_of_the_preamble_to_the_armeni_an_constitution_from_theory_to_practice

¹⁶ Letter dated 10 February 1994, op. cit.

¹⁷ Tofik Musayev, *Legal aspects of the Nagorno-Karabakh conflict* (in Russian), Baku, 2001, <https://karabakh.center/storage/libraries/X4Pv6bi8ZHVqY4bqfY7GxC5hR3XCKdoPQfG52aGB.pdf>

¹⁸ Vasif Huseynov and Matin Mammadli, *Persistence of Armenia’s Territorial Claims against Azerbaijan in Constitutional Documents and Official Correspondence*, Baku, AIR Center, February 2024, <https://aircenter.az/uploads/QX0cxTqHuL2e.pdf>

citizen of Armenia during those 10 years. Kocharyan, a native of Karabakh, moved to Armenia in 1997 and thus, met neither of these criteria. However, Kocharyan's supporters justified his candidacy by referring to the legal validity of the 1989 declaration in Armenian legislation, and the Central Election Commission (CEC) accepted this argument as legally valid by registering him as a candidate.¹⁹ That Kocharyan used this trick to come to power is hardly surprising, but what is astounding is that the election observation reports and various local and foreign media covering the 1998 election either completely omitted this highly controversial aspect of the elections or covered it in very general terms.²⁰

“ Perhaps the most conspicuous example revealing Armenia’s irredentist intentions was Pashinyan’s widely-publicized proclamation “Karabakh is Armenia – period”, which he uttered in Karabakh in August 2019, after which he led the crowds in chanting “miatsum”. ”

Another telling example dates to 1999, when the Armenian government submitted to the parliament a list of Soviet-era legislative acts to be rescinded. Initially, the 1989 declaration was also included in the list, but then it was removed, indicating that this document was not to be considered null and void as far as the Armenian legislation was concerned.²¹

In yet another example, in May 2018, soon after coming to power, Prime Minister Nikol Pashinyan made a cryptic reference to the preamble of the Armenian Constitution, stating, “I want to emphasize that the Republic of Armenia has been founded by the Armenian people, and not by the citizens of the Republic of Armenia, or the citizens of Soviet Armenia.”²² This statement implied that Pashinyan considered the Republic of Armenia to be founded not only by its citizens, but also by ethnic Armenian residents of Karabakh, to whom the 1989 declaration expressly extended Armenian citizenship.

Perhaps the most conspicuous example revealing Armenia’s irredentist intentions was Pashinyan’s widely-publicized proclamation “Karabakh is Armenia – period”, which he uttered in Karabakh in August 2019, after which he led the crowds in chanting “miatsum” (unification).²³ This statement was unprecedented and extraordinary in its public and unequivocal character, marking a significant departure from the earlier double-speak by

¹⁹ See, for example, Lusine Sargsyan, “The Robert Kocharyan Administration: 1998-2008”, EVN Report, 22 September 2021, <https://evnreport.com/magazine-issues/the-robert-kocharyan-administration-1998-2008/>; and Tatoul Hakobyan, “The 1998 elections: Kocharyan becomes president in Armenia” (in Armenian), Aliqmedia, 5 May 2021, <https://www.aliqmedia.am/2021/05/05/13319/>

²⁰ See for example, “Strong turnout as Armenians choose president”, CNN, 16 March 1998, <http://edition.cnn.com/WORLD/9803/16/armenian.elex/index.html>

²¹ Marta Akhnazaryan, “De jure resolution on the reunification of Armenia and Artsakh remains in force” (in Russian), Golos Armenii, 2 December 2023, <https://golosarmenii.am/article/197233/de-yure-postanovlenie-o-vossoedinenii-armenii-i-arcaxa-v-sile>

²² “Nikol Pashinyan: ‘The process of building a free and happy Armenia is irreversible’”, Aravot, 27 May 2018, <https://en.aravot.am/2018/05/27/213288/>

²³ Joshua Kucera, “Pashinyan calls for unification between Armenia and Karabakh”, Eurasianet.org, 6 August 2019, <https://eurasianet.org/pashinyan-calls-for-unification-between-armenia-and-karabakh>

Armenian leaders regarding the status of Karabakh as an ostensibly independent entity. As such, this statement is deemed as one of the watershed moments that precipitated the 44-Day War in September 2020.

Although Pashinyan's rhetoric towards Azerbaijan has undergone significant changes following Armenia's defeat in the 2020 war, his past statements and legal interpretation of the constitution's preamble highlight the persistent problem of territorial claims embedded within the Armenian legal-political system.

2. The Evolution of Armenia’s Political and Legal Approaches Regarding Azerbaijan’s Territorial Integrity in the Post-War Period (2021-2024)

The crushing defeat in the 44-Day War has caused what was described as “a monumental paradigm shift in traditional Armenian thinking”.²⁴ Armenian society began to discuss its past blunders more openly, as evidenced by Pashinyan’s new discourse on “Real” vs. “Historic Armenia”.²⁵

Since mid-2022, achieving a peace deal based on mutual recognition of territorial integrity and sovereignty has become a central principle of the Armenian-Azerbaijani peace process. The Prague meeting in October 2022 marked a significant turning point when the negotiations took on a qualitatively new dynamic: an Armenian leader recognized – for the first time – Azerbaijan’s territorial integrity and sovereignty based on international borders.²⁶ Armenian senior officials have since verbally stated their recognition of Azerbaijan’s territorial integrity on numerous occasions.²⁷ At times, Yerevan even attempted to turn the tables against Baku, accusing it of not acknowledging Armenia’s territorial integrity “based on the 1991 Alma-Ata Declaration”.²⁸

And yet, a closer examination of Armenia’s actions in international forums reveals a continuation of the previous policy of deliberate ambiguity, either by refusing to clearly recognize Azerbaijan’s territorial integrity or attaching unacceptable legal qualifiers and caveats to such supposed recognition.

2.1. A legal swindler

Ever since the October 2022 Prague meeting, Armenian senior officials have been making regular references to the 1991 Alma-Ata Declaration and Protocols on the establishment

²⁴ Onnik James Krikorian, “Historical versus real Armenia – Pashinyan’s push for a new narrative”, Commonsplace.eu, 11 April 2024, <https://www.commonspace.eu/opinion/opinion-historical-versus-real-armenia-pashinyans-push-new-narrative>

²⁵ Damjan Krnjec-Miskovic, “The Two Armenias Debate and the Quest for Peace with Azerbaijan”, The National Interest, 11 May 2024, <https://nationalinterest.org/feature/two-armenias-debate-and-quest-peace-azerbaijan-210979>

²⁶ “Statement following quadrilateral meeting between President Aliyev, Prime Minister Pashinyan, President Macron and President Michel, 6 October 2022”, <https://www.consilium.europa.eu/en/press/press-releases/2022/10/07/statement-following-quadrilateral-meeting-between-president-aliyev-prime-minister-pashinyan-president-macron-and-president-michel-6-october-2022/>

²⁷ See, for example, Nane Sahakian, “Pashinian Reaffirms Recognition Of Azerbaijan’s Territorial Integrity”, Azatutyun.am, 18 April 2023, <https://www.azatutyun.am/a/32369093.html>; “Armenia doesn’t seek self-determination of NK and fully recognizes Azerbaijani territorial integrity, says Alen Simonyan”, Armenpress, 28 November 2023, <https://armenpress.am/en/article/1125098>

²⁸ See, for example, Hoory Minoyan, “Mirzoyan says Azerbaijan unwilling to recognize Armenia’s territorial integrity”, The Armenian Weekly, 1 May 2024, <https://armenianweekly.com/2024/05/01/mirzoyan-says-azerbaijan-unwilling-to-recognize-armenias-territorial-integrity/>; and “Foreign Minister of Armenia Ararat Mirzoyan’s interview to ‘Al-Jazeera’”, MFA.am, 30 April 2024, https://www.mfa.am/en/interviews-articles-and-comments/2024/04/30/fm_interview/12622

of the Commonwealth of Independent States (CIS).²⁹ The signatories of this document, which included both Armenia and Azerbaijan, agreed to recognize and respect each other's territorial integrity and the inviolability of existing borders. Based on this provision, Pashinyan's administration argued that it had already recognized Azerbaijan's territorial integrity back then and therefore, "nothing new was decided in Prague".³⁰ An implication made with such statements was that a mere reference to the Alma-Ata Declaration should be sufficient to satisfy Azerbaijan's desire for formal recognition of its territorial integrity by Armenia. This narrative, however, not only failed to reassure Azerbaijanis, which grew increasingly skeptical of Yerevan's frequent references to the Alma-Ata Declaration, but also was debunked by Armenia's own fact-checkers, who have shown that the previous Armenian authorities did not recognize Azerbaijan's territorial integrity.³¹

Perhaps the most telling examples exposing Armenia's utter disregard towards Azerbaijan's territorial integrity in the post-2020 period are its legal submissions to international courts, particularly the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR).

Thus, in its inter-state application lodged against Azerbaijan before the ECtHR (Application No.42521/20), Armenia asserted the Alma-Ata Declaration had nothing to do with Azerbaijan's claim to Karabakh. In this regard, Paragraph 256 of Armenia's submission expressly stated: "the Republic of Armenia has never accepted the applicability of the principle of *uti possidetis juris* for the determination of title in its relations with the Republic of Azerbaijan. The mere involvement of the territory of Artsakh [i.e. Karabakh] within the administrative boundaries of the Azerbaijani Soviet Socialist Republic is by no means a legal argument in favour of Azerbaijani title over Artsakh."³² In other words, by Yerevan's own assertion and contrary to its other verbal proclamations, the Alma-Ata Declaration could not be considered as a sufficient legal basis for recognition by Armenia of Azerbaijan's territorial integrity.

Furthermore, Armenia's ECtHR and ICJ submissions are rife with controversial formulations that manifest a flagrant disregard for Azerbaijan's territorial integrity. For example, Armenian legal agents numerously referred to the Armenia-sponsored separatist entity without qualifiers ("Artsakh", "Republic of Artsakh")³³ and equated its

²⁹ Text of the Alma-Ata Declaration and its Protocols, 21 December 1991,

https://web.archive.org/web/20010122033300/http://lcweb2.loc.gov/frd/cs/belarus/by_appnc.html

³⁰ "Comment of the Spokesperson of MFA of Armenia regarding the statement of the official representative of the MFA of the Russia", 31 August 2023, https://www.mfa.am/en/interviews-articles-and-comments/2023/08/31/spox_comment/12172

³¹ "The former authorities did not recognize the territorial integrity of Azerbaijan, including Nagorno Karabakh: Pashinyan's claims are false", FIP.am, 23 May 2023, <https://fip.am/en/22654>

³² Vasif Huseynov and Matin Mammadli, "Persistence of Armenia's Territorial Claims against Azerbaijan", *op. cit.*, p. 3.

³³ In its original filing against Azerbaijan to the ICJ dated 23 September 2021, Armenia's agent stated that "Armenia will be referring to the Republic of Artsakh and Nagorno-Karabakh interchangeably in this Application and Request for provisional measures. Armenia's references to Nagorno-Karabakh are without prejudice to its position on the status of the Republic of Artsakh under international law." What does its position entail, Armenia's agent did not further elaborate on.

legal status with that of Azerbaijan (e.g. “Armenia is not planting landmines *in the territory of the Republic of Azerbaijan or the Republic of Artsakh*.”, “Azerbaijan’s aggression *against the Republic of Artsakh*...” etc.).³⁴ Armenia’s agents also numerously called the Azerbaijani settlements in the previously occupied territories with their occupation-era names, including those settlements that were outside of the boundaries of the former NKAO (e.g. “Qashatagh” for Kalbajar, “Berdzor” for Lachin, “Mekhakavan” for Jabrayil etc.). These settlements, inhabited solely by ethnic Azerbaijanis before the conflict, were referred to as the “regions of the Republic of Artsakh”,³⁵ indicating that in Armenia’s legal interpretation, the boundaries of the now-defunct separatist entity extended to cover all formerly occupied territories, not just those of the NKAO. In a curious display of diplomatic spitefulness, Armenia’s legal agent once even referred to Ganja, Azerbaijan’s third-largest city, as “Gandzak”.³⁶

On the domestic front, the Pashinyan administration’s post-2020 policies have continued disregarding Azerbaijan’s sovereignty over Karabakh. Thus, for nearly two years after the 44-Day War, Yerevan, by its own admission, continued to rotate its military personnel inside Azerbaijan’s sovereign territory, in clear violation of the 2020 armistice agreement.³⁷ Armenia’s financial support to the separatist entity, which was preserved at the time under the protective umbrella of the Russian peacekeeping force, increased dramatically by 122%, compared with the pre-war period, with Armenian state budget covering 73% of the separatist entity’s budget.³⁸ Pashinyan even boasted about this in May 2022, stating, “Artsakh never had a bigger budget, and the Republic of Armenia had never provided more assistance to Artsakh.”³⁹

Armenia’s National Security Strategy, adopted in July 2020, months before the 44-Day War, proclaims “international recognition of Artsakh’s right to self-determination”, a euphemism for Karabakh’s secession from Azerbaijan, as a national priority for Armenia. In April 2021, when asked whether Armenia would change its strategy in light of the post-war circumstances, Armen Grigoryan, national security council’s secretary, said the

³⁴ For details, see, parallel ICJ Cases, Armenia v. Azerbaijan, <https://www.icj-cij.org/case/180>; and Azerbaijan v. Armenia, <https://www.icj-cij.org/case/181>

³⁵ Vasif Huseynov and Matin Mammadli, “Persistence of Armenia’s Territorial Claims against Azerbaijan”, op. cit., p. 4.

³⁶ Oral observations of Armenia on 18 October 2021, ICJ Case Azerbaijan v. Armenia, <https://www.icj-cij.org/sites/default/files/case-related/181/181-20211018-ORA-02-00-BI.pdf>. It is worth emphasizing that in statements before the ICJ and ECtHR, Azerbaijan’s legal agents have refrained from using similarly politically charged language when referring to geographic names in modern-day Armenia.

³⁷ See, for example, Ani Mejlumuan, “Armenia pledges to complete Karabakh withdrawal this summer”, Eurasianet.org, 20 July 2022, <https://eurasianet.org/armenia-pledges-to-complete-karabakh-withdrawal-this-summer>. Despite this statement, the supply of weapons to local separatists and the rotation of military personnel ended only in April 2023, after Azerbaijan moved to install a border checkpoint in Lachin, within the area of responsibility of the Russian peacekeepers, thereby re-establishing control over the entirety of its border with Armenia.

³⁸ “Prime Minister Nikol Pashinyan's speech at the discussion of the report "On the Execution of the State Budget of the Republic of Armenia for 2021" in the NA Standing Committees”, 31 May 2022, <https://www.primeminister.am/en/statements-and-messages/item/2022/05/31/Nikol-Pashinyan-Speech/>

³⁹ Ibid.

strategy “has not lost its relevance”, thus effectively reaffirming the policy course aimed at undermining Azerbaijan’s territorial integrity.⁴⁰

In recent months, as Yerevan faced growing Azerbaijani demands to amend its constitution, some Armenian analysts have countered by arguing that Azerbaijan should also amend its constitution, given that it proclaimed itself a successor to the 1918 republic.⁴¹ Both Armenia and Azerbaijan have mentioned their briefly lived 1918 statehoods in their respective declarations of independence, subsequently enshrined in their constitutions. Such references could not be construed as expressions of territorial claims. Similar historical references abound in other contexts. For example, the Constitution of Poland refers to both the First (1569-1795) and the Second Polish Republic (1918-1939), which had vastly different borders from the present-day Poland.⁴² The constitutions of Estonia and Latvia also make references to their 1918 statehoods, whose borders slightly differed from those of today. Such references primarily serve as historical and cultural assertions of national identity and state continuity, rather than manifestations of any territorial ambitions. By contrast, the reference to the 1989 “miatsum” declaration, enshrined in Armenia’s Constitution, is a clear-cut and unmistakable expression of a territorial claim against Azerbaijan.

2.2. Fool me once: lessons from the “Zurich protocols”

“ Considering this experience, it is highly likely that under the current constitutional framework, Armenia’s Constitutional Court would muddle its ruling on a future peace treaty between Armenia and Azerbaijan with terminological qualifiers, legal caveats, and deliberately ambiguous judgments that would be unacceptable to Azerbaijan. ”

When faced with Baku’s demands to change its legislation, Yerevan argues that the parties have agreed a clause in the draft peace treaty according to which “neither party may invoke its domestic legislation for not implementing its obligations under the peace agreement.”⁴³ However, it should be underlined that this clause could not be extended to the Armenian Constitution, which has supremacy over all international treaties, as stipulated in Article 5.⁴⁴ Furthermore, Article 168 of the Constitution requires that any international treaty signed by the government should be approved by the Constitutional Court prior to its ratification by the parliament to ensure it is in accordance with the Constitution.

⁴⁰ “Armen Grigoryan: Peace in Karabakh is maintained thanks to Russian peacekeepers” (in Russian), RIA Novosti, 23 April 2021, <https://ria.ru/20210423/grigoryan-1729619235.html>

⁴¹ See, for example, <https://x.com/robananyan/status/1804029758444827016>

⁴² The Constitution of the Republic of Poland, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

⁴³ Statement by the Ministry of Foreign Affairs of Armenia regarding statements made by the President of Azerbaijan on June 6, 2024, https://www.mfa.am/en/interviews-articles-and-comments/2024/06/07/mfa_statement/12686

⁴⁴ See, Constitution of the Republic of Armenia, <https://www.president.am/en/constitution-2015/>. Additionally, Article 116 explicitly prohibits the ratification of international treaties that contradict the Constitution.

Given these constraints, some analysts in Azerbaijan have expressed concern that the Armenia-Azerbaijan peace treaty may face a similar fate as the stillborn Armenian-Turkish protocols (aka Zurich protocols) of October 2009.⁴⁵

Hailed as a “historic agreement”, these protocols were reviewed by Armenia’s Constitutional Court, which approved them in its January 2010 ruling.⁴⁶ However, the Court’s decision came with significant legal caveats, which rendered the protocols’ provisions concerning the mutual recognition of borders practically meaningless. Thus, the Court ruled that the provisions of the protocols “cannot be interpreted or applied... in a way that would contradict the provisions of the Preamble to the [Armenian] Constitution and the requirements of Paragraph 11 of the Declaration of Independence of Armenia.”⁴⁷

This ruling effectively meant that the implementation of the protocols, contrary to their stated objective, did not imply Armenia’s official recognition of the existing Turkish-Armenian border.⁴⁸ Reference to Paragraph 11 of the independence declaration, which mentions “Western Armenia”, implied that Armenia would maintain its veiled territorial claims against Türkiye. In a statement issued following the Court’s decision, the Turkish foreign ministry said it “undermine[d] the very reason for negotiating these Protocols as well as their fundamental objectives.”⁴⁹

Neither Armenia, nor Türkiye moved to ratify the protocols. Armenia suspended the ratification process in April 2010, and formally withdrew its signature in 2018.

⁴⁵ See, for example, “The Constitution that is leading Armenia to disaster - If not amended, the peace treaty is meaningless” (in Azerbaijani), in *Yeni Musavat*, 9 June 2024, https://musavat.com/news/ermenistani-felakete-surukleyen-konstitusiyasi-deyisilmese-sulh-muqavilesi-menasizdir_1076523.html; “Why is the Armenian Constitution an obstacle to peace with Azerbaijan?” (in Azerbaijani), BBC Azerbaijani, 5 July 2024, <https://www.bbc.com/azeri/articles/c0jq1z5kw3eo>

⁴⁶ “The decision of the Constitutional Court of the Republic of Armenia on the case on determining the issue of conformity with the Constitution of the Republic of Armenia of the obligations stipulated by the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and by the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey signed in Zurich on 10 October 2009”, 12 January 2010, https://www.concourt.am/decision/full_text/850.pdf

⁴⁷ Ibid.

⁴⁸ As Nona Mikhelidze writes, “...most crucially, [the Constitutional Court’s decision] stated that the implementation of the protocols did not imply Armenia’s official recognition of the existing Turkish-Armenian border established by the 1921 treaty of Kars. By doing so, the Constitutional Court rejected one of the main premises of the protocols, i.e. ‘the mutual recognition of the existing border between the two countries as defined by relevant treaties of international law’.” See, Nona Mikhelidze, “The Turkish-Armenian Rapprochement at the Deadlock”, Rome, Istituto Affari Internazionali (IAI), March 2010, <https://www.iai.it/sites/default/files/iai1005.pdf>

⁴⁹ Turkish MFA, Press Release Regarding the Recently Published Grounds of the Decision of the Armenian Constitutional Court on the Protocols Between Turkey and Armenia, 18 January 2010, https://www.mfa.gov.tr/no_-14_-18-january-2010_-press-release-regarding-the-recently-published-grounds-of-the-decision-of-the-armenian-constitutional-court-on-the-protocols-between-turkey-and-armenia.en.mfa

In 2011, a year after the Court’s controversial ruling, then President Serzh Sargsyan was asked by a group of youth whether Armenia would ever gain control of “Western Armenia”. He replied, “It all depends on your generation. My generation, I believe, fulfilled its duty when it was necessary to defend part of our homeland, Artsakh, from the enemy in the early 1990s, and we were able to do that.”⁵⁰

In 2020, just weeks before the outbreak of the 44-Day War, Pashinyan commemorated the centenary of the defunct Sevres Treaty, which partitioned the Ottoman Turkish territory, designating much of Eastern Anatolia to Armenia. In a move that drew ire from the Turkish government, Pashinyan praised the treaty as a “historical fact that reflects our long journey to restore our independent statehood” and said, “we are bound by duty to remember it, realize its importance, and follow its message.”⁵¹

Such statements were symptomatic of Armenia’s approach to the Turkish-Armenian normalization process. Armenian political elites wanted to have their cake and eat it too.

Considering this experience, it is highly likely that under the current constitutional framework, Armenia’s Constitutional Court would muddle its ruling on a future peace treaty between Armenia and Azerbaijan with terminological qualifiers, legal caveats, and deliberately ambiguous judgments that would be unacceptable to Azerbaijan. Such legal loopholes could allow Armenia to revive its territorial claims in the future, should the regional balance of power shift in its favor. It is based on this rationale that Baku insists on changing of Armenia’s constitution prior to the signing of the peace treaty.

⁵⁰ “Will Western Armenia be returned to us? – Serzh Sargsyan's response” (in Russian), News.am, 25 July 2011, <https://news.am/rus/news/68980.html>

⁵¹ “PM Nikol Pashinyan addresses the conference on 100 years of signing of Treaty of Sevres”, 10 August 2020, <https://www.primeminister.am/en/statements-and-messages/item/2020/08/10/Nikol-Pashinyan-message/>. For Turkish foreign ministry response, see, “Press Release Regarding the Statements of the Authorities of Armenia on the Pretext of the Centenary of the Treaty of Sèvres”, 10 August 2020, https://www.mfa.gov.tr/no_-171_-sevr-anlasmasi-nin-100-yildonumu-bahanesiyle-ermenistan-makamlarinca-yapilan-aciklamalar-hk.en.mfa

3. Moving Beyond the Legacy of the “Miatsum” Declaration in Pursuit of Sustainable Peace

“[...] the post-2020 context requires definitive clarity over the territorial integrity, sovereignty and borders of both nations. ”

Armenia and Azerbaijan need a treaty with clear provisions for durable and sustainable peace. Unlike the negotiations in mid-2000s and 2010s, which were built upon the notions of constructive ambiguity and an open-ended process regarding Karabakh's future status, the post-2020 context requires definitive clarity over the territorial integrity, sovereignty and borders of both nations.⁵² Any ambiguities on these fundamental issues, embedded either in the peace treaty or in national legislation, would undermine the chances of an agreement and greatly increase the risk of return to violence in the future.

Prime-minister Pashinyan seems to understand the problem and has advocated for fundamental legislative changes on multiple occasions. Thus, in August 2023, on the 33rd anniversary of Armenia's Declaration of Independence, he offered an unprecedented criticism, saying that his opinion of this foundational document had changed after the 2020 war. The Armenian Declaration of Independence, Pashinyan said, created a “confrontational narrative...that kept [Armenia] in constant conflict with [its] neighbors.”⁵³ He was clearly alluding to the 1989 “miatsum” declaration and the notion of “Western Armenia”, suggesting their inclusion in the independence declaration undermined Armenia's independence.⁵⁴

In a January 2024 interview to Armenian Public Radio, Pashinyan went further by arguing that new geopolitical and regional realities required a change to the Armenian Constitution.⁵⁵ This time, Pashinyan referred specifically to the 1989 “miatsum” declaration, stating that maintaining a reference to this declaration in the Constitution “means that we'll never have peace.”⁵⁶ The interview drew strong nationalist backlash to the extent that the director of Public Radio apologized for it, blamed the journalist who

⁵² For a discussion about the open-ended peace process between Armenia and Azerbaijan during the 2010s, see, Tabib Huseynov, “Transitional intervention strategies for conflict transformation in the South Caucasus”, *Caucasus Survey*, Vol.2, Nos.1 - 2, November 2014, pp. 130-141

⁵³ “Prime Minister Nikol Pashinyan's congratulatory message on the occasion of the 33rd anniversary of the adoption of the Declaration of Independence of Armenia”, 23 August 2023, <https://www.primeminister.am/en/statements-and-messages/item/2023/08/23/Nikol-Pashinyan-message/>

⁵⁴ Thus, according to Pashinyan, “With the Declaration of Independence adopted at the end of the 20th century, [Armenia] adopted a formula that had already led us to the loss of independence at the beginning of the 20th century.”, *ibid.*

⁵⁵ Arshaluis Mgdesyan, “Armenian PM's new constitution proposal faces uphill battle”, Eurasianet.org, 7 February 2024, <https://eurasianet.org/armenian-pms-new-constitution-proposal-faces-uphill-battle>

⁵⁶ “Prime Minister Pashinyan's interview to the "Security Environment" program of the Public Radio of Armenia”, 1 February 2024, <https://www.primeminister.am/en/interviews-and-press-conferences/item/2024/02/01/Nikol-Pashinyan-Interview-Armradio/>

interviewed the Prime Minister for not challenging him more, and said the journalist was consequently “reassigned” for this failure.⁵⁷

Most recently, Pashinyan reiterated his calls for a new Constitution on 5 July 2024, on the occasion of the Constitution Day, a national holiday.⁵⁸

“ Adopting a new constitution is a lengthy and politically cumbersome process. It is also unpredictable, since it may be rejected at a referendum or may fail due to insufficient turnout. ”

While advocating for a new Constitution, Pashinyan faces a dilemma: removing territorial claims would clear a major hurdle for the peace talks, yet a perception that he is changing the constitution under Baku's pressure could damage his political standing and undermine public trust in the new constitution. Adopting a new constitution is a lengthy and politically cumbersome process. It is also unpredictable, since it may be rejected at a referendum or may fail due to insufficient turnout. According to a July 2024 poll, over 80% of Armenian respondents opposed changes to the Armenian constitution, compared to 38% in January 2024.⁵⁹ Such a drastic shift in public perception, fueled by nationalist propaganda from the radical opposition, indicates that the Armenian public now views discussions about changing the constitution as an ultimatum from Azerbaijan.

In May 2024, Pashinyan signed an executive order instructing the Council for Constitutional Reforms to draft a new constitution by January 2027. This means that if the peace treaty hinges on the adoption of a new constitution, its signing would have to be postponed at least until the end of 2027 even under the most optimistic of circumstances.

Suggesting that Azerbaijan delay signing the peace agreement until Armenia amends its Constitution would effectively hold the peace process hostage to Armenia's domestic politics. Such a move would inadvertently empower revanchist factions in Armenia, who seek to prolong the process indefinitely in anticipation of a possible shift in power dynamics favoring Armenia in the future. History has repeatedly shown that when the political processes stall, military escalation takes over. Therefore, while changing of the Armenian Constitution should remain on the agenda, it should not be a precondition for signing of the peace treaty.

Azerbaijani analysts acknowledge the practical challenges associated with changing Armenia's constitution but emphasize that this should not serve as an excuse for Yerevan

⁵⁷ Joshua Kucera, ” Between Two Mountains, An Armenian Search For Identity”, RFE/RL, 6 March 2024, <https://www.rferl.org/a/armenia-mount-ararat-aragats-pashinian-azerbaijan-national-identity/32850668.html>

⁵⁸ “Prime Minister Nikol Pashinyan's message on the occasion of the Constitution Day”, 5 July 2024, <https://www.primeminister.am/en/statements-and-messages/item/2024/07/05/Nikol-Pashinyan-message-Constitution-Day/>

⁵⁹ “Gallup: 80.3% of respondents opposed to changes in Armenian Constitution”, News.am, 10 July 2024, <https://news.am/eng/news/833380.html>

to avoid its responsibility for the peace process.⁶⁰ Yet, there has been no shortage of constructive proposals from Azerbaijani experts on how Armenia could address its constitutional conundrum to move the peace process forward.

Some analysts suggested including a clause in the peace treaty whereby Armenia would commit to amending its constitution within a certain timeframe as a possible solution.⁶¹ This proposal has several precedents, such as in the 1998 Belfast (Good Friday) Agreement or the 2006 Nepalese Comprehensive Peace Agreement, where the parties pledged to amend their constitutions to align their legislation with the peace terms. However, this solution does not address the legal effect of the 1989 "miatsum" declaration and its derivative elements in the Armenian legal system.

Suggestions have also been made for the Armenian Constitutional Court to annul the "miatsum" declaration, to enable signing and subsequent ratification of the peace treaty.⁶² This proposal targets the root cause of the problem more directly. However, without a legislative decision by the parliament, the original initiator of the "miatsum" declaration, the Armenian Constitutional Court would lack the legal grounds to nullify it.

Considering the above, the primary focus should be on the Armenian Parliament formally rescinding the "miatsum" declaration, as the original author of this document. Given the constitutional implications of this decision, the Constitutional Court should then follow up by endorsing the legality of this decision in accordance with Article 168 of the Constitution. It is of utmost importance that both the Armenian Parliament and the Constitutional Court confirm the 1989 declaration null and void, as these institutions have upheld the legal narrative of territorial claims embedded in the Armenian legal system for decades.

As this paper argued, the "miatsum" declaration forms the legal basis and the root cause of Armenia's territorial claims against Azerbaijan. Rescinding it would significantly reduce the controversy surrounding further constitutional amendments, paving the way for their smoother resolution within Armenia's legal-political framework. Pashinyan's ruling "Civil Contract" party holds majority in the parliament. So, if Armenian government shows a genuine effort, securing a positive decision would be almost certain.

Thus, a formal, unconditional and unequivocal rescinding of the "miatsum" declaration is a key for further progress in the peace negotiations. By rejecting the expansionist "miatsum" ideology in both political and legal-constitutional domains, Armenia would not only achieve peace with Azerbaijan, but also liberate itself from the shackles of

⁶⁰ Vasif Huseynov, "The Last Hurdle to the Armenia-Azerbaijan Peace Treaty Should be Overcome", AIR Center, 12 June 2024, <https://aircenter.az/en/single/the-last-hurdle-to-the-armenia-azerbaijan-peace-treaty-should-be-overcome-1487>

⁶¹ "Shafiyev: Armenia's unwillingness to change Constitution may indicate reluctance to make peace with Baku", Report.az, 10 June 2024, <https://report.az/en/region/shafiyev-armenia-s-unwillingness-to-change-constitution-may-indicate-reluctance-to-make-peace-with-baku/>

⁶² Rasim Musabekov, "Constitutional disputes and peace treaty challenges between Armenia and Azerbaijan", AzeMedia, 10 June 2024, <https://aze.media/constitutional-disputes-and-peace-treaty-challenges-between-armenia-and-azerbaijan/>

revanchist retrograde concept of "historical Armenia". This transition would allow it to move to what Pashinyan calls a "real Armenia", a progressive country with clearly defined borders and harmonious relations with its neighbors.

