BAKU DIALOGUES

POLICY PERSPECTIVES ON THE SILK ROAD REGION

Vol. 7 | No. 1 | Fall 2023

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Legal and Political Mechanisms for Peacemaking

How These May Apply to the Armenia-Azerbaijan Peace Process

Rodrigo Labardini

Despite various tensions that have been going on for some time, there have been a number of indications that a formal peace treaty may be signed between Azerbaijan and Armenia in the time ahead. This expectation became even sturdier after a significant increase in the number of meetings between the leaders of both countries, particularly during May and July 2023 (Brussels on 14 May, Moscow on 25 May, Chișinău on 1 June, and Brussels again on 15 July). These meetings were parallel to several others by the Deputy Prime Ministers and Foreign Affairs Ministers of both countries in diverse cities ranging from Brussels and Chișinău to Washington and Moscow and on the bilateral border. Statements and readouts from these meetings evidence a complex negotiation and an interrupted conversation mechanism with the EU's facilitation, the U.S.'s support, and Russia's mediation, including encouragement from Türkiye and, to some extent, France and Germany.

The conversations have been very complicated. Not only do they deal with very thorny issues having to do regional security, the restoration of transport links between the two South Caucasus states (this would assist and further develop regional linkages in the Silk Road region and points beyond), the delimitation of the Armenia-Azerbaijan border, the future of Karabakh's ethnic-Armenian population and Azerbaijan's internally displaced persons (IDPs), and a possible peace treaty. But, at least implicitly, they also deal with overcoming a protracted animosity—that is to say, the question of reconciliation.

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A significant part of the intricacy involved is due to the paradigm shift in the balance of power that resulted from the outcome of the Second Karabakh War. In less than two months, Azerbaijan fully recovered seven of its eight regions that had been militarily occupied by Armenia for nearly 30 years. All at once, everything had changed: the face of the South Caucasus had been abruptly altered in just 44 days, which gave nations little time to accept the new reality and adapt to the new set of circumstances. When commentators have touched upon the issue, discussions generally include the trilateral statement that put an end to active hostilities, adopted by the leaders of Armenia, Azerbaijan, and Russia on 10 November 2020, and some of these referred to the document as a treaty—i.e., a legally binding agreement signed between States to be governed by international law—which it is not. This essay examines the nature of said trilateral statement as a "politically linking agreement"—or what I call *ligante pacta politica*—fixing a set of further negotiations and actions. It will also offer remarks on issues and paths that may eventually lead to a peace treaty that will undoubtedly benefit not only the South Caucasus but the Silk Road region in general.

The Trilateral Statement

A trilateral statement was adopted on the night of 9-10 November 2020, remotely signed in the three capitals by the leaders of the Republic of Armenia, the Republic of Azerbaijan, and the Russian Federation. While the statement does not explicitly mention starting negotiations to conclude a peace treaty, all its provisions are oriented toward achieving a state of peace between Armenia and Azerbaijan. Highlighting the importance of the issues, the three leaders met twice in 2021 (Moscow on 11 January and Sochi on 26 November), issuing statements confirming continued adherence to the 2020 trilateral statement, once in 2022 (Sochi on 31 October), where they confirmed the supremacy of the Alma-Ata documents of 1991, and again in 2023 (Moscow on 25 May).

Since the adoption of the November 2020 trilateral statement, numerous commentators and analysts have referred to it as if it were a legally binding agreement, i.e., a treaty: an "international agreement concluded

between States in written form and governed by international law" as defined in Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties. We can see this from frequent remarks alluding to the supposed fact that one or another term of the statement has or has not been duly complied with, while repeatedly denoting the specific terms used in the statement as if they had been written in stone. In other words, by highlighting these aspects, the geopolitical environment apparently seems to consider that the statement was not only a political agreement between warring sides to end hostilities and set guidance for future development, but, rather, an international legally binding agreement: a treaty. No one offers any characterization as to what type of treaty it might be: peace, war-ending, border demarcation, or otherwise. Nonetheless, as President Aliyev stated in May 2023: "the trilateral declaration, it is not a ceasefire agreement, but it is also not a peace agreement."

The lack of a fixed definition of the term 'ceasefire' allows flexibility in addressing the unique dynamics of each situation, yet it may concomitantly complicate issues precisely due to such flexibility.

What is clear is that the 10 November 2020 trilateral statement calls for a "complete ceasefire and a cessation of all hostilities." The term 'ceasefire' does not have a universally standardized or legally binding definition. The lack of a single definition can lead to variations in how the term is used in different contexts, including media, government documentation, and scholarly work. This flexibility allows for different interpretations based on the specific context and goals of the parties involved. The term 'ceasefire' is also closely associated with 'cessation of hostilities,' 'truce,' and 'armistice'—the latter two having long-standing precedents pertaining to inter-state armed conflict.

Generally speaking, 'ceasefire' refers to a temporary cessation or pause in hostilities, typically between warring parties in an armed conflict. Ceasefires can vary widely in terms of their scope, duration, and conditions. Several definitions treat ceasefires as distinct types of agreements separate from comprehensive peace agreements. These definitions often emphasize that a ceasefire does not necessarily signal the end of a conflict but rather a temporary pause in the fighting.

Ceasefires can also be viewed as components of broader peace agreements. In this context, a ceasefire is one element of a larger political and/or legal framework aimed at resolving the underlying issues of the conflict and establishing a sustainable peace.

The lack of a fixed definition of the term 'ceasefire' allows flexibility in addressing the unique dynamics of each situation, yet it may concomitantly complicate issues precisely due to such flexibility. It is also worth noting that the understanding of terms like 'ceasefire' can evolve over time, as the understanding of both conflicts and conflict resolution strategies develops. Thus, given the varied nature of conflicts and their resolutions, it is important to consider the specific context when discussing or analyzing ceasefires.

The trilateral statement would seem to be an armistice, as it ended active hostilities and put in place a set of future negotiations and actions arranging a path towards a peace treaty, but it is definitely not a document that marked the end of a war.

On the other hand, Article 36 of the 1907 Hague Convention (IV), "Respecting the Laws and Customs of War on Land," states that an "armistice suspends military operations by mutual agreement between the belligerent parties." An armistice constitutes an initial contact between the parties, often leading, in due course, to a peace treaty; but the legal state of war continues. In other words, an armistice is not peace.

The terms 'ceasefire,' 'truce,' 'cessation of hostilities,' and 'armistice' also have differences of meaning related to their temporality. Truces are mostly preliminary with a local scope, allowing field commanders to execute them for humanitarian purposes, whereas armistice and cessation of hostilities are more permanent arrangements. Truce, cessation of hostilities, and armistice seem like a sequence and can be considered as the "three stages of progress from war to peace" or as "a first link in a chain running from war to peace." A break in fighting is intended to provide a period of calm to facilitate negotiations, discussions, or the implementation of certain measures, including negotiating a more permanent peace agreement. Also, due to political repercussions involved in a ceasefire, they are

often not referred to in such terms but rather as "codes of conduct" or "declarations."

The trilateral statement would seem to be an armistice, as it ended active hostilities and put in place a set of future negotiations and actions arranging a path towards a peace treaty, but it is definitely not a document that marked the end of a war. Fighting can break out at any moment, as evidenced by various fatalities occurring several times since 10 November 2020. In fact, one can surmise that while the armed conflicts between Armenia and Azerbaijan known as the First Karabakh War (1988-1994) and the Second Karabakh War (2020), both situations really constitute a single conflict, as there were almost 30 years of "frozen conflict" with numerous deaths, parallel to continuous discussions and negotiations conducted primarily under the auspices of the OSCE Minsk Group Co-Chairs, with peace never achieved—this produced something akin to a false sense of peacetime in the middle of wartime.

One could also deduce that, after 2020, the four UN Security Council resolutions on the subject were finally executed. Yet, peace still has not been attained, and situations have arisen that may lead to the widening of the conflict and undermine peace and security in the region. On the other hand, they may serve to produce the opposite outcome: the results of the recent "antiterrorist measure" conducted by Azerbaijan (19-20 September 2023) speak to this point, for it brings to an end the functioning of the ethnic-Armenian secessionist "grey zone"—as presidential adviser Hikmet Hajiyev and others had put it—that was generally understood to be one of the major impediments to the successful completion of peace talks between both warring sides. Be that as it may, a peace agreement remains essential for the well-being of both Azerbaijan and Armenia and the region in general—the South Caucasus and the whole of the Silk Road region.

Any such result will have overreaching geopolitical implications, starting with the fact that a state of peace will be present and thus there should be no further need of external ceasefire monitoring or peacekeeping operations. The region would attain a state of peace that has not existed since the demise of the USSR. Additionally, it would improve regional stability and security, propel cooperative arrangements, and develop the individual countries' economic situation, particularly in trade, communications, transport, energy, and tourism sectors.

While not legally binding, the 10 November 2020 trilateral statement should be considered as a politically linking agreement. This is what I call *ligante pacta politica*—an agreement that politically links the parties but does not legally bind them. This distinction can be understood as one between a "gentleman's agreement"—i.e., one that "relies upon the 'decency' and 'honor' of the parties rather than the law to bind the parties"—versus a "treaty"—i.e., an agreement concluded by States governed by international law. At this point, it is important to underline that both political and legal agreements are encompassed within the concept of international commitments adopted by states.

While not legally binding, the 10 November 2020 trilateral statement should be considered as a politically linking agreement. This is what I call ligante pacta politica*—an agreement that politically links the parties but does not legally bind them.*

The main difference may be inferred from the following. A perfectly drafted treaty shall be legally binding and enforceable in the international arena—subject to the natural limitations of the international system. However, if there is no political will, such a perfectly drafted treaty may attain no outcome and come to nothing, transforming itself into a chimera, and a peace treaty may become a scrap of paper. On the other hand, a political agreement may be executed and further developed by the parties, and while its non-compliance may be demanded, this can only take place in political terms—including resorting, once again, to war. Any agreement—political or legal—requires the will to pursue and achieve any result. If it is of a legal nature, its execution may be exacted through the appropriate institutions, whether from the counterpart itself, an arbitration, a court, or an international organization such as the United Nations. If it is political in nature, its execution will be exacted through political means. The legal avenue is generally favored, as it establishes a known path for all actors and falls in line with the UN Charter, international law, and general principles of international relations, international amity, and comity. Political mechanisms are not

excluded as long as they follow the principles of the UN Charter.

As the University of Southern Denmark's Chiara de Franco points out, cessation of military confrontations rarely coincides with the end of war. Legal and political matters continue after the last shot has been fired, civilians driven from their homes try to rebuild their houses and their lives, military veterans need to adapt to their new role in civil society, and only then begins the struggle to define the history and the significance of recent past events and long-gone days. Further, determinations must be made regarding persons in affected territories before, during, and after military occupation. Thus, after ongoing military operations end, mechanisms for reaching a peace treaty become crucial. "In international wars with more than two participants, a single treaty may be signed by all the belligerents, but usually several treaties have been concluded," Professor de Franco tells us; but with only two parties in play, one treaty will generally suffice as only their interests should be taken into account. And, as stated, in the South Caucasus this would have a cataclysmic geopolitical reorganization of the Silk Road region.

Political Agreements

An inescapable fact in human affairs is power, evermore so in the international arena influencing the conduct of states. International law does not differ from other kinds of law in being inseparably related to power. In this sense, while separable, international law is sometimes seen as a tool of power politics. In fact, as journalist Mervyn Jones states, "international law is not less, but more, political than any other type of law."

Ligante pacta politica and otherwise political commitments, political agreements, or "gentleman's agreements" are, in general, perfect examples of how diplomacy can successfully achieve an accord and reach a solution to numerous situations arising in the lives of nations. While political agreements are not treaties, they may reflect the parties' intent to cooperate or address specific issues, often lacking the necessary legal framework to ensure legal compliance or legal enforcement. Instead, they rely on the goodwill and commitment of the parties involved to fulfill their obligations.

As the University of Potsdam's Andreas Zimmerman reminds us,

non-legally binding documents are increasingly being used in recent decades. Nowadays, States incrementally choose informal, non-binding mechanisms over treaties to organize their international affairs. These instruments are more flexible than treaties. Since they are not governed by UN Charter Article 102 (requiring treaties to be submitted to the UN to be published), they come into force swiftly, typically without parliamentary approval, are simple to change or terminate, and are not required to be disclosed. *Ligante pacta politica* are exempt from time-consuming formalities and processes required to conclude formal treaties precisely because they are not treaties. But they are not irrelevant to international relations and law. Evidencing how much States resort to this type of deal and understandings, in 2020, the Inter-American Juridical Committee issued Guidelines on Binding and Non-Binding Agreements. Other forums have also dealt with the issue, including the Committee of Legal Advisers for Public International Law of the Council of Europe.

Political commitments are considered agreements, but they are non-binding: they only link politically, and they only announce or provide assurances of political intentions. An agreement—defined as "mutual consent by participants to a commitment regarding future behavior"—encompasses both treaties (legally binding) and political commitments (defined as a "non-legally binding agreement between States, State institutions, or other actors intended to establish commitments of an exclusively political or moral nature"). Political agreements are international arrangements or informal pacts between governments to address issues of mutual interest—and they serve as important instruments in international relations, shaping cooperation and addressing global challenges. These commitments are flexible with great adaptability to circumstances. This also gives sufficient confidence for the parties to determine the degree and extent to which they link (politically) or bind (legally) them.

The degree to which political agreements may link parties will vary. The moral and ethical considerations of political commitments may have an impact on their compliance. Due to the concepts of good faith and mutual trust, parties may feel obligated to keep their promises. Political agreements frequently have reputational repercussions, which force parties to uphold their obligations to preserve

credibility. Political agreements can also be the first step toward more formalized cooperation and can act as a prelude to legally binding treaties. This viewpoint is further illustrated by instances of political agreements that have been recognized as legally binding. Some of the circumstances that may influence whether any declaration may be considered legally binding will depend on specific facts involved, including criteria like the "intention of the parties to be bound in international law, significance of the arrangement, requisite specificity, including objective criteria for determining enforceability, the necessity for two or more parties to the arrangement, and the form of the document."

Hence, *ligante pacta politica* possess a "pre-law-function" as it may lay out the terms with which states could potentially be willing to comply in the future, within the framework of a treaty that would then be legally binding. In this way, they may be considered precursors for concluding treaties, as they may inform the content of a future treaty, and, in practice, they evidence a will and exercise, or as Zimmerman says, a "normative pull." Without the existence of previous political agreements, many treaties could not have been signed and executed.

Several factors influence the linking ability of political agreements. The level of formality and specificity plays a crucial role. While not required, clear and specific language enhances the likelihood of the political agreement being treated as linking, therefore politically exacting that it complies with the terms used. The presence of enforcement mechanisms or consequences for non-compliance strengthens the linking nature of political agreements. While the absence of such mechanisms may undermine the agreement's enforceability, the logic of that sort of endeavor suggests that the parties will likely resort to any political means available to uphold the political commitment. The general political context and power dynamics surrounding the political agreement will significantly impact upon its linking force. Stronger states or influential actors may exert greater pressure or leverage to ensure compliance.

Nine Examples

Nine examples of linking political agreements will be discussed in what follows. First is the Atlantic Charter, which is nothing but a joint declaration depicting the political will of the U.S. and the UK regarding global security. It was issued by President Franklin D. Roosevelt and Prime Minister Winston Churchill on 14 August 1941 (notably, *before* the United States entered World War II), after their first wartime conference on board the HMS Prince of Wales anchored in Placentia Bay off the coast of Newfoundland, which at the time was still a British Dominion. The Atlantic Charter is not an official document but a joint statement expressing the war aims of the two countries—one technically neutral and the other at war. The Atlantic Charter expressed the two countries' beliefs in the rights of all people to live in freedom from fear and want, the freedom of the seas, self-determination, and the belief that all nations must abandon the use of force and work collectively in the fields of economics and security. One of its major provisions declared:

> [A]fter the final destruction of the Nazi tyranny, [we] hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men in all lands may live out their lives in freedom from fear and want…[S]uch a peace should enable all men to traverse the high seas and oceans without hindrance.

The Atlantic Charter is considered one of the first significant steps towards the formation of the United Nations.

Another example is the Tehran Conference (28 November-1 December 1943) and the Yalta Conference (4-11 February 1945) between the British Empire, the U.S., and the USSR, which also did not result in any treaty: they were politically linking conferences that decided several monumental issues that were later attained and adhered to by the parties and the world, including the establishment of the United Nations Organization and the partition of post-Hitler Germany. Yalta had a clear and staunch political commitment and the division of Germany into occupied zones was essential to its execution, evidencing political will as a paramount component in an international relations mechanism.

A third example of linking political commitments and arrangements is the Helsinki Accords, or the "Final Act" of the First Conference of Security and Co-operation in Europe (CSCE) Summit of Heads of State or Government of the Helsinki Conference. This document was signed by 35 States on 1 August 1975 and served as a political capstone of sorts of the Cold War

doctrine of détente championed by Henry Kissinger and embraced by his Soviet counterparts.

While not legally binding, the political commitments made in the Helsinki Accords have had substantial long-term effects. They established the inviolability of European frontiers and reject any use of force or intervention in internal affairs. They reflected and evidenced a strong commitment to follow the principles of the peaceful settlement of disputes whilst urging the signatories to respect human rights, including freedom of thought and religion. They have no formal sanction mechanism; nonetheless, they provided for collaboration, communication, a cooperative mindset, and transparency.

The Helsinki Accords are not treaties but rather constitute a politically linking—some would say politically binding—agreement consisting of three main sections informally known as "baskets" adopted on the basis of consensus. Although not legally binding, the Helsinki Final Act facilitated dialogue, cooperation, and trust-building between East and West, helping to reduce Cold War tensions, particularly on the ground in Europe. Its influence on subsequent developments and its impact on human rights issues in East-Central Europe demonstrates the lasting influence of this kind of political agreement. The Helsinki Final Act has had long-term impact and influence, contributing to a shift in the political landscape. It played a crucial role in the eventual collapse of communist regimes in East-Central Europe. Its non-binding nature did not prevent it from shaping the course of history.

A fourth example of linking political commitments and arrangements is the Oslo Accords—i.e., Israel and the Palestine Liberation Organization (PLO) signing two documents: the Oslo I Accord in Washington, D.C., in 1993 and the Oslo II Accord in Taba, Egypt, in 1995. This signaled the beginning of the Oslo peace process based on Resolutions 242 and 338 of the UN Security Council. The Oslo process got underway following negotiations held in secret in Oslo, Norway, which led each party to agree to accept the other as a negotiation partner. The PLO recognized the State of Israel while Israel recognized the PLO as "the representative of the Palestinian people."

A fifth example is the 1988 Baltic Sea Ministerial Declaration and the 1992 Baltic Sea Declaration, which clearly paved the way for the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. These had been preceded by merely political agreements negotiated under the auspices of the UN Environment Program (UNEP) and the UN's Food and Agriculture Organization (FAO). These cases also show that the content, and even the specific language of a treaty, can be mainly determined by such instruments.

The 1998 Good Friday Agreement is a sixth example of linking political commitments and arrangements setting the path for considerable institutional change in both Northern Ireland and the Republic of Ireland. A pair of agreements were signed on 10 April 1998 that largely put an end to "The Troubles," an ethno-nationalist conflict that raged in Northern Ireland since the late 1960s. It represented a significant advancement in the 1990s Northern Ireland peace process. It consisted of an international British-Irish Agreement between the London and Dublin governments and a Multi-Party Agreement reached by the vast majority of the political parties in Northern Ireland.

This established a cross-border committee with strong coordination and implementation powers and, potentially, executive powers for specific functional areas of cooperation for the island of Ireland. It also established a power-sharing Assembly that would be elected by proportional representation within Northern Ireland. The agreement placed high priority on issues of sovereignty, governance, discrimination, military and paramilitary organizations, justice, and policing. It included accepting the concept of consent, a dedication to civil and political rights, cultural parity of esteem, police reform, paramilitary disarmament, and the early release of paramilitary prisoners, followed by demilitarization. Additionally, and quite significantly, the Irish government backed the revision of Articles 2 and 3 of the Irish Constitution as part of the negotiations leading up to the Agreement in order to modify the Irish territorial claim to Northern Ireland. Two referenda were held on 22 May 1998, and despite the difficulties of establishing sustainable peace in Northern Ireland, progress was achieved because Anglo-Irish policymaking was logical and had the characteristics of what international relations theoretician Ernst B. Haas long ago called a "learning process."

A seventh example of the degree to which linking political agreements can link adversarial states is the Joint Comprehensive Plan of Action (JCPOA). The JCPOA, which not without controversy and detractors, to say the least, stated that the UN would lift the international sanctions against Iran and, in exchange—in an evident *quid pro quo*—Tehran agreed not to develop nuclear weapons.

The articulation of the difference between political commitments and binding agreements played a major role in the U.S. legal position. In this sense, the U.S. argued at the time, the JCPOA is merely a political commitment and thus does not impose any binding obligations on America. It is claimed that the obligations of the U.S. may be laid down in the JCPOA —which is a political agreement—while the rights of the U.S. are set down via various UN Security Council Resolutions—which are oftentimes binding for all UN member states. The endorsement of the JCPOA by the Security Council, via Resolution S/RES/2231 (20 July 2015), established a certain basis for political commitments to become binding under international law. However, the language used in S/RES/2231 is controversial as it "calls upon" member states to take actions in support of the JCPOA while it "decides"—making it mandatory, in terms of Article 25 of the UN Charter—that certain measures will expire in 10 years after the JCPOA's adoption. Despite all of the above, what is clear is that the JCPOA was a linking political agreement that may have become legally binding but only until it was endorsed by the Security Council—i.e., the JCPOA remained politically linking while S/RES/2231 was mandatory in certain of its provisions.

My eighth example of linking political commitments and arrangements is the 1978 Aegean Sea case, in which the International Court of Justice (ICJ) analyzed several communications and language between the Foreign Ministers of Greece and Türkiye to determine whether there was a legally binding agreement or not. The ICJ found that there was no such agreement because even though delegations of both parties met, the Brussels Joint Communiqué of 31 May 1975 did not reflect a legally binding agreement between them.

Regardless, some political agreements may become legally binding. Few, but some, scholars believe that every commitment made by states is inevitably legal, for states are unavailable to select

arrangements to fall outside the international legal order in which all UN member states operate. At a minimum, international customary law springs into life from states' daily acts, whether by action or omission. In the case of *Qatar v. Bahrain*, which came to pass some two decades after the Aegean Sea case, the ICJ declared that exchanged "minutes" of meetings and letters constituted an international legally binding agreement. Thus, while Bahrain contended that these documents had only been political negotiations and could not have a legally binding effect, and even though Bahrain's Foreign Minister insisted that neither he nor the Bahrain government had the intent to adopt a legally binding agreement, the political arrangement amongst the Foreign Ministers of Qatar, Bahrain, and Saudi Arabia was to be found binding—as reflected in the "minutes."

This would signify that *ligante pacta politica* may not only set the path towards a treaty but that such political agreements can *themselves* become binding—even if the parties apparently did not have the definite intention to enter into a legally binding agreement. Moreover, in this case, these three states had had previous agreements, which the "minutes" reaffirmed.

In this respect, during the 1982 Argentina-United Kingdom war regarding the Malvinas/Falkland Islands, both countries did not officially declare war, but both declared the islands a war zone. This ninth and final example tells us that diplomatic relations between both countries were restored after a meeting on 17-19 October 1989 in Madrid, whereafter both governments issued separate statements on 19 October 1989. A salient point of these documents, which are of a political nature, was that neither were signed nor formally adopted. They were simply released by both governments, giving credence to the argument that they were jointly adopted. In a joint letter to the UN Secretary General on 24 October 1989, both the Argentine and British Permanent Representatives to the UN transmitted their joint statement, further requesting that it be circulated as an official document of the General Assembly and the Security Council. The joint statement indicated that nothing should be interpreted as "a change in the position of the [Argentina or the UK] with regard to sovereignty or territorial and maritime jurisdiction over the [Islas Malvinas/Falkland Islands], South Georgia, the South Sandwich Islands, and the surrounding maritime areas" nor "recognition of or support for the position of [Argentina or the

UK] with regard to sovereignty or territorial and maritime jurisdiction" over such regions. Both governments met again on 14-15 February 1990 in Madrid and adopted a new joint statement, which was sent to the UN Secretary General via a joint letter on 21 February 1990.

Interestingly, the February 1990 joint statement specifically states that the "formula on sovereignty over the [Falkland Islands/Islas Malvinas], South Georgia and the South Sandwich Islands and the surrounding maritime areas, recorded in paragraph 2 of the joint statement of 19 October 1989, applied to [the 1990] meeting and its consequences." While both joint statements are political in nature and were never signed nor formally adopted as legally binding documents, both governments continue to strictly abide by their terms, which explicitly state that no change occurred in either country's position regarding the sovereignty of the Islas Malvinas/Falkland Islands. Further, it is worth noting that Argentina adopted a new constitution in 1994, which inter alia declare the Islas Malvinas to be a part of one of its provinces.

By definition, *ligante pacta politica* are not supposed to establish any independent legal rights or responsibilities. In practice, however, we clearly see that, in fact, they are frequently used by states as a way to avoid legally binding obligations. Nonetheless—to quote the 2020 Inter-American Juridical Committee's Guidelines—states "honor their political commitments and apply them with the understanding that other states will expect a performance of a State's political commitment whether due to their moral force or the political context in which they were made."

The takeaway here is that *ligante pacta politica* can both have substantial policy effects and affect the conduct of the concerned parties if there is widespread acceptance and support for these documents within the international community. However, they are not exempt from answerability. States may resort to all political means available to them. And a previous war between the parties is a harsh reminder and not a good omen.

Separability of the Main Issues

In diplomacy and international negotiations, we often see that the principle of "nothing is agreed until everything is agreed" being applied, which is normally stated in an explicit fashion. This principle was adopted in the Joint Framework Document between Britain and Ireland in 1995 and was later applied in cases involving Israel-Palestine, Bosnia, Colombia, and Cyprus. It was also present in the November 2001 Declaration of the Fourth Ministerial Conference of the World Trade Organization (WTO), the Single Undertaking under the Doha Declaration, which failed in 2011 after ten years of negotiations by 160 countries. The goal of the approach that takes this principle as a starting point is to promote "big picture negotiations" in which parties can avoid committing to certain provisions of the agreement individually and when individual issues apparently may not be resolved independently. However, the application of the "nothing is agreed until everything is agreed" principle also implies that they are all free to renege on any agreements they have made at any time. Thus, the principle is not to be assumed in any negotiation, particularly between two parties, unless explicitly stated.

All issues being dealt with in the South Caucasus are quite complicated—e.g., regional security, transport links between Armenia and Azerbaijan (and, indeed, from Central Asia to Anatolia), border demarcation, and a possible peace treaty. Progress in one area will and should be considered as definitely contributing to confidence-building measures and promoting the achievement of a general state of peace.

Towards a Peace Treaty

Political scientist Dan Reiter reminds us that two central factors shape war-termination decisionmaking: information about the balance of power and the resolve of one's enemy, and fears that the other side's commitment to abide by a war-ending peace settlement may not be credible.

For these purposes, and to overcome obstacles, states will engage in different negotiation processes, generally following three stages identified by legal scholar Christine Bell in peace progress mechanisms: pre-negotiations ("talks before talks"), negotiations ("the talks") and post-negotiation (a "rocky road to implementation").

The first stage is crucial to "break the ice," facilitating the parties to communicate their concerns, examine solutions for making peace, and understand one another. This allows them to ensure their mutual commitment to the peace process. In this pre-peace treaty phase, the

parties tend (or are compelled) to choose mediators or facilitators (or both) in order to identify a common good and develop confidence between one another. In this stage, parties will probably coincide on the same road they intend to construct. Peace negotiations may begin in official or informal interactions.

To reach a peace treaty, parties make use of what are called "Confidence Building Measures" (CBMs) to increase their confidence and desire to negotiate and to ensure one another that there will not be a deviance from actions intended to promote peace. The purpose of CBMs is not to solve interpersonal conflicts but to establish a workable trust so that parties can engage in real conversations to resolve a conflict's underlying concerns. CBMs may include, amongst other actions, the release of detainees, the removal of soldiers from contested regions, disarmament campaigns, military and police patrols, communications between defense ministries, assistance during natural disasters, encouragement of intercommunal interactions, and the suppression of criminal activity along a shared border. The presence of mediators is another way to build confidence, facilitate contact, and find mutually-acceptable common ground. In the context of the Armenia-Azerbaijan peace process, one could argue that by hosting several meetings, the U.S., Russia, and the European Union are contributing towards establishing a state of peace. Establishing trust between the former belligerents' military chiefs is also generally useful, and the direct line established in November 2021 between Baku and Yerevan for communication between their defense ministers to provide crisis management was a good step forward. While all these measures are non-binding, parties become inclined to execute a peace treaty if they mutually respect such conditions.

An authoritative text on the subject defines a "treaty of peace" as a "formal instrument professing to establish permanent peace between the parties" after a war has ended. Its purpose is to establish an order, maintain a sustainable peace, and lay down the terms for a non-belligerent future

An authoritative text on the subject defines a "treaty of peace" as a "formal instrument professing to establish permanent peace between the parties" after a war has ended. Its purpose is to establish an order, maintain a sustainable peace, and lay down the terms for a non-belligerent future**.** Several conditions should be achieved in order to generate an environment propitious for signing and executing a peace treaty. Before signing a treaty, formerly warring parties must show their willingness to participate in negotiations and seek a peaceful outcome—in other words, previously warring parties must show an honest and genuine desire to engage in negotiations. In the negotiation process itself, parties should prioritize the long-term benefits over immediate ones—particularly of a contemporary political nature.

Establishing a fair, workable dispute resolution procedure, such as mediation, arbitration, or recurring to neutral third parties can also be crucial to fostering confidence and a productive negotiation process. A mutually-accepted solution can sometimes be reached with the support of competent mediators, who can encourage discourse, build trust, and aid in improving communication.

To reach agreement on a peace treaty, it is also important to raise public awareness of the peace process and its advantages to win support from the general population.

The key outside stakeholders—neighboring countries, other states, and inter-state organizations—can contribute to the success of a peace process by inter alia supporting parties diplomatically.

Finally, there needs to be a strong commitment from all parties to uphold the conditions of the peace treaty, including adhering to deadlines, participating actively in follow-up processes, and working with monitoring mechanisms (should they be agreed upon).

The Peace Treaty

A peace treaty is key to the overall normalization process. However, it is not a panacea. It is therefore better to think of it as one of the many stages in a complex transition from wartime into peacetime. A lasting peace will likely derive from a treaty that takes into account multiple aspects of those mentioned above. On the other hand, there will likely be delays, setbacks, or even derailment where an agreement, whether political or legal, fails to take into account several of the above-mentioned issues. Two significant concerns will arise, often in apparent contradiction. On

one side, since a peace treaty is a legally binding agreement, drafters will want to prepare and design it as best as possible, thus vying to prevent any foreseeable difficulties. On the other hand, word and phrasing imperfections, viability, or validity need to be balanced against the necessity to keep moving forward the impetus from war to peace. As French and now UN diplomat Jean Arnault puts it:

> ambiguities, lacunae, even stark impossibilities are acceptable costs. Over time, ambiguities will be lifted, lacunae will be filled, amendments will be made to take account of impossibilities, and, most importantly, the relevance of seemingly intractable issues will erode as the parties gradually learn to value accommodation over confrontation.

The sustainability of peace will depend on how to successfully deal with problems that will surface at the implementation stage and, additionally, to determine how and to what extent demands explicitly or implicitly placed by the parties and influential outside actors can be met. A common fault is to overestimate the implementation capabilities of the parties, in terms of either the scope of the commitments they have undertaken or the timing of their implementation. The gravest risk consists in misinterpreting the other side's lack of capability as a lack of political will. This is sometimes followed by how public opinion's expectations are met or not. Another quandary consists in dealing with political constraints, since an agreement implies a compromise between positions initially held by the parties, while public opinion—and other domestic and international political actors—will remain in the extremes. Some actors may oppose to certain concessions, which oftentimes is evidence of political weakness.

A strong agreement will lead to a more durable peace.

Vital interests cannot be postponed to the implementation stage in the hopes that better circumstances will be present for their settlement. Instead, they must be adequately addressed throughout the negotiation process, and they should be framed in the peace agreement in such a way as to lend themselves to be implemented speedily, simultaneously, and around the time of the signing of a peace agreement. Nonetheless, implementation will be of paramount importance and quite difficult to manage. Ambiguities of language, almost a necessity in the drafting negotiation process, will arise. However, a clear understanding of the parties' political commitments will assist in developing the legally binding agreement and its appropriate application.

Maintaining Peace

What makes peace easier or harder to maintain? Some scholars point out that a decisive victory tends to create a more stable situation than stalemates, while conflicts over territory are more likely to reemerge. Changes in relative capabilities over time provide the best explanation for the breakdown of peace. In this sense, the durability of peace is best examined as a decision to restart the war as part of an ongoing bargaining process, so that changes taking place after the fighting stops are most likely to affect whether it starts again.

Another crucial point to keep in mind in the context of preserving peace is to vigilantly pay attention to the strong connection between an enduring rivalry and the resumption of war. Although democratic peace theory, in the tradition of Bruce Russett, is generally considered to be the major empirical finding of international relations scholarship, conflicts between great powers, recently independent states, or contiguous states are more likely to recur. Therefore, territorial disputes and conflicts that result in stalemates are more likely to persist. Domestic political factors like regime type and issue prominence also have an impact on the termination of such rivalries.

Political agreements can still impose certain political commitments and obligations on the parties concerned, which can eventually make them legally obligatory even though they are typically regarded as non-binding or may not have the same legal enforceability as treaties.

A peace treaty becomes a necessity to put an end formally and legally to a war. Ceasefires and armistices are not mere scraps of paper. The implementation of specific mechanisms can help make peace last. In essence, a strong agreement will lead to a more durable peace.

Political agreements can take various forms, such as trilateral statements, joint statements, declarations, memoranda of

understanding, letters of intent, and many other denominations. While *ligante pacta politica* will not have the legal implications of a treaty because they do not embody the states' intention to be governed by international law, they will still politically link the parties. International relations—both bilateral and multilateral—may become strained, they may lose credibility and reliability, and the parties may suffer great damage to their reputation and international standing in the event that they break the promises and commitments outlined in any political commitment—particularly with their active counterparts, with or without maintaining diplomatic relations.

In some circumstances, parties may experience diplomatic or political repercussions, such as economic sanctions or the loss of political support by foreign countries. Political agreements can still impose certain political commitments and obligations on the parties concerned, which can eventually make them legally obligatory even though they are typically regarded as non-binding or may not have the same legal enforceability as treaties.

Wartime or Peacetime?

Is there peacetime or wartime between Azerbaijan and Armenia? The gravest military aspects seem to have finished when active hostilities ended due to the 10 November 2020 trilateral statement. Yet, this situation is not definitive, as evidenced by different clashes and untimely deaths occurring along the line of contact and their—still undefined—borders. High-level conversations are not only contributory elements for achieving peace but are also important pacesetters for communications and exchanges. However, the foregoing neither necessarily means the end of hostilities nor the establishment of peace between states.

Is there peacetime or wartime between Azerbaijan and Armenia?

In the European theater, World War II hostilities ended on 8 May 1945, when Germany surrendered. By his Proclamation 2714 dated 31 December 1946, U.S. President Harry Truman announced the cessation of hostilities while indicating that "a state of war still exists." Such a state of war continued until 19 October 1951, when the U.S. Congress adopted a Joint Resolution—echoed by Truman in Proclamation 2950 a few days later (24 October 1951)—that declared the end of the state of war with Germany. In the Pacific theater, days after the United States dropped nuclear bombs on the Japanese cities of Hiroshima and Nagasaki on (respectively) 6 and 9 August 1945, Japan announced its surrender on 14 August 1945 and signed its instrument of surrender on 2 September 1945. However, the peace treaty was signed on 8 September 1951 and came into force on 28 April 1952. Hence, neither a ceasefire, a cessation of hostilities, an armistice, nor the surrender of one party signifies, in and of itself, the end of a war. Such types of documents only mean the active discontinuation of armed hostilities and are properly understood as steps for further negotiations to achieve a state of peace.

We also need to distinguish between conflict and war. The military aspect may have stalled due to an armistice, but the present situation cannot be qualified as constituting peacetime. Various types of underlying tensions are imbued with diverse patterns, including economic, social, political, cultural, legal, historical, and pertaining to international humanitarian law. In this context, war is often considered as part of a continuum of conflict, sharing similarities with other forms of disagreements and engagements such as arms races, international crises, and more. We can draw comparisons to bargaining engagements, games, epidemics, cyclical processes, duels, fights, lawsuits, and so on. War is difficult to classify into one specific type of conflict, given its complexity and multifaceted nature. Peace may only happen when war has ended; and yet, conflict will probably still remain in varying degrees, as there is a long train of animosity.

In short, while we can neither consider the 10 November 2020 trilateral statement to be a treaty nor a "legally binding agreement," we may consider it not just as a "political agreement" but as a *ligante pacta politica*—a linking political agreement to which both sides adhere as much as possible. One political commitment setting the path towards sustainable peacetime. BD

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