

AGAIN ABOUT THE MEASURES TO MAINTAIN CEASEFIRE REGIME IN NAGORNO KARABAKH CONFLICT ZONE

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A. The 'conspiracy of silence' on the agreement signed 17 years ago

In May 2012 we will mark the 18th anniversary of the signing of the Permanent Agreement on the Ceasefire in effect as of May 12, 1994, in the Nagorno Karabakh conflict zone. The agreement was signed by the three conflicting parties, namely Azerbaijan, Armenia and the Nagorno Karabakh Republic, with the mediation of Russia.

In fact the war could have ended earlier. Short-term ceasefires were achieved many a time, but the Azerbaijani side either was unwilling to extend them, or even violated them, trying to gain the upper hand by force of arms. For instance, a protocol envisaging a ceasefire to come into effect on 1 March 1994 and the withdrawal of troops from the line of contact was signed at the Russian Ministry of Defense on February 18, 1994. The protocol was signed by the defense ministers of the Republic of Azerbaijan, the Republic of Armenia, the Russian Federation, and a representative of the Nagorno Karabakh Republic. However, Azerbaijan evaded fulfilling the obligations assumed under the protocol and the war continued for another two months.

In February of this year, it was 17 years since the Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict (sometimes it is also referred to as the Agreement on Incident Resolution) was signed. The agreement took effect on 6 February 1995 and was signed by the defense ministers: by M. Mamedyarov - Azerbaijan, S. Sargsyan (the incumbent President of Armenia) - Armenia, and S. Babayan, the commander of the Defense Army of Nagorno Karabakh. It should be noted that the proposals of the mediators were sent on February 3 to the first persons of the conflicting parties, namely G. Aliyev, L. Ter-Petrosian, and R. Kocharian, which means that those proposals could not be signed without their personal consent. It is also noteworthy that Russian and Swedish Co-chairs of the OSCE Minsk Group on Nagorno Karabakh - Ambassador Vladimir Kazimirov and Ambassador Anders Bjorner acted as mediators in the signing of the Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict.

By the way, so far it has been the only agreement on Karabakh to be signed under the aegis of the OSCE. The author believes that this agreement is one of the examples of successful interaction between Russian and Western diplomats regarding the settlement of the Nagorno-Karabakh conflict.

It should be observed that although 17 years have passed since the signing of the Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict, the agreement has not been implemented so far, despite the fact that immediately after the agreement's signing, in the first ten-day period of February 1995, the Russian Co-chair V. Kazimirov made sure that the conflicting parties exchanged HF numbers (in the Soviet time, it was a means of private telephone communication of the government), allowing the political and military leaders of the conflicting parties to rapidly get in touch with each other in case of an incident. Besides, communication among the conflicting parties' sub-unit commanders in the field was carried out. Subsequently, direct two-way communication between the parties was not properly established due to Baku's refusal to act in compliance with the letter and spirit

of the agreement.

The two main goals of the abovementioned agreement were: the resolution of incidents through direct communication between the parties (in particular, such communication was expected to be carried out by fax and international communication lines of the government) and the prevention of propaganda campaigns aimed at stirring hostile sentiments.

Interestingly, the overwhelming majority of those concerned with the subject of the Nagorno Karabakh conflict settlement (diplomats, experts, journalists, etc) are aware of the Agreement on Ceasefire in effect as of May 12, 1994, but very few of them are aware of the Agreement on Strengthening the Ceasefire Regime. No less curious is the circumstance that the Co-chairs of the OSCE Minsk Group seldom mention the 1995 Agreement on Strengthening the Ceasefire Regime - in the past 17 years they have referred to it only a few times. It looks very much like maintaining a 'conspiracy of silence' established by Baku with respect to the only serious juridical act of the OSCE Minsk Group.

It is noteworthy that prior to the meeting of the presidents of Azerbaijan, Armenia, and Russia in Kazan last year when the sides were expected to sign the Madrid Principles, the main negotiating strategy of the OSCE Minsk Group mediators had been aimed at signing that very document. Yet, after the document remained unsigned and the meeting virtually ended in failure, the three co-chairs focused on the confidence building measures. The first words about that were spoken during the most recent regional trip of the co-chairs in 2011.

There is some difference between the steps that the co-chairs took 17 years ago and the current steps of the co-chairs: in 1995 the Russian and Swedish co-chairs laid stress not so much on the investigation of incidents as on their localization and elimination, as well as on the creation of difficulties for those trying to use incidents for hostile propaganda campaigns. Now the co-chairs focus on incident investigation, but this is only half the work.

Besides, as is generally known, Russia, the United States, and France have decided to lay stress on the fact that the conflict must be settled not only based on the principles of territorial integrity and the right of nations to self-determination, but also based on the principle of non-use of force or threat of force. One of the reasons for not signing the Madrid Principles is that one of the parties (Azerbaijan) has not renounced the use or threat of force for the settlement of the Nagorno Karabakh conflict.

The next step of the co-chairs was their attempt in December 2011 to expand the opportunities (to increase the level of financing) of the Office of the Personal Representative of the OSCE Chairman-in-Office in the conflict zone. The matter was that the Office of the Personal Representative should assist with investigation of possible incidents on the contact line of the armed forces of the conflicting parties in the Nagorno Karabakh conflict zone, including in pursuance of the Agreement of February 4, 1995. Baku blocked the proposed increase in the level of financing, giving a reason that a final agreement on details of the incident investigation mechanism had not yet been reached.

Yet the agreement signed 17 years ago under the aegis of the OSCE clearly sets forth the mechanism of actions of the parties and the mediators in case of an incident. In particular, the matter concerns Articles 1, 2, and 4 - 8 of the Agreement on Strengthening the Ceasefire Regime.

The next attempt to use the elements of the agreement signed 17 year ago can be seen from the results of the meeting of the three presidents in Sochi in January 2012. In particular, it was said in the final joint statement issued by the presidents of Azerbaijan, Armenia, and Russia that: 'the Presidents... took note of the report of the Co-chairs about the mechanism for conducting investigations along the ceasefire line, which they had developed jointly with the Personal Representative of the OSCE Chairman-in-Office, and they instructed the Co-chairs to continue this work'.

It follows from this statement that the co-chairs are working on the proposals concerning the

mechanisms for conducting investigations along the ceasefire line. Since there have been no reports that the conflicting parties and the mediators have repudiated the agreement signed 17 years ago, we suppose that the proposed mechanism is based on the 1995 agreement, which was an agreement of unlimited duration.

Thus we witness the OSCE Minsk Group co-chairs making efforts not for the purpose of full or stage-by-stage implementation of the 1995 Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict, but making an attempt to draw some ideas from that document in order to establish a mechanism for investigation of incidents.

The mediators apparently believe that by that means a step forward can be taken in implementation of confidence building measures, reduction of the threshold of confrontation between the conflicting parties, and ensuring the conditions for the non-use of force or threat of force in the Nagorno-Karabakh conflict zone. If they succeed in achieving conditions for the implementation of the principle of non-use of force or threat of force, one can also expect progress in other directions of settlement.

B. The realities of the line of contact of the conflicting parties

Let's take a look at the Nagorno Karabakh conflict zone.

The situation remains most acute if we look at the contact line from the western (Armenian) side in Agdam, Mardakert, and Martuni directions, as well as to the south/ closer to the border with Iran (from the side of Hadroust regional center). For convenience, let's call this section of the line of confrontation of the warring parties 'western'. It is here that violations of the ceasefire regime are most frequent; it is here that snipers 'work', subversive sorties are organized, and offensive reconnaissance is conducted. Since the signing of the Agreement on Ceasefire in effect as of 12 May 1994, this section of the line has witnessed major skirmishes and clashes between the warring parties. It is here that some sections of the defensive lines briefly changed hands several times. In this section, the warring parties suffer heavy casualties from enemy fire or as a result of skirmishes.

The 'northwestern' section of the contact line where Karvajar (Kelbajar) region borders on Azerbaijani positions can be considered relatively calm. The Armenian side occupies here the dominant heights of the Mrov Mountain Range and has the opportunity to rake with fire the positions (not the most advantageous) of Azerbaijani subunits.

The total length of the 'western' and 'northwestern' sections of the contact line is approximately 330 km.

The northwestern section of Armenia's border, especially in Noyemberian-Ijevan region (its length is 136 km along the straight line), is much more restless. The situation here is in many ways similar to that in the abovementioned 'western' section of the contact line.

Yet another relatively calm section of the line of confrontation at the Armenian-Azerbaijani border is 70 km in length and runs parallel to Lake Sevan. Part of this section runs along the Sevan Range where Armenian subunits have quite advantageous positions. Skirmishes and shooting incidents are a rare occurrence here.

No doubt the quietest section of the contact line and the whole conflict zone is Armenia's border (221 km long) with the Nakhijevan Republic. The summer of 1992 saw battles here between the then irregular subunits of the conflicting parties, but as soon as Geydar Aliyev came to Nakhijevan, the situation became less tense. The patriarch of Azerbaijani politics entered into negotiations with Armenian leaders (President Levon Ter-Petrosian and his chief advisor on national security Ashot

Manucharian) and by the mid 1993 a ceasefire regime came into effect along the Armenian-Nakhijevani border, without the help of mediators. Although this was not documented, shootings have become rare on this border. Nevertheless, some stationary posts continue guarding the border from both sides.

Some 3,000 Azerbaijani servicemen and some 900 Armenian ones have died on the contact line since the signing of the ceasefire agreement in 1994. In the past 18 years no exact information about the number of casualties on the contact line has been published. The author collected the abovementioned data from various sources and these figures have never been refuted by any official source of the conflicting parties. In addition, there is no exact information on dynamics of casualties suffered by the two sides in the past 18 years, but according to some sources, most casualties occurred during the first five years after the signing of the ceasefire agreement.

For example, according to the information provided by Armenia's Military Prosecutor General G. Kostanian, the number of combat casualties in the Armenian armed forces amounted to ten in 2011. The remaining 26 are non-combat deaths (suicides, deaths resulting from violence, disease, mine explosion, etc), i.e. the number of deaths resulting from other causes is 2.5 times the number of deaths resulting from combat operations.

Following the full re-equipment of the positions, the number of casualties of the two sides has declined and, according to the abovementioned information provided by the military prosecutor, does not exceed 10-20 servicemen a year. We believe that the number of combat casualties sustained by Azerbaijan's armed forces every year does not differ greatly from the number of casualties of the Armenian side.

Now let's look at the existing situation from two points of view:

- from the military point of view: if we divide the total number of casualties suffered by both sides by 18 - the number of years that have passed since the signing of the agreement, we will find out that 216 people from both sides died on the contact line a year on average. If we assume that in the past ten years the number of combat casualties of both sides was, on average, limited to 40 people (20 from each side), then it is not a large number, taking into account the fact that in the conflict zone the entire length of the line of contact of the parties is about 760 km. It appears that one serviceman from both sides dies a year on average per 19-20 km of the line of contact of the conflicting parties. It is a small number, and on the whole, taking into consideration the fact that there are neither peacekeepers/ peace-keeping forces nor stationary posts of military observers from OSCE and other international organizations in the conflict zone, one can say that the Agreement on Ceasefire in effect as of May 12, 1994, has been carried out successfully. It would be even better if the Agreement on Strengthening the Ceasefire Regime, too, would be implemented because it would help to minimize skirmishes and local clashes along the contact line in the conflict zone and to stop the sniper war and withdraw snipers from the firing line;

- from the military-political and diplomatic points of view: The main thing necessary for the successful settlement of the conflict is the strict and full implementation of all the legally binding agreements signed earlier, including the Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict Zone. Under the agreement signed 17 years ago, each incident in the Nagorno Karabakh conflict zone shall be investigated, and only information, which was verified and reconciled between the parties, may be given to the press. This will help ease tension on the conformation line, create an atmosphere of at least a partial trust between the parties, and add a real meaning to the legal term 'non-use of force or threat of force'. The full implementation of the agreement will reduce the likelihood of a surprise, accidental, or unsanctioned war. Later this atmosphere may lead to a drop in the rate of military spending growth and the arms race. The implementation of the whole Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict Zone will enhance the authority of the OSCE Minsk Group mediators, improve the atmosphere of the negotiating process, and create the necessary prerequisites for a social dialog.

We should remind the hopeless pessimists that even during the 1991-1994 war there were quite a few cases when the sides managed to achieve brief ceasefires. In such cases:

- the ceasefire regime was observed and a swap of bodies of killed soldiers took place; - joint Armenian-Azerbaijani groups of sentries were posted along the contact line, which seems incredible today, - there were periods, although brief, when round-the-clock direct telephone communication was established between commanders of Armenian and Azerbaijani sub-units.

We should also mention that more or less effective ceasefires were arranged 6-7 times, mostly with the assistance of Russia, but they were violated by the Azerbaijani side more frequently (no less than four times) than by the Armenian side. Once there was a brief ceasefire during the visit of a Finnish colonel, but Baku refused to extend it. Other mediators, namely Iran, the OSCE, and Kazakhstan, also failed to ensure that the ceasefire came into effect in practice.

Summing up the aforesaid, we should note that the Agreement on Ceasefire in the Nagorno Karabakh Conflict Zone, which took effect on May 12, 1994 and was signed with the mediation of Russia 18 years ago, is implemented with reservations. However, the implementation of this agreement, for the time being, is not a guarantee of non-resumption of hostilities in the conflict zone, especially against the background of quite a high level of militarization of the conflicting parties. The implementation of the 1995 Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh Conflict Zone will reduce the likelihood of resumption of hostilities and become a significant step forward in advancement of one of the three principles of settlement - the principle of non-use of force or threat of force.

C. It is necessary to study and use experience of ceasefire regime in other conflicts

As stated above, based on the results of the Sochi meeting of the presidents, the co-chairs of the OSCE Minsk Group are preparing new proposals to work out a mechanism for investigation of violations of the agreement on strengthening the ceasefire regime in the Nagorno Karabakh conflict.

As of today we know at least two big conflicts, in which, as in the case of the Nagorno Karabakh conflict, the ceasefire regime is maintained without the participation of peacekeeping forces. The matter concerns the conflict between India and Pakistan over Kashmir as well as the conflict between North and South Korea.

In the former case the ceasefire was violated several times due to outbreaks of hostilities between India and Pakistan, and these hostilities were so large-scale that they could be called war (in 1947-1949, 1965, 1971, and 1999). After both countries obtained nuclear weapons, no resumption of hostilities has taken place anymore. It is so very understandable: nuclear weapons are a serious factor of deterrence.

As regards the 1953 armistice between the army of the Democratic People's Republic of Korea (DPRK) on the one hand and the army of the United Nations (in reality the U.S.) and the Republic of Korea on the other, in the past 50 years the Armistice Agreement has been largely observed, except for a few cases of the escalation of the situation. Most recently, the situation worsened in 2011, after the incident with the South Korean corvette Cheonan.

A military demarcation line runs along the 38th parallel. On both sides of the line, there is a demilitarized zone approximately 4 km wide. The military demarcation line is marked by black-and-yellow poles, put up at a distance of 100-200 meters from each other. There are barbed wire fences (three meters high) that stretch along the demilitarized zone, on both its northern and southern sides.

The U.S. acting under the flag of UN plays an important role in observing the Armistice Agreement here. On 17 November, 2000, after a regular meeting of representatives of DPRK and the UN, i.e. the U.S., it was decided that following 'unexpected armed incidents' in 'some parts' of the demilitarized zone, they must be resolved directly between the military of North and South Korea. The territories where inter-Korean projects such as construction or repairs of railways and highways would be carried out were meant by 'some parts' of the demilitarized zone.

The most famous place in the demilitarized zone is Panmunjom. Located at the western end of the demilitarized zone, it has an area of 800 sq. m. and belongs to neither DPRK nor the Republic of Korea. This is the Joint Security Zone, with a facility for talks (also called the New Freedom House). The army of DPRK and the UN forces, i.e. the US forces, ensure security in this zone, where each side has 6 observation posts and 35 servicemen. The New Freedom House hosts meetings and talks between North and South Korea and houses the department for ties between DPRK and the Republic of Korea, where a special hot line was set up. Despite the confrontation, DPRK and the Republic of Korea have observed the armistice for almost 60 years.

We would not suggest that something like the demilitarized zone at the 38th parallel can be organized in the Nagorno Karabakh conflict zone and along the line of contact of the conflicting parties. The point is neither conflicting party will agree to withdraw from its fortified positions. The idea of a military demarcation line in the conflict zone is unlikely as well.

In this connection we should remind the reader that after the signing of the Agreement on Ceasefire in effect as of May 12, 1994 in the Nagorno Karabakh Conflict Zone, another meeting of the defense ministers of Azerbaijan and Armenia and the commander of the army of Nagorno Karabakh took place at Russian Ministry of Defense on 16 May 1994, during which a demand for withdrawal of troops from the contact line was made again. Yet the then defense minister of Azerbaijan M. Mamedyarov was urgently called to Baku by President Geydar Aliyev and later he avoided withdrawing the troops, giving a reason that the contact line passed mainly through the territory of Azerbaijan and that the Armenians must withdraw from the contact line and let Azerbaijani troops stay where they were. Naturally the Armenian side refused to take such a unilateral step.

On the other hand we do not rule out that the OSCE Minsk Group co-chairs and the conflicting parties could discuss the establishment of a joint security zone in the Nagorno Karabakh conflict zone and the creation of a negotiating facility equipped with a hot line, similar to the New Freedom House in Panmunjom.

The author does not rule out that establishing an analog of the mentioned joint security zone and the negotiating facility in the Nagorno Karabakh conflict zone, with the mediation of the Office of the Personal Representative of the OSCE Chairman-in-Office, would contribute to the implementation of the Agreement on Strengthening the Ceasefire Regime. In our opinion, this agreement should remain the main one and should not be changed.

As for the mechanism (currently being drafted by the mediators) for investigation of incidents along the ceasefire line, we believe that it should be based only on the Agreement on Strengthening the Ceasefire Regime. Yet it would be helpful to study the PROCEDURE for investigating incidents and armistice violations, which has been used by the conflicting parties on the Korean peninsula for almost 60 years.

In case of a thorough examination of the issue, the consent of the conflicting parties, and the need, these procedures or their elements could be adapted for use in the Nagorno Karabakh conflict zone. This could contribute to the implementation of the Agreement on Strengthening the Ceasefire Regime in the Nagorno Karabakh conflict zone.

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