

Germany Accuses Azerbaijan of Breaking Its Promise to Refrain from Military Action in Nagorno-Karabakh

Stefan Talmon

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On 19 September 2023, some three years after an all-out war between Azerbaijan and Armenia over Nagorno-Karabakh – an ethnic Armenian enclave that is internationally recognized as part of Azerbaijan – Azerbaijan began military operations against what it called ‘illegal Armenian armed groups’ in Nagorno-Karabakh. Tensions had been building around the region for months after Azerbaijani troops blockaded the Lachin corridor, cutting off the only road connecting Nagorno-Karabakh to Armenia. The tensions had given rise to a flurry of peace talks between the conflicting parties in Washington, Brussels and Moscow.

On the same day, Federal Foreign Minister Annalena Baerbock told reporters on the sidelines of the United Nations General Assembly in New York City that Azerbaijan had broken its promise not to resort to military action on Nagorno-Karabakh, saying:

Baku’s promise to refrain from military action was broken. Azerbaijan must immediately stop shelling and return to the negotiating table.

Similarly, she wrote on the platform X:

In the last few days there have been intensive negotiations between inter alia the EU & USA with Armenia & Azerbaijan on de-escalation. Baku’s promise to refrain from military action was broken.

In an official statement issued on the same day, it said that ‘Baku’s pledge to abstain from military measures has been broken.’

While such a ‘promise’ or ‘pledge’ to refrain from military action may have been made by Azerbaijani officials in confidential negotiations, it did not necessarily constitute a binding legal undertaking on the part of Azerbaijan not to use force. The use of the term ‘promise’ or ‘pledge’ indicates a unilateral act on the part of Azerbaijan rather than an informal international agreement between the parties. It is standard practice in ongoing negotiations that nothing is agreed until everything is agreed.

Unilateral declarations creating legal obligations do not need to be made publicly, as demonstrated by the Ihlen Declaration, which was made in a diplomatic conversation between the Norwegian Minister for Foreign Affairs, Nils Claus Ihlen, and the Danish Minister at Christiania (Oslo). Such declarations, however, must manifest a will to be bound on the part of the declaring State. As the International Court of Justice

pointed out in the Frontier Dispute case, 'it all depends on the intention of the State in question.' The Court continued: 'In order to assess the intentions of the author of a unilateral act, account must be taken of all the factual circumstances in which the act occurred.' The promise was apparently made by Azerbaijan in ongoing peace negotiations between the parties mediated by third States. In such negotiations, a promise to refrain from military action can at best be seen as a temporary political commitment, rather than as a binding legal undertaking. In addition, such a political commitment during ongoing negotiations is always subject to the condition that the other side sticks to their commitments and that the circumstances in which the commitment was made does not change.

Under international law, Nagorno Karabakh is a part of Azerbaijan, which has been forcibly removed from government control by Armenian separatists with the assistance of Armenia. It seems highly unlikely that Azerbaijan intended to enter into a legal obligation to refrain from military action to regain full control over its own territory. There also seems to have been no expectation on the part of Armenia that the use of force by Azerbaijan had been ruled out. In an interview with the French AFP news agency published on 21 July 2023, Armenian Prime Minister Nikol Pashinyan said: 'So long as a peace treaty has not been signed and such a treaty has not been ratified by the parliaments of the two countries, of course, a [new] war [with Azerbaijan] is very likely.'

By talking about Baku having broken its promise to refrain from military action, Foreign Minister Baerbock thus apportioned political blame rather than accuse Azerbaijan of violating a self-assumed obligation under international law.

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