

**NAGORNO-KARABAKH:**

**A PLAN FOR PEACE**

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## NAGORNO-KARABAKH: A PLAN FOR PEACE

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Settlement of the long running Nagorno-Karabakh conflict -- the most significant obstacle to stability in the South Caucasus -- remains elusive, despite more optimistic noises recently from Azerbaijan and Armenia. Eleven years after the 1994 ceasefire, burgeoning defence budgets, increasing ceasefire violations, and continuing demonisation by each side of the other side are ominous signs that time for a peace agreement is running out. But a compromise can now be constructed around an approach that, while addressing all the matters in dispute, leaves the core issue of Nagorno-Karabakh's ultimate status open for later resolution, after other measures have been put in place.

Key elements of that proposed settlement package include the withdrawal of the Armenia-backed Nagorno-Karabakh forces from the occupied districts of Azerbaijan surrounding the entity; the renunciation by Azerbaijan of the use of force to reintegrate the entity; the deployment of international peacekeepers; the return of displaced persons; and the re-opening of trade and communication links. Nagorno-Karabakh's status should ultimately be determined by an internationally sanctioned referendum with the exclusive participation of Karabakh Armenians and Azeris, but only after the above measures have been implemented. Until then Nagorno-Karabakh would remain part of Azerbaijan, though in practical terms it would be self-governing and enjoy an internationally acknowledged interim status.

Today Armenia and Azerbaijan remain divided on vital points. Azerbaijan does not accept any compromise of its territorial integrity, nor does it agree that Nagorno-Karabakh's population alone can vote on determining its final status. Armenia is not willing to support withdrawal from the seven occupied districts around Nagorno-Karabakh, or allow the return of Azerbaijan internally displaced persons (IDPs) to Nagorno-Karabakh, until the independence of Nagorno-Karabakh is a reality. There has been tentative discussion of a possible plebiscite to determine the entity's final status, but with none of the necessary detail agreed as to who would vote on what, when and how, nor any agreement as to what other settlement conditions would create the context for such a vote.

The Minsk Group of the Organisation for Security and Cooperation in Europe (OSCE), currently co-chaired by France, Russia and the U.S., has been facilitating negotiations since 1994. After a decade of fruitless talks, a new format of meetings, the Prague Process, involving direct bilateral contact between the foreign ministers of Armenia and Azerbaijan was initiated in 2004. During the past twelve months the participants and OSCE co-chairs alike have publicly expressed optimism that a deal can be reached soon. But there is an urgent need to translate that generalised optimism into very specific agreement and action.

An earlier Crisis Group report explored how the Armenian and Azeri communities of Nagorno-Karabakh and the surrounding districts live today and view resolution of the conflict.<sup>1</sup> Against that background, this report examines the causes of the Nagorno-Karabakh conflict, analyses the OSCE-led negotiations process as it has evolved since 1992, and identifies the necessary elements of a workable and achievable peace plan.

### RECOMMENDATIONS

#### To Avoid a Resumption of Fighting:

1. All parties to the conflict should respect the 1994 ceasefire, refrain from using force, not promote the use of force, and end the arms race in the region by halting the rise of defence budgets.

#### To Create an Appropriate Environment for Conflict Settlement:

2. Azerbaijan should resume direct contact with the de facto Nagorno-Karabakh authorities and facilitate the development of closer contact between Karabakh Azeris and Karabakh Armenians.

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<sup>1</sup> Crisis Group Europe Report N°166, *Nagorno-Karabakh: Viewing the Conflict from the Ground*, 14 September 2005.

3. The de facto Nagorno-Karabakh authorities should end support for settlement of formerly Azeri majority areas with Armenians, including by:
    - (a) stopping privatisation of land, homes and businesses in those areas;
    - (b) ceasing to establish local administrations and infrastructure in the occupied areas adjacent to Nagorno-Karabakh; and
    - (c) protecting the remaining Azeri homes.
  4. Armenia should encourage the de facto Nagorno-Karabakh authorities to take a more conciliatory stance on resolution of the conflict.
- (h) identification of a referendum mechanism for resolving the final status of Nagorno-Karabakh, as set out below, with provision until then for the entity to have internationally recognised interim status, and its governing bodies to be elected under international supervision.
6. The final status of Nagorno-Karabakh should be decided by a self-determination referendum, which would:
    - (a) be held after the return of displaced Azeris to former Azeri-majority areas in Nagorno-Karabakh and after an international conference determines that Nagorno-Karabakh has met international preconditions for statehood, including the protection of minority rights, such review to be conducted for the first time five years after the signing of the peace agreement;
    - (b) give Nagorno-Karabakh an appropriate range of options, including unity with, and secession from, Azerbaijan;
    - (c) be held with the exclusive participation of Karabakh Armenians and Azeris; and
    - (d) have its exact modalities agreed upon in talks chaired by the OSCE, based on the principle that all parties will recognise the validity of its result.

### **To Address the Substantive Matters in Dispute:**

5. The parties should sign an agreement that includes the following elements:
  - (a) renunciation of the threat or use of force to settle disputes, including any that may arise in connection with the implementation of the peace agreement;
  - (b) creation of a joint commission including Azerbaijan and Nagorno-Karabakh representatives and chaired by the OSCE to supervise implementation;
  - (c) incremental withdrawal of Nagorno-Karabakh forces backed by Armenia from all occupied territories around Nagorno-Karabakh, but beginning with five districts and occurring simultaneously with the deployment of international peacekeepers;
  - (d) withdrawal of Nagorno-Karabakh forces backed by Armenia from the Kelbajar district once appropriate security measures are in place at the Murov mountain pass, and from the Lachin district following agreements guaranteeing secure communications through the Lachin corridor;
  - (e) safe and voluntary return of displaced persons to their pre-war homes in the formerly occupied districts, once withdrawal and international deployment have been completed;
  - (f) assurances for free movement of people and goods, including the lifting of all blockades and the reopening of all transport and trade routes (road and rail) closed as a result of the conflict;
  - (g) implementation of confidence-building measures in cooperation with international organisations including the UN, International

### **To Facilitate Public Acceptance of the Settlement:**

7. Azerbaijan should allow Karabakh Azeris to play a bigger role in the negotiations and the internal political process, including by passing legislation allowing Karabakh Azeris to elect the head of their community, ensuring voting rights for displaced persons in the 2005 parliamentary elections, and permitting all candidates to campaign in collective centres.
8. Government officials and media in Azerbaijan and Armenia should refrain from using belligerent and xenophobic language against "the other".
9. Officials involved in the negotiations process should agree to a broad common strategy for disseminating information about that process, coordinate efforts to present to the public elements of a possible agreement, and not be reluctant to start a debate on highly sensitive questions.

**To Build Confidence and Guarantee Sustainable Peace:**

10. Donors should assist Armenia and Azerbaijan in developing and carrying out small, cross-border, sub-regional trade, humanitarian and public health projects, including in response to disasters, and should fund and help carry out programs aimed at improving mutual understanding, tolerance and reconciliation that target civil society, teachers and journalists.
11. Donors should carry out a common assessment mission of needs in Nagorno-Karabakh and the adjacent occupied districts, and once a peace agreement is signed should hold an international donor coordination conference and begin implementing projects in the former conflict zone.
12. Armenia and Azerbaijan should each investigate war crimes, prosecute those responsible and adopt legislation to give amnesty to those who participated in the conflict but did not commit serious offences.
13. Armenia and Azerbaijan should establish joint commissions to:
  - (a) make a political assessment of the conflict's causes and consequences; and

- (b) deal with inter-state property return and compensation questions.

**To Increase the Prospects for a Peace Agreement and to Give It Stability:**

14. The UN Security Council, the OSCE and the EU Council of Ministers should pledge to serve as guarantors of the peace agreement.
15. The OSCE should expand the mandate of the Personal Representative of the Chairman-in-Office to include working with civil society, media and opposition political forces in order to facilitate contacts between the sides at the local level and build confidence and opening an office in the occupied territories, staffed with political, human rights and elections officers.
16. The EU should become more actively engaged in the conflict resolution effort by basing the office of its Special Representative for the South Caucasus in the region.
17. The EU should include long-term programs and strategies to promote confidence building in its Action Plans with Armenia and Azerbaijan.

**Tbilisi/Brussels, 11 October 2005**

## NAGORNO-KARABAKH: A PLAN FOR PEACE

### I. INTRODUCTION

The Nagorno-Karabakh conflict has existed since the end of World War I but developed into a full-fledged war only after Armenia and Azerbaijan seceded from the Soviet Union. Today there is neither war nor peace. Ceasefire violations are increasing,<sup>2</sup> people continue to die on the line of contact,<sup>3</sup> and there is a real risk of new large-scale fighting. Azerbaijan has upped its war rhetoric and increased its military budget by 122 per cent between 2003 and 2005.<sup>4</sup> In 2006 it plans to double it, to \$600 million,<sup>5</sup> the equivalent of 60 per cent of Armenia's planned 2006 budget.<sup>6</sup>

<sup>2</sup> Ceasefire violations, which are almost daily, were particularly acute in March and April 2005 and the second quarter of 2004. On 8 September 2005 a senior Azerbaijan defence ministry official told Crisis Group there had been seven violations in the previous 24 hours.

<sup>3</sup> Azerbaijani sources estimate that some 2,000 soldiers and civilians have been killed since the 1994 ceasefire. In the first nine months of 2005 alone, about 60 soldiers and civilians were killed in frontline areas. Crisis Group phone interview with Yashar Jafarly, head of the Azerbaijan Union of Officers in Reserve and Resignation, September 2005. A senior official of the defence ministry said that in 2004 fifteen civilians were killed but did not provide military casualties. Crisis Group interview, Baku, September 2005.

<sup>4</sup> From \$135 million to \$300 million. Figures denoted in dollars (\$) are in U.S. dollars. Jean-Christophe Peuch, "Caucasus: Top Armenian General Slams Azerbaijan Over Defence Spending", RFE/RL, 29 June 2005.

<sup>5</sup> "The President Has Held a Meeting on Army Build-up", *Yeni Azarbaycan*, 17 September 2005. "Azerbaijan Doubles Army Spending", *Caucasus Press News Bulletin*, no. 11, 6 September 2005.

<sup>6</sup> Shakeh Avoyan, "Government Plans \$1 Billion Budget for 2006", RFE/RL, 28 September 2005. Azerbaijan justifies its rising military expenditures as needed to compensate for aid Russia gives Armenia. In May 2005, after withdrawing from its two remaining bases in Georgia, Russia shifted a portion of its weapons and equipment from that country to Armenia. Soon after, President Ilham Aliyev announced an intention to increase military spending significantly. Samvel Matirosyan and Alman Mir Ismail, "Armenia and Azerbaijan Differ over Russia Base Pullout", *Eurasianet*, 28 June 2005, at <http://www.eurasianet.org/departments/insight/articles/eav062805.shtml>.

The deep-rooted causes of the conflict are disputed. Azerbaijan argues that the war was initiated by a land-hungry Armenia.<sup>7</sup> Armenia maintains that it started with Azerbaijan's military aggression against Nagorno-Karabakh's overwhelmingly Armenian population, which sought to exercise its right to self-determination.<sup>8</sup> Today both countries claim they have the right to use force: Azerbaijan to restore its territorial integrity, Armenia to protect Nagorno-Karabakh's Armenian population.

Since the 1994 ceasefire, peace negotiations have been facilitated by the Minsk Group of the Organisation for Security and Cooperation in Europe (OSCE), now co-chaired by France, Russia, and the U.S. Several proposals have been put forward to solve the conflict. In 1999 and 2001 it seemed as though a deal was close. However Armenia, Azerbaijan, the de facto authorities of Nagorno-Karabakh<sup>9</sup> and the Karabakh Azeris have never agreed to common principles which would lay the foundation for a peace agreement.<sup>10</sup>

Again in 2005 the Minsk Group co-chairs are expressing optimism.<sup>11</sup> From May 2004 until September 2005, the

<sup>7</sup> 83.3 per cent of Azerbaijanis polled believe the conflict is due to Armenian territorial aspirations. Azerbaijanian Sociological Association, Country Report on the "Potential of Azerbaijanian and Armenian Peoples in Peacebuilding and Post-Conflict Cooperation", Baku, 2003.

<sup>8</sup> Hratch Tchilingirian, "Nagorno-Karabagh: Transition and the Elite", *Central Asian Survey*, 18 (4), 1999, pp. 441-445.

<sup>9</sup> The authorities in Nagorno-Karabakh are de facto because neither their credentials nor those of the government they represent have been accepted internationally as valid de jure.

<sup>10</sup> The first written proposals for an overall settlement were presented by the Finnish-Russian co-chairs of the Minsk Group in July 1995, September 1995 and March 1996. These were followed by three proposals drafted by the French, Russian and U.S. negotiators in June 1997, December 1997 and November 1998. Terhi Hakala, "The OSCE Minsk Process: A Balance After Five Years", *Helsinki Monitor*, no.1, 1998, pp. 5-15.

<sup>11</sup> Crisis Group interviews with French co-chair staff, Paris, May 2005; phone interview with U.S. co-chair staff, February 2005. On 14 July 2005 U.S. Co-Chair Steven Mann told journalists, "there is a possibility of a Karabakh settlement in the course of this year". The Azerbaijan deputy foreign minister said on 18 July, "we are closer to peace than ever before". For more, see Liz Fuller, "Armenia/Azerbaijan: Expectations Muted on Eve of Karabakh Talks", RFE/RL, 19 August 2005; Ruzanna

foreign ministers of Armenia and Azerbaijan met eleven times in what has been termed the "Prague Process".<sup>12</sup> These meetings provide for the two sides to re-examine all aspects of a settlement.<sup>13</sup> At a meeting of the Commonwealth of Independent States (CIS) in Astana on 15 September 2004, the Minsk Group co-chairs informed the presidents of Armenia and Azerbaijan that they were ready to submit a framework as a basis for a settlement.<sup>14</sup> The presidents said they needed "time for reflection", and negotiations resumed only in December.<sup>15</sup> Since January 2005 the foreign ministers have been sitting down, either alone or with the Minsk Group co-chairs. The presidents met on 15 May (Warsaw) and on 27 August on the sidelines of a CIS Summit in Kazan (Tatarstan).<sup>16</sup> At the last gathering, the Minsk Group co-chairs apparently presented a one-page settlement strategy outline for consideration.

Officials close to the negotiations have told Crisis Group that positions have narrowed on the most difficult issue: the final status of Nagorno-Karabakh.<sup>17</sup> While President Kocharian's delegation had previously insisted that any political settlement must first resolve the status issue, its position now is that agreement on the possibility, among other options, of future status for Nagorno-Karabakh separate from Azerbaijan is sufficient to begin phased troop withdrawal.<sup>18</sup> President Aliyev's negotiators are also

revising their demands. While they had previously refused to consider that Nagorno-Karabakh could ever have more than broad autonomy within Azerbaijan, today they accept that the status question still needs to be resolved, implicitly acknowledging that a range of options can be considered. Pushing resolution of status to a future date -- and putting it in the hands of Nagorno-Karabakh's inhabitants of all ethnicities, who would vote in a self-determination referendum -- may prove to be the key to a political settlement.

After many years of deadlock, the environment has changed with Azerbaijan's improved economic position based on skyrocketing oil revenues. While Armenia has strong economic growth,<sup>19</sup> it suffers from exclusion from regional projects and a blockade. Oil funds have allowed Baku to initiate an arms race but also given Azerbaijan a new sense of national confidence and pride. Under these conditions, Baku's threat to restore its territorial integrity by force is real.<sup>20</sup> Armenian hardliners argue that "withdrawal from the security zone around Nagorno-Karabakh is suicide",<sup>21</sup> believing that while any occupation of Azerbaijan territory continues, a military action might draw only rhetorical criticism internationally. The response to this concern is that if there is a peace agreement, occupation ends, and international peacekeepers are deployed, an attack would be interpreted as a grave

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Stepanian and Ruzanna Khachatryan, "Mediators Say Karabakh Peace in Sight", RFE/RL, 14 July 2005; Emil Danielyan, "Armenia, Azerbaijan Appear Closer to Karabakh Peace", Eurasia Insight, 20 May 2005.

<sup>12</sup> The new round of negotiations was launched during an April 2004 meeting between President Kocharian and President Aliyev in Warsaw. Four meetings were held between the foreign ministers in 2004.

<sup>13</sup> According to the co-chairs, a new methodology was agreed: "no agenda, no commitment, no negotiation, but a free discussion on any issue proposed by Armenia, by Azerbaijan, or by the co-chairs". Twelfth Meeting of the Ministerial Council 6 and 7 December 2004, "Report of the co-chairs of the OSCE Minsk Group to the OSCE Ministerial Council", Sofia, 2005, p. 148.

<sup>14</sup> OSCE, "Statement of the Ministerial Council on the Nagorno-Karabakh Conflict", Sofia, MS (12) Journal No. 2, Annex 3, 7 December 2004.

<sup>15</sup> Baku's introduction of the question of "illegal activities carried out in the occupied territories of the Republic of Azerbaijan" to the UN General Assembly on 14 October 2004 allegedly slowed down the resumption of negotiations.

<sup>16</sup> Since Ilham Aliyev was elected on 15 October 2003, the presidents have met five times: in Geneva (December 2003), Warsaw (April 2004), Astana (September 2004), Warsaw (September 2005) and Kazan (August 2005).

<sup>17</sup> In this report the term Nagorno-Karabakh refers to the territory of the former Nagorno-Karabakh Autonomous Oblast of the Azerbaijan Soviet Socialist Republic (SSR).

<sup>18</sup> Crisis Group interviews with senior officials from the Armenian Ministry of Foreign Affairs, Yerevan, March, May

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and September 2005. A partial parallel can be found in the case of Kosovo: UN Security Council Resolution 1244 explicitly mandates "a political process designed to determine Kosovo's future status", thus indicating that the present de jure sovereignty of Serbia and Montenegro over Kosovo is not necessarily permanent. See Crisis Group Europe Report N°161, *Kosovo towards Final Status*, 24 January 2005, p. 29.

<sup>19</sup> Average real GDP growth in 2002-2004 was 12.4 per cent. "IMF Executive Board Approves Three Year, \$34.2 Million Poverty Reduction and Growth Facility Arrangement for the Republic of Armenia", Press Release no. 05/123, 25 May 2005, <http://www.imf.org/external/np/sec/pr/2005/pr05123.htm>.

<sup>20</sup> President Ilham Aliyev has made numerous threats to use force to resolve the Nagorno-Karabakh conflict. In September 2005 he stated, "despite our endless talk about all these factors, diplomatic, economic and other political achievements, the issue remains unsettled. What should Azerbaijan do in this situation? Azerbaijan has conducted and expressed its peaceful policy for many years, but the issue remains unsettled. For this reason, it is natural that we are increasing our military potential", in "The President Has Held a Meeting on Army Build-up", Yeni Azarbaycan, 17 September 2005 retransmitted in BBC Monitoring Azerbaijan, 17 September 2005. See also "President Outlines Military Power to Release Occupied Lands on Army Day Celebrations", ANS TV report, 25 June 2005, at <http://www.ans.az/archivetest.php?y=2005&m=6&d=25&the news=2766>.

<sup>21</sup> Gayane Movsisyan, "The Proposals Made by the International Crisis Group as the Reflection of the Struggle for the South Caucasus", De Facto Agency (Armenia), 14 September 2005.

violation of Azerbaijan's obligations and international peace and security.

Peace may also be more attainable because the Armenian and Azerbaijan foreign ministers seem personally committed to a settlement. Their personalities, similar age, education and cosmopolitan background have undoubtedly helped create rapport between the negotiation teams.<sup>22</sup> The co-chair countries have remained steadily committed to resolution of the conflict, and Russia-U.S. rivalries have abated.

However, domestic factors in Azerbaijan and Armenia weigh against any resolution in 2005. In November, there will be parliamentary elections in Azerbaijan and a referendum in Armenia on constitutional amendments that the opposition is portraying as a test of confidence in the Kocharian government. Politicians are more likely to try to send encouraging messages that peace is in reach -- as long as they can stay in office -- than to tell their constituents the details of the compromises necessary for a peace deal. It also cannot be ruled out that the two leaderships may be appearing conciliatory to establish credibility with Western governments and international organisations.<sup>23</sup> The ruling party in Baku may be particularly susceptible to this for fear that the U.S., OSCE and EU will condemn it if elections are not free and fair.

## II. UNDERLYING CAUSES OF CONFLICT

Armenians consider Nagorno-Karabakh vital to their national existence; Azerbaijanis see it as essential to their modern statehood. They have mutually exclusive views of the region's pre-Soviet and Soviet-era history. Each maintains that its people are indigenous, and the other's presence is recent. They cite competing human rights principles to justify their negotiating positions, while accusing the other of "aggression" and terrible human rights violations. The root causes of the 1988-1994 war have not been addressed. Even more worrying, new hatreds and divisions have appeared since the ceasefire, making the resumption of war more likely.<sup>24</sup>

### A. HISTORICAL

Competing historical narratives shape perceptions of the origins of the conflict.<sup>25</sup> Both sides depict themselves as victims of violence and generous hosts who have been savagely betrayed. Both sustain the notion of ethnic continuity in Nagorno-Karabakh to justify their right to sovereignty today, while describing the other as "non-indigenous" and denigrating their historical presence.

The dispute began when the Soviet-era borders of Armenia and Azerbaijan were being defined. On 5 July 1921 the Caucasus Bureau of the Communist Party declared Nagorno-Karabakh part of Soviet Azerbaijan, and in 1923 the Nagorno-Karabakh Autonomous Oblast (NKAO) was established, providing the region with broad autonomy inside Azerbaijan. However, on several occasions Armenians petitioned Moscow for the oblast's transfer.<sup>26</sup> In January 1988 a petition signed by 80,000 Armenians from Nagorno-Karabakh and Armenia was delivered.<sup>27</sup> On 20 February 1988 the Nagorno-Karabakh Soviet passed a resolution asking for a transfer to the Armenian SSR. Azerbaijan formally rejected this on 13

<sup>22</sup> Both ministers have spent extensive periods in the U.S. The Armenian minister has a masters degree from the Fletcher School of Law and Diplomacy and Harvard's Kennedy School of Government. The Azerbaijani minister has a doctorate from Brown University and served from 1998 to 2003 as chargé d'affaires of the Washington embassy.

<sup>23</sup> Ilgar Mammedov in Shahin Abbasov, "Azerbaijan: A Road, if not a Referendum, for Nagorno-Karabakh", 17 August 2005, Eurasianet.

<sup>24</sup> For more on the worsening intercommunal relations, see Crisis Group Report, *Nagorno-Karabakh*, op. cit.

<sup>25</sup> For more on these see Thomas de Wall, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York, 2003), pp. 145-158; and Council of Europe (CoE), "Background Paper on Nagorno-Karabakh", at [http://www.coe.int/T/F/Com/Dossiers/Evenements/2003-04-jeunes-conflit/Nagorno\\_conflict.asp](http://www.coe.int/T/F/Com/Dossiers/Evenements/2003-04-jeunes-conflit/Nagorno_conflict.asp).

<sup>26</sup> Christopher Walker, *Armenia and Karabakh: the Struggle for Unity* (London, 1991), pp. 118-119, 121; Tchilingirian, op. cit., pp. 441-445.

<sup>27</sup> Stuart Kaufman, *Modern Hatreds: The Symbolic Politics of Ethnic War* (Ithaca, 2001), p. 60.



June but two days later Armenia consented to Nagorno-Karabakh's incorporation.

On 1 December 1989 the Supreme Soviet of the Armenian SSR and the Nagorno-Karabakh regional council (Soviet) adopted a joint resolution "On the Reunification of Nagorno-Karabakh with Armenia".<sup>28</sup> On 2 September 1991 the regional council in Stepanakert<sup>29</sup> declared the Nagorno Karabakh Republic independent.<sup>30</sup> Azerbaijan declared its own independence on 30 August and on 26 November revoked Nagorno-Karabakh's autonomous status. But Nagorno-Karabakh Armenians continued with their efforts to split, organising a referendum on 10 December in which some 108,615 people voted for independence.<sup>31</sup> Few if any Azeri inhabitants participated, and Baku did not recognise the validity of the poll.<sup>32</sup> On 6 January 1992, Stepanakert formally declared independence based on the referendum, but no state, not even Armenia, has recognised Nagorno-Karabakh's statehood.

## B. POLITICAL AND LEGAL

The main political cause of the conflict is the contradiction between Azerbaijan's demand for territorial integrity and the aspiration of the majority of Nagorno-Karabakh residents for self-determination. This is a reflection of the contradiction between two principles of international law: the sanctity of international borders and the right to

self-determination.<sup>33</sup> Differences of view within the international legal community about the scope and character of self-determination further deepens divisions.<sup>34</sup> Armenians understand the concept in a nationalist sense, pursuant to which a territorially concentrated, historically continuous ethnic group should be allowed to have its own state if it chooses.<sup>35</sup> Azerbaijanis argue that the right to self-determination does not extend to secession and must be exercised in the context of respect for territorial integrity. They contend that the war was caused by Armenian aggression, which aims to (re)create a Greater Armenia.

Armenia cites Soviet law and underlines that just as Azerbaijan had the right to secede from the Soviet Union in 1991, Armenians in Nagorno-Karabakh had the right to separate from Azerbaijan. The argument is that article 3 of the 3 April 1990 Soviet law on withdrawal from the USSR entitled the Nagorno-Karabakh Autonomous Oblast (NKAO) and Armenians living in compact settlements to secede from Azerbaijan through referendum.<sup>36</sup> Armenian activists note that when Azerbaijan declared its independence it claimed to be the successor of the

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<sup>28</sup> Even though the Nagorno-Karabakh council later declared independence, not unification, this resolution has not been withdrawn.

<sup>29</sup> Stepanakert is the capital of the non-recognised Nagorno-Karabakh Republic and the former Nagorno-Karabakh Autonomous Oblast. The city is today officially called Khankendi by Azerbaijan. When a town or village has two names, this report will generally use the pre-1988 version.

<sup>30</sup> Shahan Avakian, *Nagorno-Karabakh: Legal Aspects* (Stepanakert, 2005), p.17. The Azeri members of the Council boycotted the session.

<sup>31</sup> The Armenians claim the referendum was conducted in accordance with Article 3 of the USSR law on the "Procedure for Solving Issues of Secession of a Soviet Republic from the USSR", 3 April 1990. Azeri authorities maintain the law dealt with secession from the USSR, not from a union republic, and the Armenians did not follow its procedures. Crisis Group interview with foreign ministry official, March 2005. For more on this, see Crisis Group Report, *Nagorno-Karabakh*, op. cit.

<sup>32</sup> According to the de facto Nagorno-Karabakh Central Election Commission (CEC), there were 132,328 registered voters in the entity of whom 26,400 were Azeris. 108,736 voters participated; 108,615 said yes, 24 said no, and 97 ballots were invalid. Karabakh Azeris boycotted the referendum though they were on the voters list. The last elections for which Azeri residents of Nagorno-Karabakh were included on the list were in December 1991 for the Supreme Council. Crisis Group interview, Stepanakert, May 2005.

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<sup>33</sup> Both sides have used the 1975 Helsinki Act of the Conference on Security and Cooperation in Europe to justify their claims. Armenians state that their case is based on human rights and the right of Armenians in Nagorno-Karabakh to self-determination, pursuant to Principle VIII of the Final Act's Declaration of Principles. Azerbaijanis counter that the crucial issue is the sanctity of international borders pursuant to Principle III.

<sup>34</sup> See for example, Javier Leon Diaz, "Minority Rights Status and Scope", 2002, at [www.javier-leon-diaz.com/docs/Minority\\_Status1.htm](http://www.javier-leon-diaz.com/docs/Minority_Status1.htm); and Malcolm Shaw, "Peoples, Territorialism and Boundaries", 1997, at <http://www.ejil.org/journal/Vol8/No3/art6.pdf>. A broad bibliography on self-determination can be found at [http://selfdetermine.irc-online.org/bibliography/bib-s\\_body.html](http://selfdetermine.irc-online.org/bibliography/bib-s_body.html).

<sup>35</sup> This theory is also close to the "liberal primary right theory" that "holds that because government's legitimacy derives solely from consent, any group of people may withdraw their territory from an existing state and set up a new state, so long as the majority of the group agrees and the rights of the minority are respected in the new state". Jason Sorens, "Secession and Self Determination", book review, *Humane Studies Review*, at <http://www.theihs.org/libertyguide/article.php/729.html>.

<sup>36</sup> Article 3 reads: "The peoples of autonomous republics and autonomous formations shall retain the right to decide independently the question of staying in the USSR or in the seceding Union republic, as well as to raise the question of their own legal state status. In a Union republic whose territory includes areas with concentrations of national groups that make up the majority of the population in a given locality, the results of the voting in these localities shall be considered separately during the determination of the referendum results". Law on Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR (3 April 1990), in Hurst Hunnum (ed.), *Documents on Autonomy and Minority Rights* (London, 1993) p. 754.

Azerbaijan Democratic Republic of 1918-1920, whose sovereignty over Nagorno-Karabakh was never recognised by the League of Nations. Karabakh Armenians, they say, thus expressed their right to self-determination on "territories that have never been within the jurisdiction of independent Azerbaijan".<sup>37</sup> When the Soviet Union collapsed, newly independent Azerbaijan had no de facto control over Nagorno-Karabakh; thus Stepanakert did not secede from an existing independent state and has never been part of the post-Soviet Republic of Azerbaijan. They argue that they have the right to statehood because they have a permanent population, a defined territory, an elected government, and the ability to enter into relations with other states.<sup>38</sup>

Azerbaijan officials assert that the right to self-determination does not extend to unilateral secession<sup>39</sup> or to secession by force of arms,<sup>40</sup> and the rights of Karabakh Armenians should not supersede those of Karabakh Azeris purely because they are in the majority.<sup>41</sup>

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<sup>37</sup> Foreign Minister Vartan Oskanian, "Statement at the Armenian National Assembly, Hearings on the Nagorno-Karabakh Issue", March 2005.

<sup>38</sup> These are the qualifications of a state outlined in the Montevideo Convention on the Rights and Duties of States (1933). Crisis Group interview with officials, Stepanakert, June 2005. This idea was also expressed by Armenian Foreign Minister Vartan Oskanian, who said that Nagorno-Karabakh has a right to self-determination based on "the de facto political reality of fifteen years of proven ability to hold elections, govern its people, protect its borders and conduct international relations". "Statement at the Armenian National Assembly, Hearings on the Nagorno-Karabakh Issue", March 2005.

<sup>39</sup> The arguments below were presented to Crisis Group by officials at the Azerbaijan Ministry of Foreign Affairs in interviews, November 2004 and March 2005. They are explained in more detail in a letter dated 16 March 2004 from the permanent representative of Azerbaijan to the United Nations, addressed to the Secretary-General and the Security Council, 59<sup>th</sup> session of the General Assembly, A/59/66-S/2004/219.

<sup>40</sup> Here they refer to Antonio Cassese, who concludes that "the realisation of self-determination, instead of gradually unravelling old inter-ethnic enmities and solving deep rooted conflicts, has triggered a settling of accounts that has been furiously carried out by force of arms, thus resulting in the negation of the very essence of self-determination". Antonio Cassese, *Self Determination of Peoples. A Legal Appraisal* (Cambridge, 1995) p. 273.

<sup>41</sup> The Armenian side argues for the right of the people of Nagorno-Karabakh to self-determination, but Azeri analysts point out that Nagorno-Karabakh was populated by both Karabakh Armenians and Karabakh Azeris. In the Armenian discourse the rights of Karabakh Azeris are generally ignored because they are a minority. Azeri analysts argue that Armenian decision makers are protecting the right of Karabakh Armenians to self-determination rather than the right of the Nagorno-Karabakh population as a whole. Crisis Group group e-mail communication Tabib Huseynov, September 2005.

They base their argument on international legal experts such as James Crawford, who states "in international practice there is no recognition of the unilateral right to secede based on a majority vote of the population of a sub-division or territory...Even when there is a strong and sustained call for independence (measured, for example, by referendum results showing substantial support for independence) it is a matter for the government of the state concerned".<sup>42</sup> As noted, the results of the Nagorno-Karabakh referendum were not recognised by Baku. According to UN texts, even though all people have the right to self-determination, "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".<sup>43</sup>

Azerbaijani experts argue that the 1990 law employed by Armenians of Nagorno-Karabakh to justify secession related to the "secession of Union Republics from the USSR", not from Union Republics.<sup>44</sup> They further point to the 1977 Soviet Constitution, which states, "the territory of a Union Republic may not be altered without its consent",<sup>45</sup> and the 1988 decision of the Presidium of the USSR Supreme Soviet, which resolved that Nagorno-Karabakh should remain part of Azerbaijan.

Moreover, Azerbaijan believes the essence of the conflict is not self-determination but Armenia's ambitions to acquire territory. It considers that as the Soviet Union ended, Armenia was able to mobilise around nationalist goals and take advantage of a relatively weak government in Azerbaijan, which was unable to protect its full territory.<sup>46</sup> The Nagorno-Karabakh self-determination vote was Armenia's excuse to intervene in Azerbaijan's internal affairs. Baku points out that the UN Charter (article 2) forbids states from interfering with the territorial integrity of other states. It accuses Armenia of doing this

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<sup>42</sup> James Crawford, "State Practice and International Law in Relation to Unilateral Secession", 19 February 1997, at <http://canada.justice.gc.ca/en/news/nr/1997/factum/craw.html#toc>.

<sup>43</sup> "Declaration on the Granting of Independence to Colonial Countries and Peoples", UN General Assembly Resolution 1514 (XV), Article 6 quoted in a letter dated 16 March 2004 from the permanent representative of Azerbaijan, op. cit.

<sup>44</sup> "Only if Azerbaijan had attempted to secede from the USSR during its existence and had complied with the Act on 'Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR' would the Nagorny Karabakh Autonomous Region have had the right to conduct a separate referendum to determine where it stood". Letter dated 16 March 2004 from the permanent representative of Azerbaijan, op. cit.

<sup>45</sup> Constitution of the USSR 1997, Art. 78. In Hunnum, Documents, op. cit., p. 747.

<sup>46</sup> Under Presidents Ayaz Mutalibov and Abulfaz Elchibey.

during the war and continuing to do so today and justifies use of force against Armenian troops by citing article 51 of the Charter (self-defence).<sup>47</sup>

### C. HUMAN RIGHTS VIOLATIONS

From the very beginning, the conflict degenerated into violence and ethnic cleansing. Armenia and Azerbaijan offer different starting dates but in most accounts the chronology of violence starts with the massacres of Armenians in Sumgait (26-28 February 1988). Azerbaijan analysts claim, however, that the first Azeri victims were those who were forcibly displaced in November 1987 from the Meghri and Kafan districts of Armenia.<sup>48</sup> Whether the war in and around Nagorno-Karabakh was a cause or the consequence of a broader conflict that tore Azerbaijan and Armenia apart remains in debate. Neither country has shown any willingness to address the human rights violations that occurred during the broader conflict -- for example, to negotiate the return of 413,000 refugees from Azerbaijan<sup>49</sup> and 207,500 refugees from Armenia<sup>50</sup> or compensate them for lost property.<sup>51</sup>

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<sup>47</sup> Crisis Group e-mail communication with an official from the Azerbaijan Ministry of Foreign Affairs, September 2005.

<sup>48</sup> The starting date of Azeri expulsions from Armenia is debated between Armenian and Azerbaijani sources. Armenian scholars say they began in 1988, while Azerbaijani scholars say they started a year earlier. No contemporary material describes 1987 displacements. See, for example, Russian Federation Supreme Soviet, Human Rights Committee, "Study on Human Rights Violations in Azerbaijan and Armenia", April-May 1991. However an account of displacement of Azeris from Armenia in the last quarter of 1987 is provided in de Waal, *Black Garden*, op. cit., pp. 18-19. See also NKAO Chronology, February 1988 – February 1990 (Baku, 1990) p. 9, and Svante Cornell, *The Conflict in Nagorno-Karabakh: Dynamics and Resolution Prospects* (Moscow, 2001) p. 439.

<sup>49</sup> 335,000 Armenian refugees from Azerbaijan and 78,000 IDPs from areas bordering Azerbaijan were registered by 1994. Crisis Group e-mail communication with political analyst Arif Yunusov, August 2005.

<sup>50</sup> 186,000 Azerbaijanis were registered at the beginning of February 1990, as well as 18,000 Kurds and 3,500 Russians who had escaped from Armenia. Ibid.

<sup>51</sup> Armenian sources claim the Armenian government provided financial compensation to Azeri refugees worth some \$100 million. See for example, "Nagorno-Karabakh Republic Years of State-Building", monograph published by the de facto Nagorno-Karabakh Ministry of Foreign Affairs, Stepanakert, 2005. Azerbaijanis allege that Armenians from Baku, Sumgait and other cities not only received governmental compensation but also were able to sell their properties. Armenians allege the same of Azeris from Armenia. However, it is unlikely that refugees and displaced persons from either country received any significant compensation from any government. Crisis Group communication with Arif Yunusov, July 2006.

The Armenian side considers itself the victim of Azeri "aggression", drawing parallels between actions in 1988-1992 and Ottoman crimes in 1915. Referring to the ethnic violence that targeted Armenians in Azerbaijan, politicians argue that Baku is another "genocidal" state, which seeks to exterminate all Armenians on its territory. They point to several incidents -- Sumgait, Azerbaijan-wide anti-Armenian riots (November 1988), Baku massacres (January 1990), and Operation Ring (April 1991-June 1992)<sup>52</sup> -- as proof that even before the Nagorno-Karabakh war the government's intention was to ethnically cleanse Azerbaijan of Armenians. As a consequence of these and other actions, almost all the pre-war Armenian population was forced to become refugees, including some 30,000 internally displaced persons (IDPs) who live today in Nagorno-Karabakh and the occupied districts.<sup>53</sup> Rights of Armenians in Azerbaijan have yet to be restored.

Armenian authorities argue that by perpetrating violence against its own citizens, Azerbaijan lost the moral right to custody over Armenian Azerbaijanis. Karabakh Armenians accuse the Soviet-era Azerbaijani government of economic and social discrimination and political repression that made life intolerable.<sup>54</sup> Thereafter when Karabakh Armenians sought self-determination peacefully, Azerbaijan tried to suppress them by force. Karabakh Armenians reason that having suffered fundamental injustices, including threats to life and ethnic cleansing, they have the remedial right to secede.

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<sup>52</sup> The joint military operation by Soviet troops and special units of the Ministry of Interior of Azerbaijan resulted in deportation of 24 Armenian-populated villages in and around Nagorno-Karabakh, accompanied by killings, rape and torture. Human Rights Watch, "Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno-Karabakh", September 1992, pp. 7-10, 47-54; de Waal, *Black Garden*, op. cit., pp. 113-124.

<sup>53</sup> Stepanakert considers that 10,000 to 15,000 people originally from pre-war Shahumian and Getashen (Azerbaijan) and some 20,000 from Mardakert and Martuni (former parts of the old oblast) are IDPs. Crisis Group interviews with officials of the de facto Nagorno-Karabakh Ministry of Foreign Affairs, May and June 2005.

<sup>54</sup> They claim the right to self-determination externally because they were denied the ability to exert that right internally or to pursue their political, economic, social and cultural development in Soviet times. Gerard Libaridian (ed.), *The Karabakh File: Documents and Facts on the Questions of Karabakh 1918-1988* (Cambridge, 1988). See also Tchilingirian, op. cit., pp. 441-445. Azerbaijani sources deny discrimination. They point out that the oblast offered local self-government, language rights, higher economic development, and more educational and cultural services than in many other parts of Azerbaijan. Azerbaijan Ministry of Foreign Affairs, "Concise Historical Information on Azerbaijan and the Roots of the Armenian-Azeri Conflict", Information Bulletin, 16 October 1996.

Azerbaijan similarly blames Armenia for having ethnically cleansed Azeris from Armenia<sup>55</sup> and the occupied territories to create an ethnically pure Greater Armenia. Eleven years after the ceasefire, the rights of over 700,000 displaced Azeris<sup>56</sup> continue to be violated. Armenia not only forcibly displaced Azeris from Armenia, Nagorno-Karabakh and seven districts around it, but also took control of 11,722 square kilometres of Azerbaijan,<sup>57</sup> violating Azeris' basic rights to freedom of movement, to their properties and homes, and to participate in the economic, social and political life of Nagorno-Karabakh and the surrounding districts. Azerbaijan accuses Armenian armed forces of brutal violence during their offensives and destruction of all that once belonged to Azeris, thus making return difficult. It claims that until the rights of the Azerbaijani IDPs to return home are restored, it has the moral authority to use force to regain their land and property.

From 1988 to 1994 Armenians and Azerbaijanis committed atrocities against each other in communal violence that quickly took on a mass mob character. There were incidents of neighbour helping neighbour regardless of ethnicity but the majority stood by and at least tacitly condoned the violence. Since the ceasefire, neither side has reflected on responsibility for the atrocities. No dialogue has been launched to start a process of forgiveness or trust building. Azerbaijanis and Armenians remain haunted by hatred, a sense of victimisation, images of death and destruction, and a desire for revenge.

The armies of Armenia and Azerbaijan, and the defence forces of Nagorno-Karabakh, all violated the rules of war. Often civilians were the main victims. The killing of anywhere between 200 and 1,000 Azeris escaping from Khojali in February 1992 by Nagorno-Karabakh forces backed by Armenia stands out as the greatest single war

crime.<sup>58</sup> Other incidents such as the murder of some 50 Armenian villagers in Leninavan (Maraga) were carried out by Azerbaijani troops.<sup>59</sup> Indiscriminate aerial bombardment and artillery shelling of Stepanakert and other Nagorno-Karabakh settlements caused more than 1,500 civilian Armenian deaths in 1992.<sup>60</sup> By the end of the war, when both sides had more lethal weapons, casualties multiplied.<sup>61</sup> In 1993-1994 when they were making their biggest territorial gains, taking control of the districts around Nagorno-Karabakh, Karabakh Armenian forces with the support of Armenia were responsible for the majority of abuses.<sup>62</sup> The commanders who committed war crimes have not been prosecuted or otherwise penalised. An estimated 18,500 Nagorno-Karabakh soldiers, half of which are estimated to be from Armenia,<sup>63</sup> and 30,000<sup>64</sup> to 45,000<sup>65</sup> Azerbaijani fighters remain on or near the line of contact. There has been no separation of forces or demilitarisation.

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<sup>55</sup> Much less has been written about violence perpetrated against Azeris living in Armenia than about atrocities committed against Armenians in Azerbaijan. Yet, there are accounts of Azeris being killed in Armenia starting in March 1988, with violence escalating in the last quarter of that year and in 1989. For more on this, see Arif Yunus, *Karabakh: Past and Present* (Baku, 2005), pp. 70-72.

<sup>56</sup> Some 724,000 Azerbaijanis (and Kurds) were displaced from Armenia, Nagorno-Karabakh and the surrounding districts. These figures are based on calculations carried out by Arif Yunusov. However the full figures that Yunusov uses are higher because they include 48,000 Meskhetian Turk refugees among the Azeri displaced. Crisis Group e-mail communication with Arif Yunusov, August 2005

<sup>57</sup> De Waal, *Black Garden*, op. cit., pp. 286. Crisis Group has decreased de Waal's figure for total Azerbaijani land under Armenian occupation by 75 sq. km. that lie outside the Nagorno-Karabakh conflict area.

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<sup>58</sup> According to Human Rights Watch, "it is widely accepted that 200 Azeris were murdered, as many as 500-1,000 may have died", "Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh", December 2004, fn. 28. The 1,000 figure is deemed highly plausible by Thomas Goltz in *Azerbaijan Diary*, (M. E. Sharpe, 1998), pp. 122-123.

<sup>59</sup> The chairman of the parliament of Nagorno-Karabakh stated that 53 civilians were killed. Human Rights Watch, "Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno-Karabakh", September 1992, p. 29. See also Human Rights Watch, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh*, op. cit.

<sup>60</sup> Human Rights Watch, "Bloodshed in the Caucasus: Indiscriminate Bombing and Shelling by Azerbaijani Forces in Nagorno Karabakh", vol. 5, issue 10, July 1993. p. 11.

<sup>61</sup> In 1993 four UN Security Council Resolutions were passed urging the parties to refrain from armed hostilities and to withdraw military forces from any occupied territories.

<sup>62</sup> Human Rights Watch, "Seven Years of Conflict", op. cit.

<sup>63</sup> Crisis Group e-mail communication with the American military analyst Richard Giragosian, August 2005. He estimates that the number of Karabakh Armenians in the Karabakh Defence Forces is 8,500, and the number of Armenians from Armenia is 10,000. See Crisis Group Report, *Nagorno-Karabakh*, op. cit.

<sup>64</sup> Crisis Group communication with Arif Yunusov, July 2005

<sup>65</sup> Approximation provided by senior official of the Azerbaijan defence ministry, Crisis Group interview, Baku, September 2005.

### III. THE NEGOTIATION PROCESS

Since 1992 the OSCE<sup>66</sup> has been the main mediator seeking a peace settlement. In 1992 it was optimistic that it could secure a negotiated peace but thirteen years later it realises it is dependent on the parties, who cannot be coerced into a resolution.<sup>67</sup> A co-chairmanship system developed in 1994 was revised in 1997 to include France, Russia and the U.S., whose representatives work together, facilitating the negotiations, drafting discussion documents, and conducting shuttle diplomacy.<sup>68</sup> On the ground they work closely with the "Office of the Personal Representative of the OSCE Chairman-in-Office (CiO) on the Conflict Dealt with by the OSCE Minsk Conference", led since January 1997 by Ambassador Andrzej Kasprzyk. His main task is to represent the CiO on issues related to the Nagorno-Karabakh conflict, including monitoring the line of contact and the Armenian-Azerbaijani border.<sup>69</sup>

Especially since the failure of the 2001 Key West talks between Presidents Aliyev and Kocharian, policy makers have begun to consider whether the OSCE Minsk Group negotiations should be closed down.<sup>70</sup> The Minsk Group

co-chairs themselves alluded to this in July 2004 when they told the two presidents that one of three options they could choose was to agree that "no agreement [is] possible, which means maintaining the fragile status quo".<sup>71</sup> It is unlikely that the Minsk Group will disappear until one of the negotiation teams quits, in which case it is doubtful the other would quickly agree to a new format.

A main criticism of the Minsk Group is that it facilitates but is loath to apply pressure.<sup>72</sup> The co-chairs and OSCE special representative are careful to avoid any statements which suggest partiality. They will not publicly criticise one side but instead reprimand "the sides" in general.<sup>73</sup> Around the table they employ a flexible format, allowing discussions to flow and intervening little. The co-chairs have offered few incentives and disincentives to advance the process. What goes on in the negotiations does not affect the multi-million dollar cooperation and aid programs the U.S., Russia and EU have with Armenia and Azerbaijan. A retired U.S. official said, "there has to be a historical compromise but it's not going to happen without some incentives and some pressure from the mediators".<sup>74</sup>

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<sup>66</sup> Until 1995 the OSCE was called the Conference on Security and Cooperation in Europe (CSCE).

<sup>67</sup> Nagorno-Karabakh is the first and only high-level, lengthy negotiation that the OSCE has become involved in. Only there has it established a separate institution with the mandate to carry out negotiations. Field missions are engaged in other instances. For example, the OSCE Mission to Georgia has been involved in negotiations between Georgia, Russia, North and South Ossetia in the framework of the Joint Control Commission (JCC) since 1994 but its mandate is not to facilitate and organise the negotiations directly. Crisis Group Europe Report N°159, *Georgia: Avoiding War in South Ossetia*, 26 November 2004. The OSCE Mission to Moldova is co-mediator in a five-sided process aimed at finding a settlement of the Transdniestrian conflict. Crisis Group Europe Report N°157, *Moldova: Regional Tensions over Transnistria*, 17 June 2004.

<sup>68</sup> The co-chairs are currently Ambassadors Steven Mann (U.S.), Yuri Merzlyakov (Russia) and Bernard Fassier (France).

<sup>69</sup> The Personal Representative's full mandate also includes assisting the CiO in achieving agreement on the cessation of the armed conflict, creating conditions for the deployment of an OSCE peacekeeping operation, reporting, assisting the High Level Planning Group, and assisting the parties in implementing and developing confidence-building, humanitarian and other measures facilitating the peace process, in particular by encouraging direct contacts. OSCE Conflict Prevention Centre, "Survey of OSCE Long-Term Missions and Other OSCE Field Activities", 26 August 2005, p. 56, at [http://www.osce.org/documents/sg/2005/08/16167\\_en.pdf](http://www.osce.org/documents/sg/2005/08/16167_en.pdf).

<sup>70</sup> In the past years Azerbaijan has sought to raise the Nagorno-Karabakh question in other international forums, especially the UN and the Council of Europe. For scholarly comment see Fariz Ismailzade, "The OSCE Minsk Group and the Failure of

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Negotiations in the Nagorno-Karabakh Conflict", Caspian Brief, no. 23, April 2002; Mient-Jan Faber and Andrzej Kasprzyk, debate, "How Should the OSCE deal with the Nagorno Karabakh conflict?", Helsinki Monitor, no. 1, 2003. pp. 1-5.

<sup>71</sup> Twelfth Meeting of the Ministerial Council, op. cit.

<sup>72</sup> The personal representative of the OSCE chairman-in-office explains that "arbitration would have to be acceptable to the parties. It is unlikely that they would comply with a solution that they would deem unsatisfactory. Enforcing peace would require additional resources (political and military) and would be a risky option for the international community". Mient-Jan Faber and Andrzej Kasprzyk, debate, op. cit., p. 2. See also Hakala, op. cit., pp. 5-15.

<sup>73</sup> For example, when ceasefire violations occur, the personal representative's activity report does not indicate which side was to blame.

<sup>74</sup> Crisis Group interview with retired U.S. official, Washington DC, April 2005. The international community has acted as such a peace enforcer in Bosnia-Herzegovina but the parties to the Nagorno-Karabakh conflict have rejected any comparisons with Bosnia-Herzegovina and the applicability of international peace enforcement. At an 11 April 2005 meeting with students, President Kocharian called application of an enforced peace formula as in Bosnia impossible. "The situation was different there -- war and humanitarian crisis. The worst that could have happened has already happened in NK and nobody intervened". Armenian president website <http://news.president.am/arm/?sub=press> (in Armenian). In an interview with Crisis Group, de facto Nagorno-Karabakh President Arkady Ghoukassian also discounted the Bosnian model, Stepanakert, June 2005.

## A. THE MINSK GROUP FORMAT

The OSCE's role, the system of mediation, and the participants in the negotiations process have been determined by a series of agreements reached by OSCE Participating States.

### 1. Key decisions

In March 1992 the OSCE Council of Ministers held an emergency meeting in Helsinki where they designated the organisation the main instrument for settlement of the conflict.<sup>75</sup> The Minsk Group, with the participation of eleven OSCE Participating States,<sup>76</sup> was mandated to prepare a conference to provide "an ongoing forum for the negotiations aimed at peaceful settlement of the crisis on the basis of principles, obligations and the charter of CSCE".<sup>77</sup> That conference has yet to be held<sup>78</sup> but the Minsk Group continues to work. The UN Security Council passed four resolutions in 1993 urging the withdrawal of forces from occupied territories of Azerbaijan and affirming support for the peace process.<sup>79</sup>

To end competing mediation efforts and consolidate the negotiations process,<sup>80</sup> the OSCE Budapest Summit in

December 1994 established a co-chairmanship<sup>81</sup> with Russia and Sweden<sup>82</sup> and gave the Minsk Group two important missions: to promote continuation of the ceasefire and to conduct negotiations for the conclusion of a "Political Agreement on the Cessation of the Armed Conflict".<sup>83</sup> It was not mandated to deal with the status of Nagorno-Karabakh, which was expected to remain the purview of the Minsk Conference.<sup>84</sup> The Budapest meeting also expressed the will to deploy a multinational OSCE peacekeeping force once the Agreement was in place; a High Level Planning Group (HLPG) was created to prepare.<sup>85</sup>

The OSCE also established principles to regulate its work. In 1996, during the Lisbon Summit, the Minsk Group recommended three principles as the basis for a settlement: territorial integrity of Armenia and Azerbaijan; Nagorno-Karabakh's legal status should be defined in an agreement based on self-determination conferring the highest degree of self-rule within Azerbaijan; and guaranteed security for Nagorno-Karabakh and its whole population.<sup>86</sup> These were supported by 53 Participating States of the OSCE but Armenia vetoed the resolution.<sup>87</sup>

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<sup>75</sup> CSCE Council of Ministers decision, Prague, 30-31 January 1992. At the invitation of Armenia and Azerbaijan the organisation sent a mission to report on progress towards implementation of CSCE commitments. CSCE Communication no. 79, Prague, 24 February 1992.

<sup>76</sup> Azerbaijan, Armenia, Belarus, Germany, Italy, Russia, U.S., Turkey, France, Czechoslovakia and Sweden. After Czechoslovakia split up, the number of participating states became twelve.

<sup>77</sup> CSCE, First Additional Meeting of the Council of CSCE, II, point 8, Summary of Conclusions, 24 March 1992.

<sup>78</sup> The first session of the Minsk Conference was planned for 23 June 1992 but Azerbaijan set as a precondition withdrawal of occupying forces from Lachin and Shusha. The Minsk Group was then created as an informal working mechanism. Personal website of the former Russian co-chairman of the Minsk Group, Vladimir Kazimirov, at <http://vn.kazimirov.ru>.

<sup>79</sup> UNSC Resolutions 822 (April 1993), 853 (July 1993), 874 (October 1993) and 884 (November 1993).

<sup>80</sup> Competition with Russian mediation efforts particularly complicated the OSCE's work. Then chief Russian negotiator, Vladimir Kazimirov, said, "the real rationale behind attempts to appropriate a 'central' role to the Minsk Group has little to do with genuine interests of the settlement.... Their aim is to eliminate an independent mediation by Russia. Some would like not to allow strengthening of her authority and influence in Transcaucasia and to depress the re-integration processes in the CIS space". Communication from Kazimirov to Chairman of the OSCE Conference on Nagorno-Karabakh Jan Eliasson, 13 October 1994.

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<sup>81</sup> The co-chairmen of the Minsk Conference to be appointed by the Chairman-in-Office were tasked "to ensure a common and agreed basis for negotiations and to realise full co-ordination in all mediation and negotiation activities... jointly chair meetings of the Minsk Group and jointly report to the Chairman-in-Office". Budapest Summit Document, "Towards a Genuine Partnership in a New Era," 6 December 1994, p. 17.

<sup>82</sup> Finland replaced Sweden in 1995.

<sup>83</sup> The concept of the agreement was based on the earlier drafts developed by the Minsk Group and known as "Timetable (or Adjusted timetable in latest modification) of urgent steps to implement Security Council resolutions".

<sup>84</sup> In practice, however, and without a formal OSCE decision, the Minsk Group began to propose draft agreements which included provisions addressing Nagorno-Karabakh's status in 1995.

<sup>85</sup> The HLPG was to offer recommendations on "the size and characteristics of the force, command and control, logistics, allocation of units and resources, rules of engagement and arrangements with contributing States", Budapest Summit Document, op. cit., p. 18.

<sup>86</sup> OSCE Lisbon Summit Document, "Statement of the OSCE Chairman-in-Office", Annex 1, 2-3 December 1996.

<sup>87</sup> It was adopted as part of the Lisbon Summit's Final Document, but included as a "non-binding special announcement" by the CiO. At the time Armenia's President, Ter-Petrosian, said, "the statement predetermines the status of Nagorno-Karabakh, contradicting the decision of the OSCE Ministerial Council of 1992, which referred this issue to the competence of the OSCE Minsk Conference, to be convened after the conclusion of a political agreement". OSCE Lisbon Summit Document, Statement of the Delegation of Armenia, Annex 2, 2-3 December 1994.

On 30 December 1996, the OSCE Chairman-in-Office<sup>88</sup> appointed a French representative to succeed the Finnish co-chair.<sup>89</sup> The foreign minister of Azerbaijan protested and requested a U.S. representative instead.<sup>90</sup> The dispute was resolved by appointing an American as an additional third co-chair. Since then this troika has not changed. Including Russia and the U.S. helps balance their interests in the region and gives more credibility to the negotiations. France ensures that the EU is well informed and its interests considered.<sup>91</sup>

Over the past decade Azerbaijan and Armenia have been represented at different levels. In 1999-2001 the presidents met, at one point in 2001 facilitated by French President Jacques Chirac. In March 2002 they agreed to assign "Personal Representatives at the level of deputy foreign ministers". Since 2004 meetings have been organised between the foreign ministers, supplemented by occasional presidential meetings, under the "Prague Process".<sup>92</sup> OSCE co-chairs have been engaged from the presidential level to the ambassadorial.

## 2. The parties

Who can negotiate is contentious. Azerbaijan considers that it is first and foremost in conflict with Armenia, which occupies its territory, so it should have only one partner. Armenia insists that the conflict is between Azerbaijan and Nagorno-Karabakh, and no agreement, including a ceasefire, is sustainable without the signature of Nagorno-Karabakh's de facto leadership.

At the 1992 Helsinki Meeting it was left to the discretion of the chairman and participants of the Minsk Group to determine whether "elected and other representatives of Nagorno-Karabakh will be invited for the participation in the Conference as interested parties".<sup>93</sup> The Armenian side used this phrase to justify the inclusion of Nagorno-Karabakh de facto authorities in the negotiations. However, Azerbaijan refused to consider the de facto leadership as

"elected representatives" since the Karabakh Azeris did not participate in the Nagorno-Karabakh elections.<sup>94</sup> It argued that Karabakh Armenians and Karabakh Azeri representatives should be considered equally as "interested parties". After Nagorno-Karabakh signed the 1994 ceasefire, it was generally considered "a party to the conflict" and from 1994 to 1997 participated as such in the talks.<sup>95</sup> After Robert Kocharian, who had been Nagorno-Karabakh's de facto president, became the President of Armenia in 1998, it was generally understood that he also represented Stepanakert.

No representatives of Karabakh Armenians or Azeris are at the negotiation table. Baku refuses to accept Stepanakert's participation.<sup>96</sup> While the de facto authorities there express frustration at their inability to take part; they argue that since 1997 there have been no real negotiations -- only "meetings" -- because without their participation, the conflict cannot be solved. They have said they prefer to enter into direct bilateral talks with Baku rather than maintain the current format.<sup>97</sup> The Minsk Group co-chairs meet with both the Karabakh Armenian and Azerbaijani representatives when they travel to the region, and it appears most likely that both would sign any peace agreement.<sup>98</sup>

## B. A PACKAGE OR STEP-BY-STEP?

Since 1995 the co-chairs have presented draft agreements as a basis for negotiations. The details were considered secret. However, in 2001 the Azerbaijani presidential administration published copies of the June 1997,

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<sup>88</sup> Swiss Minister of Foreign Affairs Flavio Cotti.

<sup>89</sup> Ambassador Heikki Talvitie, since 2003 the EU's Special Representative to the South Caucasus.

<sup>90</sup> Letter of Azerbaijani Minister Hasan Hasanov to OSCE Chairman-in-Office Flavio Cotti, 31 December 1996.

<sup>91</sup> Other EU member states seem disinclined to replace French involvement with a formal EU co-chairman and express satisfaction with the level of communication with French officials. The situation has, however, been complicated by the appointment of Ambassador Talvitie as the EU Special Representative for the South Caucasus. Replacing the French negotiator with Talvitie might strengthen the EU's position in the Minsk Group.

<sup>92</sup> See Section I above.

<sup>93</sup> CSCE, First Additional Meeting of the Council, part II, point 9, 24 March 1992, Conclusions resume.

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<sup>94</sup> Mario Raffaelli's Letter of Chairman of Minsk Conference to CSCE Chairman-in-Office, 23 September 1992.

<sup>95</sup> Nagorno-Karabakh's position as "party to the conflict" was codified at the OSCE Budapest Summit when the final document heralding the "confirmation by the parties to the conflict of the ceasefire" agreement of 1994 was signed by Nagorno-Karabakh together with Armenia and Azerbaijan. Budapest Summit Document, op. cit., p. 5. In 1997 its rejection of that July's draft peace agreement again excluded it.

<sup>96</sup> The OSCE Minsk Group co-chairs do not decide who participates. The decision to include a party requires consensus, in this situation Azerbaijan's agreement. Ara Tadevosian, "Kocharian and Aliiev Tread Political Tightrope", Institute for War and Peace Reporting (IWPR), issue 49, 15 September 2000.

<sup>97</sup> Crisis Group interview with de facto Nagorno-Karabakh President and Ministry of Foreign Affairs officials, Stepanakert, June 2005.

<sup>98</sup> Crisis Group interview with Personal Representative of the OSCE Chairman-in-Office, Ambassador Andrzej Kasprzyk, Baku, December 2004. In general the non-elected representative of the Karabakh Azeri community has been much less vocal than his Armenian counterpart in seeking a place at the table. The Karabakh Azeri community is represented by Nizami Bahmanov, appointed in 1992.

December 1997 and November 1998 proposals. It is, therefore, possible to determine the main issues and approaches under discussion.<sup>99</sup> Two differing methodologies have thus been proposed: package and step-by-step solutions.

Initially the OSCE established a step-by-step approach, tasking the Minsk Group to define a political agreement while the Minsk Conference was to determine the status of Nagorno-Karabakh in a second stage. The co-chairs soon began suggesting comprehensive package agreements, however, which also addressed status. The June 1997 proposal was based on such a package, while the December 1997 draft was step-by-step. From 1998 through 2001 in Key West, the negotiators also attempted to find a package deal starting with a "common state" proposal.

Kocharian, as President of Armenia since 1998, has strongly favoured a package solution because it would mean the withdrawal of troops from Azerbaijani-occupied territories would only begin after a guarantee had been secured that Nagorno-Karabakh would never be subordinated to Baku. Azerbaijan, however, considers such an exchange of territory for status would be an admission of defeat.<sup>100</sup>

When Ilham Aliyev came to power in 2003, he categorically rejected the package approach, saying that confidence building would be needed after an Armenian withdrawal and before Nagorno-Karabakh's status could be determined. His administration also criticised the Armenian side for using the occupied lands as a trump card to get their desired outcome on status.<sup>101</sup>

Since the start of the Prague Process, Armenian and Azerbaijani negotiators have made a significant tactical compromise, agreeing "it doesn't matter if we call this a step-by-step or a package solution, because in any case you agree to a package, but implement it step-by-step".<sup>102</sup>

In June 2005 the Azerbaijani foreign minister explained that the sides are addressing issues one by one, resolving one before moving to another, "like pearls knotted on a silk thread".<sup>103</sup> Both sides now seek ways to finalise an agreement on how status will be determined but to postpone the decision itself while implementing other aspects.

### C. BUYING TIME

Since the start of negotiations it has been evident that both sides have sought to buy time. Partly this is because their leaders have not wanted to make compromises, which are bound to decrease their domestic popularity and perhaps even cost them office. Azerbaijan, Armenia and de facto Nagorno-Karabakh authorities have all believed at one point or another that the postponement of a settlement was to their advantage. Only the Karabakh Azeris, who continue to live in precarious conditions, have no such strategy.

The Armenian side considers that delaying resolution of the conflict works to its advantage because it believes statehood will eventually become a fait accompli. Nagorno-Karabakh de facto authorities argue they are fast meeting all the preconditions of statehood.<sup>104</sup> New mono-ethnic institutions exist, and privatisation of land and business has been carried out, institutionalising the dispossession of Azerbaijanis' rights. Looking at the Kosovo experience, Armenia considers that "international tendencies are moving towards reinforcing the right to self-determination. The longer Nagorno-Karabakh maintains its de-facto independence, the harder it will be to reverse the wheel of history".<sup>105</sup>

Azerbaijan also believes time is on its side as it consolidates its economic potential and amasses oil revenues. The ongoing increases in defence expenditures are largely based on money from the new Baku-Tbilisi-Ceyhan pipeline.<sup>106</sup> Azerbaijan continues to work with Georgia in regional development projects -- oil and gas

<sup>99</sup> No subsequent draft proposals have been made public.

<sup>100</sup> According to former Azerbaijan Foreign Minister Tofiq Zulfugarov, in Artur Terian and Armen Koloyan, "Former Leading Azerbaijani Officials Comment on Prospects for Karabakh Peace", RFE/RL Caucasus Report, vol. 4, no. 10, 9 March 2001.

<sup>101</sup> This was most evident in November 2004 when Azerbaijan succeeded in including an item on the situation in the occupied territories on the UN General Assembly agenda. Additional pressure was put on Armenia when a resolution was passed by the Council of Europe stating that "considerable parts of the territory of Azerbaijan are still occupied by Armenian forces", CoE PACE, Resolution 1416, point 1, 25 January 2005.

<sup>102</sup> Crisis Group interview with official, Azerbaijan foreign ministry, Baku, March 2005. A similar statement was made

in a Crisis Group interview with Armenian diplomat, Yerevan, February 2005.

<sup>103</sup> Quoted in Fuller, "Armenia/Azerbaijan: Expectations Muted", op. cit.

<sup>104</sup> As defined by the Montevideo Convention on Rights and Duties of States, article 1, signed 26 December 1933. See also "The Nagorno-Karabakh Crisis: A Blueprint for Resolution", a memorandum prepared by the Public International Law and Policy Group and the New England Centre for International Law and Policy, June 2000, pp. 44. See also Tchilingirian, op. cit., p. 457.

<sup>105</sup> Foreign Minister Vartan Oskanian, "Statement", op. cit.

<sup>106</sup> Adalat Bargarar, "Azerbaijan Boosts Military," IWPR, issue no. 294, 7 July 2005.



pipelines, a possible new railway<sup>107</sup> -- that deepen Armenia's isolation. Baku believes it will become increasingly strong in the region and Western investors and states reliant upon it. As Ilham Aliyev stated in 2004, "we are not in a rush. We have the truth on our side; we have time on our side; we have international justice on our side".<sup>108</sup>

#### IV. THE QUESTION OF FUTURE STATUS

From the start, the main stumbling block has been Nagorno-Karabakh's final status. Yerevan, which supports independence or unification with Armenia, and Baku, which demands that the entity remain part of its territory, have diametrically opposite demands. An Armenian foreign ministry official told Crisis Group, "this conflict started with status; it has to end with status".<sup>109</sup> Azerbaijani officials categorically disagree, saying first the occupation of Azeri territory has to end and the withdrawal of forces and return of displaced persons begin.<sup>110</sup> Moreover they insist no Nagorno-Karabakh status that would violate Azerbaijan's territorial integrity is possible.

Settling status before other issues is extremely difficult. Since the start of the Prague Process, the negotiators appear to have recognised this, tempering maximal positions and agreeing that the status issue will be addressed, but only after the withdrawal of Nagorno-Karabakh and Armenian forces from at least five occupied territories adjacent to Nagorno-Karabakh begins. Officials close to the negotiations state that a package solution immediately resolving the status issue is no longer sought.

The Armenians are calling for a settlement which would make explicit that status remains an open question,<sup>111</sup> to be dealt with at a later stage. According to the Armenian foreign minister, the basis for any solution "is the affirmation of the right of the people of Nagorno-Karabakh to self-determination and the international recognition of that right. Azerbaijan's simple [acceptance of] this fact, and its formalisation in an agreement, will make possible the start of the resolution of the matter".<sup>112</sup> In a meeting with Crisis Group, a senior Azerbaijani official talked about initiation of an "interim interaction regime" between Baku and Stepanakert, during which withdrawal from the occupied territories would proceed but final status question would be left unresolved. That regime would be maintained until voting on the issue was organised.<sup>113</sup>

After more than a decade of negotiations and academic research, a wide range of status solutions have been proposed, both during the official negotiations and by

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<sup>107</sup> On 25 May 2005 the presidents of Azerbaijan, Georgia and Turkey signed a "Declaration on the Creation of the International Transport Corridor Kars-Tbilisi-Baku", to begin planning a Kars (Turkey)-Akhalkalaki (Georgia)-Tbilisi railway project to link the three states. Grigor Hakobyan, "Armenia Responds to the Kars-Akhalkalaki Railroad Proposal", *Central Asia-Caucasus Analyst*, 7 September 2005.

<sup>108</sup> E. Jourand, "France pledges support to resolve the Nagorno-Karabakh dispute", *Agence France-Presse*, 23 January 2004.

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<sup>109</sup> Crisis Group interview with official, Armenia foreign ministry, Yerevan, February 2005.

<sup>110</sup> Crisis Group interview with official, Azerbaijani foreign ministry, Baku, August 2005.

<sup>111</sup> Crisis Group interview with official, Armenia foreign ministry, Yerevan, February 2005.

<sup>112</sup> Foreign Minister Vartan Oskanian, "Statement", *op. cit.*

<sup>113</sup> Crisis Group interviews with senior official, Azerbaijan government, Baku, March and September, 2005.

governmental and non-governmental actors.<sup>114</sup> These include keeping Nagorno-Karabakh in Azerbaijan but with considerable autonomy;<sup>115</sup> postponing final status; declaring Nagorno-Karabakh and Azerbaijan part of a "common state";<sup>116</sup> putting Nagorno-Karabakh under a dual Azerbaijan/Armenia protectorate; exchanging Nagorno-Karabakh for land in Armenia;<sup>117</sup> giving Nagorno-Karabakh intermediate sovereignty leading to "earned recognition";<sup>118</sup> and resolving status in the context of a broader regional settlement.<sup>119</sup> The options proposed by the OSCE Minsk Group and those preferred by the interested parties are discussed below.

## A. STATUS OPTIONS

Azerbaijani public opinion's preferred outcome is for Nagorno-Karabakh to stay part of Azerbaijan and for the country to remain a unitary state,<sup>120</sup> with no new constitutional or legislative arrangements for Nagorno-Karabakh residents and no devolution or sharing of power.<sup>121</sup> Baku leaders, however, have been saying for several years that they are ready to give some form of

self-government. As recently as May 2005, President Aliyev said:

Our position remains unchanged -- our lands must be returned and our territorial integrity restored. Our greatest concessions are security guarantees for Nagorno-Karabakh Armenians and our readiness to grant the highest degree of autonomy that exists in the world.<sup>122</sup>

No details have been provided on what this autonomy would look like.<sup>123</sup> No efforts have been made to consult with Karabakh officials to determine if a common approach could be found. An OSCE Parliamentary Assembly report recently concluded that for autonomy to work, "Azerbaijan would have to make Nagorno-Karabakh really welcome and not be seen as a conquered enemy or occupied territory".<sup>124</sup> In the meantime, Karabakh Armenians insist their entity can never again be part of Azerbaijan -- even with wide autonomy. In July 1997 the Minsk Group presented a formula, with Karabakh becoming "a state and a territorial formation within the confines of Azerbaijan", with significant rights, privileges and guarantees.<sup>125</sup> Stepanakert's de facto authorities rejected this. Armenia is willing to consider an autonomy solution with Nagorno-Karabakh remaining formally part of Azerbaijan, but on the principle "there cannot

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<sup>114</sup> For a more detailed view of these status options, see Ali Abasov and Haroutiun Khachatryan, *Variants for a Solution of the Karabakh Conflict: Concepts and Reality* (Baku, 2002), at <http://www.ca-c.org/dataeng/karabakh.eng/e00.titul.eng.shtml>.

<sup>115</sup> John J. Maresca, "A Proposal for Settlement of the Conflict Over Nagorno-Karabakh", Special Report 9, United States Institute for Peace, August 1994. David Laitin and Ronald Suny, "Armenia and Azerbaijan: Thinking a Way out of Karabakh", *Middle East Policy*, vol. VII, no. 1, October 1999, pp. 145-176.

<sup>116</sup> 1998 Minsk Group proposal.

<sup>117</sup> Paul A. Goble, "Coping with the Nagorno-Karabakh Crisis", *The Fletcher Forum*, Summer 1992; Paul A. Goble, "How the 'Goble Plan' was Born", *RFE/RL Caucasus Report*, vol. 3, no. 23, 8 June 2000. Also part of the Minsk Group Paris Principles and the Key West Preliminary Unofficial Draft.

<sup>118</sup> "The Nagorno-Karabakh Crisis: A Blueprint for Resolution", op. cit.

<sup>119</sup> Armen Aivazian in Patricia Curley, "Nagorno-Karabakh Searching for a Solution", United States Institute of Peace Roundtable Report, December 1998; Michael Emerson, "Caucasus Revisited", CEPS Policy Brief, no. 34, June 2003; Sergiu Celac, Michael Emerson and Nathalie Tocci (eds.), "A Stability Pact for the Caucasus", June 2000, at <http://www.ceps.be/files/Caucasus.pdf>.

<sup>120</sup> In a survey of 1,155 persons carried out across Azerbaijan, 89.7 per cent said Nagorno-Karabakh should be within Azerbaijan; 56 per cent responded that it should have no autonomy within Azerbaijan, and 33.7 per cent supported some form of autonomy. Baku Press Club, "The Karabakh Conflict and Prospects for Settling it, The Results of Sociological Research and Media Coverage of the Karabakh Settlement Problem (2001-2003)", Baku, 2004, p. 9.

<sup>121</sup> The Azerbaijani constitution says that the state is a "democratic, lawful, secular and unitary republic" (Article 7), and the territory is "one, indivisible and inviolable" (Article 11).

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<sup>122</sup> "Azerbaijan promises Nagorno-Karabakh vast autonomy Baku", *Interfax*, 19 May 2005. Azerbaijani leaders have pointed to the status of Tatarstan in Russia as an example of the "highest autonomy that exists in the world".

<sup>123</sup> The Parliamentary Assembly of the Council of Europe considers that "if the eventual settlement of the dispute does not envision the immediate secession of Nagorno-Karabakh from Azerbaijan, everyone accepts that Nagorno-Karabakh must have a high level of autonomy". David Atkinson, "The Conflict Over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference", report, point 26, Doc. 10364, 29 November 2004.

<sup>124</sup> OSCE Special Representative on the Nagorno Karabakh Conflict Goran Lennmarker, "A Golden Opportunity -- Some Ideas on the Nagorno-Karabakh Conflict", July 2005 session of the OSCE Parliamentary Assembly.

<sup>125</sup> OSCE Minsk Group draft, "Comprehensive Agreement on the Resolution of the Nagorno-Karabakh Conflict", Agreement II, point 2, July 1997. According to the July 1997 draft, the entity would have "its own constitution adopted by the people of NK in a referendum...own flag, coat of arms, and anthem...its own legislative, executive and judicial bodies...the right to maintain direct relations with foreign states and international organizations...a national guard and police force...a multi-ethnic nature; each citizen would have the right to use his national language in all official and unofficial cases". In addition, laws of Nagorno-Karabakh would have superiority on its territory over Azerbaijani laws, and Azerbaijani security forces would be able to enter only with Nagorno-Karabakh's authorisation. Minsk Group draft, Agreement II, point 5-15, July 1997.

be a vertical link between Azerbaijan and Nagorno-Karabakh".<sup>126</sup>

The preferred outcome in Armenia and Nagorno-Karabakh is either unification of the entity and the state of Armenia, or full independence for Stepanakert. The former option has been considered in past negotiations. In 1999 the presidents of Azerbaijan and Armenia appeared to reach an agreement on a territory swap.<sup>127</sup> In exchange for acquiescing to the transfer of Nagorno-Karabakh's sovereignty to Armenia, Azerbaijan would gain Armenia's strategic Meghri region and thus a land link with the isolated entity of Nakhichevan and Turkey.<sup>128</sup> This met stiff resistance in Azerbaijan as well as Armenia.<sup>129</sup> A modified version was then presented during the Paris and Key West talks. Azerbaijan was offered "sovereign corridors" linking it with Nakhichevan through Meghri in exchange for Nagorno-Karabakh.<sup>130</sup> President Heydar Aliyev considered this, though it is unclear whether he accepted. Upon return to Azerbaijan he denied having approved transferring sovereignty over Nagorno-Karabakh.<sup>131</sup> As recently as 2002 the unification option was on the table;<sup>132</sup> Azerbaijan has been categorically opposed since Ilham Aliyev came to power the next year.

Today Stepanakert and Yerevan are more inclined to call for independence of Nagorno-Karabakh.<sup>133</sup> When asked Nagorno-Karabakh's ultimate aim, a senior official at its representation office in Yerevan responded, "independence of course".<sup>134</sup> Karabakh Armenian public opinion is increasingly moving toward independence.<sup>135</sup> An Armenian analyst predicted that Kosovo's experience would make this option more palatable to the international community, perhaps conditioned on acceptance of provisions that forbid later unification with Armenia and guarantee certain human rights.<sup>136</sup> Such talk, however, remains anathema in Azerbaijan where it is firmly believed that a second Armenian state must not be created on the territory of Azerbaijan.<sup>137</sup> Baku also considers that Nagorno-Karabakh's heavy dependence on Armenia makes any talk of independence only an attempt to mask irredentist aims.

Based on the positions of the sides, two possible compromise solutions stand out. One would be a confederation between Azerbaijan and Nagorno-Karabakh. Elements of a confederation were proposed in the "Common State" 1998 Minsk Group draft: "Nagorno-Karabakh is a statal and territorial entity in a form of a Republic, which constitutes a common state with Azerbaijan within its internationally recognised borders".<sup>138</sup>

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<sup>126</sup> Foreign Minister Vartan Oskanian, "Statement", op. cit. Defence Minister Serge Sarkisian, statement at gathering of young Armenians, Tsakhkadzor, 23 July 2005.

<sup>127</sup> The origins of the territory swap have often been attributed to Paul Goble, who wrote in 1992 that a territorial exchange including "sending part of the NKAO [oblast] to Armenia" and "transferring the Armenian-controlled land bridge between Azerbaijan and Nakhichevan to Azerbaijani control" should be considered by both sides. Goble, "Coping with Nagorno Karabakh", op. cit., p. 26.

<sup>128</sup> According to Azerbaijani sources this agreement was cemented in Sadarak, on the border between Armenia and Nakhichevan on 11 October 1999. However Armenian experts deny an agreement was ever signed, and Crisis Group was unable to obtain a copy of the text from Azerbaijani officials.

<sup>129</sup> At the time it was rumoured that the swap plan had caused President Aliyev's foreign policy adviser, Vafa Guluzade, his foreign minister, Tofik Zulfugarov, and the head of the Presidential Secretariat, Eldar Namazov, to resign. Mass demonstrations were also organised. "Azerbaijani Politicians Discuss Expediency of Partisan War", RFE/RL Caucasus Report, 22 October 1999. Goble described Armenians concerns in an article, Goble, "How the Goble Plan was Born", op. cit.

<sup>130</sup> According to an "unofficial draft" prepared by U.S. negotiators and shown to Crisis Group by Armenian authorities in Yerevan, May, 2005. Article 2 of the draft states that Nagorno-Karabakh will be transferred to the sovereignty of Armenia. See also de Waal, *Black Garden*, op. cit., pp. 267-268.

<sup>131</sup> Azerbaijani authorities deny the existence of any Key West agreements or written drafts.

<sup>132</sup> De Waal, "Karabakh: One last push?", IWPR, issue 126, 25 April 2002.

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<sup>133</sup> Some hardline nationalist political groups in Armenia, such as the Constitutional Right Union party, oppose independence of Nagorno-Karabakh, which they consider part of Armenia.

<sup>134</sup> Crisis Group interview with staff of Nagorno-Karabakh representation office, Yerevan, February 2005.

<sup>135</sup> In a survey of 1,000 persons carried out by the Stepanakert Press Club, 44.9 per cent agreed that Nagorno-Karabakh should be independent, while 48.3 felt it should unify with Armenia. Stepanakert Press Club, "Mountainous Karabakh in the Mirror of Public Opinion", Stepanakert, 2004, p. 203.

<sup>136</sup> Crisis Group e-mail correspondence with Armenian analyst, July 2005. See also Crisis Group Report, *Kosovo Towards Final Status*, op. cit., p. 33, which cites analogous restrictive provisions for Austria (on unification with Germany) and Cyprus (on unification with Greece).

<sup>137</sup> Heydar Aliyev made this point during his speech at the OSCE Lisbon Summit in 1996, and Ilham Aliyev has repeated it. Independence for Nagorno-Karabakh would be a tough sell to the international community, which considers the break-up of the Caucasus into very small independent states dangerous. In OSCE Special Representative on the Nagorno Karabakh Conflict Goran Lennermarker, "A Golden Opportunity -- Some Ideas on the Nagorno-Karabakh Conflict", July 2005 session of the OSCE Parliamentary Assembly, op. cit.

<sup>138</sup> According to this, "Azerbaijan and Nagorno-Karabakh shall establish a Joint Committee...whose mission shall be to define policies and activities within the sphere of joint competence". OSCE Minsk Group draft, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict", 7 November 1998. The "Common State" was not a full confederation as Nagorno-Karabakh would not

The idea was rejected by Azerbaijan as violating its territorial integrity, and Baku public opinion remains against a confederal solution.<sup>139</sup> Yet, a confederation would retain Azerbaijan's pre-war borders; based on a mutual agreement, Azerbaijan could represent Karabakh at the UN; the right to return, and freedom of movement and trade would be guaranteed. Stepanakert would have broad powers to manage its internal affairs and maintain its fundamental political integrity. Yerevan has insisted that it is against "vertical relations" between Baku and Stepanakert but it has not rejected a confederation based on horizontal power sharing. In an interview with Crisis Group, de facto President of Nagorno-Karabakh Arkadi Ghoukasian said, "a horizontal association with Azerbaijan is not ruled out but there could be no subordination".<sup>140</sup>

However as Baku refuses to discuss a confederal solution, the most realistic status option today is maintenance of the status quo, keeping Nagorno-Karabakh de jure in Azerbaijan but de facto independent. For Azerbaijan this is the worse option available, tantamount to preserving the occupation. But it can also be seen as part of its broader buying time strategy, since as long as status is unresolved, Azerbaijan reserves the right to use force to restore its territorial integrity. Retaining the status quo also fits the Yerevan and Stepanakert "buying time" strategies.

Even if the status quo is maintained, two further options remain. While status remained open, the parties could either freeze the situation on the ground or move forward on resolving other issues. The latter, which fits within a step-by-step approach, appears to be the most attractive to them.

While the parties negotiated and ultimately implemented other settlement elements, they could muddle through on status -- remaining vague enough on Nagorno-Karabakh's

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be recognised "individually by the international community as sovereign state, a subject of international law" and would not "possess the status of full international legal personality". A "confederation is a union of states that are recognized individually by the international community as sovereign states. A confederation is a loose structure created for limited purposes and often for restricted duration....In a confederation every single state has the right to secede....The states that make up a confederation are recognized as subjects of international law and possess the status of full international legal personalities", Bruno Coppieters, Tamara Kovziridze and Uwe Leonardy, "Federalisation of Foreign Relations: Discussing Alternatives for the Georgian-Abkhaz Conflict", Caspian Studies Program, Harvard University, Working Papers Series, no. 2, October 2003, pp. 19-20.

<sup>139</sup> Options to Regulate the Nagorno-Karabakh Conflict: Results of Sociological Research and Mass Media Monitoring, 2001-2003 (Baku, 2004), in Russian, p. 9

<sup>140</sup> Crisis Group interview with de facto Nagorno-Karabakh President Arkadi Ghoukasian, May 2005.

future to save face for political leaders. Meanwhile, Nagorno-Karabakh forces backed by Armenia could begin withdrawing from occupied territories adjacent to the entity. In exchange, Armenia could secure from Azerbaijan a commitment not to use force and international security guarantees for the population of Nagorno-Karabakh. Determination of the ultimate status of Nagorno-Karabakh could be decided at a vague later date, possibly via a mechanism specified in a peace agreement.

This would give Nagorno-Karabakh an internationally recognised interim status maintaining many of the current practices and institutions, which would no longer be considered "illegal" as infringing on Azerbaijan's sovereignty. Residents would be allowed to elect representatives in internationally supervised elections. Institution building would continue. The Defence Army would be transformed into a national guard. Trade and the collection of custom duties would be opened up. Donors could implement programs and internationally recognised travel documents could be issued.

## B. IMPLEMENTING A SOLUTION BY REFERENDUM

A referendum to ultimately finalise Nagorno-Karabakh's status has become an increasingly attractive option as the difficulty has become clear of negotiating a solution acceptable to Armenian and Azerbaijani public opinion. Since 1995 people in Azerbaijan, Armenia and Nagorno-Karabakh have experienced a debilitating no peace, no war situation. Nothing has been done on the ground to build confidence and trust, demilitarise and demobilise, or resume trade and communications. Something is needed to break a cycle of growing hostilities. Agreement on a later referendum, such agreement to be followed by the immediate start of the withdrawal of occupying forces as described below, is the crucial ingredient in a viable peace process.

Armenian and Azerbaijani officials close to the peace negotiations have confirmed to Crisis Group that they are considering such a formula, to make it possible for the people of Nagorno-Karabakh to determine their status through a voting process in the distant future.<sup>141</sup> A senior authority in the Armenian foreign ministry stated, "let's give the people of Nagorno-Karabakh the prospect of a future status. Their right to self-determination could

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<sup>141</sup> A referendum to resolve the status question was also recommended by NATO Parliamentary Assembly Chair Pierre Lelouche and former Spanish Minister of Foreign Affairs Anna Palacio in "Putin or the Ghosts of Empire", *Figaro*, 18 December 2004.

be expressed through a referendum".<sup>142</sup> For Armenian officials a plebiscite must offer Nagorno-Karabakh the chance for independence. An Azerbaijani official explained, "I am fully supportive of a referendum-type process if it fits within a legal and democratic process like in Quebec and Scotland".<sup>143</sup> Clearly at this stage this does not include any referendum which could lead to independence of Nagorno-Karabakh and compromise Azerbaijan's territorial integrity. The fact that a referendum mechanism is being discussed in the Prague Process surfaced in the media through statements by "high level sources" to Radio Free Europe/ Radio Liberty in July 2005.<sup>144</sup> A few days later Azerbaijan's foreign ministry denied the story.<sup>145</sup> However, a month later, asked about a referendum, Foreign Minister Elmar Mammadyarov said, "a number of variants...are being discussed... naturally one...is the expression of the people's will. Another variant is how and when it will happen. This question is not yet discussed".<sup>146</sup>

Armenians decision-makers and activists are arguing about the benefits of a referendum. They say the device is being used increasingly to settle secessionist conflicts -- in Sudan and East Timor, for example.<sup>147</sup> The possibility of

secession must, however, be agreed with the centre. Otherwise, "any vote without the consent of the central state is a 'unilateral' vote, at best a statement of protest", likely to lead to greater conflict.<sup>148</sup>

Because mobilisation for secession in the lead up to a self-determination referendum can cause ethnic polarisation, violence and ultimately war, any referendum should be conditioned on achieving respect for certain standards, including functioning democratic institutions, rule of law, freedom of movement, a working economy, sustainable returns of IDPs and community rights.<sup>149</sup> The majority must go some way to accommodate the concerns of the minority if the result is to be internationally recognised. That means Nagorno-Karabakh authorities must respect and protect the rights of Karabakh Azeris, beginning with the right to return, before any referendum can be held.<sup>150</sup>

Public reaction to such a referendum is extremely negative in Azerbaijan but tends to be more favourable in Armenia,<sup>151</sup> in both cases because it is assumed a vote would ratify Nagorno-Karabakh's separation from Azerbaijan.<sup>152</sup> This is too simplistic a reading of the possibilities a referendum could offer. Ideally it would cement a negotiated peace deal and secure popular approval for its implementation. In the absence of an agreement on status and with public opinion so deeply divided, however, this kind of referendum is unlikely. In

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<sup>142</sup> Crisis Group interview with senior official, Armenian foreign ministry, Yerevan, May 2005.

<sup>143</sup> Crisis Group interview with official, Baku, March 2005. The 1998 Scottish referendum was on enhanced autonomy, not independence, and there is no legal mechanism for an independence referendum. Quebec held referendums in 1980 and 1995 on its role within Canada and whether it should pursue a path toward independent statehood. In 1998, the Supreme Court of Canada decided that "neither the population of the province of Quebec...nor its representative institutions...possess a right, under international law, to secede unilaterally from Canada". Court of Canada advisory opinion, "Reference re Secession of Quebec", 20 August 1998, §138.

<sup>144</sup> Harry Tamrazian, "Armenia, Azerbaijan, 'Close to a Peace Deal'", RFE/RL Armenia Service, 11 July 2005 at [www.armenialiberty.org](http://www.armenialiberty.org).

<sup>145</sup> Novoye vremya (Baku), 16-18 July 2005 (in Russian).

<sup>146</sup> Aza Babayan and Armen Zakarian, "Azerbaijan Admits Referendum Option for Nagorno-Karabakh", RFE/RL Armenian Service, 23 August 2005 at [www.armenialiberty.org](http://www.armenialiberty.org).

<sup>147</sup> See, for example, Foreign Minister Vartan Oskanian, "Statement", op. cit. President Robert Kocharian referred to the Sudanese case in "Will Referendum Decide Karabakh's Fate", AZG, 12 January 2005, at <http://www.azg.am/?lang=EN&num=2005011201>. A referendum on independence has been held in East Timor but not yet in Sudan. The Comprehensive Peace Agreement signed in 2005 by the Khartoum government and the Sudan People's Liberation Movement envisages such a self-determination vote in the South after a six-year interim period. See Crisis Group Africa Report N°96, *The Khartoum-SPLM Agreement: Sudan's Uncertain Peace*, 25 July 2005. A comprehensive survey finds that "sovereignty referendums" account for 22 per cent of all referendums held between 1791 and 1998 at the national level. Gary Sussman, "When the

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Demos Shape the Polis -- the Use of Referendums in Settling Sovereignty Issues", London School of Economics, at <http://www.iandrinstitute.org/Studies.htm>.

<sup>148</sup> Sussman, op. cit.

<sup>149</sup> No referendum has been established for Kosovo but the UN Interim Administration Mission in Kosovo (UNMIK) has implemented a standards plan. The results are not yet available of a comprehensive assessment the UN recently conducted to determine whether Kosovo has met enough of the standards for talks on final status to begin. Crisis Group Report, *Kosovo Towards Final Status*, op. cit., p. 29.

<sup>150</sup> Some senior Armenian officials suggest Karabakh Azeris might vote in a referendum from their current residence but be allowed to return only after independence. However, a senior Armenian diplomat close to the negotiations confirmed that the participation of Karabakh Azeri returnees was a possible option. Crisis Group interview with Yerevan, May and September 2005.

<sup>151</sup> Some critics in Armenia point out that the Karabakh Armenians already held a referendum and expressed their will for independence. They also worry that Azerbaijan might try artificially to boost the Karabakh Azeri population. Haroutiun Khachatryan, "Nagorno-Karabakh: Peace on the Horizon?", Eurasianet, 17 August 2005.

<sup>152</sup> Former Presidential adviser Vafa Guluzade argued a referendum would not advance a peace deal because "the Armenians have already conducted a referendum, and no doubt they will vote for independence again", in Shahin Abbasov, "Azerbaijan: A Road, if not a Referendum, for Nagorno-Karabakh", Eurasianet, 17 August 2005.

any event, it would be premature to assume an outcome before other critical elements have been agreed: who will vote, when, and on what question, and who will monitor/supervise.

**Who will vote.** According to Azerbaijan's constitution, border changes require "nation-wide voting (referendum)".<sup>153</sup> Baku policy makers stress that any referendum on Nagorno-Karabakh status would have to be conducted Azerbaijan-wide if it put territorial integrity at question.<sup>154</sup> If the country's 4.2 million eligible voters were to take part on the same basis as the approximately 145,000 people living in Nagorno-Karabakh, unification with Armenia or independence would certainly be defeated.

Within the context of a comprehensive peace settlement, Azerbaijan should accept the argument that the people of Nagorno-Karabakh have the right to determine the entity's status. Significantly, Azerbaijan's Special Representative on Nagorno-Karabakh has publicly suggested that Karabakh Armenians and Karabakh Azeris could make their own status determination.<sup>155</sup> He added, however, "the status will not be decided by the majority. A referendum which will take into account the opinion of only one side is unacceptable".<sup>156</sup> The option he called for included separate votes in Nagorno-Karabakh by the Armenian and Azeri communities. If both voted for the same status, they would get it;<sup>157</sup> otherwise the status quo would prevail. This is unacceptable to Armenians, who want a single vote.

Defining voter eligibility among Karabakh Armenians and Azeris would be another problem. One option would be to give voting rights to all those living in the entity on polling day -- including those who emigrated from other parts of Azerbaijan and/or the former Soviet Union. Another would be to allow only those whose families lived in Nagorno-Karabakh prior to 1990 to vote. According to the 1989 census, the population of the old oblast was 189,085 including 145,500 ethnic Armenians (76.9 per

cent) and 40,700 ethnic Azeris (21.5 per cent).<sup>158</sup> Negotiators might work with demographers to determine a formula for preparing the voters list but that formula would have political implications.

**Options voted upon.** How the question or questions to be voted on are formulated would be significant. At least four status options might be posed: independence; remaining part of Azerbaijan, with significant autonomy; unification with Armenia; and a Nagorno-Karabakh/Azerbaijan confederation. Currently, the most plausible choice to be offered would appear to be between the first two of these options.

**Timing.** Negotiators appear willing to postpone a referendum for at least ten, possibly twenty years. Each side considers a later date advantageous. A later referendum might allow Baku to convince Karabakh Armenians that their interests would be better served in Azerbaijan. In several decades, however, Nagorno-Karabakh might also have become so tied to Armenia that a referendum could only realistically confirm unification. Of course, a delayed vote could either harden ethnic divisions or provide time for confidence building.

**Oversight.** It would be necessary to agree in advance on what authorities would maintain de facto control over Nagorno-Karabakh before a referendum and who would be responsible for calling and conducting it. Azerbaijan negotiators open to a referendum do not seem fixed on restoring Baku's control before a vote. Rather, as one explained, Baku would open a dialogue with the de facto Nagorno-Karabakh authorities to forge interim agreements that did not imply recognition.<sup>159</sup> Responsibility for the oversight of the referendum could be given to an international conference under OSCE chairmanship, which would assess whether Nagorno-Karabakh had met all pre-conditions.

**Other modalities.** Other open questions include who would register voters and conduct the ballot -- the de facto Nagorno-Karabakh Central Election Commission, a special mixed Election Commission, or an international entity; who would finance it; who would register voters; where polling stations would be set up, their staffing and security; and whether there would be outside monitors and who they might be. Such detailed modalities are unlikely to be part of a peace agreement. They might be the subject of future talks between Armenia, Azerbaijan and Nagorno-Karabakh or decided by the OSCE.

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<sup>153</sup> Chapter I, Article 3, Constitution of the Republic of Azerbaijan. According to the same article, any amendments to the constitution require a nation-wide referendum.

<sup>154</sup> Crisis Group interview with foreign ministry officials, Baku, December 2004.

<sup>155</sup> Araz Azimov, deputy foreign minister, said, "the local Armenians, who are citizens of Azerbaijan, as well as Azerbaijanis, must themselves determine their status", available at "There is Progress in Daqliq Qarabaq Talks, Araz Azimov, Deputy FA Minister", 20 July 2005, at <http://www.karabakh.gen.az/news.php?nid=349&cid=0>.

<sup>156</sup> Ibid.

<sup>157</sup> If both communities voted for independence, all Azerbaijan would presumably then have to vote in a referendum to ratify the change in borders unless the constitutional provision was modified.

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<sup>158</sup> Ethnic Composition of the Population of the USSR According to the USSR Census of 1989 (Moscow, 1989).

<sup>159</sup> Crisis Group interview with senior official, Azerbaijan government, Baku, March 2005.

## V. OTHER QUESTIONS TO BE RESOLVED

The success of a future conflict settlement will not only be predicated upon the determination of Nagorno-Karabakh's status, but also on finding solutions to other disagreements. Four are of particular importance. This section discusses how they were addressed in earlier Minsk Group drafts; what the positions are today; and what may be the way forward to attain agreement.

The sides have concurred in a combination of the package and step-by-step approaches whereby all elements of the settlement would be addressed now, but status would remain open until after other steps had advanced. The more certain the Armenian side feels about the prospect of Nagorno-Karabakh independence, the more likely it is to make concessions on other issues. If status resolution is postponed until a referendum, Armenian negotiators will consider independence not yet guaranteed and will call for stronger security measures. Azerbaijani decision-makers are likely to insist on early full withdrawal of forces from the occupied territories adjacent to Nagorno-Karabakh as long as the fate of their demand that their country's territorial integrity be respected is uncertain. Under these circumstances, any compromises will require strong international support in the form of peacekeeping forces, financial assistance and political guarantees.

### A. SECURITY GUARANTEES

Armenian negotiators insist that the Karabakh Armenians receive security guarantees. Stepanakert is haunted by wartime memories and the prospect of an Azerbaijani attack and demands the preservation of mechanisms that would allow defence of its territory.<sup>160</sup>

When asked what would be the best security guarantee, the de facto president responded, "status",<sup>161</sup> that is, international recognition of Nagorno-Karabakh as an independent state. If independence is not an immediate prospect, he said, other guarantees could include allowing Stepanakert to maintain an army; full demilitarisation of

the surrounding territory; international security assurances; and codification of Armenia's role as a security guarantor.<sup>162</sup> The first two elements are likely to be part of any settlement as they have been of past drafts. In the 1997 and 1998 Minsk Group plans, Nagorno-Karabakh would have been granted the right to maintain "National Guard and police forces."<sup>163</sup> The distinction made between National Guard and police forces indicates that the existing Defence Force would have been transformed into a National Guard and presumably retain much of its functions and equipment. Azerbaijani negotiators do not insist that Nagorno-Karabakh fully demilitarise. As it is currently one of the world's most militarised societies, however, there may be a need for external assistance to carry out some disarmament, demobilisation and economic reintegration of former combatants into society.<sup>164</sup>

Stepanakert and Armenian Minister of Defence Serzh Sarkisian, have requested third-party security guarantees.<sup>165</sup> These could consist of explicit pledges by Armenia and others to protect Nagorno-Karabakh during the peace implementation period. The 1998 draft peace agreement stated that:

The Presidents of France, the Russian Federation, and the United States of America affirm the intention of the three countries to work in unison to monitor closely the progress of implementation of the Agreements, and to take appropriate measures to promote compliance with this Agreement. The OSCE and the UN Security Council shall adopt appropriate diplomatic, economic or, in extreme cases, military measures in accordance with the UN Charter should the need arise.<sup>166</sup>

<sup>160</sup> In negotiations, the Azerbaijanis have been less insistent on security guarantees. When they talk about such guarantees, it has been for returning Azeri refugees both to occupied territories and to Nagorno-Karabakh proper, especially to Shusha. If local Azerbaijani law enforcement is not allowed into Nagorno-Karabakh, the Azerbaijani state would be fully dependent on Stepanakert to guarantee the security of returning Karabakh Azeris.

<sup>161</sup> Crisis Group interview with de facto Nagorno-Karabakh President Ghoukasian, Stepanakert, May 2005.

<sup>162</sup> Ibid. A senior Armenian foreign ministry official enumerated measures. Crisis Group interview, Yerevan, September 2005.

<sup>163</sup> OSCE Minsk Group draft, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict", 7 November 1998, point 9.

<sup>164</sup> Nagorno-Karabakh may be the world's most militarised society. An independent analyst estimates that the Nagorno-Karabakh Defence Army is composed of 18,500 troops of which some 8,500 are Karabakh Armenians and 10,000 Armenians. If these estimates are accurate, 65 persons per 1,000 Nagorno-Karabakh inhabitants would be in the armed forces, easily surpassing the proportion of population to military in virtually every country. For more, see Crisis Group Report, *Nagorno-Karabakh: Viewing the Conflict from the Ground*, op. cit.

<sup>165</sup> "The Armenian side is ready to withdraw from the occupied territories in exchange for international security guarantees for NK", Serzh Sarkisian, Armenian Minister of Defence, press conference, 19 April 2005, at [http://www.mil.am/arm/speeches.php?id=293\\_0\\_7\\_0\\_M&path=/4/3](http://www.mil.am/arm/speeches.php?id=293_0_7_0_M&path=/4/3) (in Armenian).

<sup>166</sup> OSCE Minsk Group draft, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict", on guarantees, 7 November 1998, point 3.

Such a guarantee, including an obligation to provide assistance, would offer Stepanakert officials a way to reassure their community and might deter any violation of the peace agreement. Should Azerbaijan take offensive action, Nagorno-Karabakh would be able to report it to the UN Security Council for consideration under Chapter VII.<sup>167</sup>

To help promote security in the conflict zone, the 1994 ceasefire might be strengthened with an "agreement on the cessation of armed conflict", explicitly forbidding use of force and containing a renunciation by all parties of the threat or use of force against each other. An additional measure in all previous Minsk Group drafts concerned the deployment of OSCE peacekeeping units, which the Armenian side in particular considers essential.

## 1. Separation of forces and demilitarisation

Within the context of withdrawal and peacekeeper deployment, a clear system of separation of forces and demilitarisation will be needed to ensure that the front line has not merely been shifted. All three 1997-1998 Minsk Group drafts provided for a "buffer zone"<sup>168</sup> in which peacekeepers would be first deployed and a "zone of separation".<sup>169</sup> The former would separate opposing military forces initially along the existing line of contact. According to the 1998 draft, after the withdrawal of any forces of Armenia to Armenia, the withdrawal of the forces of Nagorno-Karabakh to the 1988 borders of the old oblast (with the exception of Lachin),<sup>170</sup> and of the forces of Azerbaijan to lines recommended by the OSCE, the buffer zone would be a narrow strip along the 1988

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<sup>167</sup> "Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression".

<sup>168</sup> The transitional buffer zone would be created as "in the first stage, forces along the current line of contact to the east and south of Nagorno-Karabakh shall withdraw to lines delineated in Annex 1, and in accordance with the schedule herein,...to facilitate initial deployment of the vanguard of an OSCE multinational force". OSCE Minsk Group, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict," agreement on the cessation of armed conflict, 7 November 1998.

<sup>169</sup> The "zone of separation" is defined as the territory freed by the withdrawal of armed forces in which peacekeepers will monitor security.

<sup>170</sup> "With the exception of the Lachin District, until achievement of an agreement on unrestricted communication between Nagorno-Karabakh and Armenia." OSCE Minsk Group, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict", agreement on the cessation of armed conflict, 7 November 1998. In the 1997-1998 drafts the forces of Nagorno-Karabakh are called upon to withdraw to the 1988 borders with the exception of the Lachin district (November 1997 and November 1998) or corridor (July 1997 draft), until subsequent agreements on the corridor.

oblast borders.<sup>171</sup> The territories vacated by troops would form the "zone of separation", which would be permanently demilitarised and monitored by international peacekeepers. While the width of the buffer zone might be an issue for negotiation between the sides, this system of demilitarisation and separation of forces remains practical and could be applied to a peace settlement.<sup>172</sup>

## 2. Deployment of peacekeepers

Since 1994 the High-Level Planning Group (HLPG) within the OSCE has been tasked to develop the plans for a multinational OSCE peacekeeping force in Nagorno-Karabakh.<sup>173</sup> A U.S. defence official who worked with it in the mid-1990s said that in the first two years it expected to become the core of an eventual peacekeeping mission.<sup>174</sup> In July 1995, the HLPG presented four deployment plans for a peacekeeping mission. The first three were for a mixed force ranging from 1,500 to 4,500 armed peacekeepers and unarmed observers. The fourth was for a purely unarmed observer mission.<sup>175</sup> As the mediation process dragged on and the wars in the former Yugoslavia illustrated the complexity of peacekeeping missions, some initial optimism faded.

The HLPG has continued to function as a planning body, though it plays no role in the negotiations and may not be fully aware of what is needed today on the ground since for several years it has been unable to carry out "a much needed operations and logistics reconnaissance mission to the conflict area".<sup>176</sup> Officials from the Armenian Ministry of Defence and the Nagorno-Karabakh Defence Forces say they have had no contacts with the HLPG for several years.<sup>177</sup> Relations between the HLPG and Ambassador

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<sup>171</sup> It is unclear whether Azerbaijani troops would also withdraw from parts of the former oblast which are currently under their control: parts of Martakert and Martuni.

<sup>172</sup> The detailed measures need not be regarded as fixed for all time. Some revisions might be made, for example, at a final Minsk Conference marking the end of the peace-building process.

<sup>173</sup> The HLPG, located at the organisation's Vienna headquarters, is to make recommendations on the size and characteristics of a multinational force, command and control, logistics, allocation of units and resources, rules of engagement and arrangements with contributing States. It is headed by Colonel Tomaz Strgar of Slovenia and includes two Russians, one Greek and one Turk among its approximately seven staff members. See [http://www.osce.org/publications/sg/2005/04/14066\\_269\\_en.pdf](http://www.osce.org/publications/sg/2005/04/14066_269_en.pdf) and the OSCE's "2004 Annual Report", p. 29.

<sup>174</sup> Crisis Group phone interview with U.S. defence official, June 2005.

<sup>175</sup> OSCE Website, "High-Level Planning Group", at <http://www.osce.org/about/13523.html>.

<sup>176</sup> OSCE "2004 Annual Report", op. cit., p. 29.

<sup>177</sup> Crisis Group interviews with senior officials, Armenian defence ministry and Nagorno-Karabakh Defence Forces,



Kasprzyk have reportedly been strained.<sup>178</sup> It is likely the HLPG would need time to fit the deployment plans to current needs.

The composition, mandate and size of a peacekeeping mission would be extremely important. Armenian officials are categorically against the deployment of any Turkish troops.<sup>179</sup> Some Azerbaijani interlocutors have said they want no Russian military involved.<sup>180</sup> It is unlikely that Russia would be willing to stay away if U.S. forces were included. Thus, one option which Azerbaijani and Armenian negotiators appear to favour has already been agreed: that Minsk Group co-chair countries and regional countries be barred from sending troops.<sup>181</sup>

Finding countries interested in staffing a peacekeeping mission is likely to be a problem. In the mid-1990s, when optimism about such missions was higher, a U.S. official noted, "the size of the peacekeeping force envisioned was 3,000 to 5,000. That said, they never talked about where exactly the 3,000 would come from, much less where 5,000 would."<sup>182</sup> When the composition of the force was discussed, it caused conflicts between OSCE officials and the Russians.<sup>183</sup> In June 1997, the HLPG proposed a force of 2,000, including about 700 Russian troops.<sup>184</sup> Today, according to sources close to the OSCE, it seems more likely that a mission of 1,500 to 2,000 would be deployed.<sup>185</sup>

While the Budapest Summit initially called for an OSCE peacekeeping force, over a decade later experience has

made OSCE Participating States wary.<sup>186</sup> Today one option might be a joint action of the European Union's Common Foreign and Security Policy involving deployment of EU peacekeepers under the leadership of an EU country that is not a co-chair of the Minsk Group.<sup>187</sup>

If it is to represent a strong security guarantee, a peacekeeping force will need to have robust rules of engagement, including the authority to use force if necessary, not only to protect itself but also to enforce compliance with the peace agreement. Its tasks would likely include separation of forces, placing heavy equipment in cantonments, demining, assuring freedom of movement, supervising an Azerbaijani-Nagorno Karabakh military commission, and generally providing the security needed to promote IDP return. Like similar missions, it will need a strong civil affairs unit capable of helping rehabilitate infrastructure and distributing humanitarian aid. It should include a civilian police component to assure law and order in the early stages. The three 1997-1998 Minsk Group drafts envisioned that peacekeepers would be first deployed in the buffer zone and then work inside the Zone of Separation along with local police, de-mining and border patrolling forces.<sup>188</sup> They were not, however, to be deployed within the borders of the former oblast or in Azerbaijan proper, where any return of displaced persons would be handled by local security structures.

### 3. Broader military cooperation

Ultimately for any peace agreement to succeed Armenia and Azerbaijan will have to devise new forms of security cooperation aimed at building transparency and confidence. Armenia, Nagorno-Karabakh and Azerbaijan should commit to balanced and stable defence forces at the lowest levels consistent with their security needs. Armenia and Azerbaijan should establish military liaison

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Yerevan and Stepanakert, May 2005. It is unclear whether the Azerbaijan defence ministry has had any recent contacts with the HLPG.

<sup>178</sup> Crisis Group interview with former OSCE official, August 2005. Kasprzyk, see above, is the Personal Representative of the OSCE Chairman-in-Office.

<sup>179</sup> Crisis Group interview with senior official, Armenian Ministry of Foreign Affairs, Yerevan, May 2005.

<sup>180</sup> During the early years of the HLPG, Russia, which always had one representative and sometimes two, expressed a desire to have troops in an eventual peacekeeping force and suggested it be led by the CIS rather than the OSCE. Crisis Group interview with senior official, Azerbaijan government, Baku, March 2005.

<sup>181</sup> Azerbaijan negotiator quoted in "Azerbaijan Offers Armenia to Open the Road Agdam-Khankendi-Shusha-Lachin-Goris-Sisian-Nakhichevan Autonomous Republic", 20 June 2005, Turan Press Service. Armenian negotiator quoted in Fuller, "Armenia/Azerbaijan: Expectations Muted", op. cit.

<sup>182</sup> Crisis Group phone interview with U.S. defence official, June 2005.

<sup>183</sup> Liz Fuller, "Russia, Turkey, Iran, and the Karabakh Mediation Process", RFE/RL Research Report, 3, No. 8, 25 February 1994, pp. 31-36.

<sup>184</sup> Ronald Eggleston, "Negotiators Review Responses to Karabakh Proposals", RFE/RL, 16 June 1997.

<sup>185</sup> Crisis Group interview with OSCE official, August 2005.

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<sup>186</sup> In 1999, the OSCE deployed the Kosovo Verification Mission (KVM), authorised by UN Security Council Resolution 1199 to monitor and verify ceasefire compliance, investigate ceasefire violations and unwarranted road blocks, assist humanitarian agencies in facilitating the resettlement of displaced persons and assist in democratisation measures eventually leading to elections. Confronted with increasing violence, it was forced to carry out a hasty evacuation in March 1999. Subsequently, an estimated 600,000 Albanian Kosovars fled or were expelled from the province. Crisis Group, Europe Briefing N° 30, *Monitoring the Northern Ireland Ceasefires: Lessons from the Balkans*, 23 January 2004.

<sup>187</sup> An EU military mission need not be restricted to EU member states; Canada and Norway have contributed to EU military operations since 2003.

<sup>188</sup> OSCE Minsk Group draft, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict", 7 November 1998, point 3.

missions between the heads of their armed forces and immediately exchange data on their holdings of weapons in the five categories defined in the Treaty on Conventional Armed Forces in Europe (CFE).<sup>189</sup> An Azerbaijani-Nagorno Karabakh military commission should be established to ensure information exchange and develop confidence.

The OSCE should apply its experience in assisting former warring parties implement regional confidence and security-building measures, as well as designing and implementing arms control agreements.<sup>190</sup> Further down the road, within the context of its Partnership for Peace program, NATO should launch a Security Cooperation Program with Azerbaijan and Armenia, and including Nagorno-Karabakh, to further the process of reconciliation by assisting security authorities to start talking and cooperating.

## B. WITHDRAWAL FROM THE OCCUPIED TERRITORIES

Withdrawal by Nagorno-Karabakh units supported by Armenia from the districts around Nagorno-Karabakh would be expected to accompany the deployment of peacekeepers and the separation of forces.<sup>191</sup> Azerbaijan has long insisted that all troops must be withdrawn from the occupied districts. Stepanakert and Yerevan consider they could only withdraw after receiving military and political assurances that Karabakh Armenians' security would be guaranteed.<sup>192</sup> Armenian officials thus favour a "land for security approach".

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<sup>189</sup> The treaty aims to establish a secure and stable balance of conventional armed forces in Europe at a level considerably lower than that which prevailed during the Cold War. It defines five categories of conventional armed forces: battle tanks, armoured combat vehicles, artillery, combat aircraft and combat helicopters. Treaty on Conventional Armed Forces in Europe (CFE Treaty), signed at the Paris OSCE Summit, 19 November 1990. For more, see [http://www1.osce.org/documents/doclib/1990/11/13752\\_en.pdf](http://www1.osce.org/documents/doclib/1990/11/13752_en.pdf).

<sup>190</sup> It has successfully engaged in these tasks especially in Bosnia-Herzegovina

<sup>191</sup> While in public statements Azerbaijani officials sometimes also call for withdrawal of Armenian forces from Nagorno-Karabakh itself, this has never been discussed within the Minsk Group process. Azerbaijan is primarily interested in withdrawal from the territories adjoining Nagorno-Karabakh, as Deputy Foreign Minister Azimov made clear: "Until there is agreement on all issues, there can be no talk of a settlement. Azerbaijan's position on the liberation of the seven occupied districts around Nagorno-Karabakh remains unchanged". "Azerbaijan Agrees on Stage by Stage Liberation of Occupied Territories", *Zerkalo* (in Russian), 7 April 2005.

<sup>192</sup> According to Stepanakert, the occupied districts form a "security belt", which is needed "to maintain security and protect

Yet, the districts are being held as much as Armenia's main bargaining chip in the negotiations as for the security they provide. Ever since Kocharian became president, Armenia has envisioned trading "land for status", with return of the occupied districts accompanying Azerbaijan's recognition of Nagorno-Karabakh's de jure independence. As recently as 2002 there were rumours that President Heydar Aliyev wanted to open communications and trade for the return of four districts but Armenia refused because status was not in the proposal.<sup>193</sup> Armenia's foreign minister says, "the status of Nagorno-Karabakh and the return of the territories around it are closely interrelated".<sup>194</sup>

If all sides sign an agreement that defines the mechanism for deciding Nagorno-Karabakh's ultimate status (such as a referendum), conditions for a "land for status" deal would be partially fulfilled. A senior Armenian official told Crisis Group there would then be incremental withdrawal from five of the seven districts.<sup>195</sup> Armenian agreement to withdrawal from occupied territories in return for the "prospect of status" is a significant tempering of previous demands but probably not enough to secure a deal. Yerevan is proposing the territories be returned in stages, starting with those to the east and south under what has been called a "5+1+1" formula.<sup>196</sup> The two districts proposed for hand-over in a second and third stage are, respectively, Kelbajar and Lachin. The Azerbaijani side accepts an incremental withdrawal but has clearly stated that all its occupied territories must eventually be returned.<sup>197</sup> Selling any delay in withdrawal to its IDPs -- 44,300 from Kelbajar and 47,400 originally from Lachin<sup>198</sup> -- would be difficult.

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[the] civilian population from shooting and bombing from the Azeri side, as experienced during the war". Officials argue it reduces the frontline by two thirds and provides more defensible positions. Crisis Group interview with de facto Ministry of Foreign Affairs officials, Stepanakert, May and January 2005.

<sup>193</sup> Crisis Group interview with Azerbaijan official, Baku, November 2004.

<sup>194</sup> Vazgen Oskanyan, Armenian Minister of Foreign Affairs, 30 May 2005 press conference.

<sup>195</sup> Crisis Group interviews with senior official, Armenian Minister of Foreign Affairs, Yerevan, May and September 2005.

<sup>196</sup> "Agreed element in talks on solving Upper Garabagh conflict is associated with returning five regions", Merkez Internet Press Service, 14 July 2005, at <http://merkez.com.az/eng/news.php?id=84>.

<sup>197</sup> Crisis Group interviews with senior official, Azerbaijan government, Baku, March and September 2005.

<sup>198</sup> These were the figures in the 1989 census, Naselenie Azerbajanskoi Respubliki, 1989, *Statisticheskiy sbornik* (Baku, 1991), pp. 12-13. Officials claim that there are now more IDPs from these regions in Azerbaijan.

## 1. The Lachin corridor

A land link between Nagorno-Karabakh and Armenia is one of the three main conditions Armenia has imposed in negotiations. Azerbaijan insists the Lachin district, like all occupied territories, must be returned.<sup>199</sup> However, since 1997 the parties have been willing to discuss treating Lachin differently. The July 1997 Minsk Group draft agreement proposed that Azerbaijan rent out the corridor to the OSCE, which would conclude a contract with the de facto Nagorno-Karabakh authorities giving them exclusive use of the corridor.<sup>200</sup> In the December 1997 draft, withdrawal from six of the seven districts was to occur before a final agreement on Nagorno-Karabakh's status, with Lachin left under Nagorno-Karabakh control until a comprehensive settlement.<sup>201</sup> The November 1998 draft stipulated that in a first phase, the forces of Nagorno-Karabakh would remain in the Lachin district. Thereafter the "question of the utilisation of the Lachin corridor by Nagorno-Karabakh, with a view to ensuring unrestricted communication between Nagorno-Karabakh and Armenia shall be agreed upon separately....The Lachin district shall remain permanently a fully demilitarised zone".<sup>202</sup>

Control over Lachin would guarantee that an independent Nagorno-Karabakh would not be an enclave,<sup>203</sup> relying upon Azerbaijan for all links to the outside world. It would, however, also provide a means for Nagorno-Karabakh to remain dependent on Armenia, and for Armenia to influence developments in the region. An Armenian official close to the negotiations insists, "there must be a corridor linking Nagorno-Karabakh to Armenia but we can discuss the size of that corridor".<sup>204</sup> Nagorno-Karabakh de facto President Ghukassian also suggested there may be room for manoeuvre: "Lachin is a matter of life and death for us [but] I cannot rule out the possibility that the Lachin issue too can become a subject for negotiations".

Armenian negotiators have always said they are interested in Lachin for security reasons. Stepanakert has not forgotten that from 1991 to spring 1992 it lacked such a corridor, and all food and weapons had to be helicoptered in. Many of its calculations about Lachin are based on those events. Armenian Ministry of Defence experts

estimate that the Lachin corridor would have to be at least 60 km wide<sup>205</sup> to ensure that artillery could not strike the road.<sup>206</sup> However, Azerbaijan's new and more sophisticated weaponry makes many calculations obsolete. In the context of a peace plan including demilitarisation of the districts around Nagorno-Karabakh, Baku's troops would be as far from Lachin as they are today -- more than 80 km.

The interest in Lachin seems to be based on more than security. Stepanakert, with Armenia's support, has modified the district's demographic structure, complicating any handover. Instead of the 47,400 Azeris and Kurds who once lived there, up to 10,000 Armenians are estimated to make up the district's population.<sup>207</sup> De facto President Ghukassian recently stated, "It is in our interest that Lachin is inhabited, and this is based on the premise that...Lachin and the Lachin corridor must remain under Nagorno-Karabakh's control".<sup>208</sup> Stepanakert considers Lachin for all intents and purposes part of Nagorno-Karabakh and has established infrastructure and institutions, in clear violation of international law prohibitions on settlement in occupied territories.<sup>209</sup> There is little chance that Baku could surrender its claim to the entire district with so many IDPs from Lachin still living in Azerbaijan. To break the impasse, an Azerbaijani official close to the negotiations has suggested that after the lands are returned, the new Armenian inhabitants might be given a choice: to remain, to be offered compensation, or to be re-settled in Armenia.<sup>210</sup>

Any peace deal must address Karabakh Armenians' security concerns as well as Azerbaijan's right to territorial integrity and IDPs' right to return home. Stepanakert's illegal activity in the district do not justify further

<sup>199</sup> Crisis Group interviews with senior official, Azerbaijan government, Baku, March and September 2005.

<sup>200</sup> July 1997 draft Minsk Group proposal, Agreement I, Article VIII, Clauses A, B and E.

<sup>201</sup> December 1997 draft Minsk Group proposal, Article II, Section B, Clause (2), Article III, Section A and Article XI.

<sup>202</sup> November 1998 draft Minsk Group proposal, Section II and Section IV, Article II, Paragraph B, Clause (2).

<sup>203</sup> Only three sovereign countries exist today as enclaves: Lesotho, San Marino and Vatican City.

<sup>204</sup> Crisis Group interview with senior official, Armenian Minister of Foreign Affairs, Yerevan, May 2005.

<sup>205</sup> This would potentially include parts of Kubatly.

<sup>206</sup> Armenian defence ministry experts estimate that Azerbaijan would employ 2s5 Giatsint self-propelled guns, 9K51 BM-21 Grad and 9K57 Uragan multi-rocket launchers to attack Lachin. Their maximum ranges are 28.5 km, 21 km and 36 km respectively. Since only Giatsints are considered accurate, Armenian military experts insist on a corridor with a radius of 30 km on both sides. Crisis Group phone interview with Armenian defence ministry official, September 2005.

<sup>207</sup> It is the sixth largest place of compact residence in territories controlled by Stepanakert. *Statistical Yearbook of Nagorno-Karabakh Republic 2000-2003*, pp. 15.

<sup>208</sup> In an interview with Azerbaijani journalist Eynulla Fatullayev, de facto Nagorno-Karabakh President Ghukassian linked Kelbajar not with the referendum but with the transfer of Shaumian from Azerbaijan to Nagorno-Karabakh control. Crisis Group phone interview with Eynulla Fatullayev, September 2005.

<sup>209</sup> Geneva Convention IV, "Relative to the Protection of Civilian Persons in Time of War", 12 August 1949, Articles 49 and 147.

<sup>210</sup> Crisis Group interview with senior official, Azerbaijan government, Baku, September 2005. The source said that Armenians who have settled in other parts of the occupied territories would have to be resettled in Armenia.

occupation. Azerbaijani officials have tried to separate the problem of the Lachin road from the district. Based on Armenian claims that the former is an essential lifeline, they propose restoring the Agdam-Lachin-Goris-Sisian-Nakhichevan road, which includes the Lachin corridor. They argue that once Azerbaijanis feel safe enough to travel through Armenian majority territory, the Lachin corridor will become the easiest way to link Azerbaijan with Nakhichevan. Ultimately, Armenians and Azerbaijanis would thus have a mutual interest in keeping the road safe and unobstructed.<sup>211</sup> Other options include demilitarising the corridor and allowing Nagorno-Karabakh to participate in patrols along the road with international peacekeepers. If Armenia and Nagorno-Karabakh are mainly interested in the road for security, the rest of the district could be returned to Azerbaijan with little delay.<sup>212</sup>

## 2. Kelbajar

In current negotiations the Armenian side is also determined to keep control over Kelbajar because of the district's strategic importance. Its northern boundary is formed by the 50km-long and almost 4,000metre-high Murov mountain range, the northern boundary of the old oblast NKAO; to the west it joins the Sevan mountain range, which divides Armenia and Azerbaijan. Nagorno-Karabakh forces control the narrow Omar pass, the only route through the Murov Mountains in the district. Any offensive from the North must use this pass.<sup>213</sup> From their positions overlooking the pass, Nagorno-Karabakh forces can monitor Azerbaijani military movements in the plains north of the range and are in a good position to shell advancing troops or intercept aircraft. The only road other than in the Lachin corridor which connects Nagorno-Karabakh with Armenia passes through Kelbajar. Kelbajar is also understood as key to Nagorno-Karabakh and Armenia's water security: 85 per cent of the entity's resources, as well as the Armenian Arpa and Vorotan Rivers which supply Lake Sevan, originate there.<sup>214</sup>

A 500-strong Nagorno-Karabakh battalion defends the Omar pass and Nagorno-Karabakh's whole northern boundary. Should Stepanakert withdraw from there, it would become more vulnerable to attack, would add 200 km to its frontline and might need to station an additional 20,000 soldiers in a mountainous environment where it would be difficult and costly to support them.<sup>215</sup> Withdrawal would also make the Lachin corridor vulnerable if Azerbaijani artillery moved onto the Murov heights.

Armenian negotiators propose making the return of Kelbajar conditional on the holding of a referendum on Nagorno-Karabakh's status.<sup>216</sup> They fear there would be no guarantee Azerbaijan would eventually agree to a referendum or recognise its result if the concession was not linked to a concrete gain, especially if a peace agreement did not include a specific date for a referendum. The thinking is that if a peace agreement is signed but a referendum never held, Nagorno-Karabakh might lose control over five of the occupied districts but would hold on to Kelbajar and Lachin, while gaining internationally recognised "interim status" and security guarantees. This would be a more manageable situation, ensure that international actors were more thoroughly involved in resolving the conflict, and limit Azerbaijan's ability to use force.

Keeping Kelbajar hostage to a referendum is unacceptable to Baku<sup>217</sup> and against the spirit of international law. A better solution would be for Azerbaijan to agree to recognise the result of any self-determination process or referendum, if held with the exclusive participation of Karabakh Armenians and Azerbaijanis and for the decision of when and how to hold a referendum to be given to an international conference, which would assess whether Nagorno-Karabakh has met preconditions for statehood, including the protection of minority rights. If Azerbaijan refused to recognise the result of such a referendum, it would be in violation of the peace agreement.

Nagorno-Karabakh's legitimate security concerns regarding the Murov pass must be addressed but so must Azerbaijan's right to regain the district and start a process of IDP return. Azerbaijan is much more likely to be willing to discuss Kelbajar with Armenia if this is based on a "land for security approach". Any territories vacated by Nagorno-Karabakh forces would need to be permanently

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<sup>211</sup> Deputy Foreign Minister of Azerbaijan Araz Azimov in "Azerbaijan offers Armenia to Open the Road Agdam-Khankendi-Shusha-Lachin-Goris-Sisian-Nakhichevan Autonomous Republic", 20 June 2005, Turan Press Service.

<sup>212</sup> In the July 1997 proposal the issue of Lachin was to be addressed with the building of a bypass road into the city; once that road was complete, the city was to be excluded from the corridor and returned to Azerbaijani control. OSCE Minsk Group, "Comprehensive Agreement on the Resolution of the Nagorno-Karabakh Conflict", July 1997, point 8.

<sup>213</sup> It was used for an offensive by the Azerbaijani army in December 1993 that was repelled with heavy Armenian losses. Other places are too steep and covered by snow year-round.

<sup>214</sup> Crisis Group e-mail communication with David Babayan, September 2005.

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<sup>215</sup> Crisis Group interview with military experts, Armenian defence ministry and Nagorno-Karabakh Defence Army, September 2005.

<sup>216</sup> Crisis Group interview with senior official, Armenian Minister of Foreign Affairs, Yerevan, September 2005.

<sup>217</sup> Crisis Group interview with senior official, Azerbaijan government, Baku, September 2005.

demilitarised and monitored by international peacekeepers. An early warning system should be put into place to warn of any advance by Azerbaijani forces into Kelbajar, and peacekeepers should have robust rules of engagement to react adequately to any such action. To meet Nagorno-Karabakh's security concerns, special measures could be defined such as joint Nagorno-Karabakh/peacekeeper patrols of the heights over the Omar pass. Modalities could be defined in the peace settlement or subsequently. However, once agreed, the occupation of Kelbajar should end.

### C. RETURN OF IDPS

For Azerbaijan, after the withdrawal of Armenian forces from the occupied districts the most important task is to create conditions in those districts for the return of displaced Azeris. Almost all the over 500,000 are committed to return to their pre-war homes. Baku has limited IDPs' opportunities to integrate in broader Azerbaijani society. Most continue to live in compact settlements, with their own government institutions and a separate system of social service provision and benefits. The government expects they will largely be able to transplant these institutions back in their pre-war communities, thus facilitating return and reintegration.<sup>218</sup>

However, the task of organising return will be daunting. Towns that previously existed in the occupied districts -- Agdam (28,200), Kelbajar (8,100), Jebrail (6,200) and Fizuli (23,000)<sup>219</sup> -- have been systematically levelled. Even electrical wiring, pipes, and other infrastructure have been removed for sale as scrap.<sup>220</sup> Efforts over much more than a decade will be needed to rebuild and rehabilitate homes, infrastructure and the economy.

Armenians insist that Azerbaijani IDPs are not the only ones with a right to return. Nagorno-Karabakh has 14,600 displaced Armenians from Martuni and Mardakert, parts of the old oblast under Baku control, as well as some 12,800 from pre-war Shahumian and Getashen (Azerbaijan proper).<sup>221</sup> The rights of these people should also be

restored in a peace settlement, Stepanakert officials say.<sup>222</sup> They believe that Azerbaijan's army should withdraw from all former oblast territory, and displaced from Martuni and Mardakert should be allowed to return under Stepanakert's jurisdiction. They also argue that any peace deal should recognise Shahumian as part of the "Nagorno Karabakh Republic", and Armenians should be guaranteed the right to return there. Transfer of sovereignty of the pre-war Shahumian district and Getashen sub-district have not been included in previous settlement drafts, and the international community is unlikely to question Azerbaijan's rights. However, it should call upon Baku to ensure that these Armenian victims of the conflict can return or be compensated for lost property.

#### 1. Return to districts surrounding Nagorno-Karabakh

Azerbaijan has always strongly asserted and Armenia never denied the right of IDPs to return to the seven districts around Nagorno-Karabakh. Both sides agree IDP return will be a key component of any peace deal. However, the 1997-1998 Minsk Group drafts do not explicitly guarantee all refugees and displaced persons the right to freely return to their homes of origin or formalise their right to the property they were deprived of or to be compensated for what cannot be restored. The December 1997 and November 1998 documents only call on the parties to "facilitate the safe and voluntary return of displaced persons to their former places of residence within the Zone of Separation".<sup>223</sup> Especially since some privatisation of land and property has begun -- especially in Lachin -- it is essential to codify the right to property.<sup>224</sup> The earlier vague formulation does not go far enough to ensure that the parties will create the political, economic

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Shahumian and Getashen as "Armenian territory, part of Nagorno-Karabakh illegally occupied by Azeri forces" and say people from these areas should return eventually to pre-war homes under Stepanakert's jurisdiction.

<sup>222</sup> Some hard-line Armenians go further and argue that the rights of Armenians from Baku, Sumgait, Ganja and other parts of Azerbaijan not in the immediate vicinity of the conflict should equal those of Azerbaijani IDPs from Nagorno-Karabakh and the surroundings. The de facto Nagorno-Karabakh Minister of Foreign Affairs, Arman Melikyan, argues this. Crisis Group interviews, Stepanakert and Yerevan, May and September 2005. This position has not been reflected in past talks and is unlikely to be taken up by the Minsk Group. The Armenian refugees from Azerbaijan and Azerbaijan refugees from Armenia are part of a broader problem which the two countries have yet to regulate through organised return or compensation. If such talks start, they should focus on mandating a bilateral commission to assess the recent history of forced displacement and on possibly creating also a return and compensation commission as well.

<sup>223</sup> Point V in both documents.

<sup>224</sup> See Crisis Group Report, *Nagorno-Karabakh*, op. cit.

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<sup>218</sup> For more detail, see Crisis Group Report, *Nagorno-Karabakh*, op. cit.

<sup>219</sup> "The Population of the Azerbaijani Republic 1989", Statistical Collection, Baku, 1991, pp. 11-13.

<sup>220</sup> Crisis Group observations in Agdam and Kelbajar, May 2005. See also OSCE, "Report of the OSCE Fact Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh", 2005.

<sup>221</sup> L.A. Arutunian. "New Migration Trends in Armenia", in *Migration Situation in the CIS Countries* (Moscow, 1999), p.74. Local authorities in Shahumian and Getashen joined Stepanakert's declaration of secession from Soviet Azerbaijan in 1991. Based on this, Stepanakert authorities describe

and social conditions conducive to safe and voluntary return, or the harmonious reintegration of the displaced.

Most parts of the occupied territories, which Azeris populated almost exclusively before the war, have been left uninhabited. Generally Nagorno-Karabakh authorities have not established institutions or encouraged Armenians to settle except in Lachin, Kelbajar and a few villages around Agdam. People from Shahumian and Getashen and Martakert have mainly settled in these last two respectively. Stepanakert is likely to insist it will not move them until they can return to their pre-war homes in Azerbaijan. Once Nagorno-Karabakh forces backed by Armenia withdraw from these districts, it will be important for Stepanakert and Baku to agree on modalities to insure that the rights of both sets of displaced are protected.

Some 500,000 Azeris can expect to be able to return to their homes -- in Aghdam, Fizuli, Jibrail, Kelbajar, Kubatly, and Zengelan -- once a peace settlement is signed. Return to Lachin may be postponed but should be guaranteed.<sup>225</sup> The greatest difficulty will be to assure conditions for Azerbaijanis to return to Nagorno-Karabakh itself. IDPs from the occupied territories have repeatedly made it clear they are unwilling to accept a situation where they can return but not their neighbours from Nagorno-Karabakh.<sup>226</sup>

## **2. Return to Nagorno-Karabakh proper**

Azerbaijan insists that IDPs from Nagorno-Karabakh also have the right to return, and Karabakh Azeris are perhaps better organised in Azerbaijan than their neighbours from the occupied territories. While not explicitly denying Azeris their right to return, Armenians have tried to condition return to Nagorno-Karabakh, and especially Shusha, on Armenian return to Shahumian.<sup>227</sup> This formula made it into the July 1997 and 1998 Minsk Group drafts.<sup>228</sup> However, the fundamental difference is that Azeris are likely to accept return to a Nagorno-Karabakh under interim status where they will be a minority, while Armenians will probably refuse to go back to Azerbaijani-governed Shahumian. In addition, while Nagorno-

Karabakh may become a territory with interim status in the context of a peace settlement, Shahumian is Azerbaijani territory, both *de facto* and *de jure*.

All previous drafts are weak on IDPs' right to return to territory within the former oblast. The three 1997-1998 texts state that the parties will facilitate return in the "zone of separation", meaning the districts around the oblast. The July 1997 and November 1998 drafts give displaced from Shusha and Shahumian the right to return to their homes but no mention is made of other settlements in Nagorno-Karabakh. Thus, they do not uphold the right of some 20,000 Azeri displaced from other parts of the entity to regain their property.

Azerbaijani authorities have been first and foremost interested in securing the right of Karabakh Azeris to return to Shusha, rather than all Karabakh Azeri towns and villages.<sup>229</sup> An Azerbaijani official close to the negotiations said it was understood that more time may be needed to implement return to Shusha but that it would ideally happen after the deployment of an international police force.<sup>230</sup> Return to other parts of Nagorno-Karabakh would be extremely difficult, and Azerbaijanis themselves recognise that concentrating the Karabakh Azeri returnee population in Shusha "may be acceptable for the Azeris, especially considering that most of them are unlikely to prefer to live in Armenian-dominated areas, at least during the immediate aftermath of the conflict".<sup>231</sup>

Nagorno-Karabakh authorities accept in principle the Azeri right of return. President Ghukasian, however, underlines the risks: "Return of Karabakhi Azeris to Nagorno-Karabakh before sufficient confidence is built will be disruptive to the peace process. Our concern is that

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<sup>225</sup> In the July 1997 document but not in subsequent ones, return to Lachin was explicitly guaranteed. This according to Azeri figures would leave 64,900 persons unable to return to their pre-war residences in the Lachin district.

<sup>226</sup> Crisis Group interviews with IDP representatives, Baku and Barda, June 2005.

<sup>227</sup> Tchilingirian, *op. cit.*, pp. 446.

<sup>228</sup> The December 1997 draft contained no guarantees on Shusha and Shumanian. The parties were called upon to carry out additional negotiations about "all others who were displaced as a result of the conflict and tension between Armenia and Azerbaijan after 1987", OSCE Minsk Group draft, December 1997, point 5.

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<sup>229</sup> Shusha is particularly important because it was the only town in Nagorno-Karabakh predominantly inhabited by Azeris before the war. It is also considered the cradle of Karabakh Azeri (and Armenian) culture, poetry and art. According to Elchin Amirbayov, "a key element in obtaining Azerbaijani acceptance of a peace agreement is the return of the Shusha region to Azerbaijani control and the guaranteed right of internally displaced Azerbaijani persons to return to the Shusha region", "Shusha's Pivotal Role in a Nagorno-Karabakh Settlement", Caspian Studies Program Policy Brief, No. 6, 2001, p. 2. However, most Karabakh Armenians oppose any Azeri return to Shusha because, they say, it had an Armenian majority before the 1920 massacre. Also, Shusha was used as a base for bombing Stepanakert during the war. The security of that city cannot be assured without control of the heights above it, including Shusha.

<sup>230</sup> Crisis Group interview with Azerbaijan official, Baku, March 2005.

<sup>231</sup> Tabib Huseynov, "Mountainous Karabakh: Conflict Resolution Through Power-Sharing and Regional Integration", 2004.

Azerbaijan may use any possible incidents with Azeris in that situation as pretext to intervene militarily".<sup>232</sup>

The rights of Karabakh Azeris in Nagorno-Karabakh would have to be clearly defined in any settlement. Some Armenian analysts have suggested that return should happen only after a status referendum.<sup>233</sup> Regardless of what Nagorno-Karabakh's ultimate status becomes, however, the rights of all returning Azeris and all minorities must be protected before any internationally-recognised referendum is held.

### 3. International assistance programs

The international community will be asked to provide substantial financial and technical aid to support returns. The 1997-1998 drafts called on the Parties to cooperate with the International Committee of the Red Cross (ICRC), the UN High Commissioner for Refugees (UNHCR) and other international bodies to provide for quick and voluntary return. Partly in response, the UNDP, UNHCR, EU and World Bank developed a \$120 million program for the "Resettlement and Reconstruction of Liberated Territories". To finance the first phase the World Bank gave a \$20 million credit, UNDP a \$3.2 million grant, UNHCR \$12.1 million, and the EU \$9.5 million. Azerbaijan contributed \$9.5 million.<sup>234</sup> The focus was on rebuilding housing, infrastructure, and social services in the war-damaged areas of Terter, Agdam and Fizuli to which Azeris had begun to return. Though the World Bank considered the project ultimately made possible the return of some 36,000 IDPs, UNHCR noted more cautiously that "there was not enough infrastructure in the return areas to sustain the return".<sup>235</sup>

Positive signs from the OSCE Minks Group co-chairs around the time of the Key West talks encouraged several large donors to develop a multi-million dollar aid package in support of the expected peace settlement. At that time donors were eager to pledge. However, the plan was never implemented. It allegedly could be reactivated once a peace deal is again close<sup>236</sup> but diplomats are pessimistic that the same level of funding would be available.<sup>237</sup>

No major donor has allocated new funding for the return and resettlement of displaced persons to Nagorno-Karabakh and the surrounding districts. If there is an agreement, however, resettlement, reconstruction and development of the war-affected areas will require rapid disbursement of significant aid. No major agency, with the exception of the ICRC, has been working in Nagorno-Karabakh and the occupied areas. International organisations are thus only partially aware of needs and resources. The EU has never conducted any assessment but would likely be called upon to give substantial humanitarian and development help in the event of a deal. Granting Nagorno-Karabakh internationally guaranteed interim status should also open the door to international aid.

### D. TRADE AND COMMUNICATION LINKS

The sides do not question the importance of rebuilding trade and communication links after a peace deal is signed but they are too optimistic that the links can be restored easily. For the Azeri and Armenian communities of Nagorno-Karabakh, daily realities and modes of existence are now radically different. The post-war years have created a huge gulf between the communities. Memories of Azeri-Armenian cohabitation have faded. In Nagorno-Karabakh new mono-ethnic institutions, settlement of displaced persons from others parts of Azerbaijan and beyond, destruction of Azeri property and privatisation of homes, land and businesses pose significant obstacles to Azeri return and reintegration. No peace agreement will hold if average Azerbaijanis and Armenians are unable to overcome their feelings of hate, fear, distrust and desire for revenge built up since 1988.

Before a peace deal is agreed, Baku refuses to allow any contacts between Azerbaijanis and officials or common people now living in Nagorno-Karabakh. Azerbaijani civil society activists who have defied the government line

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<sup>232</sup> Crisis Group interview with de facto Nagorno-Karabakh President Ghukasian, May, 2005

<sup>233</sup> Crisis Group interview with senior official, Armenian ministry of defence, Yerevan, May 2005.

<sup>234</sup> World Bank, "IDP Economic Development Support Project", Project Information Document, Appraisal Stage, Report NoAB1243, November 2004.

<sup>235</sup> UNHCR Global Report 2000, "Azerbaijan", p. 353.

<sup>236</sup> Crisis Group interview with UNHCR staff, Baku, March, 2005.

<sup>237</sup> As one U.S. official close to the negotiation process told Crisis Group, "at the time, there was just an opportune moment

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to get international funds. Bosnia was no longer a problem, Kosovo was not a problem. And these new things [Afghanistan, Iraq] had not broken yet". Crisis Group interview, Washington DC, May, 2005. On 10 January 2002 at a Washington press conference, the U.S. Minsk Group representative at the time, Ambassador Rudolf Perina, warned that if the parties did not take advantage of international good-will and attention, that attention would wane. "If we will have a settlement [in the near future], the international community will be very generous in providing funding and assistance to help this settlement and reconstruction. But I have to tell you the money is going very, very rapidly to different directions after [11 September] -- not just American money but also EU money". Kenan Aliyev, "U.S. Envoy Cautions that Window Could Close on a Karabakh Settlement", Eurasianet, 14 January 2002.

have faced harassment at home.<sup>238</sup> This is a misguided policy. Dialogue between Baku and Stepanakert is urgently needed to build a sense of confidence and security between Armenians and Azerbaijanis. Baku should not continue holding the building of contacts and communication links hostage to a peace deal.

Dialogue and confidence building between Armenians and Azerbaijanis may help speed up a political solution and provide a basis for coexistence. Yet few channels of dialogue exist. It is impossible to travel directly from Azerbaijan to Nagorno-Karabakh or Armenia and phone connections do not function. No program has been established to allow refugees and IDPs to access official documents left in their original residences. Average citizens have little neutral information about "the other side". Only a handful of internationally-sponsored civil society programs linking Azerbaijan, Armenia and Nagorno-Karabakh have been implemented.<sup>239</sup> No visits of homes, cemeteries, or religious or cultural monuments have been organised across the ceasefire line.

The Azerbaijani side expresses confidence "return and people living side by side" will be enough to promote confidence building.<sup>240</sup> However, experience from other conflicts shows this is rarely the case. Returnees to communities where they are the minority, as they would be in Nagorno-Karabakh, often face violence, harassment and discrimination. Substantial efforts will be needed to guarantee they can live in peace. Stepanakert must carry out reforms that guarantee returnees a say in local government, inclusion in the police and other rights.

## 1. Roads and railways

Roads and railways, which have been closed since the start of the conflict, should be reopened to rejuvenate trade and communication after an agreement is signed.

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<sup>238</sup> For example, in April 2003 Azerbaijani authorities organised mobs of "angry civilians" who mounted demonstrations and attacks against the Human Rights Centre of Azerbaijan (Eldar Zeynalov, director) and the Institute of Peace and Democracy (Leyla Yunus, director) for having cooperated with Armenians and traveled to Nagorno-Karabakh. Staff of the Helsinki Citizens Assembly Azerbaijan National Committee have faced similar harassment.

<sup>239</sup> One of the largest is the Consortium Initiative financed by the UK government. It brings together Catholic Relief Services (CRS), Conciliation Resources (CR), International Alert (IA) and the London Information Network on Conflicts and State-building (LINKS), which seek to contribute to the peaceful transformation of the Karabakh problem and complement the existing Minsk Group negotiating process. For more see <http://www.consortium-initiative.org/>.

<sup>240</sup> Crisis Group interview with senior official, Azerbaijani government, Baku, March 2005.

Since the early years of the conflict, Azerbaijan has closed all such links with Armenia. The Yerevan-Baku railways -- one a southern route along the Araks River, the other to the north through Kazakh and Yevlakh -- do not operate. The main Yerevan-Baku road followed the southern route and is blocked, as is the route through Agdam which was used for most travel between Stepanakert and Yerevan/Baku.

Substantial investment would be needed to rebuild the railway in and around Nagorno-Karabakh, which has been virtually dismantled by scavengers. In 2002, Azerbaijan offered to resume railway links with Armenia through Nagorno-Karabakh.<sup>241</sup> Subsequently, the EU Parliament's Special Rapporteur Per Gahrton proposed political and financial support for a plan foreseeing withdrawal of Armenian armed forces from five occupied districts in combination with restoration of the southern Baku-Nakhichevan-Yerevan railway.<sup>242</sup>

As described in the Lachin section above, Azerbaijani negotiators have already pledged that the Agdam-Lachin-Goris-Sisian-Nakhichevan road would be reopened once there was a peace agreement. The road, which would continue to Turkey, would benefit both Armenian and Azerbaijani communities, so they would have a common interest in keeping it safe. As happened in Bosnia-Herzegovina, where a similar road linking Croat settlements to Croatia and Banja Luka to Brcko<sup>243</sup> was the first thoroughfare used by all ethnic groups after the Dayton Agreement, the road should be secured and patrolled by international peacekeepers.

However, it remains to be seen whether the route proposed by Azerbaijan is practical. It crosses difficult high altitude terrain, including the Sisian pass (2,345 metres) separating Nakhichevan and Armenia. Another route that may be easier to restore connects Nakhichevan and Armenia through Ordubad and Meghri. This southern option would not link up with the Lachin-Agdam road but instead follow the Araks River and cross through Zangilan, Jebrail and Fizuli. Thus, it would not have the same confidence-building potential as the Agdam route.

Armenia is interested in legalising transportation and transit through Azerbaijan of its goods and people. This would include opening the railway connection to Russia through the northern towns of Ijevan (Armenia) and

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<sup>241</sup> See Emile Danielyan, "Armenia Denies Rejecting Aliev's Karabakh-Settlement Proposal", RFE/RL Caucasus Report, 3 October 2002; Fariz Ismailzade, "Latest Efforts to Solve Nagorno-Karabakh Dispute Fail, Killing Talk of Economic Cooperation", Central Asia Caucasus Analyst, 9 October 2002.

<sup>242</sup> Liz Fuller, "From Simmering Conflict to Simmering Peace Process", RFE/RL Caucasus Report, 9 July 2004.

<sup>243</sup> The U.S. military called it the "Arizona Road".



Kazakh (Azerbaijan), then onto Tbilisi or Baku. Another option would be to reopen the rail link from Yerevan to Baku and on to Russia via Nakhichevan. This connection would also restore Armenia's rail link to Iran through Julfa (Nakhichevan), while benefiting Azerbaijan by linking it to Nakhichevan.

To help Azerbaijan in 1993 after the fall of Kelbajar, Turkey closed its land border and airspace to Armenia.<sup>244</sup> In 1995, flights between the two countries resumed<sup>245</sup> but there is still no road or rail connection. It is impossible to travel by train between Turkey and Russia.<sup>246</sup> Azerbaijani authorities have explicitly said they want Turkey to keep the border closed until there is a settlement.<sup>247</sup> With all land passages shut, most Turkish-Armenian trade goes through Georgia. Opening the border would boost trade between Armenia and Turkey to the advantage of both.<sup>248</sup> A 2000 World Bank study calculated that Armenia's GDP would increase by 14 per cent; other estimates range between 30 and 50 per cent.<sup>249</sup> A new, less optimistic report still claims that Armenia's economy would expand by \$20 million to \$30 million.<sup>250</sup> Turkey has at times set conditions for opening the border not linked to Nagorno-Karabakh<sup>251</sup> but resolution of the conflict would likely

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<sup>244</sup> Re-opening of the border is not only dependent on resolution of the Nagorno-Karabakh conflict but also on the improvement of bilateral Turkish-Armenian relations.

<sup>245</sup> In December 2001, Turkey resumed granting visas to Armenians. Vehicles registered in Armenia may not enter Turkey.

<sup>246</sup> Largely due to the Nagorno-Karabakh conflict, the Kars-Gyumri-Yerevan railway has been closed since 1993. It is estimated that it would cost \$40 million to reopen. "Turkish-Armenian Friendship will Improve with Trade", *Turkish Time*, July 2000, at [http://www.turkishtime.org/temmuz/54\\_4\\_eng\\_2.htm](http://www.turkishtime.org/temmuz/54_4_eng_2.htm). Georgia and Turkey have begun negotiations on opening a Kars-Akhalkalaki-Tbilisi railway. "Kars-Akhalkalaki-Tbilisi Railway Sitting", *Caucasus Press*, 22 August 2005.

<sup>247</sup> President Ilham Aliyev said, "it is no secret that the European Union and other influential countries are putting pressure on Turkey to open its border with Armenia. But I have said many times that if that happens, then the Nagorno-Karabakh conflict will never be resolved". Emil Danielyan, "Azerbaijan opts out of key Karabakh talks", *RFE/RL, Caucasus Report*, 26 March 2004. See also Zulfugar Agayev, "Turkey could prove spoiler for Nagorno-Karabakh peace", *Eurasianet*, 8 April 2004.

<sup>248</sup> Jon Gorvett, "Turkey and Armenia Explore Rapprochement", *Eurasia Insight, Eurasianet*, 16 July 2003.

<sup>249</sup> "The EU's relations with Armenia Overview", April 2004, at [www.europa.eu.int](http://www.europa.eu.int).

<sup>250</sup> Report by the Armenian-European Political Legal Advice Centre (AEPLAC), quoted in Haroutiun Khachatryan, "Report: No Big Gains to Armenia if Turkey Lifts Blockade", *Eurasianet*, 9 August 2005.

<sup>251</sup> These include Armenian withdrawal from all occupied Azerbaijan lands; an end to Armenian claims on Turkey's eastern territory; and an end to its campaign to secure international recognition of the 1915 massacres as a genocide. Agayev, op. cit.

be a strong incentive. It would also benefit Turkey's underdeveloped eastern regions and provide a bigger market in the Caucasus for Turkish goods.<sup>252</sup> Opening the border need not be part of a peace agreement but a decision to do so once a settlement was signed would show strong support for peace and contribute to confidence building and economic development in the entire region.<sup>253</sup>

## 2. Dialogue and confidence building

Restoring confidence between Azeris and Armenians living in and around Nagorno-Karabakh will be a huge challenge, requiring transformation of the language, images and modes of dialogue they use with reference to the other. Political leaders, media, and educational sources in Armenia, and even more so in Azerbaijan, demonise each other, calling for revenge and appealing to people's sense of victimisation without calling on them to consider their responsibility in the conflict. To prepare the population for a peace deal and implement it, new symbols and rhetoric with respect to the conflict are needed. Politicians should be the first to adopt a discourse which includes the "other" as an equal, respected member of society. Their message should be transmitted through media, which can be heard on both sides of the line of contact.

A range of local disputes around land, water and electricity are likely to arise between those living in Nagorno-Karabakh and the surrounding districts. Distribution of resources was never strictly defined during the Soviet era, and mechanisms to resolve the disputes will be needed to prevent escalation. As noted, substantial reconstruction will be needed in the occupied territories. Where possible construction teams should include Azeris and Armenians to give both a stake in the effort, combat unemployment and reduce resentment among Karabakh Armenians at the flow of resources into the occupied districts. The biggest tensions are predictable in the occupied districts when returning Azeris will have to displace or live side by side with Armenian settlers, in Lachin, Kelbajar and Agdam. This movement will require careful preparation, training of local police and establishment of a compensation scheme for any Armenians who would again be displaced.

The greatest difficulties are likely to be inside Nagorno-Karabakh, where returning Azeris would potentially

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<sup>252</sup> For more on this see International Alert, "From War Economies to Peace Economies in the South Caucasus", London, 2004, pp. 41-51; Also analysis by the Turkish-Armenian Business Development Council at <http://www.tabdc.org/about.php>.

<sup>253</sup> A U.S. official interviewed by Crisis Group noted that opening the border "would help Armenians get over their siege mentality", Washington DC, March, 2005.

become a substantial minority of some 25 per cent. The local population would have to change its mentality fundamentally to accept a multinational Nagorno-Karabakh as the foundation for peace and stability in the region rather than a threat to its survival. This will be easier if Azeris can participate fully in political life through a power sharing system.

After a peace agreement, the handful of non-governmental organisations and others who have been working across the line of contact to promote dialogue, communication and occasional joint projects will be the only ones with the networks, know-how and experience necessary to begin confidence-building measures quickly. They should receive financial support -- other post-conflict situations demonstrate they can create momentum for others to follow.<sup>254</sup>

## VI. CONCLUSION

Within the Prague Process, Azerbaijan and Armenia seem to have narrowed positions on the most difficult issues and may have found a formula that could finally settle the Nagorno-Karabakh conflict. The option under consideration would formalise that Nagorno-Karabakh's status remains a question that ultimately would be determined through a referendum whose precise modalities would be agreed upon at a later date. In the meantime Nagorno-Karabakh would obtain an internationally-guaranteed interim status. Nagorno-Karabakh forces backed by Armenia would withdraw from five, six or all seven of the occupied territories adjacent to Nagorno-Karabakh. The return of Azerbaijani IDPs would begin. To ensure Nagorno-Karabakh's security, the international community would make strong pledges to intervene if the agreement were violated, and it would deploy peacekeeping troops with robust rules of engagement. Communication and trade links would be reopened, and confidence-building projects initiated.

Even if the sides agree to a series of principles, however, there are likely to be significant stumbling blocks to implementation. One very difficult issue unlikely to be resolved fully at the negotiation table, is the fate of Lachin. Another is the return of Azerbaijanis to Nagorno-Karabakh, particularly to areas outside Shusha.

The foreign ministries seem capable of agreeing on key principles to implement a peace settlement, beginning with withdrawal from the occupied territories around Nagorno-Karabakh and ending with a legal process including Karabakh Azeris and Armenians to determine the entity's ultimate status. However, it remains unclear whether they will be able to get their governments to go ahead with the plan, and the even more difficult task will be to convince Azerbaijani, Armenian and Nagorno-Karabakh public opinion. Azerbaijanis and Armenians are as far from each other as ever, plagued by anger, distrust and hatred of the "other". If the governments are truly committed to this peace process, they, together with the Minsk Group co-chairs, must put significantly more time and resources into explaining it to highly critical publics. The success of any peace deal is as much dependent on securing public acceptance as on finding agreements at the table. So far, even if there is progress in the negotiations, in the field resumption of war still seems as likely as peace. This gap needs to be redressed urgently.

**Tbilisi/Brussels, 11 October 2005**

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<sup>254</sup> Sabine Freizer, "What Civil Society After Civil War? A Study of Civil Society Organisations' Effect on Peace Consolidation in Bosnia-Herzegovina and Tajikistan", doctoral dissertation, submitted to University of London, May 2004; Benjamin Gidron, Stanley Katz, and Yeheskel Hasenfeld, *Mobilising for Peace: Conflict Resolution in Northern Ireland, Israel/Palestine, and South Africa* (Oxford, 2002).

## APPENDIX A

### MAP OF SOUTH CAUCASUS



This map is for reference only and should not be taken to imply political endorsement of its content

## APPENDIX B

### MAP OF NAGORNO-KARABAKH AND SURROUNDING SEVEN DISTRICTS



This map is for reference only and should not be taken to imply political endorsement of its content