

**NAGORNO-KARABAGH**

**LEGAL  
ASPECTS**

**THIRD EDITION**

**SHAHEN AVAKIAN**

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## **LEGAL ASPECTS**

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**SHAHEN AVAKIAN**  
**“NAGORNO-KARABAGH: LEGAL ASPECTS”**  
**Third Edition, Yerevan 2010**

The study covers the legal aspects of Nagorno-Karabagh problem.  
It examines the issues of law as they affected the legal status of  
Nagorno-Karabagh.

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This is a study of legal issues on Nagorno-Karabagh. It does not intend to cover the political and historical aspects; it will instead cover issues of law as they affected Karabagh in pre-Soviet period, in the period of Sovietization, and under Perestroika.

It will also examine the issues of sovereignty of Nagorno-Karabagh according to the laws of the former USSR, the compliance of Azerbaijan's domestic legislation on Nagorno-Karabagh and Azerbaijan's policy of ethnic cleansings with the principles of international law, as well as the establishment of the Republic of Nagorno-Karabagh under international law.

Since a proper understanding of Nagorno-Karabagh problem is complicated both by geopolitical changes and by frequent and deliberate misinterpretation and misrepresentation of Karabagh's history and legal status, we aim at presenting a brief overview of the issue from a legal point of view and demonstrate that Nagorno-Karabagh has never been part of the Republic of Azerbaijan.

Even a brief study of the legal background of the problem provides a basis to believe that Nagorno-Karabagh, apart from its historic and cultural rights, also has full legal foundations for its independence.

## Basic Facts

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<b>Name</b>	Nagorno-Karabagh Republic or Republic of Artsakh
<b>Capital</b>	Stepanakert
<b>Language</b>	Armenian
<b>Population</b>	140,100*
<b>Ethnic Composition</b>	95% Armenian, 5% minorities (Greeks, Russians, Ukrainians, Assyrians, Georgians, etc.)
<b>Religion</b>	Christian, 95% of the population are adherents of the Armenian Apostolic Church
<b>Location</b>	Situated in the southeastern part of the Caucasus Minor, from the West it borders with Armenia, from the North and the East- with Azerbaijan. It includes the eastern part of the Karabagh Plateau and extends from the West to the East running into the Lowland Karabagh that forms the major part of the Kura-Arax wide plain.
<b>Relief</b>	Mountainous
<b>Area</b>	11,500 sq. km**
<b>Main Law</b>	Constitution of the Republic of Nagorno-Karabagh***
<b>Flag</b>	Three equal horizontal stripes of red, blue and orange colours (from the top to the bottom). From both edges of the right side of the colour cloth a white five-toothed stepped rug pattern starts and joins at the one third of the flag.
<b>Administrative division</b>	Includes 7 regions and the Capital of the Republic
<b>Largest towns</b>	Martuni, Martakert, Askeran, Hadrut, Shushi
<b>Currency</b>	Armenian Dram
<b>Time Zone</b>	GMT+ 04:00

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\* As of 2009 statistics.

\*\* According to the Constitution of the Republic of Nagorno-Karabagh.

\*\*\* Adopted on 10 December 2006 via nation-wide referendum.

# 1. Pre-Soviet Status

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After the Russian-Persian war (1804-1813) Karabagh, along with the other northeastern provinces of Armenia, was transferred from Persian to Russian dominion under the terms of the Treaty of Gulistan (1813). In 1840, as a result of the implementation of an administrative reform in the Caucasus, which divided the region into two administrative districts, Karabagh was incorporated into the Caspian District. The next administrative reform of 1867 incorporated Karabagh into the Elizavetpol District. The area then remained undisturbed until the beginning of World War I.

The dispute over Nagorno-Karabagh dates from the period of the Russian Empire's disintegration after the 1917 October Revolution. Under Lenin's "national policy" doctrine, peoples leaving Russia were recognized in their right for self-determination though no special procedure was settled for secession from Russia<sup>1</sup>.

During 1918-1920 the legislative power in Nagorno-Karabagh was exercised by the Assemblies of Armenians of Karabagh.

The First Assembly of Armenians of Karabagh was convened on July 22, 1918, which declared Nagorno-Karabagh an independent administrative and political entity. The Assembly elected a National Council and a democratic government comprised of seven ministers. The objectives of the newly formed state authorities were endorsed by the declaration of the democratic government of July 24, 1918.

Soon after the convocation of the First Assembly, the government of the Democratic Republic of Azerbaijan, backed by the Turkish army, attempted to include Nagorno-Karabagh within its borders. However, the Second and Third Assemblies of Armenians of Karabagh, convened in September 1918, refused to obey

both the ultimatums of the Turkish Command and the demands of the government of Azerbaijan.

On February 19, 1919, the Fourth Assembly of Armenians of Karabagh convened in Shushi, decisively refused Azerbaijan's ultimatum and expressed a protest on the appointment of Khosrov bek Sultanov as a Governor-General of Nagorno-Karabagh by the approval of the British Command. The Assembly Resolution reads as follows:

*"Definitely insisting on the peoples' right for self-determination, Armenian population of Karabagh respects the right of self-determination of the neighboring Turkish people, and decisively protests before the whole world those attempts of the government of Azerbaijan that are aimed to abolish this principle regarding Nagorno-Karabagh, which will never accept the authority of Azerbaijan"*<sup>2</sup>.

The National Council of Karabagh, in a protest note addressed to the British Command, stated that Nagorno-Karabagh had never recognized and would never accept the authority of the Government of Azerbaijan within Armenian Karabagh's territory. Relying on the fact that the British Command had recognized Armenian Karabagh as a territory not under the control of any state, especially Azerbaijan, until the Paris Peace Conference, the National Council of Karabagh considers the appointment of a British Governor-General as the only acceptable option for the governance of Armenian Karabagh. This refusal to recognize Azerbaijan's authority was re-affirmed by the Fifth Assembly of Armenians of Karabagh, convened on April 23, 1919.

On August 22, 1919, the Seventh Assembly of Armenians of Karabagh and the Government of the Democratic Republic of Azerbaijan concluded a provisional agreement on the status

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1. Lenin, V. I., Complete Publications of Works, (Moscow: 1963, in Russian), v. 31, at 436.

2. Nagorno-Karabagh in 1918-1923: Collection of Documents and Materials. Yerevan, 1992, p.79, Document N49.

of Nagorno-Karabagh in order to avoid military conflict. Both sides agreed that the problem of Karabagh must be considered at the Paris Peace Conference. Karabagh's status as an independent political unit was not modified by this Agreement. The fact that the Government of the Democratic Republic of Azerbaijan entered into agreement with the Seventh Assembly of Armenians of Karabagh is an evidence that Karabagh was considered a distinct legal entity.

The efforts of the Government of Azerbaijan to solve the Karabagh problem by military means in March 1920 provoked the organization of Karabagh's self-defense. Soon after, the military units of the Republic of Armenia came to rescue the oppressed population of Karabagh and fully liberate Karabagh.

On April 23, 1920, the Ninth Assembly of Armenians of Karabagh declared Nagorno-Karabagh an inalienable part of the Republic of Armenia. The Assembly Summary Document reads as follows:

*"1. The provisional Agreement signed between the Seventh Assembly of Armenians of Karabagh and the Government of the Democratic Republic of Azerbaijan is pronounced violated due to the continued aggression of the Azerbaijani troops against peaceful Armenian population and massacres of the population of Shushi and the Armenian villages.*

*2. Nagorno-Karabagh is declared as an inalienable part of the Republic of Armenia".*

The telegram of the chairman of the Armenian National Council of Nagorno-Karabagh of June 9, 1920 addressed to the chairman of the

Armenian delegation in Moscow stated that the Ninth Assembly had adopted a resolution according to which the provisional agreement of 1919 was pronounced violated due to the attack of Azerbaijani forces on Shushi; the Armenian delegation was requested to so inform the Russian Soviet government.

Thus, during the initial phase of the creation and determination of the borders of the three national states of Transcaucasia, Nagorno-Karabagh had never been an integral part of the Democratic Republic of Azerbaijan. From May 1918 until April 1920, when the Democratic Republic of Azerbaijan became Sovietized, Nagorno-Karabagh was regarded as a distinct legal entity and all attempts of the Government of Azerbaijan to subjugate Karabagh failed.

As for the position of the international community regarding this issue, the Democratic Republic of Azerbaijan of 1918-1920 was never formally recognized by the international community, and by the League of Nations, in particular. The League not only refused to officially recognize the Democratic Republic of Azerbaijan, but also its application for membership. At its fourth meeting on December 1, 1920, the Fifth Committee of the Assembly of the League of Nations, having examined the request for admission of the Democratic Republic of Azerbaijan, arrived at the following conclusion:

*A. Within the content of Article 1 of the Covenant of the League of Nations, Azerbaijan cannot be regarded as de jure a "full self-governing State", as it had not been recognized de jure by any member of the League of Nations. Moreover, it was stated that the territory of the Republic of Azerbaijan, "occupying a superficial*

area of 40,000 sq. miles, appears to have never formerly constituted a State, but has always been included in larger groups such as the Mongol or Persian and since 1813, the Russian Empire. The name Azerbaijan which has been chosen for the new Republic is also that of neighboring Persian province". Furthermore, the ability of the government of Azerbaijan was questioned as to whether it could undertake international obligations and give guarantees required by membership<sup>3</sup> (See Annex 2).

B. "...it is difficult to ascertain the exact limits of the territory within which the government of Azerbaijan exercises its authority. Owing to the disputes with neighboring States concerning its frontiers, it is not possible to determine precisely the present frontiers of Azerbaijan. The provisions of the Covenant did not allow the admission of Azerbaijan to the League of Nations under present circumstances"<sup>4</sup>(See Annex 3).

The decision of the Fourth Committee was adopted unanimously in the following terms: "The Committee, after having considered the Report of the Sub-Committee with regard to Azerbaijan's request for admission to the League of Nations, reports unfavorably with regard to its admission and refers the question back to the Assembly"<sup>5</sup> (See Annex 4).

On August 10, 1920, Soviet Russia and the Republic of Armenia signed an agreement stating that "the regions of Karabagh, Zanghezour and Nakhichevan should be occupied by the Soviet troops, but that would not predetermine the final possession of these regions. The solution of the issue was subject to determination by a Pact to be signed between Armenia and Soviet Russia".

Thus, at that time, Nagorno-Karabagh was not recognized as part of Soviet Azerbaijan. Like the position taken by the League of Nations, Soviet Russia, by this Agreement, recognized Nagorno-Karabagh as a disputed territory between Soviet Azerbaijan and the Republic of Armenia.

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3. "Admission of Azerbaijan to the League of Nations", Memorandum by the Secretary-General, November 1920, 20/48/108.

4. League of Nations: Journal N17 of the First Assembly, Geneva 1920, page 139.

5. League of Nations: The Records of the First Assembly, The Meetings of the Committees, Fourth Committee, page 173.

## 2. Sovietization Period

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On November 30, 1920, the now-Soviet Government of Azerbaijan adopted a declaration on recognition of Nagorno-Karabagh, Zanghezour and Nakhichevan as part of Soviet Armenia as a welcome act towards the victory of sovietized forces in the country. According to this declaration, the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorno-Karabagh, Zanghezour and Nakhichevan were recognized as an integral part of the Soviet Armenia (See Annex 5).

In its "Declaration Regarding the Establishment of the Soviet Power in Armenia" of December 2, 1920, the Azerbaijani Revolutionary Committee recognized only Nagorno-Karabagh's right for self-determination. Nonetheless, this recognition was equivalent to the proclamation of Nagorno-Karabagh as an integral part of Armenia, as the will of its people could not be distrusted.

On June 12, 1921, the National Council of the Azerbaijan SSR, based on the declaration of the Revolutionary Committee of the Azerbaijan SSR and on the agreement between the governments of the Azerbaijan SSR and the Armenian SSR, adopted a declaration which proclaimed Nagorno-Karabagh as an integral part of the Armenian SSR.

On June 19, 1921, Alexander Miasnikyan, Chairman of the Council of People's Commissars of the Armenian SSR, issued the following decree: *"On the basis of the declaration of the Revolutionary Committee of the Soviet Socialist Republic of Azerbaijan, and the agreement between the Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorno-Karabagh is an inseparable part of the Soviet Socialist Republic of Armenia"*.

In the official report for 1920-1921 of the People's Commissariat for Foreign Affairs to the

IX Conference of Soviets, it was mentioned that: *"In July, an agreement is being signed with Azerbaijan on Nagorno-Karabagh, which is being included in the Soviet Armenia"*.

In July 1921, the Azerbaijan SSR insisted on examining Nagorno-Karabagh issue at the Plenary Session of the Caucasian Bureau (Kavbureau) of the Central Committee of the Russian Communist Party-Bolsheviks (RCP-B).

On July 4, 1921, in Tbilisi, Georgia, the members of the Caucasian Bureau of the RCP-B declined a formula suggested by the Azerbaijani representative, Narimanov, to *"leave Karabagh in Azerbaijan"* and decided to *"include Nagorno-Karabagh in the Armenian SSR, and to conduct a plebiscite in Nagorno-Karabagh only"*. However, during the nights of July 4 and 5, a new decision was drafted, dictated by Moscow. The first paragraph of the new decision stated: *"Proceedings from the necessity of establishing peace between Muslims and Armenians... leave Nagorno-Karabagh in the Azerbaijan SSR, granting it wide regional autonomy with an administrative centre Shushi, included in the autonomous region"*. During that night Stalin, Moscow's representative, failed to succeed in getting approval of the majority of the members of the Plenary Session. The decision of July 5, 1921, can thus be considered null and void as it was neither discussed nor voted upon. De jure, only the previous decision of July 4, 1921, to *"include Nagorno-Karabagh in the Armenian SSR, and to conduct a plebiscite in Nagorno-Karabagh only"* was the last legal document on the status of Nagorno-Karabagh to be legally adopted without procedural violations<sup>6</sup>.

As these facts demonstrate, Nagorno-Karabagh did not belong to the Azerbaijan SSR, neither during the sovietization of Azerbaijan, nor after the establishment of the Soviet power in Armenia, when Baku recognized all disputed

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6. Knowing that the July 5 decision could be disputed because of procedural errors, Baku decided to "fix" the true story. In 1989, a publication of documents and materials on the history of the creation of the Nagorno-Karabagh Autonomous Region the following text was included as an addition to the decision: "Vote: Yes-4, Abstentions-3". In their haste, the "editors" in Baku had forgotten that the Plenary Session had nine members and that, according to its own voting rules, four votes were not enough to pass a decision.

territories as Armenian. On the other hand, with or without procedural violations, the legitimacy of this forum is seriously questioned. The decision of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolsheviks is an unprecedented legal act in the history of international law: the political party of a third country, with no legal power or jurisdiction, decided the status of the territory of Nagorno-Karabagh.

On July 7, 1923, Soviet Azerbaijan's Central Executive Revolutionary Committee established the Nagorno-Karabagh Autonomous Oblast /Region/ (NKAO) only on the Armenian populated part of its territory and artificially shifted the capital from Shushi to Khankendi. As a result, the Nagorno-Karabagh Autonomous Oblast was totally isolated from the Armenian SSR and deprived of a common border.

During the Sovietization period the issue of the legal status of the NKAO was discussed in 1977 in the framework of the nation-wide discussions of the new USSR Constitution. In the Session Protocol of the Presidium of the Council of Ministers of the USSR of November 23, 1977, it was mentioned that *"As a result of a number of historic circumstances, Nagorno-Karabagh was artificially annexed to Azerbaijan several decades ago. In this process, the historic past of the oblast [region], its ethnic composition, the will of its people and economic interests were not taken into consideration. Decades passed, and the Karabagh problem continues to raise concern and cause moments of animosity between the two peoples, who are connected with ages-old friendship. Nagorno-Karabagh (Armenian name - Artsakh) should be made part of the Armenian Soviet Socialist Republic. In this case everything will take its legal place"* (See Annex 6).

### 3. Nagorno-Karabagh Under Perestroika

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On February 20, 1988, a session of the Regional Council of delegates of the NKAO adopted a resolution “making an appeal to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR to withdraw the Nagorno-Karabagh Autonomous Oblast from Azerbaijan and transfer it to Armenia”. At the same time, an appeal was sent to the Supreme Soviet of the USSR for the approval of this resolution.

On June 13, 1988, the Supreme Soviet of the Azerbaijan SSR denied the application of the Council of delegates of the NKAO. However, on June 15, 1988, the Supreme Soviet of the Armenian SSR approved Karabagh’s request and decided to appeal to the Supreme Soviet of the USSR for the resolution of the issue.

The European Parliament in its “Resolution on the situation in Soviet Armenia” of July 1988, taking into consideration the historic status of the Nagorno-Karabagh Autonomous Oblast as integral part of Armenia, the arbitrary inclusion of the area within Azerbaijan and the massacre of Armenians in the Azerbaijani town of Sumgait in 1988, condemned the violence employed against Armenians in the Azerbaijan SSR and supported the demand of the Karabagh Armenians for the reunification with the Socialist Republic of Armenia. It also called on the Supreme Soviet of the USSR to study the compromise proposals from the Armenian delegates suggesting that Nagorno-Karabagh be temporarily governed by the central administration in Moscow, temporarily united to the Russian Federation or temporarily placed under the authority of a “presidential regional government” (See *Annex 7*).

On July 18, 1988, the Supreme Soviet of the USSR, citing Article 78 of the 1977 Soviet Constitution, which prohibited any territorial changes to a Union Republic without its consent<sup>7</sup>,

decided to leave Nagorno-Karabagh within the Azerbaijan SSR. By the resolution of the Central Committee of the Communist Party of the Soviet Union of March 24, 1988, and according to subsequent implementation directives of the government, an authorized representative of Moscow was appointed to the territory.

With a view to regulating the existing situation, on January 20, 1989, the Supreme Soviet of the USSR established the NKAO Special Administration Committee which was under the direct supervision of the Soviet Central Government. Thus, the USSR Central Government ascertained Azerbaijan’s inability to exercise formal control over the territory of Nagorno-Karabagh. As a result, the overall supervision of the economy, internal governance bodies, cultural and educational institutions of Nagorno-Karabagh was transferred to the appropriate institutions of the Soviet Union and the Armenian SSR. By the end of 1989, Nagorno-Karabagh was therefore no longer under Azerbaijan’s administrative control and de facto not within the Azerbaijan SSR.

In the summer of 1989, authorized representatives of the people of Nagorno-Karabagh formed a National Council.

On November 28, 1989, the Supreme Soviet of the USSR dissolved the NKAO Special Administration Committee and, on January 15, 1990, decided to replace it with a “Republican Organizational Committee” (Orgkom) of the Azerbaijan SSR.

On December 1, 1989, the Supreme Soviet of the Armenian SSR adopted a resolution calling for the reunification of the Armenian SSR and Nagorno-Karabagh.

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7. Article 78 of the USSR Constitution stated: “The territory of a Union Republic may not be altered without its consent. The boundaries between Union Republics may be altered by mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics”.

On November 23, 1991, the Supreme Soviet of Azerbaijan, having already declared its own independence from the USSR, adopted a law on “Abolition of the Nagorno-Karabagh Autonomous Oblast”<sup>8</sup> (See *Annex 8*). Also, the law called for the renaming of certain Armenian cities, including Stepanakert. Such measures violate international practice, because, in such cases, the opinion of the local population is required via referendum. In doing so, Azerbaijan violated its own law of June 16, 1981, which was adopted to regulate relations between the Azerbaijan SSR and Nagorno-Karabagh. This law prohibited infringement of Nagorno-Karabagh’s borders without the latter’s explicit consent.

On November 28, 1991, the USSR Constitutional Oversight Committee resolution found the USSR Supreme Soviet’s November 28, 1989, decision “On measures to normalize the situation in the Nagorno-Karabagh Autonomous Oblast”<sup>9</sup> unconstitutional, as well as Azerbaijan’s decision of November 23, 1991, abolishing Karabagh’s autonomous oblast. It also revoked the December 1, 1989 Armenian resolution on “Reunification of the Armenian SSR and the Nagorno-Karabagh Autonomous Oblast”. Thus, this resolution restored Nagorno-Karabagh’s pre-1988 status.

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8. The law on abolition of Nagorno-Karabagh Autonomous Oblast was based on the second paragraph of Article 104 and the third paragraph of Article 68 of the 1978 Constitution of the Azerbaijani SSR and on Article 4 of the Constitutional Act on State Independence of the Republic of Azerbaijan (adopted on October 18, 1991).

9. The USSR Constitutional Oversight Committee found that the decision of November 28, 1989, hindered the restoration of the constitutional bodies of authority and government in the Nagorno-Karabagh Autonomous Oblast and hindered the realization of the rights of people of Nagorno-Karabagh as provided by Articles 39 and 48 of the Constitution of the USSR, which determine the principle of general, equal and private electoral right.

## 4. Rejection of Soviet Legal Heritage by the Republic of Azerbaijan

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On August 30, 1991, the Azerbaijan SSR's Supreme Soviet adopted a Declaration on "Re-establishment of the State Independence of the Republic of Azerbaijan" as it existed in 1918-1920<sup>10</sup>.

On October 18, 1991, the Republic of Azerbaijan confirmed its independence by the adoption of its Constitutional Act on State Independence, which politically and legally meant that the Azerbaijan SSR withdrew from the USSR. This Constitutional Act forms an inseparable part of the 1995 Constitution of Azerbaijan (amended by the 2002 referendum). The same Constitutional Act considered the establishment of the Soviet power in Azerbaijan as "annexation by the Soviet Russia" which "overthrew Azerbaijan's legal government". Thus, the Republic of Azerbaijan declared the establishment of the Soviet power in Baku illegal, and rejected the whole Soviet political and legal heritage. The Constitutional Act reads as follows:

*"... Article 2. The Republic of Azerbaijan is the successor of the Azerbaijani Republic, which existed from May 28, 1918 till April 28, 1920.*

*Article 3. The treaty on the establishment of the USSR of December 30, 1922 is considered not valid in the part related to Azerbaijan from the moment of signing it.*

*All questions arising from the relations with sovereign states included in the Union SSR are subject to regulation by treaties and agreements.*

*Article 4. The Constitution of Azerbaijan of 1978 is in force so far as it does not contradict the provisions of this Constitutional Act.*

*All previous acts that were in force in Azerbaijan before the proclamation of the state*

*independence will be in force so far as they do not contradict the sovereignty and territorial integrity of Azerbaijan and are not abolished or changed by the order determined by law. Until the adoption of appropriate laws of the Republic of Azerbaijan, the list of the USSR laws being in force in the territory of Azerbaijan is subject to determination by the Parliament of the Republic of Azerbaijan.*

*... Article 15. On the Territory of the Republic of Azerbaijan, Azerbaijan's Constitution and laws have exclusive legal force.*

*The legislative power is limited to the Constitution of the Republic of Azerbaijan; the executive and judicial powers are limited to the Constitution of the Republic of Azerbaijan and law. The Constitution of the Republic of Azerbaijan should be adopted via referendum held by the decision of the Parliament of the Republic of Azerbaijan among the whole population of the Republic" <sup>11</sup>.*

Baku clearly understood that if it were to accept the Soviet legal heritage (1920-1991), it would have to accept the status of the Nagorno-Karabagh as legal. In that case, the USSR law "On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR" could be applied<sup>12</sup> (See Annex 9).

The Azerbaijan SSR was the only Soviet Republic whose borders were determined by international treaties (the Treaty of Moscow of March 16, 1921, and the Treaty of Kars of October 13, 1921), which were never denounced by Azerbaijan. It is the only Soviet Republic whose territorial integrity loses its basis without these agreements and outside of the Soviet legal heritage.

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10. Declaration of the Supreme Soviet of the Azerbaijan Republic on "Re-establishment of the State Independence of the Azerbaijan Republic", Bakinski Rabochi, August 31, 1991.

11. Constitutional Act on the State Independence of the Azerbaijani Republic", Baku, 7.11.1991.

12. See the Part 5. "Sovereignty of Nagorno-Karabagh Under Domestic Legislation of the Former USSR".

When the Republic of Azerbaijan rejected the Soviet legal heritage in 1991, the international subject to which the territories were passed in 1920 ceased to exist. By rejecting the legal heritage of the Azerbaijan SSR of 1920-1991, the Republic of Azerbaijan has lost all claims to the territories passed to Soviet Azerbaijan in July, 1921 - namely Nagorno-Karabagh- even if the latter's act of transfer was legitimate<sup>13</sup>.

As for the norm of Article 4, paragraph 2, of the Constitutional Act stipulating that all previous acts being in force in Azerbaijan before gaining state independence will be in force as far as they do not contradict the sovereignty and territorial integrity of Azerbaijan, it can be regarded as an abstract and discriminatory norm, which is a legal

fiction. Also, this norm contradicts the provisions of Article 15 proclaiming that the Constitution and laws of Azerbaijan have exclusive legal force on the territory of the Republic of Azerbaijan.

Furthermore, from spring 2008 until fall 2009, the Republic of Azerbaijan conducted an international celebration of the 90th anniversary of the establishment of the Democratic Republic of Azerbaijan, the creation of Azerbaijani armed forces and the parliament, the 90 year achievements of Azerbaijani diplomacy, etc. These celebrations were devoted to affirming the fact that the Republic of Azerbaijan is the legal and political successor of the Democratic Republic of Azerbaijan of 1918-1920.

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13. See Part 2. "Sovietization period".

## 5. Sovereignty of Nagorno-Karabagh Under Domestic Legislation of the Former USSR

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In the USSR, the legal status of the Nagorno-Karabagh Autonomous Oblast (NKAO) was determined within a unique legal framework under the absolute legal force of the USSR Constitution. It was demonstrated by the primary references to the USSR Constitution in all Laws concerning the NKAO. Particularly, the law “on the Nagorno-Karabagh Autonomous Oblast” of June 16, 1981 (amended as of July 22, 1982, June 27, 1985 and April 14, 1986) of the Azerbaijan SSR (Articles 1 and 2) defined the status of the NKAO first of all in compliance with the USSR Constitution, then in accordance to the Constitution of the Azerbaijan SSR. The National Deputies’ Council of the NKAO was assigned as the only state authority delegated to exercise state, economic, social, and cultural activities in the territory of the NKAO (Articles 10 to 13).

The issue of the borders of the NKAO was guaranteed by the same principle as that holding in the case of a Union Republic; specifically, Article 3 of the Law stated that: “*the territory of the Autonomous Oblast may not be altered without the consent of the National Deputies’ Council of the Nagorno-Karabagh Autonomous Oblast*”. Legally, it means that the NKAO had the same degree of jurisdiction over its territory and borders as the Azerbaijan SSR had over its territory and borders. There is, however, an important difference between the two respective entities in terms of their ability to make territorial changes. Jurisdiction of the NKAO over its territory was exclusive since the authority to change the territory or the borders was granted solely to the National Deputies’ Council of the NKAO; neither the authorities of the USSR nor those of the Azerbaijan SSR had any jurisdiction to interfere. In contrast, any changes to the borders of the Azerbaijan SSR were dependent on the votes of the Armenian deputies elected to the Supreme Soviet of the Azerbaijan SSR.

Likewise the Union Republics, representatives of the NKAO, within fixed quotas,

were also engaged in the works of the highest bodies of the Soviet Union: according to the provisions of Article 110 of the USSR Constitution, five deputies from the NKAO were elected to the Council of Nationalities of the USSR. Thus, within the USSR legal system, the NKAO and the Azerbaijan SSR, were entities having extremely similar legal status in terms of the key attributes of statehood.

On September 2, 1991, Nagorno-Karabagh, in compliance with domestic Soviet law, initiated the process of independence through the adoption by the local councils of Nagorno-Karabagh of the “Declaration of Independence of the Republic of Nagorno-Karabagh”<sup>14</sup>. This act was in full conformity with the existing law. The Soviet law of April 3, 1990 “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR”- particularly Articles 1, 3, 4, 6, 7, 8, 12 and 19 - provided that the secession of a Soviet Republic from the body of the USSR allows an autonomous region within the territory of the same republic to trigger its own process of independence.

Laws adopted by the Supreme Soviet were at the highest level in the Soviet normative hierarchy and had an absolutely binding character for all the members of the USSR. At the time of adoption of the law, and for more than a year thereafter, Azerbaijan was a member of the Union and thus still bound by its provisions.

On December 10, 1991, the Republic of Nagorno-Karabagh held its own referendum on independence in the presence of international observers and media representatives<sup>15</sup>. This referendum was in conformity with Article 3 of the Soviet law “On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR”, which stipulated that Referendum on independence in a Union Republic that “*includes autonomous republics,*

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14. This Declaration proclaimed the Republic of Nagorno-Karabagh within the present borders of Nagorno-Karabagh Autonomous Oblast and adjacent Shahumian region.

15. The observers were the representatives of the former Union Republics, deputies of Supreme Soviets of the USSR, RSFSR, MosSoviet, and representatives of various international organizations and foreign states.

*autonomous regions or any type of similar distinct territories within its borders, referendums may be conducted separately in each of the autonomies...”.*

A total of 82.2 percent of Karabagh’s registered voters participated in the elections and overwhelmingly (99 percent in favor of independence, 107,648 persons) supported Nagorno-Karabagh’s independence from the already seceded Republic of Azerbaijan. As a result, Nagorno-Karabagh was the only autonomous region of the USSR that gained independence according to existing domestic legislation.

Following the results of the referendum, on December 12, 1991, an act “On the Results of the Referendum on Independence of the Republic of Nagorno-Karabagh” was adopted and signed by independent observers, which confirmed the fact that the preparatory, organizational and implementation procedures were carried out in conformity with the previously adopted “Interim Provisions on Organization of a Referendum in Nagorno-Karabagh Republic”. According to this act, no violations were recorded by the observers during voting, delivery of bulletins and vote count.

On December 10, 1991, the Central Electoral Committee of the Nagorno-Karabagh Republic adopted an “Act on Referendum”, which confirmed the fact that 22,747 persons of Azerbaijani origin who did not participate in the referendum were previously notified and given the appropriate documents on the referendum. It also stated that the military units of Stepanakert, because of political considerations, did not participate in the referendum. The Act recorded no grievances regarding any violations in the organization of the referendum.

On December 28, 1991, Parliamentary elections were held in the Republic of Nagorno-Karabagh.

On January 6, 1992, the Supreme Council of the Republic of Nagorno-Karabagh adopted the

“Declaration on State Independence of the Republic of Nagorno-Karabagh” with a view to regulating relations between the Azerbaijani and Armenian nations, ensuring the right of people for self-determination and reiterating Nagorno-Karabagh’s experience of self-governance as it existed during 1918-1920. This Declaration and the Universal Declaration of Human Rights formed the basis for the elaboration of the Constitution and Legislation of the Nagorno-Karabagh Republic.

On January 8, 1992, the National Assembly of the Nagorno-Karabagh Republic adopted the Constitutional Law “On Basic Principles of the State Independence of the Nagorno-Karabagh Republic”, which proclaimed the Nagorno-Karabagh Republic an independent, democratic state, that independently defines the forms of cooperation with other states. According to the provisions of this law, the territory of the Nagorno-Karabagh Republic may not be altered without the consent of the National Assembly of the Nagorno-Karabagh Republic based on the free will of its population via referendum. The borders of the Nagorno-Karabagh Republic with other states may be changed by mutual agreements of the concerned sides. The constitutional and legal status of the Nagorno-Karabagh Republic may not be altered without the consent of the National Assembly of the Nagorno-Karabagh Republic.

On September 20, 1992, the National Assembly of the Republic of Nagorno-Karabagh petitioned the United Nations, the Commonwealth of Independent States, and individual countries to recognize the Nagorno-Karabagh Republic.

The Resolution of the European Parliament “On Support for the Peace Process in the Caucasus” of June 21, 1999, recognizes the fact that the “*Autonomous Region of Nagorno-Karabagh declared its independence following similar declarations by former Soviet Socialist Republics after the collapse of the USSR in September, 1991*”<sup>16</sup> (See Annex 10).

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16. Official Journal of the European Communities, C 175/251.

## 6. Compliance of Azerbaijan's Policy of Ethnic Cleansings with International Law

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Throughout its rule over Nagorno-Karabagh, the authorities of the Azerbaijani SSR pursued a systematic policy of ethnic cleansings that hampered the social and economic development of Karabagh, thus using the region only as a supplier of raw materials<sup>17</sup>. The authorities of the Azerbaijan SSR allocated almost no funds for the development of road infrastructure in the Nagorno-Karabagh Autonomous Oblast (NKAO), thereby making it fully dependent upon the infrastructures of the surrounding Azerbaijani regions.

Measures hampering the social and economic development of the NKAO were combined with a policy of discrimination against Armenians: obvious and brutal interventions into spiritual and cultural life of Armenians, systematic insults and harassment of their national dignity. Many Armenian schools, churches, and monasteries were shut down, and priests were prosecuted<sup>18</sup>. Historical documents proving Armenians as being the native population of Karabagh were intentionally altered. Radio and television broadcasts from Yerevan were banned. Even the Armenian cultural and historical heritage of Karabagh was ignored and systematically destroyed. Quotas allocated to the Union Republics for seats in higher education institutions were never granted to the NKAO, and Karabagh Armenians who had received higher education in the Armenian SSR were denied employment anywhere within the entire territory of the Azerbaijan SSR.

Azerbaijan's discrimination towards Nagorno-Karabagh had its impact on the welfare of its Armenian population and became a major migration factor. As a result, the Armenian population declined: while Armenians constituted 94.4 per cent of the entire population of Nagorno-

Karabagh in 1923, their numbers dropped down to 76.9 percent of the population by 1989. Meanwhile, the Azerbaijani population of Nagorno-Karabagh increased several times as its growth was predominantly sustained by the influx from Azerbaijan: in 1923, Azerbaijanis constituted 3 per cent of the population of the area, and by 1989 their number increased up to 21.5 percent<sup>19</sup>.

An obvious example of the discriminatory policy of the Azerbaijan SSR was the July 7, 1923 decision of Soviet Azerbaijan's Central Executive Revolutionary Committee "On the creation of the Autonomous Oblast of Nagorno-Karabagh" which breached the geographical and ethnic borders of the Autonomous Oblast that had been determined by the July 4, 1921 decision of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolsheviks, and formed the Autonomous Oblast of Nagorno-Karabagh only on the Armenian populated part of its territory.

Furthermore, under the terms of Item 2 of the November 24, 1924 decision "On the Status of the Autonomous Oblast of Nagorno-Karabagh", the official language for executive functions, judicial processes, and education within the region was declared to be an undefined "native language" rather than Armenian (the language of the vast majority of the population).

This discriminatory policy of the authorities of the Azerbaijan SSR violated domestic legislation, particularly the law of the Azerbaijan SSR on "Nagorno-Karabagh Autonomous Oblast" of June 16, 1981 (amended as of July 22, 1982, June 27, 1985 and April 14, 1986). The provisions of this law guaranteed the equality of all citizens of the NKAO in economic, political, cultural and social spheres regardless of their educational, linguistic,

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17. "The people's economy of the Azerbaijan SSR" confirms that per capita investments in Nagorno-Karabagh in 1981-1985 were 2 times less than the average in Azerbaijan, and in 1986, this number declined to 2.7 times less than the average.

18. In comparison to 1931 when there were 112 churches and 18 monasteries operating in the NKAO, from 1932 to 1989 there was no single functioning church or monastery. Between 1955-1988, numerous appeals by His Holiness Vazgen I, Supreme Patriarch and Catholicos of All Armenians, to the authorities of the Azerbaijan SSR to have a single operation monastery in Nagorno-Karabagh were rejected. (See the newspaper "Communist", 30 March 1990 "Interview with the Bishop Pargev Martirosian of Artsakh diocese).

19. For more details see "The Reproduction and Migration of the Population of Armenia in XIX-XX Centuries", V.Khobjabekyan, Yerevan, 2002.

sexual, racial, religious, ethnic particularities, and social origin. It also allowed citizens to freely use their native language or any other language of the nations of the USSR. In addition, the law laid out clear responsibilities for the planning and execution of a social and economic development program for the NKAO that was an integral part of the State Development Plan of the Azerbaijan SSR.

Azerbaijan's policy of ethnic cleansings also contradicts the main principles of modern international law. Policies of forcibly removing a population violate many international human rights documents that provide direct and indirect protection against ethnic cleansings<sup>20</sup>, including the right of everyone to life and freedom, to maintain property, liberty of movement, etc. These rights have been also endorsed by the decisions of the European Court of Human Rights. Moreover, many international documents consider mass deportation as a demonstration of racial, religious and other discrimination. Particularly, the Committee on the Elimination of Racial Discrimination (CERD)<sup>21</sup> in its Decision 2 (47) on the situation in Bosnia and Herzegovina of 17 August 1995 declared that "any attempt to change or to uphold a changed demographic composition of an area, against the will of the original inhabitants, by whichever means is a violation of international law"<sup>22</sup>. Ethnic cleansings were also condemned by the Tokyo and Nuremberg Trials, as well as in accusations laid against Serb leaders by the UN. In the framework of the UN<sup>23</sup>, forced mass displacement is considered a crime against humanity and falls under the jurisdiction of the International Criminal Court<sup>24</sup>.

Thus, references made in all documents forming the legal basis for the creation of the Republic of Nagorno-Karabagh, particularly the "Declaration of Independence of the Republic of Nagorno-Karabagh" of September 2, 1991, to the policy of apartheid and discrimination carried out by the authorities of Azerbaijan, which have resulted in creation of an atmosphere of hate and intolerance against Armenians all over the country, and caused armed conflict, human losses and mass deportations of the peaceful population of the Armenian settlements, are the most important arguments for the independence of the Republic of Nagorno-Karabagh.

Armenian cultural and historical heritage of Karabagh was also subject to a discriminatory policy. Armenian monuments of Karabagh comprised a vast majority in the territory of the Azerbaijan SSR (accounted almost 11,000 monuments)<sup>25</sup>. However, decision of the Council of Ministers of the Azerbaijan SSR of April 2, 1968, that affirmed the list of 591 monuments being under the state protection, contained only 25 Armenian monuments and solely from the territory of the NKAO and without having mentioned their distinguishing national belonging<sup>26</sup>.

The discriminatory policy of the authorities of the Azerbaijan SSR towards the cultural and historical heritage of Karabagh was carried out in the following ways:

- the Armenian monuments intentionally were not mentioned in all official publications, directories and guidebooks,
- national, cultural and religious belonging of the Armenian monuments was misrepresented<sup>27</sup>,

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20. The Universal Declaration of Human Rights of 1948 (Articles 1, 2, 7), the International Covenant on Civil and Political Rights of 1966 (Articles 2 and 26).

21. The Committee monitors implementation of the International Covenant on Elimination of All Forms of Racial Discrimination (1966); examines the initial and periodic reports of the State Parties and makes relevant recommendations. On 27 September 2001 the Government of the Republic of Azerbaijan declared that it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the above-mentioned Convention.

22. A/50/18, 1995, para. 26.

23. See the UN Security Council 771 (1992), 780 (1992), 808 (1993), 820 (1993), 941 (1994) and General Assembly 46/242 and 47/80 Resolutions.

24. See the Rome Statute of the ICC of July 17, 1998, Article 7.

25. Newspaper "Communist", "The Stance on the Past as a Pledge for the Future" L.Barsegyan, A.Grigoryan, 07 October 1989.

26. "Haykakan banber" periodical, N 3/171, February 1991.

27. In 1960-1970 the unscientific theory elaborated by the National academy of Sciences of the Azerbaijan SSR "proved" the belonging of all Christian monuments of the country to the "Caucasian Albanians". Decision N145 of the Council of Ministers of the Azerbaijan SSR of April 27, 1988, affirmed the list of the cultural and historical monuments of the Nagorno-Karabagh Autonomous Oblast describing them as Albanian and consequently of Azeri origin.

- the Armenian cultural and historical monuments were systematically and deliberately obliterated, all forms of vandalism were encouraged<sup>28</sup> (several Armenian masterpieces were demolished, particularly the Complex of Dadivank, Monasteries of Amaras and Khalankhatuik, caves of Azokh and Major Taghlar, etc.),

- during renovation works, the Armenian monasteries were turned into Muslim buildings (as in 1970s the Church of St.Sargis of Andcak),

- Soviet and foreign expeditions examining the Armenian historical and cultural monuments were hindered or denied at a state level.

Azerbaijan's policy of vandalism violated the USSR legislation, particularly Article 27 of the 1977 USSR Constitution, which guaranteed the protection, augmentation and extensive utilization of society's cultural wealth for the moral and aesthetic education of the Soviet people, for raising their cultural level, and encouraged the development of the professional, amateur and folk arts in every way.

Azerbaijan also violated international instruments recognizing the duty of a state to ensure the identification, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage situated on its territory, in times of peace and war. The protection of cultural property, comprised of safeguarding and respecting such property, is provided for in the following international documents:

- the 1899 and 1907 Hague Conventions and, in particular, Articles 27 and 56 of the Regulations of the 1907 Fourth Hague Convention<sup>29</sup>;

- the Roerich Pact on Protection of Artistic and Scientific Institutions and Historic Monuments (April 15, 1935)<sup>30</sup>;

- Article I (2) of the UNESCO Constitution that entrusts the organization with the task of maintaining, increasing and diffusing knowledge by "*assuring the conservation and protection of the world's inheritance of books, work of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions*"<sup>31</sup>;

- the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (May 14, 1954, Hague Convention) and its two Protocols<sup>32</sup> (May 14, 1954 and March 26, 1999) and the Additional Protocols I and II to the Four 1949 Geneva Convention<sup>33</sup>;

- the European Cultural Convention (May 5, 1955)<sup>34</sup>;

- the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations (December 5, 1956);

- the UNESCO Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (November 19, 1968);

- the UNESCO Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (November 16, 1972);

- the UNESCO Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (November 26, 1976);

28. Barbaric destruction of the Armenian monuments of Karabagh were witnessed by various researchers, particularly by outstanding researcher of the Armenian architecture Samvel Karapetian's "the Armenian Cultural Monuments in the Region of Karabagh" (Yerevan, 2000) and the British researcher Tomas de Waal's "Black Garden" (Moscow, 2005) works.

29. Azerbaijan is not a party to these Documents.

30. Azerbaijan is not a party to this Document.

31. Azerbaijan has been a member of UNESCO since June 3, 1992.

32. Azerbaijan is a party to these Documents (to both the Convention and I Protocol since September 20, 1993, and to Protocol II since April 17, 2001).

33. Azerbaijan is a party to the Convention, but not to its two Protocols.

34. Azerbaijan acceded to this Convention on April 25, 1997.

- the UNESCO Declaration of Principles of International Cultural Co-operation (November 4, 1966);
  - the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (November 14, 1970)<sup>35</sup>;
  - the European Convention on the Protection of the Archaeological Heritage (November 20, 1970; revised as of January 16, 1992)<sup>36</sup>;
  - the UNESCO Convention concerning the Protection of World Cultural and Natural Heritage (November 16, 1972)<sup>37</sup>;
  - the International Covenant on Economic, Social and Cultural Rights (Article 15) (January 3, 1976)<sup>38</sup>;
  - the Convention for the Protection of the Architectural Heritage of Europe (October 3, 1985)<sup>39</sup>;
  - the European Convention on Offenses Relating to Cultural Property (June 23, 1985)<sup>40</sup>;
  - the Europe Landscape Convention (October 20, 2000)<sup>41</sup>;
  - the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (October 17, 2003);
  - the Articles 8(2) (b) (ix) and 8 (2) (e) (iv) of the Rome Statute of the International Criminal Court, and, as appropriate, Article 3 (d) of the Statute of the International Criminal Tribunal for the former Yugoslavia, related to the intentional destruction of cultural heritage;
  - the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression (October 20, 2005)<sup>42</sup>;
  - the Council of Europe Framework Convention on the Value of Cultural Heritage (October 27, 2005)<sup>43</sup>;
  - UN General Assembly Resolutions on "Culture and Development": 41/187 (December 8, 1986), 46/158 (December 19, 1991), 51/179 (December 16, 1996), 52/197 (December 18, 1997), 53/184 (December 15, 1998), 55/192 (December 20, 2000) and 57/249 (December 20, 2002);
  - UN General Assembly Resolutions 53/22 on the United Nations Year of Dialogue among Civilizations (November 4, 1998) and 56/6 on the Global Agenda for Dialogue among Civilizations containing the Programme of Action (November 9, 2001);
  - UN Declaration and Programme of Action on a Culture of Peace Resolutions 53/243 A and B (September 13, 1999);
  - UN General Assembly Resolution 55/254 on the Protection of Religious Sites (June 11, 2001);
  - UN General Assembly Resolution 56/8 to proclaim the year 2002 as the United Nations Year for Cultural Heritage to raise awareness of the importance of protecting the world cultural heritage (December 4, 2001).
- All studies show that the strongest argument for Nagorno-Karabagh's self-determination is the fact that the state of Azerbaijan, in all aspects, not only failed to provide any framework for Nagorno-Karabagh's free and democratic development, but also, at a state level, planned and systematically pursued a policy of ethnic cleansing, thus hampering the social and economic development of Nagorno-Karabagh.

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35. Azerbaijan ratified this Convention on August 25, 1999.

36. Azerbaijan is not a party to this Convention.

37. Azerbaijan has been a party to the Convention since December 16, 1993.

38. Azerbaijan is a party to the Convention from November 13, 1992.

39. Azerbaijan has signed the Convention on December 2, 2008.

40. Azerbaijan is not a party to this Convention.

41. Azerbaijan has signed the Convention on October 22, 2003.

42. Azerbaijan is not a party to this Convention.

43. Azerbaijan is not a party to this Convention.

## 7. Does Azerbaijan's internal Legislation on Nagorno-Karabagh Comply with International Law?

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On November 23, 1991, the Republic of Azerbaijan annulled Karabagh's Autonomy. In doing so, Azerbaijan violated its own law on "Nagorno-Karabagh Autonomous Oblast" of June 16, 1981 (amended as of July 22, 1982, June 27, 1985 and April 14, 1986), which states that the territory of the NKAO may not be altered without the consent of National Deputies' Council of the NKAO. Furthermore, the law clearly defines that the law on Nagorno-Karabagh Autonomous Oblast should be adopted by the Supreme Soviet of the Azerbaijan SSR at the proposal of the National Deputies' Council of the NKAO. Azerbaijan, having once abolished the autonomous status of Nagorno-Karabagh, has also restricted the scope of autonomy in its basic law - i.e. the 1995 Constitution (amended as of August 24, 2002) - by requiring that the state should be "unitary".

Currently, the protection of human rights, particularly the attitude of a government towards its people, does not constitute exclusively an internal affair of the respective state, but is a matter of a legitimate international concern.

The Republic of Azerbaijan, by abolishing the autonomous status of Nagorno-Karabagh without its peoples' consent and stipulating in its Constitution that the Republic of Azerbaijan shall not yield its territory, or part of it, in any form, to anyone, and the borders can be specified only by the Parliament on the basis of the will of the Azerbaijani people, without the consent of ethno-territorial entities, violated the requirements of the basic international norms on the matters of the right of self-determination of peoples.

In doing so, the Republic of Azerbaijan has violated the Articles 1, 55, and 73 of the United Nations Charter which recognizes the fundamental principles of "equal rights and self-determination of peoples". This was also in

contradiction with the whole spirit of Chapter XI of the declaration regarding non-self-governing territories. The character of the right of self-determination was also recognized in the following United Nations Conventions and documents:

- UN Resolution 1514 of December 14, 1960;
- UN Resolution 1541 of December 15, 1960;
- International Covenant on Civil and Political Rights of December 16, 1966;
- International Covenant on Economic, Social and Cultural Rights of December 16, 1966;
- UN General Assembly Declaration on "Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations" (October 24, 1970);
- International Court of Justice advisory opinions, (Western Sahara Case on the Right for Self-determination of January 3, 1975; the Frontier Dispute Case (Burkina Faso V. Mali) of December 22, 1986; the Case concerning East Timor of June 30, 1995);
- General Comment No. 12 of the International Covenant on Civil and Political Rights<sup>44</sup>;
- Vienna Declaration and Programme of Action, adopted by World Conference on Human Rights on June 25, 1993;
- UN General Assembly Declaration on "Universal Realization of the Right of Peoples to Self-determination" (December 20, 1993);

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44. "The right to self-determination of peoples not only recognizes that all peoples have the right of self-determination, but imposes specific obligations on States parties to promote the realization of the right of self-determination, and to respect that right, in conformity with the provisions of the Charter of the United Nations", General Comment N12: The right to self-determination of peoples (Art. 1)13/03/84.

- International Labor Organization (ILO) Conventions #107 and #169 (Article 1[3]), 1998);

- UN Resolution 55/85 of December 4, 2000;

- UN Resolution on the "Universal Realization of the Right of Peoples to Self-Determination" of December 18, 2009<sup>45</sup>.

In particular, based on the Declaration of October 24, 1970, the UN General Assembly indicated that the right of territorial integrity takes precedence over the right to self-determination only so long as the state possesses "a government representing the whole people belonging to the territory without distinction as to race, creed or color".

In the case of Quebec's unilateral secession from Canada, the Supreme Court of Canada stated that only the state whose government represents the whole of the peoples lived within its territory, on a basis of equality and without discrimination and respects the principles of self-determination in its internal arrangements, has right to maintain its territorial integrity under international law. People living in such states have no right to secede from the state without the agreement of the state's government. The Canadian Court found that the people of Quebec were not denied any such right of democratic self-government and respect for human rights, so unilateral secession from Canada would not have been permissible under international law<sup>46</sup>. Thus, the Supreme Court of Canada by its Decision on Quebec's unilateral secession, legally affirmed those conditions, under which unilateral secession can be considered legitimate under international law.

The case for secession becomes even stronger when the claimant group has attained de facto independence<sup>47</sup> (the case of Aaland Islands).

The character of the right of self-determination was also recognized in the CSCE Helsinki Final Act (August 1, 1975) and the OSCE Istanbul Charter on European Security (November 19, 1999).

The binding nature of the right of self-determination of the people of Nagorno-Karabagh is also recognized within the framework of the peace negotiation process of the OSCE Minsk Group, particularly in the statement of the Minsk Group Co-chairs and Foreign Ministers of the Republic of Armenia and the Republic of Azerbaijan of December 1, 2009, and in the ministerial statement of the 17th OSCE Ministerial Council of December 2, 2009, adopted in Athens, that endorsed the peaceful settlement of the Nagorno-Karabagh conflict, based on the principles of the Helsinki Final Act of Non-Use of Force or Threat of Force, Territorial Integrity, and the Equal Rights and Self-Determination of Peoples.

In the modern world, there are more and more cases of the application of the right to self-determination in one form or another both by conflicting parties and by the international community to prevent or to settle the existing conflicts. Within just the last decade, this option has been chosen in the cases of East Timor, Northern Ireland, Southern Sudan, Serbia and Montenegro, Puerto Rico, Western Sahara, Namibia, Eritrea, Fiji, Bougainville and Papua New Guinea, Bosnia, Kosovo, and elsewhere.

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45. Azerbaijan was among 50 and more co-sponsor countries to this Resolution.

46. Secession of Quebec, [1998] 2 S.C.R. 217 (<http://csc.lexum.umontreal.ca/en/1998/1998scr2-217/1998scr2-217.html>)

47. See Chapter 8 "Independent State of Nagorno-Karabagh under International Law".

## 8. Independent State of Nagorno-Karabagh Under International Law

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This study has demonstrated that the independence of the Republic of Nagorno-Karabagh was conducted in conformity with the requirements of internal and international legal norms. Simultaneously, to this legal process, the Republic of Nagorno-Karabagh has successfully established all the attributes and structures necessary for the formation of an independent state.

The former autonomous oblast of the USSR has become an independent state with its own political structures and principles, executive and legislative authorities, armed forces, and emblems. During the twenty years of its existence, the Republic of Nagorno-Karabagh has shown its capacity to maintain and strengthen the national security and economic development of the country, and has repeatedly demonstrated that it is ready, willing, and able to conduct wider international participation.

According to the principles of international law, an entity can be considered an independent state if it possesses the following attributes:

- a defined territory;
- permanent population;
- a permanent administration, organized under common political institutions, exercising exclusive jurisdiction on a defined territory and people;
- a government engaged in discussions with foreign states.

Some sources of international law regard "state recognition" as another condition for the establishment of an independent state. However, this approach is not a generally accepted norm; it can thus be considered a declarative statement, indicating the readiness of a state to recognize a self-declared state, and establish direct international and legal relations with it. This was demonstrated by the practices of several states,

such as the United Kingdom and the United States of America.

**Defined territory:** The Republic of Nagorno-Karabagh has a "defined territory". It exercises its sovereign jurisdiction on a defined territory with its borders and is capable of providing security and normal living conditions to its citizens. This also proves Nagorno-Karabagh to be a politically independent factor in the region.

**Permanent population:** The vast majority of people of the Republic of Nagorno-Karabagh constitute a homogenous group with historic ties to its territory. The population of the Republic of Nagorno-Karabagh is about 140,100 with 95% Armenians and 5% minorities. On November 18, 1995, the President promulgated the "Law on the Main Principles of Nationality of Nagorno-Karabagh".

**Permanent administration organized under common political institutions:** On September 9, 1996, the National Assembly of the Republic of Nagorno-Karabagh established a Commission for the Elaboration of the Constitution presided by the President of the country. On December 10, 2006, in the presence of local and international observers, the Constitution of the Nagorno-Karabagh Republic was adopted via a nation-wide referendum as a symbol of an independent statehood that guarantees the protection of individual and citizen's rights and freedoms and regulates the state affairs<sup>48</sup>. The Constitutional referendum was monitored by independent observers (See *Annex 11*). The Constitution proclaimed the Republic of Nagorno-Karabagh as a sovereign, democratic state based on social justice and the rule of law, where the state power shall be exercised in accordance with the principles of division and balance of the three branches of the power and separation of authorities between

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48. From 90,077 registered citizens of the Nagorno-Karabagh Republic 78,369 (87.02%) participated in the Constitutional referendum. 77,279 voters or 98.58% of the participants voted in favor of the adoption of the Constitution.

the state and local self-government. The establishment and procedure of activities of the Office of Ombudsman are also provided for in the Constitution.

Nagorno-Karabagh is a Republic with a presidential governing system. This form of governance was introduced in November 1994. Universal direct presidential elections were held on November 24, 1996, and the Acting President, Robert Khocharyan, became the first democratically elected President of the Republic. On September 1, 1997, during extraordinary presidential elections, the Minister of Foreign Affairs of the Nagorno-Karabagh Republic, Arkadi Ghoukasyan, was elected as the second President of the Republic (by 89.32% of the votes). On August 11, 2002, Ghoukasyan was re-elected (88.95% of the votes). During the most recent presidential elections, on July 19, 2007, Bako Sahakyan was elected as a President of the Nagorno-Karabagh Republic (by 85.1% of votes). The presidential elections were monitored by local and international observers (*See Annex 12*).

The National Assembly is the highest legislative body of the Nagorno-Karabagh Republic. It is comprised of 33 deputies, elected to five-year terms. The National Assembly has three fractions. There are six standing committees<sup>49</sup>.

The regular parliamentary elections were held in December 1991, June 1995, June 2000, and June 2005. The electoral procedures have been improved, particularly following the adoption of the new Electoral Code of the Nagorno-Karabagh Republic on December 8, 2004. The most recent elections of the National Assembly of the Nagorno-Karabagh Republic took place on May 23, 2010. More than 100 international observers from 14 countries, including Canada,

Russia, Armenia, Argentina, the Netherlands, Germany, the Czech Republic, Denmark, Ireland, France, and the United States monitored these elections (*See Annex 13*). A dozen local observers also took part in the monitoring process.

Since 1991, the National Assembly of the Nagorno-Karabagh Republic has adopted a series of laws necessary for the foundation and functioning of the country's political structures, executive, and judicial authorities. These include the Law on Education, Law on Military Service, Law on Police, Law on Television and Radio, Law on Tax Service, Law on NKR Budget System, Law on Civil Defense, Laws on the NKR Government, Law on Census, Law on Language, Law on Children's rights, Law on Public Organizations, Law on Maintenance of historic and cultural monuments and historical territories, Law on Mass media, Law on defense, Law on Civil service, Law on refugees, Law on Tourism, Law on Ombudsman, Electoral Code, etc.

According to the provisions of the Constitution of the Nagorno-Karabagh Republic and the Decree of the President "On the Organizational Structure of the Government of the Nagorno-Karabagh Republic" of June 25, 2008, the Government of the Nagorno-Karabagh Republic is comprised of the Prime Minister, the Deputy Prime Minister and the Ministers. The Government is comprised of 11 Ministries<sup>50</sup> and 11 adjunct bodies to the Government<sup>51</sup>.

Local governance has been operating in the Nagorno-Karabagh Republic since the adoption of the law on "Elections of Bodies of Local Governance" by the National Assembly on January 28, 1998. The first elections were held on September 27, 1998. Subsequent regular elections were held on September 5, 2001, August 22, 2004, and October 14, 2007.

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49. Standing committees of Defense, Security, and Public Order, Finance, Budget and Economic Management Affairs, Foreign Affairs, Production and Production Infrastructure, Social Welfare Affairs, State and Legal Affairs.

50. Ministries of Health, Justice, Foreign Affairs, Agriculture, Education and Science, Culture and Youth Affairs, Defense, Social Welfare, Economic development, Urban Planning and Finance.

51. National Security Service, State Committee of Real Estate Cadastre, Department of Industrial Infrastructures, Tourism Department, Department of Capital Construction, State Tax Service, Department of Environment and Natural Resources, NKR Police, Department of Water Industry, State Committee of Sport, Rescue Service.

The economy of the Nagorno-Karabagh Republic has been developing since the ceasefire of 1994, with agriculture forming the largest sector. Large-scale reconstructions are being carried out in the country. The country has its own budget system and currency (since 1993, the Armenian dram has been the official currency). A law adopted by the National Assembly regulates the budget of the country. The law on "Property" of February 1995 regulates property issues.

Starting from 2000 the introduced tax reforms in the Nagorno-Karabagh Republic significantly reduced tax and mandatory social security contributions, the share of the shadow economy, and created normal conditions for the promotion of foreign investments. The NKR state budget annually allocates large sums for the development of small and medium enterprise as the most important component for the social and economic development of the country.

**Government engaged in discussions with foreign states:** On September 20, 1992, the National Assembly of the Nagorno-Karabagh Republic petitioned the United Nations, the Commonwealth of Independent States, and individual countries for recognition of the Nagorno-Karabagh Republic.

Thus far, the Government of the Nagorno-Karabagh Republic has been engaged in discussions with foreign states. The Nagorno-Karabagh Republic has representative offices in the United States of America, France, Russia, Lebanon, Germany, Australia and Armenia.

The Government of the Nagorno-Karabagh Republic has also brought its constructive participation in negotiations for the peaceful settlement of the conflict. A series of documents on the peaceful settlement of the conflict adopted in various international forums and numerous mediation efforts of individual States contain the signatures of officials of the Nagorno-Karabagh Republic, while the Republic of Azerbaijan still rejects any direct talks with Nagorno-Karabagh<sup>52</sup>.

Though, starting from 1992, the authorities of the Republic of Azerbaijan held regular direct contacts with the authorities of the Nagorno-Karabagh Republic, and also a series of trilateral negotiations under the Russian mediation took place in 1993-1994 in Moscow, between the top political leadership and representatives of the Defence Ministries of the Republic of Azerbaijan, the Nagorno-Karabagh Republic and the Republic of Armenia<sup>53</sup>.

The active involvement of Nagorno-Karabagh in the process of Peace negotiations within the CSCE/OSCE framework is witnessed by the First Additional Meeting of the CSCE Council held in Helsinki on March 24, 1992, which decided to convene a conference on Nagorno-Karabagh and invited the legitimate authorities of Nagorno-Karabagh to the Conference as an interested party: "Elected and other representatives of Nagorno-Karabagh will be invited to the [Minsk] Conference as interested parties by the Chairman of the Conference after consultation with the States participating at the Conference"<sup>54</sup>.

52. These documents include: the Zheleznovodsk Communiqué of September 23, 1991, issued after official talks held in Zheleznovodsk, Russia, at the initiative of the Russian and Kazakh Presidents; The Sochi Agreement of 19 September 1992, signed by the defense authorities of Azerbaijan, Nagorno-Karabagh and Armenia, which calls for cessation of all military activities for two months; A military-technical protocol on the implementation of the Sochi Agreement signed on 25 September 1992, in Moscow; the Timetable of Urgent Steps proposed by the Chairman of the CSCE Minsk Group of September 1993, in which Nagorno-Karabagh appears as a side to the conflict for the first time; the Bishkek Protocol of May 5, 1994, signed at negotiations of the Speakers of Parliaments of Armenia, Azerbaijan and Nagorno-Karabagh; and the Agreement on cease-fire, mediated by the Russian Federation on 12 May 1994, and signed by the Ministers of Defense of Armenia and Azerbaijan and the Commander of the Nagorno-Karabagh armed forces.

53. As a result, several agreements were reached on reciprocal cessation of artillery bombardments and offensive military operations, prolongation of the ceasefire regime, mutual release of the detained women and children, and other issues.

54. Helsinki Additional Meeting of the CSCE Council – 24 March 1992 – Summary of Conclusions, p. 14 ([http://www.osce.org/documents/mcs/1992/03/4150\\_en.pdf](http://www.osce.org/documents/mcs/1992/03/4150_en.pdf)).

The participation of Nagorno-Karabagh in the OSCE Minsk process also enshrined in other relevant OSCE documents: the OSCE Budapest Summit 1994 Document<sup>55</sup>, where the participating States welcomed the affirmation of the ceasefire agreement reached on May 12, 1994, by the parties to the conflict (Azerbaijan, Nagorno-Karabagh and Armenia) and announced their readiness to deploy multinational CSCE peacekeeping force, and reached an agreement on the creation of the High-level Planning Group of the OSCE; and the March 31, 1995 statement of the OSCE Chairman-in-Office<sup>56</sup>, which

confirmed the previous OSCE decisions on the status of the parties to the conflict, and provided for the participation of the two member States involved in the conflict and Nagorno-Karabagh as a third party to the conflict, as well as the Minsk Conference in the whole process of negotiations.

In addition, the OSCE Minsk Group Co-Chairs, during their regional trips, travel to the Republic of Nagorno-Karabagh and meet with the Karabagh authorities.

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55. [http://www.osce.org/documents/mcs/1994/12/4050\\_en.pdf](http://www.osce.org/documents/mcs/1994/12/4050_en.pdf)

56. [http://www.osce.org/documents/cio/1995/03/16057\\_en.pdf](http://www.osce.org/documents/cio/1995/03/16057_en.pdf)

## Concluding Remarks

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This study has reached a number of conclusions:

- Never in history Azerbaijan had a complete and effective sovereignty over the whole region. At any given moment since 1918, when the first Azeri state was established, such sovereignty can be at least disputed. The international community- the League of Nations in particular- never recognized the Republic of Azerbaijan of 1918-1920, arguing that it was impossible to determine the frontiers of the territories within which the government of Azerbaijan exercised its authority.

- The domestic legislation of Azerbaijan on Nagorno-Karabagh, particularly the abolition of the autonomous status of Nagorno-Karabagh without its people's consent, violates the basic international norms on the matter of the rights of peoples for self-determination.

- In 1991, Nagorno-Karabagh initiated the process of its independence in compliance with the domestic legislation of the USSR. After the collapse of the Soviet Union, two states were formed: the Republic of Azerbaijan - on the

territory of the Azerbaijan SSR - and the Republic of Nagorno-Karabagh - on the territory of the Nagorno-Karabagh Autonomous Region /Oblast/. The establishment of both States has a similar legal basis; therefore, the establishment of Nagorno-Karabagh Republic, on the basis of its peoples' right to self-determination, should not be considered within the scope of territorial integrity of the Republic of Azerbaijan.

- In 1991, Azerbaijan, rejecting the Soviet legal heritage of 1920-1991 and affirming the fact that the Republic of Azerbaijan is the successor of the Republic of Azerbaijan of 1918-1920, lost all pretensions to the territories passed to Soviet Azerbaijan in July 1921, namely Nagorno-Karabagh, even if the latter's transfer was legitimate. Therefore, the Nagorno-Karabagh Republic was formed on territories over which the Republic of Azerbaijan had no sovereignty.

- The establishment of the Nagorno-Karabagh Republic was carried out in conformity with the principles and attributes required by international law for the creation of an independent state.

## ANNEX 1

### List of Legal Acts and Materials on Nagorno-Karabagh

1. Provisional agreement on Nagorno-Karabagh status signed between the Seventh Assembly of Armenians of Karabagh and the government of Democratic Republic of Azerbaijan (August 22, 1919);
2. Telegram of the Chairman of the Armenian National Soviet of Nagorno-Karabagh addressed to the Chairman of the Armenian delegation in Moscow (June 9, 1920);
3. League of Nations: Secretary-General's Memorandum on the Application for the Admission of the Republic of Azerbaijan to the League of Nations, 20/ 48/108 (November 1920);
4. Declaration of the Soviet Government of Azerbaijan on recognition of Nagorno-Karabagh, Zanghezour and Nakhichevan as part of Soviet Armenia (November 30, 1920);
5. League of Nations Assembly document 206, fourth meeting (December 1, 1920);
6. "Declaration Regarding the Establishment of Soviet Power in Armenia" of the Azerbaijan's Revolutionary Committee (December 2, 1920);
7. "Letter from the President of the Peace Delegation of the Azerbaijan Republic" (December 1920);
8. League of Nations, Record of the first Assembly, Meeting of the Committees II, Geneva, (1920);
9. Declaration of the National Council of the Azerbaijan SSR proclaiming Nagorno-Karabagh as an integral part of Armenian SSR (June 12, 1921);
10. Plenary Session Protocol of the Caucasian Bureau of the Russian Communist Party-Bolsheviks (July 4, 1921);
11. "Letter from the President of the Peace Delegation of the Azerbaijan Republic" N-955 (September 4, 1921);
12. Declaration of the Soviet Azerbaijani Central Executive Revolutionary Committee on Establishment of the Nagorno-Karabagh Autonomous Oblast (July 7, 1923);
13. Provision on Nagorno-Karabagh Autonomous Oblast (November 26, 1924).
14. The USSR Constitution (1924);
15. The USSR Constitution (1936);
16. The USSR Constitution (October 7, 1977);
17. The Constitution of the Azerbaijan SSR (April 21, 1978);
18. Law of the Azerbaijan SSR on "Nagorno-Karabagh Autonomous Oblast" (June 16, 1981);
19. Resolution of the Regional Council of delegates of the NKAO making an appeal to the Supreme Soviets of the Azerbaijan SSR and Armenian SSR to withdraw the NKAO from Azerbaijan and transfer it to Armenia (February 20, 1988);
20. The European Parliament Resolution "On the Situation in Soviet Armenia" (July 1988);
21. Resolution of the Presidium of the Supreme Soviet of USSR on the Establishment of the NKAO Special Administration Committee (January 20, 1989);
22. The USSR Supreme Soviet Presidium's decision on abolishing certain provisions of the Azerbaijan SSR Supreme Soviet decision "On measures to normalize the situation in Nagorno-Karabagh Autonomous Oblast" (December 4, 1989);
23. Soviet law "On the Competencies of Regional and District National Deputies Councils of USSR Autonomous Regions and District Deputy Councils";
24. Soviet law "On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR" (April 3, 1990);
25. Azerbaijan SSR Supreme Soviet Declaration on "Re-establishment of the State Independence of the Republic of Azerbaijan" (August 30, 1991);
26. Declaration of Independence of the Republic of Nagorno-Karabagh (September 2, 1991);
27. Constitutional Act on State Independence of the Republic of Azerbaijan (October 18, 1991);

## ANNEX 1: List of Legal Acts and Materials on Nagorno-Karabagh

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28. Azerbaijan Supreme Soviet law on the "Abolition of the Nagorno-Karabagh Autonomous Oblast" (November 23, 1991);
29. Resolution of the USSR Constitutional Oversight Committee (November 28, 1991);
30. Act "On Referendum of 10 December 1991 in Nagorno-Karabagh";
31. Declaration on State Independence of Nagorno-Karabagh (January 6, 1992);
32. Constitutional Law "On Basic Principles of the State Independence of the Nagorno-Karabagh Republic" (January 8, 1992);
33. Law on "President of Nagorno-Karabagh" (December 21, 1994);
34. Law on "Government of Nagorno-Karabagh" (December 22, 1994);
35. Law "On the Nagorno-Karabagh Parliament" (December 22, 1994);
36. Law of the Nagorno-Karabagh Republic on "Property" (February 14, 1995);
37. Law on "Main Principles of Nationality of Nagorno-Karabagh" (November 18, 1995);
38. Constitution of the Republic of Azerbaijan (adopted on November 12, 1995, came into force on November 27, 1995);
39. Law of the Nagorno-Karabagh Republic "On Language" (March 20, 1996);
40. Law of the Nagorno-Karabagh Republic "On Children's Rights" (July 19, 1996);
41. Decrees of the President of the Nagorno-Karabagh Republic of 24 December 1996, 29 October 1997, 12 January 2005 and 25 June 2008 on the composition of the government;
42. Law of the Nagorno-Karabagh Republic "On Elections of Bodies of Local Governance" (January 28, 1998);
43. European Parliament Resolution "On Support for Peace Process in the Caucasus" (March 11, 1999);
44. Law of the Nagorno-Karabagh Republic "On Maintenance of Historic and Cultural Monuments and Historical Territories" (May 20, 1999);
45. Law of the Nagorno-Karabagh Republic "On Defense" (November 30, 2002);
46. Law of the Nagorno-Karabagh Republic "On Public Organizations" (December 30, 2002);
47. Law of the Nagorno-Karabagh Republic "On Civil Service" (December 27, 2003);
48. Law of the Nagorno-Karabagh Republic "On Refugees" (December 29, 2003);
49. Law of the Nagorno-Karabagh Republic "On Mass Media" (November 10, 2004);
50. "Electoral Code" of the Republic of Nagorno-Karabagh (December 8, 2004, amended as of May 22, 2007);
51. Law of the Nagorno-Karabagh Republic "On Tourism" (December 17, 2004);
52. Law of the Nagorno-Karabagh Republic "On Ombudsman" (March 9, 2005);
53. Constitution of the Nagorno-Karabagh Republic (December 10, 2006);
54. Statement of the Minsk Group Co-chairs and Foreign Ministers of the Republic Armenia and the Republic of Azerbaijan (December 1, 2009);
55. Ministerial statement of the 17th OSCE Ministerial Council (December 2, 2009);
56. Interparliamentary Assembly on Orthodoxy Resolution "On the preservation of Armenian Christian spiritual and cultural monuments in the region and the peaceful resolution of the Nagorno-Karabagh issue" (June 30, 2010).

## ANNEX 2

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### League of Nations Memorandum on the Application for the Admission of the Republic of Azerbaijan to the League of Nations

#### **Memorandum by the Secretary General**

By a letter dated 1st November 1920(1), the Secretary-General of the League of Nations was requested to submit to the Assembly of the League an application for the admission of the Republic of Azerbaijan to the League of Nations. This letter issues from the Azerbaijan Delegation attending at the Peace Conference, which has been in office at Paris for more than a year. The Members of the Delegation now at Geneva state that their mandate is derived from the Government which was in power at Baku down to the month of April last. It may be convenient to recall briefly the circumstances, which preceded the establishment of this Government.

#### *Establishment of the State of Azerbaijan*

The Transcaucasian territory in which the Republic of Azerbaijan has arisen appears to be the territory which formerly composed the Russian provinces of Baku and Elisabethopol. It is situated on the shore of the Caspian Sea, which forms its boundary towards the east. Its northern boundary is the frontier of the province of Daghestan; on the north-east it is coterminous with the area known as the Northern Caucasus, on the west with Georgia and Armenia and on the south with Persia. Its population according to the last Russian statistics, is estimated at 4.615.000 inhabitants, including 3.482.000 Musulman Tartars, 795.000 Armenians, 26.580 Georgians and scattered minorities of Russians, Germans and Jews. It may be interesting to note that this territory, occupying a superficial area of 40.000 square miles, appears to have never formerly constituted a State, but has always been included in larger groups such as the Mongol or Persian and since 1813 the Russian Empire. The name Azerbaijan which has been chosen for the new

Republic is also that of the neighbouring Persian province.

#### *First Federal Period*

On the collapse of the Russian power in the Caucasus in the month of October 1917, the people of this region, Tartars of Azerbaijan, Georgians and Armenians, united to form a sort of Federal Republic under common government with a Federal Chamber of representatives. In consequence of serious disagreements, this Transcaucasian Federation was dissolved on the 26th May 1918 at Tiflis, where its Parliament held its meetings.

#### *Second Period: Independent Republic*

On the following day, May 28th, the Republic of Azerbaijan was proclaimed at Tiflis. Fatali Khan Koiski was named President of the Government, and it appears to have been agreed at that time that the Musulman members of the former Federal Chamber, together with the members of the Musulman Council, should constitute the provisional Parliament. The Government of the new Republic thus composed was transferred from Tiflis to its own territory, but was not able to take possession of its capital-Baku until the 14 September, 1918, after this town had been evacuated by the Bolshevik forces retreating before the Germano-Turk invasion. Ultimately a Parliament of 120 members was elected by universal suffrage and the executive power was entrusted to a responsible Ministry composed of notabilities of the district of Baku.

On the 17 of November, 1918, General Thomson, at the head of British troops, and representing the Allied and Associated Powers, entered Baku. He appears on his entry to have

considered the Government in power in the town as only a local authority. He formally announced that he occupied the territory in perfect agreement with the new Russian Government and without prejudging the rights of Russia in the district. On the 28th December, 1918, however, General Thomson proclaimed that the Government of the Republic of Azerbaijan would henceforth constitute the sole regular local government and that the Allies would guarantee their support to it. The constitution of the Republic appears none the less to have been somewhat obscure during and after the British occupation.

The Government of Azerbaijan was at Paris during the Peace Conference and obtained on the 12th January, 1920, at the same time as the Republic of Georgia and Armenia, de facto recognition from the Supreme Council. It should be noted, however that the Government of the US didn't associate itself with this recognition.

*Third Period: Dispersal of the Government*

On the 25th April, 1920, Bolshevik disturbances occurred at Baku and compelled the authorities of the Republic of Azerbaijan to take fight. Certain members of the Government, who fell into the hands of the revolutionary forces, were put to death. The army of the Republic was dispersed. According to information furnished by the delegation now in Geneva, the territory traversed by the railways still continues to be in the possession of the Bolsheviks, with the exception of the district between Elisabethopol and the Georgian frontier. A considerable portion of the territory not so occupied is, however, understood to be still under the administration of the Government of the Republic of Azerbaijan, some departments of which are said to be at Elisabethopol, while others are said to have

emigrated to Tiflis. The army is understood to be divided, certain units being in the Northern part and others in the Southern district of the country. Communication with Georgia is maintained, but communication between the Republic and its Persian and Armenian neighbours is understood to be suspended in consequence of the occupation on the Caspian side and the recent invasion of the Kemalists. The Republic of Azerbaijan is accordingly at the moment deprived of all the resources which it drew from the exploitation of petroleum, of the fisheries of the Caspian Sea and the transit trade. Its administration can only be carried on by precarious means, and its executive and control organs maintain connection with difficulty with the central Government, which is itself for the moment dispersed.

*Juristic observations*

The conditions governing the admission of the Members to the League of Nations are prescribed in Article 1 of the Covenant, which is in the following terms: "The original Members of the League shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice there of shall be sent to all other Members of the League. "Any fully self-governing State, Dominion or Colony not named in the Annex may become a Members of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by

the League in regard to its military, naval and air forces and armaments. *“Any Member of the League may, after two years’ notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.”*

The application made by the Azerbaijan Peace Delegation for the admission of Azerbaijan to the League of Nations appears to raise from the purely legal point of view two questions upon which it will be necessary for the Assembly to pronounce. The territory of Azerbaijan having been originally part of the Empire of Russia, the question arises whether the declaration of the Republic in May 1918 and the recognition accorded by the Allied Powers in January 1920 suffice to constitute Azerbaijan de jure a “full self-governing State” within the meaning of Article 1 of the Covenant of the League of Nations. In this connection it should perhaps be noted that this recognition is only claimed by the Azerbaijan Delegation to have been given de facto and that it was given only by Great Britain, France, Italy and Japan, but was refused by the USA.

Should the Assembly consider that the international status of Azerbaijan as a “fully self-governing State” is established, the further question will arise whether the Delegation by whom the present application is made is held to have the necessary authority to represent the legitimate government of the country for the purpose of making the application, and whether that Government is in a position to undertake the obligations and give the guarantees involved by membership of the League of Nations.

## ANNEX 3

### League of Nations: An Extract from the Journal N17 of the First Assembly

(Geneva 1920)

(Page 139)

*“Azerbaijan. The Committee decided that though the request of Azerbaijan to be admitted was in order, it was difficult to ascertain the exact limits of the territory within which the Government of Azerbaijan exercised its authority. Frontier disputes with the neighbouring States did not permit of an exact definition of the boundaries of Azerbaijan. The Committee decided that the provisions of the Covenant did not allow of the admission of Azerbaijan to the League under present circumstances”.*

League of Nations: Letter from the President of the Peace Delegation of the Republic of Azerbaijan.

#### *Note by the Secretary-General:*

The Secretary-General has the honour to forward herewith to the Members of the League of Nations the following letter dated the 7th December, which he has received from the President of the Azerbaijan Peace Delegation.

Republic of Azerbaijan  
Peace Delegation  
Geneva  
December 7th, 1920.

To His Excellency M. Paul Hymans,  
President of the First Assembly of the League of Nations, Geneva.

Sir,

At its Fourth Meeting on December 1st, the Fifth Committee elected by the Assembly of the League of Nations arrived at the conclusion that it was impossible to admit the Republic of Azerbaijan to the League of Nations.

This conclusion, as will be seen from the Report contained in No. 17 of the Journal, page 139, is based upon the facts:

1. That it is difficult to determine precisely the extent of the territory over which the Government of this State exercises its authority.
2. That, owing to the disputes with neighbouring States concerning its frontiers, it is not possible to determine precisely the present frontiers of Azerbaijan.

The Committee decided that the provisions of the Covenant do not allow of Azerbaijan being admitted to the League of Nations under the present circumstances. Will you allow me, on behalf of the Delegation of the Republic of Azerbaijan, of which Delegation I am the President, to present to the Assembly of the League of Nations, through your intermediary, the following observations relating to the two arguments brought forward by the Fifth Committee.

I

The Committee, in the first place, refers to the difficulty of defining the frontiers of the territory over which the Government of Azerbaijan exercises its authority. The Delegation takes the liberty of pointing out to the Assembly of the League of Nations that the difficulty referred to by the Committee being only of a temporary and provisional nature, cannot and must not be considered to affect this question in any real or decisive sense. It is an undisputed fact that, until the invasion of the Russian Bolsheviks on April 28th, 1920, the legal Government of Azerbaijan

exercised its authority over entire territory of the Azerbaijan Republic, without exception, within the present boundaries as indicated in the map submitted to the Secretary-General of the League of Nations. After this invasion, part of the territory was occupied by the Bolsheviks; and with their Government at their head, the Azerbaijani people, concentrated in the town of Gandja, began a bloody struggle against the Bolsheviks, thanks to which, the latter gradually evacuated almost all the territory which they had occupied. At the present time, they hold only the town of Baku and surrounding districts, and occupy but a small part of the railway as far as the station of Adji-Kaboul. All the rest of Azerbaijan, including part of the districts of the provinces of Baku and Kauba, as well as all the districts of the former province of Elisabetopol, is in the hands of the Government of Azerbaijan, which has its headquarters in the town of Gandja, where there is also a section of the Parliament which was dispersed by the Bolsheviks, and part of the Army. This is equivalent to nine-tenths of the territory of Azerbaijan, within its present boundaries; and the Government of Gandja, which is the legal Government of Azerbaijan, is able to give sufficient guarantees that it will fulfill all its obligations of an international character, in conformity with the Covenant of the League of Nations. The Delegation makes bold to assure the Assembly of the League of Nations that the struggle carried on by the people of Azerbaijan, headed by their Government, against the Russian Bolsheviks, will be continued with unflagging energy until Baku and the surrounding districts are delivered from the invaders.

Our people will never come to terms with the Bolsheviks, whom they look upon as usurpers who must be swept away.

We may say in passing, that so obvious a peril as Bolshevism threatens not only Azerbaijan, but the whole of the Caucasus. It has overrun the whole of the Northern Caucasus and Kouban, as well as the bordering State of Armenia, which has just been declared a Soviet Republic.

## II

The second objection raised by the Committee relates to disputes outstanding between Azerbaijan and the neighbouring States of Georgia and Armenia. With regard to this point, the delegation has the honour to draw the attention of the Assembly to the fact that it is almost impossible to name a new State whose frontiers are absolutely undisputed. On the contrary, we see that not only new States, but even States which have been in existence for centuries, have had, and still have, frontier disputes; but these disputes don't cause them to be deprived of their sovereign rights over their own territory. The Republic of Azerbaijan, in defending the integrity of her territory against all aggressions is obliged to come into conflict with Georgia over the districts of Zakatal, and with Armenia over Karabagh and Zanghezour. These territories form part of Azerbaijan, and are administered by the Azerbaijan Government; the provinces of Karabagh and Zanghezour were left under Administration of Azerbaijan by the decision of a former Allied representative in the Caucasus. In any case, these disputes concern not only Azerbaijan but also the neighbouring States which on their part have caused these disputes. But the Republic of Azerbaijan has always taken the view that these frontier disputes with the neighbouring Republics of Georgia and Armenia were only questions of domestic interest for the Republics concerned, and that the

interested Governments would find a way of settling these disputes by mutual concessions. If, however, this hope should not be realized and if the disputes can't be settled on the spot, the Delegation of Azerbaijan has no doubt but that the three Trans-Caucasian republics will apply to the League of Nations, as can be seen in the text printed by the Delegation of Azerbaijan in its political memorandum (Republic of Azerbaijan, page 44) which was submitted to the Peace Conference in September, 1919, and also in the seventh point of the Notes which the Delegation presented, of November 25th, 1920, (No. 697), to the Secretary-General of the League of Nations with reference to his memorandum No. 108 upon the admission of the Republic of Azerbaijan into the League of Nations. The Delegation firmly believes that, in spite of the aforesaid disputes which were thrust upon Azerbaijan, this country, so richly favoured by nature, will be able to guarantee the fulfillment of all the obligations of an international character which are imposed by the Covenant upon Members of the League of Nations.

The Delegation of Azerbaijan, on behalf of the vital interests of its country, which has twice suffered from the attacks of the Russian Bolsheviks, has the honour to declare to Members of the League of Nations that the

admission of the Republic of Azerbaijan to the League of Nations would furnish it with that moral support so urgently need by our people in their struggle against the Bolsheviks - a people which alone, without any foreign aid, has been engaged, for more than six months, in a bloody struggle in order to save the independence of Azerbaijan. In the hope that this appeal for moral support will attract the attention of the Honourable Representatives of the peoples taking part in the Assembly, I have the honour to beg you to be good enough to have the above statement read to the Assembly, at the time of the discussion of the above-mentioned conclusions of the Fifth Committee, with regard to the admission of the Azerbaijan Republic to the League of Nations.

***I have the honour to be  
(Signed) A. U. Toptchibacheff,  
Head of the Peace Delegation  
of the Republic of Azerbaijan.***

## ANNEX 4

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### League of Nations: An Extract from the Records of the First Assembly. The Meetings of the Committees. Fourth Committee

(Page 173)

#### **20. APPLICATION OF AZERBAIJAN FOR ADMISSION TO THE LEAGUE**

Dr. NANSEN (Norway) then read his Report upon the request for admission submitted by the Republic of Azerbaijan (page 219). The request for admission appeared to have been drawn up in due form. It was submitted by the Azerbaijan Delegation appointed by the Government, which had been in power at Baku until April last. It was next pointed out in the Report that it was difficult to form an opinion as to the extent of territory over which the Government, which had been exiled from Baku, still exercised authority. Another Government was in power at Baku. The frontier disputes with Georgia and Armenia made it impossible to ascertain with certainty whether the boundaries of the State of Azerbaijan could be considered as definitely established. This State obtained de facto recognition from England, France and Italy in January, 1920.

Finally, Dr. Nansen asked whether it would be possible to admit to the League of Nations a State which did not appear to fulfill all the conditions laid down in the Covenant, in particular, those concerning stability and territorial sovereignty, and which, further, had not been recognized de jure by any Member of the League of Nations.

Mr. BENES (Czechoslovakia) quite agreed. He thought it would be difficult under present circumstances to admit Azerbaijan to the League. The Government of this State was not stable, its frontiers appeared to be ill defined, and, further, formed the subject of disputes with its neighbours. The provisions of the Covenant did not permit the admission of Azerbaijan under present conditions.

The Czecho-Slovakian Delegate moved that Azerbaijan be not admitted under present conditions.

Lord Robert CECIL (South Africa), supported the motion of Mr. BENES. Azerbaijan did not appear to him as a State, which could be considered free and capable of giving the necessary guarantees.

The motion of Mr. BENES was unanimously adopted by the Committee in the following terms:

*“That the Committee, after having considered the Report of the Sub-Committee with regard to Azerbaijan’s request for admission to the League of Nations, reports unfavourably with regard to its admission and refers the question back to the Assembly”.*

## ANNEX 5

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### **Declaration of the Revolutionary Committee of the Azerbaijan SSR on Recognition of Nagorno-Karabagh, Zanghezour and Nakhichevan as an Integral part of the Armenian SSR**

Unofficial translation

November 30, 1920  
To ALL, ALL, ALL!

On behalf of the Soviet Socialist Republic of Azerbaijan, we declare to the Armenian people the decision of the Revcom [Revolutionary Committee] of Azerbaijan of November 30:

*“The Workers-Peasants Government of Azerbaijan, having received the message on the declaration of the Soviet Socialist Republic in Armenia on behalf of the rebelling peasantry, welcomes the victory of the brotherly people. From this day on, the former borders between Armenia and Azerbaijan are announced abrogated. Nagorno-Karabagh, Zanghezour and Nakhichevan are recognized as an integral part of the Armenian Socialist Republic.*

*Long live brotherhood and union of the workers and peasants of Soviet Armenia and Azerbaijan!*

*Narimanov  
Chairman of the Revcom of Azerbaijan*

*Guseinov  
the Peoples Commissar on Foreign Affairs”.*

*Newspaper “Communist”, December 7, 1920, Yerevan (Armenian publication).*

## ANNEX 6

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### **An Extract from the Session Protocol of the Presidium of the Council of Ministers of the USSR of November 23, 1977**

Unofficial translation  
(61:11-4133)

The Session of the Presidium of the Council of Ministers of the USSR included in its Protocol the following:

*“... As a result of a number of historic circumstances, Nagorno-Karabagh was artificially annexed to Azerbaijan several decades ago. In this process, the historic past of the oblast [region], its ethnic composition, the will of its people and economic interests were not taken into consideration. Decades passed, and the Karabagh problem continues to raise concern and cause moments of animosity between the two peoples, who are connected with ages-old friendship. Nagorno-Karabagh (Armenian name Artsakh) should be made part of the Armenian Soviet Socialist Republic. In this case everything will take its legal place.”*

## ANNEX 7

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### European Parliament Resolution on the Situation in Soviet Armenia

The European Parliament,

A. having regard to the recent public demonstrations in Soviet Armenia demanding that the Nagorno-Karabagh region be reunited with the Republic of Armenia,

B. having regard historic status of the autonomous region of Nagorno-Karabagh (80% of whose present population is Armenian) as part of Armenia, to the arbitrary inclusion of this area within Azerbaijan in 1923 and to the massacre of Armenians in the Azerbaijani town of Sumgait in February 1988,

C. whereas the deteriorating political situation, which has led to anti-Armenian pogroms in Sumgait and serious acts of violence in Baku, is in itself a threat to the safety of the Armenians living in Azerbaijan.

1. Condemns the violence employed against Armenian demonstrators in Azerbaijan;

2. Supports the demand of the Armenian minority for reunification with the Socialist Republic of Armenia;

3. Calls on the Supreme Soviet to study the compromise proposals from the Armenian delegates in Moscow suggesting that Nagorno-Karabagh be temporarily governed by the central administration in Moscow, temporarily united to the Federation of Russia or temporarily placed under the authority of a "presidential regional government";

4. Calls also upon the Soviet authorities to ensure the safety of the 500,000 Armenians currently living in Soviet Azerbaijan and to ensure that those found guilty of having incited or taken part in the pogroms against the Armenians are punished according to Soviet law;

5. Instructs its President to forward this resolution to the Council, the Commission and the Government of the Soviet Union.

(d) Joint resolution replacing Docs. B2-538 and 587 88  
Source: Official journal of the European Communities, No. C 94/117, July, 1988.

## ANNEX 8

### **The Law of the Republic of Azerbaijan on "Abolition of Nagorno-Karabagh Autonomous Oblast of the Azerbaijan Republic"**

Unofficial translation

The Supreme Soviet of the Republic of Azerbaijan, proceeding from the sovereign right of the Azerbaijan Republic to take decisions on issues concerning the formation of its own nation-state:

- Recognizing the illegitimacy of the creation of the Nagorno-Karabagh Autonomous Oblast in 1923 as a factor contradicting the national interests of the Azerbaijani people and promoting a deepening ethnic dissension between the Azerbaijani and Armenian peoples; aimed at breaking the economic and communication infrastructure of the largest natural-ecological region of Azerbaijan - Karabagh, used by Armenian nationalists for violent eradication on the territory of all ethnic, historical, political, economic and spiritual attributes, which unconditionally gives evidence that Nagorno-Karabagh is a genuine part of Azerbaijan;

- Thus, taking into account that for more than half a million ethnic Azerbaijanis residing in the Armenian SSR at the time of its formation, have created no ethnic-cultural autonomy; and in the succeeding years the population was deported in Armenia where, in fact, not a single Azerbaijani remained;

- Considering that the policy conducted by the Armenian authorities is directed at the annexation from Azerbaijan of its genuine historical territory and transformation of Nagorno-Karabagh Autonomous Oblast into the tool of such policy, which really threatens the sovereignty and territorial integrity of the Republic of Azerbaijan;

- Realizing that the further preservation of an ethnic-territorial entity for the small group of Armenian population in the Azerbaijan Republic entails escalation of violence towards the Azerbaijani population, reinforcement of criminal actions of the Armenian warlords, formed by the extremists, both local and delegated from the territory of Armenia, for mass murders, robberies, arsons, destruction of property of ethnic Azerbaijani population residing on their own territory;

- Understanding historical responsibility towards present and future generations of the Azerbaijani people for preservation and development of a sovereign Azerbaijani State and its integrity;

- Proceeding from the necessity of complete restoration of the sovereign rights of the Azerbaijan Republic in the mountainous area of Karabagh, disarmament of the illegally created armed groups, protection of the rights, freedom and dignity of the citizens of the Azerbaijan Republic, and the settlement of the inter-ethnic relations;

- Based on the will expressed by the peoples of Azerbaijan, hereby decides that:

1. According to the Article 3 (paragraph 2) and the Article 10 of the Constitution of the Azerbaijan Republic, the Article 4 of the Constitutional Act "On State Independence of the Azerbaijan Republic" the Nagorno-Karabagh Autonomous Oblast of the Azerbaijan Republic is abrogated as an ethnic-territorial entity. The

**ANNEX 8: he Law of the Republic of Azerbaijan on "Abolition of Nagorno-Karabagh Autonomous Oblast of the Azerbaijan Republic"**

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Decree "On the Establishment of the Nagorno-Karabagh Autonomous Oblast" of the Central Executive Committee of Azerbaijan of July 7, 1923 and the Law of the Azerbaijan SSR "On the Nagorno-Karabagh Autonomous Oblast" of June 16, 1981 are being annulled.

2. Historical names of the cities Stepanakert, Martakert, Martuni are restored and consequently renamed as follows: Stepanakert - into Khankendi, Martakert - into Agdere, and Martakert Region into the Agdere Region, city of Martuni - into the city of Khojavend, and the Martuni region - into the Khojavend Region.

3. Askeran and Hadrut Regions are abolished.

4. Khojali Region with Khojali administrative centre is formed; accordingly, the abrogated Askeran Region is being transferred into Khojali Region and the Hadrut Region - into Khojavend Region.

5. the cities of Khankendi and Shusha, as well as the Regions of Agdere, Khojavedi, Khojali and Shushi are included in the list of cities and regions [respectively] being under the jurisdiction of the Republic.

**A. Mutalibov**

President of the Republic of Azerbaijan

Baku  
November 23, 1991.

## ANNEX 9

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### **An Extract from the USSR Law "On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR"**

(April 3, 1990)  
Unofficial translation

... Article 3. In case the Soviet Republic has autonomous republics, autonomous regions or any type of similar distinct territories within its borders, referendums may be conducted separately in each of the autonomies. The people residing in the autonomies are given a right to independently decide whether to remain in the Soviet Union or in the seceding Republic as well as to decide on their state legal status. Referendum results are to be considered separately for the territory of a Soviet Republic with a compactly settled ethnic minority population, which constitutes majority on that particular territory of the Republic.

#### Article 4.

For the purpose of organizing, deciding the dates, and reviewing the results of a secession referendum, the Supreme Soviet of the given Republic is to form a commission with participation of all interested parties, including the ones mentioned in the first and second parts of the Article 3 of this Law.

#### ... Article 6.

Decision of a Soviet Republic to secede from the USSR must be made by means of a referendum if so voted by not less than two-thirds of the citizens of the USSR, who permanently resided on the territory of the Republic and are eligible to vote in accordance with laws of the USSR by the time the decision was made to conduct a referendum on secession from the Soviet Union. The results of the referendum are to be reviewed by the Supreme Soviet of the Soviet Republic. In a republic, which has

autonomous republics, autonomous regions, autonomous territories or territories with compactly settled national minority population as mentioned in Article 3 of the present Law within its borders, the results of the referendum are to be reviewed by the Supreme Soviet of the Soviet Republic jointly with the Supreme Soviet of the autonomous republic and respective Soviets of People's Deputies. The Supreme Soviet of the Soviet Republic submits the results of the referendum to the Supreme Soviet of the USSR.

#### Article 7.

The Supreme Soviet of the Soviet Republic submits the results of the referendum to the Supreme Soviet of the USSR. The Supreme Soviet of the Soviet Republic which has autonomous republics, autonomous regions, autonomous territories or territories with a compactly settled national minority population within its borders as mentioned in second part of Article 3 of the present Law submits the results for each autonomous republic, autonomous region, autonomous territory or territory with a compactly settled national minority population to the Supreme Soviet of the USSR separately along with necessary conclusions and suggestions made by respective state authorities. If it is verified that the referendum is conducted in accordance to the law, the Supreme Soviet of USSR takes it to the Congress of the Peoples Deputies of USSR for review. In case the law is violated during the course of the referendum, the Supreme Soviet of the USSR makes a decision to conduct a second referendum, not later than in the course of three months in a given Republic, or one of its parts, or an autonomous entity, or the

**ANNEX 9: An Extract from the USSR Law "On the Procedures of the Resolution of Problems on the Secession of a Union Republic from the USSR"**

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territory with a compactly settled national minority population as mentioned in the second part of Article 3 of this law.

Article 8.

The Supreme Soviet of the USSR forwards the results of the referendum on secession of a Soviet Republic from the USSR along with the suggestions made by the interested parties to the highest state authorities of all Soviet and autonomous republics as well as to the state authorities of autonomous entities for the purpose of study and evaluation of possible consequences for each Soviet and autonomous republic as well as autonomous entity in the event the actual secession of a respective Soviet Republic from the USSR takes place.

## ANNEX 10

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### European Parliament Resolution "On Support for the Peace Process in the Caucasus"

The European Parliament,

- having regard to its previous resolutions on the Caucasus, in particular those of 18 June 1987(1), 18 January 1990(2), 21 January 1993(3) and 27 May 1993(4),

A. whereas the autonomous region of Nagorno-Karabagh declared its independence following similar declarations by former Soviet Socialist Republics after the collapse of the USSR in September 1991,

B. whereas the war has caused serious humanitarian problems, in particular as a result of the displacement of more than one million persons from Armenia, Nagorno-Karabagh and Azerbaijan,

C. whereas the cease-fire has generally been respected since 1994,

D. whereas Armenia and Azerbaijan have both expressly applied to join the Council of Europe,

E. whereas the strengthening of democracy and respect for human rights are prerequisites for a peaceful solution to the conflict in Nagorno-Karabagh,

F. whereas the presidential elections in Azerbaijan in October 1998 were marked by irregularities and fraud which have been condemned by international observers, and whereas irregularities were also noted during the Armenian presidential elections in March 1998,

G. whereas so far the negotiations on a political solution to the conflict involving Nagorno-Karabagh have not produced a positive outcome,

H. whereas an approach which takes account of all the problems and all the recent political developments in the region is likely to produce a lasting peace,

I. whereas the three Presidents in the Minsk Group representing Russia, the United States and France, who have been instructed by the OSCE to draw up a plan for a lasting peace, have proposed a fair basis for negotiations on a peaceful solution to the conflict;

1. Endorses the peace plan proposed by the Minsk Group;

2. Takes the view that these proposals constitute a basis for discussion likely to end the negotiating deadlock;

3. Calls on the OSCE's Minsk Group to continue its efforts to seek a lasting solution to this conflict;

4. Considers that a strong human rights component should be a part of any verification or observer mission under the auspices of the OSCE sent to Nagorno-Karabagh to ensure a lasting peace and to provide early warning of incidents that could lead to a resumption in the fighting;

5. Considers that aid provided by the European Union to this region must be linked to tangible progress in the areas of human rights and democracy in both countries;

6. Considers that the European Union should increase its assistance under the Tacis-Democracy programme to non governmental organizations in Armenia and Azerbaijan interested in fostering discussion and political education on issues relating to conflict resolution;

7. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe, the Parliamentary Assembly of the OSCE, the Presidents in the OSCE's Minsk Group, the parliaments of Armenia and Azerbaijan and the representatives of Nagorno-Karabagh.

*June 21, 1999  
Official Journal of the European  
Communities, C 175/251*

## ANNEX 11

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### Report on the Results of the Constitutional Referendum of the Republic of Nagorno-Karabagh

(December 10, 2006)

#### SUMMARY

The referendum conducted on December 10, 2006 on the Nagorno-Karabagh Republic (NKR) Constitution meets most of the standards of the OSCE, the Council of Europe and other international structures in terms of democratic elections, equally used for the referenda as well.

The referendum followed the broad and open discussions of the draft Constitution, where the proposals of both local organizations and international experts of Constitutional Law were taken into account.

The broad public confidence, which is typical of an election in the NKR, has impressed greatly.

The campaign was of pluralistic nature and gave an opportunity to all the political parties and unions to show their stance towards the draft Constitution to their electorates. The campaign was exercised mainly via media by having relatively a few numbers of big meetings.

The Central Referendum Commission (CRC) has made praise-worthy efforts to conduct this election in a professional and trustworthy manner and the due respect and honor should be given to the election administration for their endeavors under tough conditions.

Transparent ballot-boxes were used during the referendum that ensured more transparency for the voting.

We have not fixed any significant violations on the very day of the referendum.

The remarks made by the observers and the shortcomings in the work of the referendum commissions, which were rather of a technical nature, were taken into account and the necessary steps were undertaken to eliminate them.

The counting of the votes in the polling stations visited by us was exercised effectively and transparently.

#### INTRODUCTION AND ACKNOWLEDGMENTS

The process of the referendum was observed by more than 100 international observers and journalists from Russia, the USA, France, Armenia, Italy, Croatia, Kosovo, Israel, Serbia, Georgia, the Ukraine, Denmark, the Republics of Abkhazia, South Ossetia, and the Transdnestrian Moldavian Republic. There were also present a great number of correspondents of broadcasting companies like Russia Today, Channel 1 (Russia), Rustavi 2 (Georgia), BBC, France Press, Eurasia Net (USA), Regnum (Russia), Interfax, De-facto, Mediamax, ARKA, Arminfo (Armenia) news agencies and others. Some of them arrived upon the invitation of the NKR Parliament and the CRC.

In our work we have been guided by the Declaration of Principles for International Election Observation of the UN General Assembly, in particular, by the principles of impartiality and fairness.

The observers would like to express their gratitude to the Ministry of Foreign Affairs, to the

Central Referendum Commission, as well as to all the ranks of the authorities for the cooperation and support given during the work of the observers' mission in the referendum. We are grateful also for the detailed information given about the referendum preparation.

### **LEGAL FRAMEWORK**

The conduct of the referendum on the NKR Constitution is legally based on the NKR Election Code and the NKR Law "On Referendum". In accordance with the above mentioned laws, the Central Election Commission was entrusted with the functions of the Central Referendum Commission.

The draft Constitution was prepared by the Constitutional Commission. Later on two readings were held in the NKR National Assembly. The adoption of the draft Constitution in the first reading was followed by the public discussion of the draft, which resulted in getting a great number of proposals, including 127 proposals from the fractions and parliamentary groups, independent MPs, as well as from the NGOs and some citizens. Due to the regulation all the proposals within the fixed period of time were submitted to the head of the Working Group of the Constitutional Commission and were discussed with the commission representatives. As a result, the finalized draft was submitted to the Parliament for a second reading. On November 1, 2006 the NKR Parliament adopted the draft Constitution in the second reading. The MPs made a decision to bring the document to referendum, the date of which was appointed by a corresponding decree of the President of the Republic.

On November 3, 2006 the NKR President Arkady Ghoukassian signed the Decree "On appointing a referendum on the NKR Draft

Constitution", according to which the nation-wide voting on the draft Basic Law of the State was fixed for December 10, 2006.

90 thousand citizens of the NKR of 18 and more years old have the right to participate in the voting. The Constitution will be considered as adopted, if not less than a 1/3 of the suffrage-holders vote in favor of it, but more than the half of the ones, that took part in the referendum. Therefore, for a positive outcome, not less than 30 thousand voters are supposed to vote for the adoption.

### **MEDIA COVERAGE**

The media took an active part in the work of clarifying some provisions of the NKR draft Constitution to the population. Films about the technical way of correct voting were periodically shown on the NKR Public TV. Some party representatives and public figures were invited to the studio to discuss the NKR draft Constitution. Broad discussions were held practically among all the NKR publishing and electronic editions. The journalistic communities implemented public opinion polls about the attitude of the population towards the conduct of the referendum. According to these polls the overwhelming majority of them voted in favor of the adoption of the Constitution.

The NKR draft Constitution was printed in a special issue of the official newspaper of the NKR National Assembly "Azat Arstakh", with a large circulation, at a statutory period, i.e. at least 25 days before the day of the Referendum.

### **REFERENDUM CAMPAIGN**

Twenty two election districts and 277 polling stations were formed within the NKR. There was also one district in Yerevan for the NKR citizens,

who were temporarily residing in the Republic of Armenia.

A corresponding preliminary campaign was carried out for familiarization of the population with the general provisions of the NKR draft Constitution via local mass media and television. About 30 thousand brochures with the text of the draft Constitution both in Armenian and Russian were printed and sent to all communities.

The parliamentary fractions "Democracy" and "Motherland" together with the oppositional parliamentary group "ARF Dashnaktsutyun-Movement-88" made a joint statement addressed to the public, and which conditioned the necessity for the adoption of the NKR Constitution by the people of Karabagh. It particularly stated: *"The referendum on December 10, 2006 will make the logical conclusion of the stage of the political self-organization of the society, the start of which was set 15 years ago by the nation-wide will to be independent. The adoption of the NKR Constitution is a challenge of time. It will enable not only to constitutionally fix the basic principles of state power and to outline a new stage of the development of our Republic, but also to create an impulse in forming and developing new and more liberal principles of the government system and civil society building"*.

The representatives of the youth unions and the students in Karabagh took an initiative and made an agitation in favor of adopting the Constitution by covering all the communities within the NKR.

#### **REFERENDUM OBSERVATIONS**

On the very day of the referendum the observers, whose signatures come below, visited

137 polling stations and were present during the counting of the votes in 32 polling stations.

The list of the voters embraced 89.044 people.

The observers were given the opportunity to familiarize themselves, without restriction, with documents, the samples of the ballots, the resolutions of referendum commissions, the journals, as well as receive copies and make extracts from them.

We have not faced any restrictions of our right as observers and mass media representatives, including freedom of movement.

The ballot-boxes were installed in places visible for the persons authorized to be present at the polling stations.

We have not fixed any serious violations either in the registration of voters and voting organization or in the processing the votes and transportation of the vote counting protocols from precincts to the regional (city) referendum commissions, and then - to the CRC.

At the polling stations we discovered no facts of administrative or law-enforcement bodies' interference in the work of the election commissions.

During the whole day of elections, the rate of attendance was reported every 3 hours. Finally, the participation of voters made up 87,02 %.

There were all conditions and terms made to keep the secrecy of ballot. The voters, we had spoken with, expressed their satisfaction as to the information on preparation and conducting the referendum by the media.

In general, the voting was held in a cheerful, but quiet atmosphere. The attendance of the voters was high practically everywhere. Anyway, some problematic tendencies were observed on the very day of the referendum. Particularly, not every voter used the separation for confidential voting. Some cases of family voting were observed. The majority of the polls were hardly reachable for the physically disabled and the aged. We have observed some queues of the voters in some districts. However, this cannot be regarded as a violation, but rather a positive moment.

#### **RECOMMENDATIONS**

- While the NKR Election Code and the Law "On Referendum" represented an improvement over previous legislation, further progress is desirable in terms of the full correspondence to the outstanding OSCE/ODIHR and CoE Venice Commission recommendations concerning elections.

- Efforts should be made to improve access to polling stations, particularly to ensure that physically disabled voters are not disenfranchised.

- Measures should be taken to enhance the secrecy of vote. The possibility for higher attendance of voters should be taken into account and the number of ballot-booths increased.

- The international community is recommended to support the democratic processes in NKR, including the conduct of the referendum.

**Stepanakert**  
**Signatures of international observers**  
**December 11, 2006.**

## ANNEX 12

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### Reports on the Results of Presidential Elections of Nagorno-Karabagh Republic

(July 19, 2007)

#### A. Report of International observers

We, the international observers representing state and non-governmental organizations from various European states and international organizations, have joined efforts to carry out international monitoring mission over presidential elections in the Nagorno-Karabagh Republic (NKR), which took place on July 19, 2007. The main task of the mission is to inform international public opinion about the real situation in the NKR in terms of democratic reforms as well as to assist appropriate structures, which organize elections, in bringing the election in conformity with the best international practice.

In our work we were guided by principles of objectivity, transparency, justice and impartiality, fixed in the 2005 UN Code of behavior of the international observers, Recommendations of the Venice commission of the Council of Europe, as well as in other international legal acts. While preparing the international mission, evaluating the needs, defining the number and composition of the participants, as well as the time limits of our stay in the NKR, we counted upon the following:

- Nagorno-Karabagh Republic electoral legislation provides sufficient guarantees to electoral rights of its citizens that corresponds to international principles on participation in free and transparent elections;

- Existence and active functioning of a spectrum of public and political organizations, as well as a guaranteed possibility for international observers to stay in the republic in the election period. These factors secure effective public and

impartial international supervision over the elections.

Before and during the voting day international observers visited more than 20 percent of the polling stations in the Republic. The observers put down their notes and remarks in personalized polling forms. The observers underline a high level of preparedness of the entire electoral system in the NKR in carrying out the elections and safeguarding suffrages of the citizens. Within its official competence the NKR Central Electoral Commission has prepared a complete set of documentation promoting transparency of the elections. However, observers would like to recommend to create the voter's corner in polling stations where one can find information materials and documents regulating the election process. At the same time state symbols were lacking in some polling station in the countryside.

It is worth mentioning that neither international nor national observers were addressed a single appeal concerning impossibility to realize the suffrage due to the absence of data about the candidates. In accordance with the national legislation citizens who on the moment were 18 and above years old have taken part in the elections at the exception of those recognized incapable and imprisoned by the decision of the court or in correspondence with the internationally recognized practice of general suffrage. All the polling stations were opened in straight accordance with the Electoral Code of the Nagorno-Karabagh Republic 8.00 AM. There was not a single polling station where for any reason voting did not take place.

According to the principle of free elections voters were provided an opportunity to take part in the voting or refrain from it without any violence or threats of its application, as well as other illegal activities that entail punishment, influence, and compulsion. Elections were carried out on an alternative basis. There were five candidates in the bulletin. In the sites visited by the international observers they have registered no facts of intervention in work of the electoral commissions by administrative or law enforcement organs. Not a single observer was denied the right to get information about the voting process. The international observers have not revealed any facts of pressures or intimidations exercised upon voters.

Voting procedures were carried out in complete accordance with the Electoral Code of the Nagorno-Karabagh Republic. The general remark which was noted by all observers concerns the fact that the polling stations were not equipped by auxiliary devices for the disable. This is why upon the request of people unable to go up by stairs of polling stations electoral commissions put portable voting boxes right to the porch of the station. This practice fully corresponds to the national legislation. National observers were present at all the monitored polling stations. This provided transparency and publicity of electoral process and increased public trust toward the results.

The pointed out remarks and violations on a whole do not influence in any way the expression of free will by NKR's citizens and allow recognizing the results of the July 19 presidential elections. On the basis of the carried out monitoring the international observers came to a common conclusion that the July 19 presidential elections in the Nagorno-Karabagh Republic correspond to the national legislation, internationally recognized norms.

This very estimation is based on the following conclusions:

1. Constitution, Electoral Code, and other laws and legislative acts of the NKR regulating the election procedures guarantee political rights to take part in state governance in accordance with internationally recognized democratic standards.

2. In organizing and carrying out the elections the principle of just elections that guarantee free expression and realization of the voter's will was fully observed. The constituency had a real and lawful possibility to elect candidates.

3. During the voting the principles of free and fair elections guarantying general and equal suffrage were observed. We realized that citizens were provided a sufficient degree of opportunity to take part in the voting or refrain from it without any violence or threats of its application, as well as other illegal activities that entail punishment, influence, and compulsion. Every voter had a right of an unimpeded access to a polling station as to realize his/her right to free voting. NKR's legislation provides an effective protection of its citizens suffrage.

4. During voting no infringement of the international principles related to elections, including principles of general, equal, direct suffrage has not been revealed. All citizens of the Nagorno-Karabagh Republic possessing an active suffrage irrespective of social and national affiliation had a possibility to vote. No facts of discrimination on the basis of race, nationality, gender, language, origin, place of residence, faith, political and public affiliation have been recorded. The voters partake in voting directly and in personal capacity, voting for other individuals was prohibited. Voting took place in specially equipped polling cabins.

5. The principle of openness and publicity of elections is sufficiently realized. Information, including the official one, was accessible to all interested individuals. The NKR Central Electoral Commission registered all international observers who expressed desire to carry out election monitoring. Their status and responsibilities were safeguarded in accordance with appropriate international documents. The principle of openness and publicity of elections did not extend on secrecy of the voter's will.

6. Independent electoral bodies fully realized the principle carrying out elections. Organization of the presidential elections and protection of the rights of voters on the whole territory of the NKR were carried out by electoral commissions at the head of the Central Electoral Commission that operate independently and within the scope of their responsibilities. No facts of influence by state and local self-government organs on their activity have been registered. Neither have there been revealed any facts of full or partial substitution, hindrance or interference into the responsibilities of electoral commissions by any structures, bodies, and organizations.

This document is open for signing by everyone who shares our estimations and conclusions.

Representatives of international observer groups:

**Grigory Marakutsia,**  
Secretary general of Inter Parliamentary  
Assembly "For Democracy and Rights of  
Peoples";

**Petr Denisenko,**  
of the Central Electoral Commission of the  
Transdnestrian Republic;

**Marina Klebanovich,**  
Coordinator of NGO network "Trans  
European Dialogue";

**Konstantin Zatulin,**  
Russian Federation State Duma deputy;

**Elena Semerikova,**  
Chairwoman of the All-Russian public  
organization "Female dialogue";

**Yury Dzitstsojty,**  
Vice-speaker of the South Ossetian  
parliament;

**Alan Elbakiev,**  
State adviser to the president of  
South Ossetia;

**Martin Fridrich,**  
Officer of European Parliament;

**S.V.Bokachev,**  
Chairman of Donetsk city council;

**G.D.Gumba,**  
Chairman of standing committee on inter-  
regional and international affairs of the  
Abkhazian parliament;

**Mila Nikolich,**  
President of the Serbian Diaspora  
Movement "SEDEP"  
and others.

**B. Report on the NKR presidential elections presented by Jana Hradilkova and Štepan Cernoušek (observers from the Czech Republic)**

**1. Our observatory unit:**

**Jana Hradilkova** - (represents citizen sector, works for NGO dealing with supporting civilians in post-conflicts zones to improve their lives and promoting education of inter-cultural dialog in society, peace activist);

**Štepan Cernoušek** - (journalist, officer in Ministry of Social issues. December, 2004 he was observing presidential elections in the Ukraine, OSCE mission).

**2. Our places of observation:**

July 18: We were visiting place in Stepanakert and Vank, talking to people engaged in campaigns and pre-election preparations.

July 19: We visited six electoral places in three regions, Stepanakert, Shoushi, Askeran region, Martouni region (three bigger places in cities, other village places). We have talked to journalists, members of commission, voters, other observers.

**3. Evaluation of our observation, experiences, comments:**

We were absolutely free in our decision where to go, what to observe and we were provided with all the necessary instruments for that (car, papers, etc.). We could start at the opening of the electoral place (Stepanakert, 7/2 – 7.30 a.m.) and then also after its closing and making summaries of votes.

Everything went very smooth – obviously all election officers are skilled and confident of their duties and responsibilities. Any confusement, any obstacles, peaceful atmosphere, any tensions or press.

Comparing the practices and protocol of elections in CR and NK:

- The cabin for filling ballots is free of the barrier (curtain) in NK.

- There are envelopes for ballots in CR, not in NK.

- At some places there was not enough light in the cabin.

- Advising to elder people in NK. Not practice in CR, but understandable.

Conclusions and comments gathered after discussions with people engaged in electoral process.

Talking about pre-election campaign - people told us that some candidates arrived to local public houses and held public debates, there was also a TV campaign, so that they had enough possibilities to know about candidates' backgrounds, but mainly they have decided according to the "active credit" of the candidate they voted for (i.e. it was clear that more than words acts were appreciated and valued).

All the people told us about the commonly accepted symbolical meaning of elections – for them it is most important that elections are the confirmation of the life in peace and stabilization of badly damaged country.

**4. Conclusions and recommendations:**

It is very obvious that in comparison with two opposite extremes of societies (of our experiences) – Chechnyan and Czech (European) - the NK society seems to be much integrated in its goals and life practices. It is a community of people which wants to live normally and is well aware of its limits and chances. There are no inner tension, there is no political pluralism, which would cause artificial conflicts between power structures. What happens on an official level is in balance with the state of society.

Recommendation: Supporting citizen activities through NGO sector, which opens “new” and international topics and which would also support the healthy, constructive opposition.

**Jana Hradilkova,  
Štepan Cernoušek  
July 20, 2007**

**C. The Statement of the Russian Observers  
on the Presidential Elections in the  
Nagorno- Karabagh Republic  
(July 20, 2007)**

International observers from various states of the world, including the Russian Federation, arrived in Nagorno-Karabagh to monitor the fourth regular Presidential elections of the Nagorno-Karabagh Republic scheduled for July 19, 2007.

The Russian observers visited a big number of polling stations in the Nagorno- Karabagh Republic. We were given an access to the work of the Central Electoral Commission, the polling stations, the process of the vote counting. We had meetings with some presidential candidates participating in the elections.

**The conclusions of the Russian observers:**

1. The Central Electoral Commission of NKR made its utmost to conduct these elections in a professional and reliable means. The work of electoral commissions during the voting and vote counting deserves an appreciation.

2. Presidential elections in the Nagorno-Karabagh Republic were transparent, free and legitimate.

3. Elections passed on an alternative basis: there were five presidential candidates.

4. Observers recorded no essential breaches in the procedures of voters registration, voting, vote counting and transportation of the counting protocols from the polling stations to the Central Electoral Commission. Facts of interference in the work of electoral commissions by unauthorized persons, including administrative or law-enforcement bodies, were not revealed in any polling station. Remarks and inadequacy rather of a technical nature noticed by the observers in the work of the electoral commissions were considered and necessary steps were undertaken for their elimination.

5. Transparent ballot-boxes were used during the voting that ensured more transparency for the election process. The process of vote counting was conducted effectively and transparently in the polling stations. Observers were given the opportunity to familiarize themselves, without restriction, with election documents, the samples of the ballots, the resolutions of electoral commissions, the session protocols.

6. We were strongly impressed by the activity of voters, their motivation and civic stance.

7. Observers express appreciation to the Ministry of Foreign Affairs of the Nagorno-Karabagh Republic, the Central Electoral Commission and the authorities of all levels for collaboration and help, shown during the work of the observing mission, for presenting a detailed information on the preparation of the elections, and also for the ensuring the freedom of movement.

8. The Russian delegation asserts that progressive democratic achievements in the NKR are obvious.

9. These elections clearly demonstrate to the world community the fact that the statehood of Nagorno-Karabagh Republic has been formed and is developing along the way of democracy and stability.

10. The Russian observers regret for the non constructive statements of representatives of some international organizations regarding the presidential elections in the Nagorno-Karabagh Republic. Nagorno-Karabagh has political, legal and historical bases for the international recognition of its independent statehood.

11. Democratic achievements of the Nagorno-Karabagh Republic require support and recognition from the world community, which would contribute to the prompt solution of the conflict between Azerbaijan and Nagorno-Karabagh, the establishment of stability and lasting peace in the region, in conformity to the vital interests of the peoples of the region and the world community. Uncertainty with the final recognition of the independence of the Nagorno-Karabagh Republic prevents its dynamic development and thus can lead to the breach of stability in the region.

#### **D. Official Report on the Presidential Elections of 19/07/2007 in Nagorno-Karabagh**

The presidential elections were conducted according to the Electoral Code and without incidents and violations. We have observed the following polling stations:

7/2 (1.568 registered voters) in Stepanakert, 21/1 (1.197 registered voters) and 21/2 (1.060 registered voters) in Shoushi, 20/50 (106 registered voters) in Karegah, 20/17 (93 registered voters) in Aghavno, 22/1 (137 registered voters) and 22/2 (572 registered voters) in Berdzor, 21/3 (73 registered voters) in Kashatagh. No tension was noticed in the area of Kashatagh to which the last polling station belongs.

In general, we observed self-conscience and high rated participation of the people of Nagorno-Karabagh of witnessing a historical momentum. It's the first stage in the process of recognition of Nagorno-Karabagh by the international community. For international recognition it is necessary to prove that the political system in Nagorno-Karabagh is really democratic. In this direction, these elections are a positive point in the Nagorno-Karabagh history.

Official results of CEC on the level of participation are as follows:

1. Stepanakert 64.62%
  2. Askeran region 89.19%
  3. Hadrout region 86.20%
  4. Martakert region 81.18%
  5. Martouni region 77.58%
  6. Shahoumyan region 94.35%
  7. Soushi region 83.64%
  8. Kashatagh region 85.88%
- Yerevan 100%.

**Professor Nikos Lygeros**  
**International observer, Greece**

**E. Report of the Independent American Monitoring Delegation to the July 19, 2007 Nagorno-Karabagh Presidential Elections**

**Summary**

The Nagorno-Karabagh Presidential election held on July 19, 2007 was the best organized and most trouble-free of the three elections which the Public International Law and Policy Group (PILPG) has monitored there. It reflected steady progress in building democratic institutions and developing the practice of participation in the political process. The commitment of the authorities, the candidates and the voters toward continued improvement of the voting environment has brought demonstrable results.

This was the first election after last year's referendum which adopted the new Constitution. The electoral law was recently further amended to fine-tune the rules and procedures, taking into account recommendations from international organizations including PILPG.

Voters had ready access to the programs and views of the candidates and the opportunities to hear and see them directly on radio and TV and during rallies organized throughout the country. There were complaints or reports of intimidation during the campaign and they were handled by the Central Electoral Commission in accordance of the election law.

The six-person PILPG delegation visited 47 polling sites throughout Nagorno-Karabagh. It also met with four presidential candidates, the current President, the Foreign Minister, the Speaker of the Parliament, other governmental officials, and on several occasions with the Central Electoral Commission. No significant irregularities were observed and the delegation concluded that the elections were conducted freely and in a transparent way according to both the laws of Nagorno-Karabagh and international standards.

PILPG considers international election observing to be an important instrument for promoting political development. Fielding observer delegations contributes to fairness of elections and supports nascent democratic institutions and practice at the time most needed. Methodological coherence in evaluation elections commensurate to the historic and political environment promotes public confidence and encourages further participation in political activities.

The delegation evaluated both the political and the technical aspect of the elections including laws and procedures and their implementation.

**The Election Environment**

The July 19, 2007 Presidential Election was the fourth held since the 1991 referendum on independence and the establishment of the Nagorno-Karabagh Republic. Since the presidential system was adopted in December 1994, the election of the President of the Republic is the most important political event determining basic orientation of governance and especially defense, security and foreign policy. Along with regular parliamentary and local elections these events appear to reflect the consensus in this small tightly-knit community to preserve their independence and secure international recognition of the de facto status they have enjoyed for the past sixteen years through support of democratic institutions and continuous improvement of procedures. Internal political stability therefore remains the concern of all citizens, groups and parties. However, continuation of the status quo does not seem to influence determination to both maintain national unity and project in the world and at the same time engage in debating major issues facing the society and different ways to achieve their goals, although often in muted way.

One unusual feature of the election was the decision of major political parties represented in the parliament, including parties considered part of the opposition, to unite in support of one “consensus” candidate for President. These parties explained it as intended to avoid potentially divisive political conflicts at a time when Nagorno-Karabagh is still in an unresolved international crisis situation. They also pointed out that they retain their freedom of action in the parliament after the election.

The persuasiveness of the security concerns motivating the major parties to support a consensus candidate is understandable. PILPG also shares the view expressed by most political observers in Nagorno-Karabagh, including those critical of the “consensus” decision, that the democratic process in Nagorno-Karabagh is generally developing in a positive fashion and that this Presidential election offered more choice between candidates than did previous Presidential elections in Nagorno-Karabagh. The PILPG delegation also notes that international organizations and individual democratic states have refused to provide assistance in democracy building and election monitoring despite repeated requests by the Nagorno-Karabagh authorities. Nevertheless, PILPG delegation believes that democracy in Nagorno-Karabagh would be served by not continuing this “consensus” approach by political parties in future elections, as it could undermine the climate and institutions of democracy and tend to deprive the people of Nagorno-Karabagh of their democratic right to choose among alternative visions of the country’s future development. A number of political leaders agreed with this assessment and pointed out that this was a necessary but temporary approach and said that Nagorno-Karabagh’s future lay in the development of a true multi-party system.

The official campaign started on June 20th

and ended on July 17th. The pre-election campaign atmosphere was calm and few incidents were reported. As in previous campaigns there were relatively few visible signs in the streets except for occasional posters.

During the campaign allegations appeared of improper political involvement by police and security organs, including intimidation of supporters of the candidate. The PILPG delegation discussed these allegations with the Central Electoral Commission and with President Ghokassian. The Chairman of the Central Electoral Commission described efforts to investigate these allegations, including contacts with the supervisors of the security officers mentioned in the allegations, who denied any improper activity.

President Ghokassian said he had looked into the allegations and found them to be false. He expressed a determination, which the PILPG delegation welcomes, to take strong action against any policy or security officials found to be improperly engaging in political activity or harassment. Developing regular mechanisms to allow complete and intrusive investigation of such allegations by the Central Electoral Commission or other competent civilian bodies is particularly important in a state such as Nagorno-Karabagh, which is developing democratic institutions in an unresolved conflict situation in which security organs necessarily play an important role.

#### **Electoral Law and Procedures**

The Electoral Code enacted in December 2004 was amended after the adoption last year of a new Constitution.

The members of the Central Electoral Commission are appointed only by elected officials. The President appointed three members

and each of the parties having a fraction in the Parliament appointed two. So the current Commission has nine members and its mandate will expire with the term of the Parliament. After being appointed the Central Electoral Commission formed eight territorial commissions for election regions (one in each of the seven regions and one in Stepanakert). Each of the territorial commissions formed precinct commissions under its jurisdiction. There were 277 polling stations for about 90,000 registered voters (including one polling station in Yerevan).

At the beginning of the campaign Central Electoral Commission distributed free TV and radio time to candidates. Each got 30 minutes allotted over the duration of the campaign based on lottery. In addition to free time the candidates were allowed to buy up 80 minutes of radio and /or TV time (one radio minute is \$41 and TV \$82).

Candidates may open a bank account with one million drams (\$3,000) and collect another five million (\$15,000) for the campaign. Individual contributions are limited to 100,000 drams (\$300) and enterprises and companies may donate up to 300,000 (\$900). However those owned by foreign capital (more than 30%) or charities are banned from making contributions. So are all foreign individuals or entities of any kind.

On election day and the previous day no campaigning is allowed. Also strictly forbidden are public statements insulting or slandering other candidates.

Based on this visit, PILPG identified a number of substantive changes to the election code which would further promote transparency. PILPG discussed these proposals with the president and with the Chairman of the Electoral Commission and they responded favorably.

In a few polling stations, it was apparent that voting booths were aligned in such a way that marking the ballot could be observed by others in the room. After making inquiries which local electoral commissions and CEC, the PILPG delegation concluded that these were isolated cases, due in part to the introduction of a new type of voting booth this year. The CEC indicated that it will make changes to address the problem.

### **Polling Day**

The PILPG delegation divided into three teams and visited 47 polling sites in all electoral regions. The general climate was businesslike and calm.

The polling sites were in suitable known to the voters (schools often) and accessible. Security was well organized but there were few signs or complaints about improper or intimidating behavior on election day.

The electoral commissions at the polling sites were well organized, familiar with the rules and procedures and fully aware of their roles and responsibilities. The voter registration lists and instructions as well as information about the candidates were prominently displayed in most places and the lists were accurate. There were no problems with identification and recording the vote in the lists. This may be attributed to relatively frequent elections. Rare cases of voters who were not registered but were in possession of identification (proof of permanent residence) were handled efficiently in accordance with an established and understood procedure to allow them to vote.

Servicemen were registered to vote outside their military units and barracks. The voter registration lists were displayed in their units 15 days before the Election Day and sent to the

polling stations three days before election. Officers and those serving under contract were registered based on their permanent residence.

Ballot materials were supplied in time and secured according to the law. For those unable to come to the polling sites, election officials arranged transportation or in rare cases visited such individuals so they could vote. Secrecy of the vote was provided.

Counting of the ballots was conducted by the commissions at polling stations immediately after the end of the voting and in the presence of candidate representatives of the candidates. Disputes about the validity of the ballots were dealt with immediately.

International observers came from the United States, Germany, France, Belgium, Italy, Serbia, Macedonia, Czech Republic, Poland, Armenia, Ukraine, Russia and elsewhere.

### **Conclusion**

Building democratic institutions and promotion of human rights is a slow and often painful process in post-conflict societies. The results depend very much on the right of the people to freely elect their representatives and on their ability to exercise that right and have a government of the choice. Critical is not only the process of the elections but what is behind them, including participation of people and how they exercise their inalienable right to govern themselves. The people of Nagorno-Karabagh have obviously made significant progress on that road. They deserve not only commendation but support to continue in that direction.

Discussions held:

**Arkady Ghoukassian**, President of the Nagorno-Karabagh Republic;  
**Ashot Ghoulian**, Speaker of the Parliament;  
**Vanik Avanesyan**, Presidential Candidate;  
**Masis Mayilian**, Presidential Candidate;  
**Hrant Melkumyan**, Presidential Candidate;  
**Bako Sahakyan**, Presidential Candidate;  
**Sergei Nasibian**, Chairman of the Central Electoral Commission;  
**Seiran Hairapetian**, Representative of the NKR President in CEC;  
**Semyon Afiyan**, Representative of Democratic Party of Artsakh in CEC;  
**Sergey Shahverdyan**, Representative of Dashnaksutyun Party – Movement-88 bloc in CEC;  
**Arthur Mosiyan & Armen Sargssian**, ARF Dashnaksutyun Party;  
**Araik Harutyunian**, Free Motherland Party;  
**Sanasar Saryan**, NKR Refugee Organization;  
**Galina Somova**, Russian Community Organization;  
**Karen Ohanjanian**, Helsinki Initiative 92;  
**Naira Hayrumian**, Open Society;  
**Karine Ohanian**, Demo newspaper; Youth leagues;  
**Samvel Arakelyan**, CEC Member.

Discussions were also held with delegates from other observers delegations and a group of journalists from the region whose visit was organized by the Institute for War and Peace with support of the European Union.

This report covers election related activities and results that occurred prior to the departure of the delegation from Nagorno-Karabagh on July 20th. This report is delivered to the completion of the election process, including the tabulation and announcement of final results and the expiry of legal deadlines for hearing possible complaints

and appeals. A conclusive assessment of the entire election would depend, in part, on the conduct of the remaining phases of the process.

**July 20, 2007**

#### **ABOUT THE INDEPENDENT AMERICAN MONITORING DELEGATION**

Public International Law and Policy Group, an organization which was nominated two years ago for the Noble Peace Prize, selected some of its best to form a delegation to observe the Presidential elections on July 19, 2007 in Nagorno-Karabagh. The six members have behind them long and successful careers and in diplomacy, civil and military service, legal affairs, in negotiation and conflict resolution, post-conflict political development and peace and democracy building. Their international experience encompasses the region of former Yugoslavia and Bosnian and Kosovo crisis, Somalia, Iraq, Sri Lanka, as well as former Soviet Union and Caucasus and providing governments and entities across Europe, Africa and Asia with advice on constitutional issues including elections and matters of public international law. They observed, analyzed and reported on first democratic elections in post-communist and post-conflict societies and assisted in drafting the related legislation.

**Vladimir Matic**, Ambassador (ret.), the Head of the Delegation resigned his position of Federal Assistant Minister for Foreign Affairs in former Yugoslavia in disagreement over policy and moral issues. He has been teaching international relations, foreign policy and diplomacy at Clemson University for the past 11 years. He worked as consultant to the United States Institute of Peace and was a Public Policy

Scholar at the Woodrow Wilson International Centre for Scholars. After the overthrow of Milosevic was a Special Envoy of the President of the Federal Republic Yugoslavia to the United States Government 2000/2001. He published numerous papers on issues of ethnic conflicts, problems of transitions and building of democracy, and observed and analyzed elections, including monitoring of elections in Nagorno-Karabagh in 2002 and 2005.

**Paul Williams** directs the Public International Law & Policy Group and was nominated for the 2005 Noble Peace Prize for his pro bono activity. He holds the Rebecca Grazier Professorship in Law and International Relations at the American University. He teaches in the School of International Service and the Washington College of Law. Previously he served in the Department of State's Office of the Legal Advisor, as Senior Associate with the Carnegie Endowment for University of Cambridge. Professor Williams has assisted over a dozen states and sub-states entities in major peace negotiations and in drafting post-conflict constitutions. He has also advised Governments across Europe, Asia and Africa on matters of international law.

**Louis Sell** serves as Executive Director of the American University in Kosovo of Maine. Previously he worked for 28 years with U.S. Department of State and served in former Yugoslavia and Soviet Union and later in Russia. He was also U.S. Representative to the joint consultative Group in Vienna and Political Deputy to the first High Representative for Bosnian Peace Implementation. He is the author of "Slobodan Milosevic and the Destruction of Yugoslavia" published in 2002 by Duke University Press. He is currently working on a book on the collapse of the Soviet Union and the end of the Cold War. Mr. Sell observed many elections in

Eastern Europe and former Soviet Union including first multi-party elections in all six Yugoslav republics and Kosovo's first post-war elections in 2000.

**Frederic Lorenz** lectures International Humanitarian Law and US foreign policy at the Jackson School of International Studies, University of Washington in Seattle. Previously served for 27 years as judge advocate in the US Marine Corps and retired as a colonel. In 1995 he served as Senior Legal Advisor for the United Nations in Somalia and in 1996 as Legal Advisor for the NATO Implementation Force in Bosnia. He spent a year in St. Petersburg as Fulbright Senior Scholar teaching international law and US foreign policy. As a United Nations Legal Affairs Officer in Kosovo he worked on the new system of national registration and first elections in the province in 2000.

**Meghan Stewart** is a Peace Fellow with PILPG and in that capacity advised over a half dozen states on international legal standards related to post-conflict constitutional reform. She served as a legal Advisor and primary drafter during constitutional reform negotiations in Bosnia in 2005 and 2006 analyzing electoral laws to ensure all proposed changes to the

Constitution would be appropriately reflected in these laws. She also worked in Sri Lanka advising the government on peace negotiations with the LTTE. In Georgia she worked to develop a comprehensive framework agreement and negotiating strategy related to the future status of Abkhazia. She also advised political leaders in Liberia and Nepal. Previously she worked with the American Bar Association CEELI in Kazakhstan.

**Christopher Goebel** is a co-founder of PILPG and has participated in projects for numerous governments and sub-government entities including those in Bosnia, Macedonia, Afghanistan, Estonia and Kosovo. He provided legal assistance on matters relevant to the peaceful resolution of the crisis in Nagorno-Karabagh. Previously, while practicing as a lawyer in New York for Cartis, Mallet-Prevost, Colt&Mosle LLP, he represented governments and private enterprises in international financial transactions including capital and equities markets, investment fund management, venture capital and project finance. As a Fulbright Research and Lecture Scholar in France he concentrated on European Union and ethnic conflicts in Balkans. He published on the topic of population transfer under international law.

## **ANNEX 13**

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### **Reports on the Parliamentary Elections of the Nagorno-Karabagh Republic**

(May 23, 2010)

#### **Report of the Independent American-Dutch Monitoring Delegation**

#### **Led By The Public International Law and Policy Group To The May 23, 2010 Nagorno- Karabagh Parliamentary Elections**

##### **Summary**

The observations conducted by the Independent American-Dutch Monitoring Delegation indicate that the Nagorno-Karabagh parliamentary elections held on May 23, 2010 were conducted in a free, fair and transparent manner. The Central Election Commission supervised the electoral preparations and polling efficiently. Based on the information gathered during our short-term mission, the activities of the electoral authorities, political parties and candidates during the elections were consistent with generally accepted international standards. The observations of our missions provide strong indications that Nagorno-Karabagh continues to make strong progress in establishing and sustaining a healthy and sustainable democracy.

The observed election environment was calm and orderly. We neither observed nor received reports of any significant irregularities in the voting process. We also received no reports of significant irregularities in the pre-election period.

The three-person delegation met with representatives of four major political parties, the Central Election Commission chairman, numerous national and local government officials, representatives from local nongovernmental organizations, and journalists. The delegation visited eight polling sites located in seven out of the eight major electoral regions and found no significant irregularities in the sites visited.

##### **Election Environment**

Elections are both a technical and political process. The technical aspect incorporates the election administration, logistical preparation, necessary electoral materials, and voter education programming used for registration and voting. The political component incorporates issues surrounding constraints on competition, the degree of voter involvement, and citizen access to information on the candidates.

The citizens of Nagorno-Karabagh we met with, from the voters and election officials in the towns and villages, to the representatives of the key political parties, to public officials at the highest level, uniformly expressed confidence and a firm conviction that the Nagorno-Karabagh elections are run in a free and fair manner. Even those who expressed dissatisfaction with some of the policy choices made by their government agreed that those choices had been made through a fair and democratic process. Numerous citizens of Karabagh expressed pride that their democratic achievements surpassed the level of democracy prevailing in several other neighboring countries.

The pre-election campaign atmosphere was reported to be calm. None of the candidates interviewed expressed the opinion that voters had been prevented from gaining sufficient information about any of the candidates or political parties, or that unfair preference had been given to specific candidates or parties in the realm of media access. There were no reports of threats, intimidation or other improper influences that could prevent voters from expressing their honest personal preferences at the ballot box. The delegation did not detect any sense of fear, intimidation or hostility directed towards candidates or potential voters. There were no

reports of onerous security measures or other external pressures that might have unfairly affected voter turnout.

CEC rules were in effect for allocating time and space in the Nagorno-Karabagh media with the intent of providing equal access to candidates and parties. No party or candidate we spoke with reported violations of these rules. Nor did we receive reports that the government has misused the media to unfairly affect the election, though some citizens expressed the view that the relative weakness of the private media has the natural effect of strengthening the voice of the incumbent government and muting the voice of opposition. The government and party officials we interviewed uniformly agreed that parties and candidates had ample and open opportunities to present their views to voters in live public forums.

#### **Election Law and Procedures**

The 2010 election is Nagorno-Karabagh's fifth parliamentary election since 1991. Approximately 90 international observers from 14 countries, including Canada, Russia, Armenia, Argentina, the Netherlands, Germany, the Czech Republic, Denmark, Ireland, France, and the United States, monitored elections.

Candidates were nominated through political parties according to the proportionality system and in voting districts according to the majoritarian system. Of the 33 National Assembly seats, 17 deputies are elected through the proportional system from the list of candidates nominated by each party, and 16 deputies are elected by majoritarian system, one from each of the 16 electoral districts. The 16 electoral districts consisted of 273 polling stations. The Central Electoral Commission registered lists of 4 political parties, Free Motherland, Artsakh Democratic Union Party, the ARF Dashnaksutyun, and the Artsakh Communist Party.

For the 16 majoritarian seats, 40 candidates were nominated. Of these, 22 by non-party groups, and 18 were nominated by political parties. 6 candidates represent the Free Motherland party, 4 represent the Artsakh Democratic Union Party, 5 represent ARF Dashnaksutyun, 1 represents the Artsakh Communist Party, 1 represents the Our Home is Armenia party and 1 represents the Christian-Democratic Party.

#### **Polling Day**

The delegation visited eight polling sites in seven of the eight electoral regions and found the election to be very well organized in a technical sense. Members of the delegation heard no serious complaints from citizens, candidates, or officials about the validity of the voting procedures or results. The general climate at the polling places was calm, positive and efficient. There was no evidence of intimidation or of any climate of fear or uncertainty on the part of voters. Police were present at most of the polling places visited by the delegation but they generally kept to their proper place in front of the polling stations. The officers understood their role in providing security for voters and election officials, and there were no complaints relating to police conduct. There was no evidence that police were having any intimidating or otherwise improper effect on voters or the voting process.

The election commissions at the polling places performed well in organizing and conducting the vote. Election commissioners were generally very well prepared; all were familiar with the required procedures, and we received no complaints regarding the actions of election officials. Necessary voting materials, including voter registration lists, supplies, and blank ballots arrived in due time and in sufficient quantities. Information about the majoritarian candidates also was displayed outside most

polling places, and no candidate representative complained of any preferential treatment in this regard.

In most polling places visited by the delegation standard voting instructions and election rules were prominently displayed. One small, rural polling place did not receive standard printed materials in time for election day, but nonetheless produced simple instructions that appeared to provide voters with the basic information needed to vote. We spoke with several voters of varying ages and none expressed concerns or confusion about the instructions provided at this station.

The voter registration lists appeared to be generally accurate and in all cases were prominently posted at the polling sites. Private voting booths were provided in all but one polling place. Election officials informed us that they were unable to obtain the standard three-sided booth due to a shortage. The replacement, a lectern, provided insufficient privacy, but during our observation no voter complained that this accommodation affected their right to cast their ballot freely.

The delegation observed one vote count. In that instance, the count proceeded in accordance with the rules. The delegation is unaware of any complaints put forward by candidates or citizens about the count. Candidate observers were allowed to be present for the count observed by our delegation, and election commissioners at the polling places we visited repeatedly confirmed that registered observers were free to observe the vote counts.

In one respect, conditions at the polling places visited by our delegation were inconsistent with electoral regulations. Although Article 24(3) of the NKR electoral code forbids individuals from assembling in groups on the day of the election within a 50 meter radius of polling place, this

requirement was rarely enforced at the polling places we observed. In most polling places, groups of citizens congregated and conversed in small groups well within the 50-meter limit.

None of these groups were engaged in campaigning, none were disruptive, and none was reported to have, or appeared to have, any negative influence on the election process. To the contrary, the groupings seemed the natural extension of an electorate taking pleasure in the democratic process. We suggest consideration be given either to clarifying the existing law or to bolstering its enforcement.

### **Conclusion**

Nagorno-Karabagh continues to make progress in building democracy, and its authorities have made a serious and concerted effort to conduct the 2010 polls by democratic means. Many of the citizens we met with recognized this progress. Our observations consistently revealed a desire for and commitment to a fair and transparent electoral process. No election is perfect and here, as elsewhere, there were some minor areas for improvement. Nonetheless, our observations, though necessarily limited, indicate that Nagorno-Karabagh's most recent election was conducted in a free and fair manner. Indeed, we found no significant evidence to the contrary. Based on our observations, we anticipate that the collective experience of the monitors present at these elections will offer a more comprehensive confirmation of the conditions we encountered.

### **The Delegation**

The delegation is composed of members with an array of experience in dealing with international, political and human rights issues. Michael Kovaka, who led the American-Dutch Independent Monitoring Delegation is Senior Counsel for the Public International Law and

Policy Group and an experienced constitutional lawyer and advocate for freedom of speech and freedom of the press in the United States. Kerstin Mikalbrown is a Senior Research Associate with the Public International Law & Policy Group, working primarily with clients in post-conflict reconstruction and security issues. Marieke de Hoon is Co-Director of the Netherlands office of the Public International Law & Policy Group, and Researcher and Lecturer in Public International Law and International Criminal Law at the Free University of Amsterdam.

Discussions Held:

**Bako Sahakyan**, President of the Nagorno-Karabagh Republic;  
**Ashot Ghulian**, Chairman of the National Assembly of the Nagorno-Karabagh Republic;  
**Georgy Petrossian**, Foreign Minister of the Nagorno-Karabagh Republic;  
**Spartak Tevosyan**, Vice Premier of the Nagorno-Karabagh Republic;  
**Ararat Danielyan**, Chairman of the Nagorno-Karabagh Republic (NKR) Supreme Court;  
**Sergey Nasibyan**, Chairman of the Central Electoral Commission;  
**Vazgen Mikaelyan**, Mayor of Stepanakert  
**Ara Pluzian**, Representative of the Dashnaksutyun Party;  
**Artur Tovmasyan**, Representative of the Free Motherland Party;  
**Vahram Atanesyan**, Representative of the Democratic Artsakh Union Party;  
**Hrant Melkumyan**, Head of the NKR Communist Party.

Representatives of the following non-governmental organizations: Institute for People's Diplomacy, Stepanakert Branch of the Moscow University, NGO Resource Center, Artsakh University, Artsakh Intelligentsia, Stepanakert Press Club, DEMO, Center for International Cooperation, International Center for Human Development, Medical Union of Karabagh,

Organization of Young Political Scientists, and the Karabaghi Refugees from Azerbaijan.

This report covers election-related activities that occurred prior to the departure of the delegation from Nagorno-Karabagh mid-day on May 24, 2010.

***Stepanakert, Nagorno-Karabagh  
May 24, 2010.***

**Report of the French delegation on the  
Legislative Elections  
of May 23, 2010**

The elections were held in accordance with democratic standards accepted by international law. Although we did not attend the election campaign, the contacts with the political parties revealed that the multiparty system was in the process of development (we were reported that meetings were held at the local level, in the small districts). Moreover, the press seems to have played its role notably through the different newspapers of parties and the organization for the first time of a television debate, two days before the polls, in which 4 formations have participated.

In comparison with the previous elections, the observers that have already participated in the monitoring of the previous polls noted improvements in the organization and the functioning of the operations of vote; the poll day lists were more accurate (less omissions); improvement of the appeal mechanisms; perfectly appropriate materials (voting booths, ballot boxes); voters having passports with photograph.

However, a certain improvements could be envisaged:

- Limitation of the numbers of the registered voters in each polling place (as an example 2072 registered voters and 187 soldiers in Hadrout) this figure seems hardly to be manageable;

- Accessibility of the old persons or handicapped to the polling places (staircases), access to the certain places was difficult;

- Certain polling places were overcrowded (reduced freedom of movement);

- In contrary, the timetable was reduced for the small polling places.

The functioning of the election observing mission could be improved through the assignment of the mission to the electoral territory (possible by casting of lots).

**Pierre d' Esperonnat,**

French association of the Doctors of Law;

**Maurice Bonnot,**

Institute of Democracy and Co-operation;

**Michel Poret,**

French association of the Doctors of Law

**Alain Fresnel,**

Independent association ECTI

**Stepanakert, May 23, 2010**

**INTERNATIONAL OBSERVATION MISSION  
OF THE ELECTIONS TO THE NATIONAL ASSEMBLY  
OF THE NAGORNO KARABAKH REPUBLIC**

**MAY 23, 2010**

We, as one of the German election observation teams, would like to thank the Nagorno-Karabakh government for the kind invitation to observe the elections to the national assembly on May 23, 2010. Especially we would

like to thank our driver and interpreter who were of valuable support.

In order to be able to offer an even better organization of the election observation we would like to highlight the following points:

- Thus, we think as necessary to have a pre-defined date when all observers meet to jointly coordinate their work. At this meeting, all necessary information material (election codes, lists of precinct centres all in different languages) should be provided.

- On election day we observed the voting process in one polling station of Stepanakert (6.01) and several polling stations in the Tartar valley up to Karvatchar (14/18; 14/17; 14/15; 14/3; 14/14; 14/01). The counting process we observed in Kichan (10/05).

- Overall, we didn't observe any grave irregularities. Remarkable was the active participation of voters as well as the election commissions (e.g. high voter turn-out, attentive election commission members, friendly and cooperative atmosphere).

- What surprised us was that we observed more irregularities in the Stepanakert polling station we visited than in the rural areas (station was crowded, lack of organization of voting process, more than one person in voting booth - even discussion in voting booth).

- In the smaller polling stations we visited the voting process was well organized. In some polling stations there were uncertainties or technical reasons though why the voting process could not be implemented as stipulated. This concerned for example the voting possibilities of voters who personally could not come to the polling stations. While in some stations this point was not clear, in others, the right procedure was clear but could out of technical reasons not be implemented. Other points we would highlight are

the different forms of sealing (in some polling stations only red plastic strips on ballot boxes; in others additional stamped paper sealing), there that was in one of the areas observed only one candidate and at some of the polling stations campaign material was displayed.

Concerning the counting process we observed, it went exactly as stipulated.

All in all we would emphasize that the whole voting process was advanced and in accordance with democratic principles - especially compared to observation experiences in other post-Soviet countries the voting process can be regarded as on a high democratic level.

Signed by:

**Christian Kolter,**  
Bremen University graduate student

**Beate Eschment,**  
Humboldt University professor in Berlin,  
expert on Central Asia

**Franziska Smolnik,**  
Research Assistant, German Institute for  
International & Security Affairs.

### **International Observers' Conclusion on the Elections to the NKR National Assembly**

On 23 May 2010, the elections of Deputies to the NKR National Assembly took place in the Nagorno Karabakh Republic in line with the NKR Electoral Code.

124 international observers from Argentina, Armenia, Germany, Denmark, Ireland, Canada, the Netherlands, Transdnestrian Moldovan Republic, Russia, Republic of Abkhazia, Republic

of South Ossetia, Slovakia, the United States, France and Czech Republic followed the process of elections. Among them were many present and former parliamentarians, representatives of non-governmental humanitarian and human rights organizations. More than 40 representatives of mass media from different countries were accredited to cover the election process.

The observers had meetings with representatives of all parties and many candidates, members of the Central Electoral Commission, journalists and representatives of local non-governmental organizations.

The day of elections, observers visited several electoral districts, participated in the process of counting of votes in electoral districts.

Based on the monitoring of the elections, observers verify:

Preparations, implementation and summarization of the results of the elections to the NKR National Assembly have been conducted in compliance with the NKR Electoral Code of December 8, 2004 (amended in 2007, 2009, 2010).

16 electoral districts and 272 polling stations were formed on the territory of the Nagorno-Karabakh Republic and one in the NKR Permanent Representation office in Yerevan for the NKR citizens temporarily visiting Armenia.

94.857 voters were included in the register.

Elections to the 33 seat NKR National Assembly were conducted by proportional (17 seats) and majoritarian (16 seats) electoral systems.

Four parties have applied to participate in the elections and the NKR Central Electoral Commission registered electoral lists of all 4

parties. 40 candidates were nominated in 16 electoral districts by majoritarian system, 18 of which from parties, 7 by civil initiative.

A ballot for the elections to the National Assembly by proportional system contained the names of parties in alphabetical order, as well as surnames, first names and middle names of the first three candidates on the list.

A ballot for the elections to the National Assembly by the majoritarian system contained surnames, first names and middle names of the candidates in alphabetical order (by surname), and the names of the nominating parties, and in the case of a civil initiative – the words "civil initiative".

As an omission, it needs to be mentioned that the computerized system of making registers (voter lists) was not fully worked out at these elections. For that reason the surnames of certain voters were not included in the register. As a result, they had to waste additional time to receive a confirmation paper from the NKR Police, on the basis of which they could vote.

The elections were conducted in a calm atmosphere, no serious violations were fixed either in registration of candidates, organization of voting, or in processing the votes and transporting the protocols of vote counting from polling stations to the regional (city) electoral commissions, and then - to the CEC.

During the day of elections, the voter turnout was reported every 3 hours. Finally, the participation of voters made up...

The voters we met expressed no pretensions regarding the organization of elections and the mass media coverage of them.

As a whole, the May 23, 2010 elections to the NKR National Assembly were transparent, fair in line with democratic standards and can be assessed as another step towards the consolidation of democracy in the NKR.

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**Stepanakert**

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LEGAL ASPECTS

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