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### 民族自决权及其对受殖民主义或外国统治或 在外国占领下的民族的适用

2005 年 3 月 21 日亚美尼亚常驻联合国日内瓦办事处代表团  
致联合国人权事务高级专员办事处的普遍照会

亚美尼亚共和国常驻联合国日内瓦办事处和日内瓦其他国际组织代表团向联合国人权事务高级专员办事处致意，并谨随函附上关于纳戈尔内卡拉巴赫自决权的法律问题的一些资料。

亚美尼亚共和国常驻代表团敬请将本普通照会及所附资料 \* 作为人权委员会第六十一届会议议程项目 5 “民族自决权及其对受殖民主义或外国统治或在外国占领下的民族的适用” 下的正式文件分发。

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\* 附件不译，原文照发。

Annex**LEGAL ASPECTS FOR THE RIGHTS TO SELF-DETERMINATION IN THE  
CASE OF NAGORNY KARABAKH****Pre-Soviet Status**

After the First Russian-Persian war (1794-1813), according to the Treaty of Gulistan (1813), Karabakh, along with the other northeastern provinces of Armenia, was transferred from Persian to Russian dominion. In 1840, as a result of the implementation of an administrative reform in the Caucasus, which divided the region into two administrative districts, Karabakh was incorporated into the Caspian District. The next administrative reform of 1867 incorporated Karabakh into the Elizavetpol District. The area remained undisturbed throughout the century and through the beginning of World War I.

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 in Nagorny Karabakh the legislative power was exercised by the Armenian Assemblies. The First Armenian Assembly was convened on July 22-26, 1918, which declared the region self-governing and set up National Council and a government.

On February 20, 1919, the forth session of the Nagorny Karabakh's Armenian National Council in a protest note addressed to the Allied Governments rejected the intention of the Government of Azerbaijan to consider Nagorny Karabakh as an integral part of the territory of Azerbaijan and emphasized the right of the people of Nagorny Karabakh to self-determination as recognized by the Peace Conference. It was mentioned that Nagorny Karabakh had never recognized the authority of the Government of Azerbaijan in the limits of Karabakh's territory.

On February 24, 1919, the Forth Assembly of the Armenians of Nagorny- Karabakh adopted a Memorandum addressed to the Command of the Allied Forces in Transcaucasia to consider the will of the people of Nagorny Karabakh to become an integral part of Armenia during the Peace Conference where the final status of Nagorny Karabakh should be determined.

On August 26, 1919, the Karabakh National Council and the government of Azerbaijan concluded' a provisional agreement on Nagorny Karabakh to avoid military conflict. Both sides agreed that the problem of Nagorny Karabakh must be considered at the Paris Peace Conference. The Agreement did not modify the status of Nagorny Karabakh as an independent political unit. The provisional Agreement was violated by Azerbaijani side after the sovietization of the Democratic Republic of Azerbaijan<sup>2</sup>.

The fact that the government of Azerbaijan entered into agreement with the Karabakh National Council is evidence that Karabakh was considered a distinct legal entity. As for the position of

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<sup>1</sup> Lenin, V. I., Complete Publications of Works, (Moscow: 1963, in Russian), v. 91, at 436.

<sup>2</sup> The telegram of the chairman of the Armenian National Council of Nagorno-Karabakh of June 9, 1920 addressed to the chairman of the Armenian delegation in Moscow informed that the IX session of the Council adopted a resolution according to which the provisional agreement of 1919 was pronounced violated due to the attack of Azerbaijani forces on Shushi; and the Armenian delegation was requested to inform the Russian Soviet Government.

the international community regarding this issue, the Azerbaijani Republic of 1918-1920 was never recognized by the international community, and by the League of Nations, in particular. The League not only refused to officially recognize the Azerbaijani Republic, but also its application for membership. At its fourth meeting on December 1, 1920, the fifth Committee elected by the Assembly of the League of Nations, having examined the request for admission of the 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 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 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>.

B. "...it is difficult 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>.

The decision of the Forth 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>.

On August 10, 1920, Soviet Russia and the Republic of Armenia (not yet Soviet) signed an agreement stating that "the regions of Karabakh, Zangezour and Nakhichevan should be occupied by 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, Nagorny Karabakh was not recognized as part of Soviet Azerbaijan.

### **Sovietization Period**

On November 30, 1920, the now-soviet government of Azerbaijan adopted a declaration on recognition of Nagorny- Karabakh, Zangezour 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 Nagorny Karabakh, Zangezour and Nakhichevan were recognized as an integral part of Soviet Armenia. Though, the Azerbaijani Revcom in its "Declaration Regarding the Establishment of Soviet Power in Armenia" of December 2, 1920, recognized only Nagorny Karabakh's right for self-determination. However, at that time, the recognition of Nagorny-Karabakh's right for self-determination was equal to the proclamation of Nagorny- Karabakh as integral part of Armenia, as the will of it's people could not been distrusted. On June 12, 1921,

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

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

<sup>5</sup> League of Nations, The Records of the First Assembly, The Meetings of the Committees, Forth Committee, page 174.

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 Armenian SSR adopted a declaration, which proclaimed Nagorny Karabakh as an integral part of Armenian SSR.

On June 19, 1921, Alexander Miasnikyan, Chairman of the Council of People's Commissars of Armenia, 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 Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorny Karabakh is an inseparable part of Soviet Socialist Armenia".

In the official report of the People's Commissariat for Foreign Affairs to the IX Conference of Soviets for 1920-1921, it was mentioned that: "In July, an agreement is being signed with Azerbaijan about Nagorny Karabakh, which is being included in Soviet Armenia".

In July 1921, the Azerbaijan SSR insisted that Nagorny Karabakh's issue be considered at the Plenary Session of the Caucasian Bureau 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 (Kavbureau) of RCP-B declined a formula suggested by its member, Narimanov, to "leave Karabakh in Azerbaijan" and decided to "include Nagorny Karabakh in the Armenian SSR, and to conduct plebiscite in Nagorny Karabakh 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 read: "Proceedings from the necessity of establishing peace between Muslims and Armenians... leave Nagorny Karabakh 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 "include Nagorny Karabakh in the Armenian SSR, and to conduct a plebiscite in Nagorny Karabakh only" was the last legal document on the status of Nagorny Karabakh to be legally adopted without procedural violations<sup>6</sup>.

As these facts demonstrate, Nagorny Karabakh did not belong to Azerbaijan SSR - either during the sovietization of Azerbaijan, or after the establishment of Soviet power in Armenia (when Baku recognized all disputed territories as Armenian) or when the plenary Session of the Caucasian Bureau of the Central Committee of RCP-B discussed the issue and declared the territories to be an integral part of Soviet Armenia.

On the other hand, with or without procedural violations, the legitimacy of these fora is seriously questioned. The decision of the Moscow RCP is an unprecedented Legal act in the history of International law: the political party of a third country, i.e., the Russian Bolshevik party, with no legal power or jurisdiction, decided the status of the territory of Nagorny Karabakh.

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<sup>6</sup> 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 Nagorny Karabakh Autonomous Region included the following text 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 voting and that according to its own voting rules, four votes were not enough to pass a decision.

On July 7, 1923, Soviet Azerbaijan's Central Executive Revolutionary Committee resolved to dismember Karabakh and establish the Autonomous Region (Oblast) of Nagorny Karabakh on a part of its territory.

### **Nagorny Karabakh under Perestroika**

On February 20, 1988, a session of the twentieth convocation of delegates of Nagorny Karabakh Autonomous Region adopted a resolution seeking the transfer of Karabakh from Soviet Azerbaijan to Armenia. At the same time, the Assembly applied to the Supreme Soviet of the USSR for confirmation of this resolution.

On June 13, 1988, the Supreme Soviet of the Azerbaijan SSR denied the application of the Assembly of Nagorny- Karabakh. Thereafter, on June 15, 1988, the Supreme Soviet of Armenian SSR approved Karabakh's request and decided to appeal to the Soviet government for the resolution of the issue.

On July 18, 1988, the Supreme Soviet of the USSR, citing Article 78 of the Soviet Constitution of October 7, 1977 (which prohibited any territorial changes to a Union Republic without its consent)<sup>7</sup>, decided to leave Nagorny Karabakh 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 established a special authority in Nagorny Karabakh, which was under the direct supervision of the Soviet central government. Thus, the central government ascertained Azerbaijan's inability to exercise formal control over the territory of Nagorny Karabakh. As a result, the whole supervision of the economy, internal governance bodies, cultural and educational institutions of Nagorny Karabakh was transferred to the appropriate institutions of Soviet Russia and Armenian SSR. By the end of 1989, Nagorny Karabakh was not under Azerbaijan's administrative control and de facto not within the Azerbaijan SSR.

In the summer of 1989, authorized representatives of the people of Nagorny Karabakh formed National Council.

On November 28, 1989, the Supreme Soviet of the USSR dissolved the special authority in Nagorny Karabakh 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 Armenia adopted a resolution calling for the reunification of the Armenian SSR and Nagorny Karabakh.

On November 23, 1991, the Supreme Soviet of Azerbaijan, that had already declared its own independence from the USSR, adopted a law on "Abolition of the Nagorny Karabakh Autonomous Oblast"<sup>8</sup>. Also, the law called for the renaming of certain Armenian cities, including Stepanakert. Such measures violate international practice, because in such cases the

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<sup>7</sup> Article 78 of the 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".

<sup>8</sup> The law on abolition of Nagorny Karabakh Autonomous region was based on the second paragraph of the Article 10 of the Constitution of the Azerbaijan Republic (adopted on November 12, 1995 by a Referendum of the Azerbaijan Republic, which came into force since 27 of November 1995) and on Article 4 of the Constitutional Act on State Independence of the Republic of Azerbaijan.

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 Azerbaijan SSR and Nagorny Karabakh. This law-prohibited infringement of the latter's borders without Nagorny Karabakh's explicit consent.

On November 28, 1991, the resolution passed by the USSR Constitutional Oversight Committee found the USSR Supreme Soviet's November 28, 1989 decision "On measures to normalize the situation in Nagorny Karabakh Autonomous Oblast"<sup>9</sup> unconstitutional, as well as Azerbaijan's decision of November 26, 1991 abolishing Karabakh's autonomous oblast. It also revoked the December 1, 1989 Armenian resolution on "Reunification of Armenian SSR and Nagorny Karabakh". Thus, this resolution restored Karabakh's pre-1988 status.

### **Rejection of Soviet Legal Heritage by Independent State of Azerbaijan**

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. The same Constitutional Act considered the establishment of Soviet power in Azerbaijan as 'annexation by Soviet Russia', which 'overthrew Azerbaijan's legal government'. Thus, the Republic of Azerbaijan declared the establishment of Soviet power in Baku illegal, and rejected the whole Soviet political and legal heritage. The Constitutional Act reads as follows:

Article 2. The Azerbaijani Republic 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 the Republic of 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.

<sup>9</sup> The USSR Constitutional Oversight Committee found that the decision of November 28, 1989, hinders the restoration of the constitutional bodies of authority and government in Nagorny Karabakh Autonomous Oblast and hinders the realization of the right of people of Nagorny Karabakh as provided by Articles 39 and 48 of the Constitution of the USSR, which determine the principle of general, equal and private electoral right.

<sup>10</sup> Declaration of the Supreme Soviet of the Azerbaijani Republic on "Re-establishment of the State Independence of the Azerbaijani Republic", "Bakinski Rabochi", August 31, 1991.

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 if it were to accept the Soviet legal heritage" (1920-1991), it would have to accept the status of the Nagorny Karabakh 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>.

The Azerbaijan SSR was the only Soviet Republic whose borders were determined by agreements (Moscow Agreement of March 16, 1921 and Kars Agreement of October 10, 1921), which were never denounced and, presently, are still in force. It is the only Soviet Republic whose territorial integrity loses its basis without these agreements and outside of the Soviet legal heritage. In 1991, after Azerbaijan rejected the Soviet legal heritage, 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 Azerbaijani Republic has lost all pretensions to the territories passed to Soviet Azerbaijan in July 1921 - namely Nagorny Karabakh, 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, 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 solely Azerbaijan's Constitution and laws have exclusive legal force on the territory of Azerbaijan.

### **Sovereignty of Nagorny Karabakh under domestic legislation of former USSR**

On September 2, 1991, Nagorny Karabakh in compliance with domestic Soviet law, initiated the Process of independence through the adoption of the "Declaration of Independence of the Republic of Nagorny Karabakh"<sup>14</sup> by the local councils of Nagorny Karabakh. This act was in full conformity with the existing law. The Soviet law of April 3, 1990 'On the Procedures of 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<sup>15</sup>.

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 Union. At the time of adoption of the law, for more than a year after its adoption, Azerbaijan was a member of Union and this law was necessarily binding for Azerbaijan.

<sup>11</sup> "Constitutional Act on the State Independence of the Azerbaijani Republic", "Baku", 7.11.1991.

<sup>12</sup> See page 17 of this report.

<sup>13</sup> See pages 11-12 of this report.

<sup>14</sup> This Declaration proclaimed the Republic of Nagorny Karabakh within the present borders of Nagorny Karabakh Autonomous Oblast and adjacent Shahumian region.

<sup>15</sup> Particularly Article 3 stated that "...People of autonomous republics and autonomous entities have the right to decide on their own whether to stay within the USSR or within a seceding Union Republic".

On December 10, 1991, Nagorny Karabakh held its own referendum on independence in the presence of international observers and media representatives<sup>16</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, autonomous regions or autonomous oblasts should be organized separately for each autonomous entity..." The vote overwhelmingly (99 percent in favor of independence, 107,648 persons) approved Karabakh's sovereignty: 82'2 percent of Karabakh's registered voters (over 108,736 persons) participated in the elections and 99'89 percent of those casting ballots supported its independence from the already seceded Republic of Azerbaijan. As a result, Nagorny Karabakh was the only autonomous region of the Soviet Union, which gained independence according to the existing domestic legislation.

Following the results of the Referendum, on December 12, 1991' an Act "On the Results of the Referendum on the independence of the Republic of Nagorny- Karabakh" was adopted and signed by the independent observers, which confirmed the fact that the preparatory, organizational and implementation procedures were carried out in conformity with previously adopted "Interim Provisions on Organization of a Referendum in Nagorny Karabakh 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 Nagorny Karabakh 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 Nagorny Karabakh (in 81 electoral districts), and on January 6, 1992, the newly convened Parliament, adhering to the results of the Referendum adopted a Declaration of Independence.

On September 20, 1992, the Parliament of the Republic of Nagorny- Karabakh petitioned the United Nations, the Commonwealth of Independent States, and individual countries to recognize Nagorny Karabakh Republic.

On January 6, 1992, the Supreme Council of Nagorny Karabakh adopted the "Declaration on State Independence of the Republic of Nagorny Karabakh" in view to regulate the relations between the Azerbaijani and Armenian nations, ensure the right of people for self-determination and reiterate Nagorny Karabakh's experience of self-governance as it existed during 1918-1920. This Declaration and the Universal Declaration of Human Rights would form the basis for the elaboration of the Constitution and Legislation of Nagorny Karabakh.

On January 8, 1992, the Parliament of Nagorny Karabakh Republic adopted the Constitutional Law "On Basic Principles of the State Independence of Nagorny Karabakh Republic", which proclaimed Nagorny Karabakh 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 Nagorny Karabakh Republic may not be altered without the consent of the Parliament of the Nagorny Karabakh Republic based on the free will of its population via referendum. The borders of Nagorny Karabakh Republic with other states may be changed by

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<sup>16</sup> The observers were the representatives of the former Unions Republic, deputies of Supreme Soviets of USSR, RSFSR, and MOSSOVET and representatives of various international organizations and foreign States.



mutual agreement of concerned sides. The constitutional and legal status of Nagorny Karabakh Republic may not be altered without the consent of the Parliament of Nagorny Karabakh Republic.

The Resolution of the European Parliament "On the Support for the Peace Process in the Caucasus" of June 21, 1999 recognizes the fact that the "autonomous region of Nagorny Karabakh declared its independence following similar declarations by former Soviet Socialist Republics after the collapse of the USSR in September 1991"<sup>17</sup>.

### **Does Azerbaijan's Internal Legislation on Nagorny Karabakh Comply with International Law?**

On November 23, 1991, the Azerbaijani Republic annulled Karabakh's Autonomy. In doing so, Azerbaijan violated its law on "Nagorny Karabakh 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 Nagorny Karabakh Autonomous Oblast may not be altered without the consent of National Deputies' Council of Nagorny Karabakh Autonomous Oblast. Furthermore, the law clearly defines that the law on Nagorny Karabakh Autonomous Oblast should be adopted by the Supreme Soviet of Azerbaijan SSR at the proposal of the National Deputies' Council of Nagorny Karabakh Autonomous Oblast. Azerbaijan, having once abolished the autonomous status of Nagorny Karabakh, has also restricted the scope of autonomy in its basic law, i.e. the 1995 Constitution, by requiring that the state should be "unitary", which leaves no further space for negotiations on these grounds.

Currently, the Protection of human rights is a matter of legitimate international concern and, consequently, does not constitute exclusively an internal affair of the respective state. Azerbaijan, by abolishing the autonomous status of Nagorny Karabakh without its peoples' consent and stipulating in its Constitution of 1995 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, Azerbaijan has violated Article 1 (Paragraph 2) 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:

- International Covenant on Civil and Political Rights of December 16, 1966;
- International Covenant on Economic, Social and Cultural Rights of December 16, 1966;
- 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);
- UN General Assembly Declaration on "Principles of international Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (October 24, 1970).

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<sup>17</sup> Official Journal of the European Communities, C 175/251.

In particular, based on ' the Declaration of October 24, 1974, the 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".

### **Independent State of Nagorny Karabakh under international law**

This study has demonstrated that the independence of Nagorny Karabakh was conducted in conformity with the requirements of internal and international legal norms. Simultaneously, to this legal process, Nagorny Karabakh has successfully established all 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 fourteenth years of its existence, the Republic of Nagorny Karabakh has shown its own capacity to maintain and strengthen national security, economic development of the country and 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:

- A defined territory;
- Permanent population;
- A permanent administration organized under common political institutions exercising exclusive jurisdiction on 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, but this approach is not a generally accepted norm, and 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 practices of several states, such as the United Kingdom and the USA.

#### **Defined territory:**

Nagorny Karabakh 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 Nagorny Karabakh to be a politically independent factor in the region.

#### **Permanent population:**

The vast majority of people of Nagorny Karabakh constitute a homogenous group with historic ties to its territory. The population of Nagorny Karabakh is about 144,300 with 95% Armenians and 5% minorities. On November 18, 1995, the President promulgated the "Law on the Main Principles of Nationality of Nagorny Karabakh".

#### **Permanent administration organized under common political institutions:**

On September 9, 1996, the National Assembly of Nagorny Karabakh established a Commission on Elaboration of the Constitution presided by the President of the country.

Nagorny Karabakh is a Republic with a presidential governing system. This form of governance was introduced in November 1 994. Universal direct presidential elections were held on November 24, 1996, and the acting President became the first democratically elected President of the Republic. The law on "President of Nagorny Karabakh" of December 21, 1994 defines the

powers of the President. On September 1, 1997, during extraordinary presidential elections, the second President of the Republic was elected.

According to the legislation of Nagorny Karabakh, the National Assembly is the highest legislative body of the Republic. Compared with the first elections of December 28, 1991<sup>18</sup>, a new form of elections was introduced in June 1995, according to which deputies are elected from 33 electoral districts, instead of 81. The last parliamentary elections were held on June 18, 2000. The law "On the Nagorny- Karabakh Parliament" of December 22, 1994, determines the powers of the National Assembly. There are six permanent Committees<sup>19</sup> in Nagorny Karabakh National Assembly; temporary committees can be formed in case of necessity. Since 1991 the National Assembly has adapted a series of laws necessary for the foundation of the country's political structures, executive and judicial authorities. During 2001-2004, the following laws were adopted: Amendments to the Law on Education, Law on Military Service, Law on Police, Law on Census, Law on Television and Radio, Law on Tax Service, Law on Regulations of the National Assembly, Law on NKR Budget System, Law on Civil Defense, Laws on the NKR Government, etc.

According to the Decrees of the President of December 24, 1996 and October 29, 1997, the government of Nagorny Karabakh is comprised of the Prime Minister and 10 Ministries<sup>20</sup>. In addition, there are state departments under the Government<sup>21</sup>. The powers of the Government are determined by the law on "Government of Nagorny Karabakh", of December 22, 1994.

Local governance is also operating in Nagorny Karabakh since the adoption of the law on "Elections of bodies of local governance" by the parliament on January 28, 1998. The first elections were held on September 27, 1999. The next regular elections were held on September 5, 2001 and on August 8, 2004.

Regular presidential, parliamentary and local elections have been held since December 1991. The last presidential elections were held on August 1, 2002. International observers observed the elections.

The economy of Nagorny Karabakh has been developing since the ceasefire of 1994. Large-scale reconstructions are being carried out in the country. The primary field of economy is agriculture. The country has its own budget system and currency. A law adopted by the Parliament regulates the budget of the country. The law on "Property," of February 14, 1995 regulates property issues.

*Government engaged in discussions with foreign states:*

The government of Nagorny Karabakh has been engaged in discussions with foreign states, also bringing its constructive participation at the international peace negotiations under OCSE mediation.

<sup>18</sup> See page 18 on the 1991 elections.

<sup>19</sup> Foreign Relations, Inter-parliamentary Relations and Information; Budget, Finance-credit and Economic issues; Agriculture and Environment Protection; Defense, Security, State Construction, Law and order Mandate; Human Rights and Minorities; Education, Science, Culture, Health, Sport and Social issues.

<sup>20</sup> Agriculture; culture, Youth Affairs and Sport; Defense; Education and Science; Economy and Finance; Foreign Affairs (created in 23 July 1993); Health; Internal Affairs; Social protection; Urban Development.

<sup>21</sup> National security; Justice; Privatization and investment; Statistics, state register and analyzes.

In various international and third party sponsored forums dedicated to the peaceful settlement of the conflict, a series of documents contain the signature of officials of Nagorny Karabakh while Azerbaijan still rejects any direct talks with Nagorny Karabakh<sup>22</sup>.

In 1992, at the Helsinki CSCE Council of Ministers, the document that mandated the Minsk process referred specifically to Nagorny Karabakh as a party in the negotiations, represented by their elected authorities. The Summary of Conclusions of the Additional Meeting of the Council of Ministers reads:

"Elected and other representatives of Nagorny Karabakh 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".

The participation of Nagorny Karabakh in the OSCE Minsk process also enshrined in relevant OSCE decisions, particularly, the OSCE Budapest Summit 1994 Document, as well as in the decision of the OSCE Senior Council of 31 March, 1995. This is few of many times that Nagorny Karabakh representatives are cited in various OSCE documents.

The 1994 cease-fire has been established with the Nagorny Karabakh officials, Azerbaijan and Armenia (Sochi Agreement, 1992, Bishkek Protocol, 1994).

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<sup>22</sup> These documents include the Zheleznovodsk Communiqué of September 23, 1991, after official talks held in Zheleznovodsk, Russia at the initiative of the Russian and Kazakh Presidents; the Timetable of Urgent Steps proposed by the chairman of the OSCE Minsk Group, on June 14, 1993; the Moscow Communiqué of February 18, 1994, following negotiations among the defense ministers of Armenia and Azerbaijan and the representative of Nagorny Karabakh's Army of Defense; the Bishkek Protocol of May 5, 1994, as the fruit of negotiations among the parliament speakers of Armenia, Azerbaijan and Nagorny Karabakh undertaken within the framework of the CIS Inter-parliamentary Assembly Mediation Mission; and the Agreement on cease-fire, mediated by Russia on May 12, 1994, among the ministers of defense of Armenia and Azerbaijan and the commander of Nagorny Karabakh's armed forces.