

The Nagorno-Karabakh Settlement Revisited: Is Peace Achievable?

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Abstract: The twelve years of negotiations on the settlement of the Nagorno-Karabakh conflict, since the May 12, 1994, cease-fire, have failed to produce any tangible results. The key issues of contention pertain not only to the final status of Nagorno-Karabakh, but also to the methodology used to settle the conflict and the format of the negotiations. Whether Nagorno-Karabakh should directly participate in the negotiations, and if there should be a package or step-by-step solution to the conflict, is crucial. Those issues have also become a matter of bitter political argument within Armenia and Azerbaijan, which impedes constructive dialogue. Currently, there is a lack of legitimacy and political will in both the Armenian and Azerbaijani leadership to solve the conflict, while Nagorno-Karabakh has been effectively left out of the negotiations. However, this should not dissuade international organizations from seeking a concrete solution, based on modern trends in international legal practices.

Key words: Minsk Group, Nagorno-Karabakh, OSCE

The Nagorno-Karabakh conflict, which mars relations between Armenia and Azerbaijan and impedes the political stability and economic development of the South Caucasus, has a long history and deep roots. Its main political cause lies in the contradiction between the aspirations for national self-determination of the predominantly Armenian-populated enclave and Azerbaijan's claim of territorial integrity to its Soviet-defined boundaries. Although the Bolsheviks granted sovereignty over the overwhelmingly Armenian-populated oblast of Nagorno-Karabakh to Azerbaijan in 1921, the people of Nagorno-Karabakh have since questioned this decision. In 1988, the Soviet of the Nagorno-Karabakh autonomous oblast requested secession from Azerbaijan, an event beginning the

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present phase of the Nagorno-Karabakh conflict. The response was the massacre of Armenians in the Azerbaijani industrial city of Sumgait. Rising ethnic tensions and the ensuing violence gradually degenerated into a full-scale war between Azerbaijan and the local Armenian self-defense forces in and around Nagorno-Karabakh and then, following the collapse of the Soviet Union at the end of 1991, the devastating military confrontation along the borders of newly independent Armenia and Azerbaijan.

On May 12, 1994, a cease-fire agreement, brokered by Russia and signed by Armenia, Azerbaijan, and Nagorno-Karabakh¹ put an end to the years of bitter armed fighting in the battle about the status of Nagorno-Karabakh. Because of the conflict, 6,500 Armenians and 20,000–25,000 Azerbaijanis were killed; 412,000 Armenians were expelled from Azerbaijan; and 186,000 Azeris fled from Armenia.² Nagorno-Karabakh forces established military control over most of Karabakh, as well as seven districts of Azerbaijan, from where some five hundred thousand Azeris were displaced. Since the cease-fire, various international mediation efforts between the conflicting parties have been consolidated into negotiations under the auspices of the Organization for Security and Cooperation in Europe (OSCE), led by the so-called Minsk Group, cochaired since 1997 by France, Russia, and the United States. The negotiations, which so far have produced few results, have focused on two possible methods for the settlement of the conflict. One approach is the package deal and the other is a step-by-step (or phased) solution.

The package solution requires an agreement on the final status of Nagorno-Karabakh to open a road for the elimination of the armed conflict's consequences. On the other hand, the step-by-step approach postpones an agreement on the final status of Nagorno-Karabakh to the indefinite future, focusing instead on a peace agreement addressing all other issues. These include provisions for reliable international security guarantees for Nagorno-Karabakh, the withdrawal of Nagorno-Karabakh forces from the occupied territories, the return of displaced persons to their prewar homes, and the normalization of the relations between Armenia and Azerbaijan, including the reopening of trade and communication links.

The choice between a step-by-step and a package methodology for the conflict's settlement has become a bitter point of contention in Armenian political discourse. The administration of the first president, Levon Ter-Petrossian, favored the step-by-step approach as a way to avoid the irreconcilable contradictions of the conflicting parties' maximalist positions, promoting the "land for peace" formula. His opponents in the government, who forced him to resign over differences on the settlement, declared the policies defeatist.

The current Armenian president, Robert Kocharian, has been a long-time advocate for the package solution based on the "land for status" formula. Besides, the former Karabakhi leader's rise to power in 1998 eventually brought a change to the negotiations' format. Whereas the 1994 Budapest Summit of the OSCE recognized Armenia, Azerbaijan, and Nagorno-Karabakh as parties to the conflict, the negotiators' perception of Kocharian as representing both Armenia and Nagorno-Karabakh eventually led to the replacement of the negotiations' tri-lateral format by bilateral Armenian-Azerbaijani talks. In addition, this allowed

for the interpretation of the Nagorno-Karabakh conflict as a territorial dispute between the two countries, enabling discussion of solutions to the conflict based on territorial swaps between Armenia and Azerbaijan during both the Paris and Key West talks in 2000–02.

Years of intensive search for a package solution did not produce any results. The new president of Azerbaijan, İlham Aliyev, rejected the package approach. International pressure then broke Kocharian's resistance. In April 2004, the conflicting parties and mediators launched the so-called Prague process of negotiations between the presidents and foreign ministers of Armenia and Azerbaijan, focusing once again on what is essentially a step-by-step solution. The key idea of these new talks is the understanding that a solution may be found by agreeing on, or even codifying in the text of the agreement of, the mechanism through which the status of Nagorno-Karabakh will be determined in the future, rather than agreeing on the status itself. After a series of meetings between both countries' presidents and foreign ministers, both the mediators and the conflicting parties have made optimistic statements that the achievement of peace is within reach in 2006, by which time domestically troublesome parliamentary elections in Azerbaijan and the Armenian referendum on constitutional amendments would be concluded, with the next elections expected to be held in 2007.

This article analyzes the evolution of the negotiations and proposed peace plans, and describes the current state of affairs of the peace talks and current ideas on the conflict's resolution.

The OSCE Mediation Framework: Step-by-Step Approach Established

Several key decisions by OSCE member states and United Nations Security Council resolutions form the basis of the negotiations' format and substance. The OSCE began handling the settlement of the Nagorno-Karabakh conflict immediately after the collapse of the Soviet Union and the accession of Armenia and Azerbaijan to the then Conference on Security and Cooperation in Europe (CSCE). In 1992, a key meeting in Helsinki of the OSCE Council of Ministers designed an international conference to be held in Minsk as the main instrument for the settlement of the conflict. The Minsk Conference, with the participation of the eleven member states of the OSCE,³ was mandated to serve as "an ongoing forum for the negotiations aimed at peaceful settlement of the crisis on the basis of principles, obligations and the charter of CSCE."⁴ The efforts have been supported by all four resolutions adopted by the Security Council on Nagorno-Karabakh, expressing their "full support of the peace process being pursued within the framework of the Minsk Conference of the CSCE."⁵

Events on the ground and the development of the military confrontation in the conflict in 1992–1994, however, revealed the deficiencies of the framework of negotiations established by the Helsinki decisions. Continued military operations—including the seizure of Shusha and Lachin by Nagorno-Karabakh forces in May 1992, the capture of Shahumian and Mardakert by the Azerbaijani Army in June–August 1992,⁶ and the occupation by the Nagorno-Karabakh forces of six Azerbaijani districts around Karabakh in 1993—disrupted any possibilities for con-

vening the Minsk Conference. It was then replaced by informal meetings of the so-called Minsk Group, conducting a series of meetings in Rome and other places in 1992. Disagreements over the status of participating delegations in the work of the Minsk Group and the absence of a clearly defined mandate for the Minsk Group further contributed to its inefficiency, which resulted in the negotiators' choice to work out the Minsk Group's decisions under the Geneva Five's narrower, secret, and informal negotiations.⁷

Another important factor contributing to the inefficiency of the Minsk Group's negotiating format was the fierce competition between the OSCE and Russian mediation efforts. Their contradicting proposals were creating opportunities for the parties of the conflict to exploit the differences between the mediators and maneuver between alternative proposals in search of a more favorable solution, or in an attempt to prevent reaching any solution at all. The OSCE Budapest Summit addressed these deficiencies. Another key decision by the OSCE further developed the framework of negotiations based on the new political realities on the ground, among which the most important was the signing of a cease-fire by the military heads of Armenia, Azerbaijan, and Nagorno-Karabakh on May 12, 1994, through Russian mediation.

To "harmonize the mediation efforts of Russia and OSCE into a single coordinated effort within the framework of the CSCE," the summit decided to establish a dual cochairmanship of the Minsk Conference with one chair to be given to Russia. The Summit also effectively mandated the Minsk Group with two tasks: (1) to promote the continuation of the existing cease-fire and (2) to conduct negotiations for the conclusion of a "Political Agreement on the Cessation of the Armed Conflict" (hereafter, the Agreement).⁸ The concept of the Agreement was based on earlier drafts developed by the Minsk Group known as the "Timetable (or Adjusted timetable in its most recent version) of Urgent Steps to Implement Security Council Resolutions."⁹ Those steps included the withdrawal of occupying forces, the removal of all obstacles to communication and transportation, and the return of refugees and Internally Displaced Persons (IDPs) to their homes. Its implementation would eliminate the conflict's major consequences for all parties and permit the convening of the Minsk Conference.

The OSCE consequently adopted a two-phase or step-by-step approach to the resolution of the Nagorno-Karabakh conflict. The first phase, mediated by the Minsk Group, was aimed at the cessation of military conflict and the preparation of necessary conditions for the convening of the Minsk Conference. The second phase, to be handled by the Minsk Conference, was aimed at reaching the comprehensive settlement of the Nagorno-Karabakh problem, including the determination of Nagorno-Karabakh's final status. The Budapest Summit also made the implementation of the Agreement contingent on the deployment of multinational peacekeeping forces (PKF), which would become possible only after the conclusion of the Agreement. Thus, the Budapest Summit adopted a well-elaborated methodology of the settlement of the Nagorno-Karabakh conflict, consisting of several consecutive steps: concluding the Agreement, deploying the PKF, implementing the Agreement, and convening the Minsk Conference to determine the final status of Nagorno-Karabakh.

The Conflicting Parties

The Budapest Summit also addressed the highly contested issue of the parties to the conflict, and of their participation status in negotiations. Azerbaijan considered the conflict to be between Armenia and Azerbaijan, refusing to recognize Nagorno-Karabakh as a party to the process of political settlement. Armenia insisted that the war was a conflict between Azerbaijan and Karabakh, and that no peace agreement, including cease-fire agreements, could be sustainable without the participation of Karabakh's leadership as a signatory to agreements. The 1992 OSCE Helsinki resolution stipulated that "Elected and other representatives of Nagorno-Karabakh will be invited for the participation in the conference by its Chairman after consultations with the Participating States."¹⁰

However, Nagorno-Karabakh was not at that time officially referred to as a party to the conflict.

The development of the military confrontation in the Nagorno-Karabakh conflict after the OSCE Helsinki decisions brought the international community and organizations

to the understanding that Nagorno-Karabakh should be considered as a full-fledged party to the conflict. This was implied U.N. Security Council Resolution 822, which referred to the occupying forces in Kelbajar as "local Armenian forces." Resolutions 853 and 884 called "upon the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic with resolutions" of the Security Council. All U.N. Security Council resolutions on Karabakh referred to the crisis as "the continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic," thus confirming the presence of a party to the conflict other than Armenia on the Armenian side.

In its final resolution, the Budapest Summit referred to "the parties to the conflict"¹¹ while mentioning the July 27, 1994, agreement on the confirmation of the cease-fire signed by Armenia, Azerbaijan, and Nagorno-Karabakh. On March 31, 1995, the OSCE chairman-in-office confirmed "previous OSCE decisions on the status of the parties, that is the participation of the two state parties to the conflict and of the other conflicting party (Nagorno-Karabakh) in the whole negotiation process, including in the Minsk Conference."¹² Based on these decisions, the OSCE Minsk Group has been conducting its mediating efforts with Yerevan, Baku, and Stepanakert.

Although based on OSCE documents, the international community officially considers Nagorno-Karabakh as a party to the conflict, both the Key West and Paris talks, as well as the recent Prague process negotiations, have effectively

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pushed Nagorno-Karabakh out of the negotiation process. Although Nagorno-Karabakh did not officially delegate the right to conduct negotiations with Azerbaijan to Armenia, it is widely understood that President Robert Kocharian, as a former leader of Karabakh, informally represents its interests as well. As long as there are optimistic expectations among the international community with regard to the Prague process, this is not considered a major obstacle. At the end of the day, however, it is obvious that no agreement will be possible to implement without the formal agreement of Nagorno-Karabakh. One should not forget that two previous peace proposals of the Minsk Group were dropped as they were officially rejected by Nagorno-Karabakh.

Lisbon Failure

In 1996, during the Lisbon Summit of the OSCE, the Minsk Group deviated from the step-by-step methodology of the Budapest Summit, recommending a settlement of the Nagorno-Karabakh problem based on three principles. Among these was the “legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan.”¹³ The recommendations were supported by fifty-three OSCE states; Armenia, however, vetoed the resolution, claiming that the Minsk Group recommendations did not reflect its mandate to negotiate the Agreement only. As President Ter-Petrosian said, “The statement predetermines the status of Nagorno-Karabakh, contradicting the decision of the OSCE Ministerial Council of 1992, which referred this issue to the competence of the OSCE Minsk Conference, to be convened after the conclusion of a political agreement.”¹⁴ The negotiations afterward reached a deadlock that was overcome only after reforming the Minsk Group cochairmanship.

On December 30, 1996, OSCE Chairman-in-Office Flavio Cotti from Switzerland appointed a representative from France to succeed Ambassador Heiki Talvite of Finland as cochairman of the Minsk Conference. The next day, the foreign minister of Azerbaijan protested against the decision and requested to reverse the decision and to appoint the representative from the United States instead.¹⁵ This sparked a diplomatic row, which was resolved after the OSCE cochairman-in-office appointed the United States representative as the third cochairman of the Minsk Conference. The coordinated and joint work of both the cochairmanships of the Minsk Conference and the Minsk Group, now represented by the United States, Russia, and France, made that joint body a much more influential and effective mediator. The active participation of the cochairmen of the Minsk Conference made possible the inclusion of negotiation elements related to the future status of Nagorno-Karabakh in the agenda, which were beyond the mandate of the Minsk Group. On May 31 and June 1, 1997, the Minsk Conference cochairmen presented a peace plan based on a package approach to Yerevan, Stepanakert, and Baku.

The 1997 Package Proposal

The new proposals, termed a package deal, adopted a new unified approach to combine the conclusion of the Agreement with a second agenda—determining

the status of Nagorno-Karabakh, which would then be approved by the Minsk Conference.¹⁶ This was an important shift from the Minsk Group's previous policies. In the past, in line with the Budapest decision, the Minsk Group was only entitled to negotiate the Agreement and prepare the conditions necessary for convening the Minsk Conference. Although the determination of Nagorno-Karabakh's status was considered within the purview of the Minsk Conference, the new proposal provided a solution of the status issue not be determined, but rather be approved at the conference.

The new proposal provided for the resolution of all issues in dispute, including the final status of Nagorno-Karabakh, in a single comprehensive agreement. As for what the status of Karabakh would be in a compromise agreement, the main idea was to formally maintain the territorial integrity of Azerbaijan, while granting Karabakh a list of special privileges that would effectively amount to full sovereignty over its domestic affairs. In the diplomatic jargon used at the time, this idea was known by its "de jure part of Azerbaijan, de facto independent" formula. A provision of the status agreement would define Karabakh as "a state and a territorial formation within the confines of Azerbaijan,"¹⁷ but would provide for unprecedented privileges and rights almost tantamount to those of sovereign states. According to the July 1997 draft, Karabakh would have "its own constitution adopted by the people of NK in a referendum . . . own flag, coat of arms, and anthem . . . will independently form its own legislative, executive and judicial bodies . . . the right to maintain direct relations with foreign states and international organizations . . . a national guard and police force . . . a multi-ethnic nature; each citizen would have the right to use his national language in all official and unofficial cases." In addition, the constitution and laws of Nagorno-Karabakh would have superiority on its territory over Azerbaijani legislation, and the Azerbaijani army, security forces, and police would not have the right to enter Nagorno-Karabakh's territory without the latter's authorization.¹⁸

The proposal, however, was rejected by Nagorno-Karabakh. Azerbaijan's response has also made it clear that the differences between Azerbaijan and Nagorno-Karabakh regarding the key elements of Karabakh's status were irreconcilable.

The 1997 Step-by-Step Proposal and Its Political Aftermath

This made the cochairs of the Minsk Group once again turn to the old strategy of the step-by-step approach outlined by the 1994 Budapest decision of the OSCE. Using that approach, the parties to the conflict only agreed on the Agreement and left the settlement of other issues to the Minsk Conference.

The solution envisaged the withdrawal of Nagorno-Karabakh forces from six districts of Azerbaijan leaving Nagorno-Karabakh itself and the Lachin district, connecting it to Armenia, under the military control of Karabakh. It also provided robust mechanisms for demilitarization of the territories to be freed by the Nagorno-Karabakh army. According to the proposal, an initial buffer zone would be created in the first stage when forces along the current line of contact withdrew to specially delineated positions in accordance with a proposed schedule to facili-

tate the initial deployment of the vanguard of an OSCE multinational force.¹⁹ The final buffer zone would extend along the 1988 borders of the former Nagorno-Karabakh oblast, as well as the northern and southern borders of the Lachin district. Another element of the demilitarization scheme was the creation of a zone of separation, formed by the freed territories, which would be permanently demilitarized and where security would be monitored by international peacekeepers. According to the step-by-step solution, the resolution of the most contentious issues, such as Nagorno-Karabakh's final status, the fate of the Lachin land corridor connecting Nagorno-Karabakh with Armenia, and the issue of the return of IDPs to Shusha²⁰ and Shahumian,²¹ would have been left for future negotiations in the Minsk Conference, or just postponed for an indefinite period until confidence building would enable the possibility of reaching further agreement.

At the end of 1997, Armenia and Azerbaijan signaled their consent to the phased resolution of the conflict. Nagorno-Karabakh, however, once again rejected the Minsk Group's proposal, citing insufficient security guarantees. Ter-Petrossian's adherence to the plan sparked a political crisis in Armenia, where hardliner elements within his own administration made a political alliance with the Nagorno-Karabakh leadership and Armenia's opposition, forcing Ter-Petrossian's resignation. In April 1998, the former Nagorno-Karabakh leader, Robert Kocharian, became the new president of Armenia. This brought radical changes to Armenian policies on Nagorno-Karabakh. Under Ter-Petrossian's administration, Armenia repeatedly stated that it had no claims on Azerbaijani territory and viewed the Nagorno-Karabakh conflict as one between Azerbaijan and Nagorno-Karabakh. Although Armenia supported the right of Nagorno-Karabakh for self-determination and viewed itself as responsible for the security of ethnic kin in Nagorno-Karabakh, it nevertheless declared that it would accept any compromise on the status of Nagorno-Karabakh reached between the two conflicting parties. Kocharian, however, positioned himself as representing the interests both of Armenia and, informally, of Nagorno-Karabakh. A direct consequence of this policy was the adoption by Armenia of Nagorno-Karabakh's position on the future status of the entity. What was the past official position of Nagorno-Karabakh was now defined by the new Armenian President Kocharian as Armenia's three indispensable principles for the solution on Nagorno-Karabakh's status: "(1) No vertical links between Azerbaijan and Nagorno-Karabakh, which means that Nagorno-Karabakh cannot be subordinated to Azerbaijan; (2) security guarantees for the population of Nagorno-Karabakh; (3) preservation of the control over the land link with Armenia."

Armenia's new focus and more active position on the status of Nagorno-Karabakh had implications for the new administration's preference for realizing the resolution of the conflict. Instead of Ter-Petrossian's land for peace approach, a more radical land for status concept of a peace deal was declared as the ultimate goal of the negotiations. Ter-Petrossian's adherence to the step-by step solution was blamed as defeatist and Kocharian's administration repeatedly stated that only a package solution would be able to ensure an acceptable status of Nagorno-Karabakh for Armenia.

The 1998 Common State Proposal

The 1998 Common State proposal of the Minsk Group was a return to the package approach and a slight modification of the previous package proposal. Its main difference from the 1997 package proposal was a looser formulation of Nagorno-Karabakh's de jure unity with Azerbaijan: "Nagorno-Karabakh is a statal and territorial entity in the form of a Republic, which constitutes a common state with Azerbaijan within its internationally recognized borders."²²

Kocharian's team put a positive spin on this modification and heralded it as a major diplomatic victory. The modification, however, came at a cost; several special privileges of the de facto independence of Nagorno-Karabakh from the previous package plan, such as the right to draft its own regular security forces (not just volunteers) or to have foreign representations, have been cut.²³ Although the proposal effectively contained more vertical links with Azerbaijan, it was easier to sell to the Armenian public opinion because of the above-mentioned looser formulation of Nagorno-Karabakh's de jure unity with Azerbaijan as an equal entity. This was the reason why the proposal was a difficult sell to the Azerbaijani public and was rejected by President Heydar Aliyev as violating Azerbaijan's territorial integrity.

Interestingly, an analysis of the Common State proposal reveals a striking peculiarity. Although it provides a solution to Nagorno-Karabakh's status, the package is not full and, technically, the draft agreement cannot really be considered a package solution, as it does not offer any solution for the final status of the Lachin district. The peace plan stipulated that in its first phase, the forces of Nagorno-Karabakh would remain in the Lachin district, and that the "question of the utilization of the Lachin corridor by Nagorno-Karabakh, with a view to ensuring unrestricted communication between Nagorno-Karabakh and Armenia shall be agreed upon separately."²⁴

Why was the issue of Lachin not solved in this otherwise comprehensive agreement on the settlement of the Nagorno-Karabakh problem? One possible explanation may be that negotiators were willing to preserve flexibility on possible options for the resolution of the future status for the Lachin district. Those could include mutually agreed upon land swaps.

Land Swap Talks

The idea of exchanging the Armenian district of Meghri for Lachin seemed attractive to Aliyev and laid down foundations for the years of negotiations of 1999–2002, aimed at finding a package solution to the Nagorno-Karabakh problem based on land swaps between Armenia and Azerbaijan. Geographically, the Meghri district divides Azerbaijan from the exclave Azerbaijani territory of Naxçevan. Gaining Meghri would mean connecting the mainland of Azerbaijan with the rest of the country, gaining a strategically important land connection with ethnic kin in Turkey. No document has ever been published revealing the details of possible land swap solutions considered at the negotiation table, and no official proposals have been made by the Minsk Group. However, leakages from different diplomatic sources indicate that the talks mostly developed based on a concept, according to which the

sovereignty over Nagorno-Karabakh would be transferred to Armenia in exchange for the Meghri land corridor to be transferred to Azerbaijan.²⁵

As for what would be the width of the corridor, the considered solutions differed at different times in the negotiations process; the understanding, however, was that the fate of the Lachin and Meghri corridors would be determined on a basis of symmetrical exchange. The initial concept of the exchange of the Lachin and Meghri districts or of just narrow-stripped corridors met strong resistance in Armenia. The main reason for it was the strategic importance attached to Armenia maintaining its boundary with Iran, which would have been lost as a result of such an exchange. The Key West negotiations focused instead on the exchange of sovereign overpasses

through Meghri and Lachin, which would allow Armenia to preserve a land connection with Iran. An agreement was not reached, however, and the negotiations failed amid mutual accusations of retreating from previously agreed principles.

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The Prague Process

The transfer of power in Azerbaijan to Heydar Aliyev’s son, Ilham, brought important changes to the negotiations process. The new leadership of Azerbaijan rejected Armenia’s insistence on a package deal and once again pushed ahead with a step-by-step strategy. The Minsk Group mediators approved this shift, as it became obvious that, after almost seven years of fruitless negotiations, no agreement on the final status of Nagorno-Karabakh would be possible in the present atmosphere of distrust. Insisting on a package approach would simply amount to freezing the conflict.

Mounting international pressures on Armenia (and Nagorno-Karabakh) demonstrated that the international community would not tolerate the use of occupied lands as trump cards for receiving a desired status for Nagorno-Karabakh. In October 2004, Azerbaijan tried to pass a resolution in the U.N. General Assembly, effectively seeking U.N. inspection of Azerbaijan’s occupied territories.²⁶ Voting on the above-mentioned Azerbaijani resolution in the U.N. General Assembly was indefinitely delayed, however, it was agreed that an OSCE fact-finding mission would be sent into the occupied territories to check Azerbaijan’s allegations that Armenia was implementing a state policy of settlement in the occupied territories. The situation was further aggravated by mounting pressure on Armenia in the Parliamentary Assembly of the Council of Europe, where a resolution²⁷ was adopted effectively accusing Armenia of occupying Azerbaijan’s territory. Under those circumstances, Kocharian chose to yield to pressure and accept what was once unacceptable to him by joining the Prague process, in which the foreign ministers of Armenia and Azerbaijan currently discuss a step-by-step solution to the conflict.

This was a serious setback for Kocharian and a blow to the policies he had pursued since he became president in 1998. It meant that six years of searching for a package solution were wasted time for the country. To defend against such criticism, Kocharian needed a face-saving element in the new step-by-step framework that could be heralded as a major advantage versus the old step-by-step plan. The idea was that an agreement should be reached, if not on the final status of Nagorno-Karabakh, then at least on a mechanism, through which the status would be defined in the indefinite future. By having a referendum as the mechanism on board, Kocharian could declare that, since the new concept of the peace agreement somehow addressed the problem of status, it can be considered a package solution, or at least a mixture of the package and step-by-step solutions.

Hence, the codification of referendum, through which the status of Nagorno-Karabakh would be determined in the future without agreement on any details of how and when such a referendum would be conducted, became a key idea to open a road for the negotiations between Armenia and Azerbaijan on a step-by-step solution of the conflict. A deliberately vague formulation of the principle would enable both sides to interpret the provision in their own way, making the peace plan more sellable to respective public opinion in both countries. Although Armenia could persist that this should be a self-determination referendum leading to the independence of Nagorno-Karabakh, Azerbaijan could insist that independence would not be an option of the self-determination referendum, and that any change of its borders could be approved only through a nationwide referendum in Azerbaijan.

After a series of meetings between the presidents and foreign ministers of Armenia and Azerbaijan, the negotiators expressed optimism about the prospects of a peace deal concluding in 2006.

Referendum as a Roadmap to Peace

Although the idea of a referendum to determine the final status of Nagorno-Karabakh has been employed by negotiators participating in the Prague process only as a face-saving trick to enable a step-by-step peace deal, it is quickly gaining popularity in the international community as a realistic roadmap to peace.²⁸ The recent peace plan proposed by the International Crisis Group²⁹ envisages that the final status of Nagorno-Karabakh should be decided by a self-determination referendum after several requirements are met, including the return of displaced Azeris to former Azeri-majority areas in Nagorno-Karabakh. Then, an international conference would determine if Nagorno-Karabakh has met international preconditions for statehood, including the protection of minority rights, with such a review to be conducted for the first time five years after the signing of the peace agreement. The referendum would give Karabakh an appropriate range of options, including unity with, and secession from, Azerbaijan, and should be based on the principle that all parties will recognize the validity of its result. In the meantime, before the referendum, Karabakh would receive an internationally recognized interim status with its governing bodies to be elected under international supervision.

The International Crisis Group's proposals are completely in line with the modern trend of international legal practices, which support the concepts of inter-

mediate sovereignty, earned recognition, and remedial right to secession.³⁰ The use of those mechanisms may involve “an initial period of heightened autonomy and self-government, the interim maintenance of territorial association with the parent state, international monitoring, and a possibility of attaining full sovereignty after meeting a series of benchmarks over time.”³¹

Although those concepts can be particularly useful mechanisms for the international community in the settlement of the Nagorno-Karabakh conflict, it is unclear whether the current presidents of Armenia and Azerbaijan can politically afford their practical implementation. Their compromised legitimacy and preoccupation with political survival can become a serious impediment for the adoption of such a roadmap as a real plan for peace. In these conditions, the face-saving codification of the referendum in the text of a peace agreement may become a more realistic target to be achieved by the two presidents.

However, even that is doubtful. The legitimacy of both presidents was further undermined by the November 2005 parliamentary elections in Azerbaijan and a referendum on constitutional amendments in Armenia, the official results of which are being questioned by international and local observers. No evidence indicates that the current leaders of Armenia and Azerbaijan possess enough authority and vision to strike a deal, which will certainly lead to difficult confrontations within their respective societies and further undermine their political standing. This will be tested in 2006. The most reliable forecast for the fate of the Prague process is failure. But, it should not discourage the international community from searching for a sustainable solution to the conflict. It should develop and accumulate useful concepts and mechanisms for the settlement of the conflict, with an understanding that strong and visionary leaders will one day lead the people currently engaged in the conflict, who will be able to use the accumulated conceptual framework in the interests of their people and the security of the region. The effective elimination of Nagorno-Karabakh from the negotiations also leaves little hope for a breakthrough.

Notes

1. The Armenian and Azerbaijani ministers of defense and the commander of the Nagorno-Karabakh Army were signatories to the agreement. Ali Abasov and Harutiun Khachatryan, *Variants for a Solution of the Karabakh Conflict: Concepts and Reality* (Yerevan: Yeni Nesil, 2002), 134.

2. This occurred in 1988–1990. International Crisis Group Europe Report no. 166, Nagorno-Karabakh: Viewing the Conflict from the Ground, <http://www.crisisgroup.org/> (accessed September 14, 2005).

3. Azerbaijan, Armenia, Belarus, Germany, Italy, Russian Federation, United States of America, Turkey, France, Czech and Slovak Federal Republic, and Sweden.

4. CSCE, First Additional Meeting of the Council of CSCE, II, point 8, Summary of Conclusions, March 24, 1992.

5. See, for instance, UNSC Resolution 884, November 1993.

6. As the first chairman of Minsk Conference, Mario Raffaelli, put it, Azerbaijan’s continued “actions aimed at the restoration of its control over the given territory are incompatible with the country’s obligations to seek peaceful solution of the conflict through negotiations. . . . How can the Minsk Group quietly continue negotiations, when the very

object of the negotiations eventually vanishes? In the case that Nagorno-Karabakh returns under the control of that country in the result of the military offensive, what would then remain for negotiations?" Letter of chairman of Minsk Conference Mario Raffaelli to CSCE chairman-in-office, September 23, 1992.

7. The secret negotiations had an informal format, with the participation of five countries (United States, Russia, Turkey, Armenia, and Azerbaijan) and the chairman of the Minsk Group. These were aimed at "the elimination of all the obstacles for convening the Minsk Conference." A series of meetings took place mostly in Geneva in the period of October 1992–March 1993.

8. Budapest Summit, "Towards a Genuine Partnership in a New Era," December 6, 1994, 17.

9. Mentioned in the United Nations Security Council resolutions 874 (October 1993) and 884 (November 1993) as "Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993)." It was set out on September 28, 1993, at the meeting of the CSCE Minsk Group and submitted to the parties concerned by the chairman of the group with the support of nine other members of the group; amended by the CSCE Minsk Group meeting in Vienna on November 2–8, 1993 (U.N. documents S/RES/884 [1993], S/26522, appendix).

10. CSCE, First Additional Meeting of the Council, part 2, point 9, March 24, 1992.

11. The participating States welcomed the confirmation by the parties to the conflict of the cease-fire agreed on 12 May 1994 through the mediation of the Russian Federation in co-operation with the CSCE Minsk." Budapest Document December 6, 1994, "Towards a Genuine Partnership in a New Era," 17.

12. 1-SC/Journal no. 2, Chairman's Summary. He also stated, "In addition, interested parties may be invited to the Minsk Conference and its preparatory work for consultations."

13. OSCE Lisbon Summit Document, "Statement of the OSCE Chairman-in-Office," Annex 1, December 3, 1996.

14. OSCE Lisbon Summit Document, "Statement of the Delegation of Armenia," Annex 2, December 3, 1996.

15. The letter of Azerbaijani Foreign Minister Hasan Hasanov to Chairman-in-Office and Minister of Foreign Affairs of Switzerland Flavio Cotti, December 31, 1996.

16. Report by the cochairmen of the OSCE Minsk Conference on Nagorno-Karabakh to the Ministerial Council of OSCE (MC.GAL/2/97).

17. OSCE Minsk Group draft, "Comprehensive Agreement on the Resolution of the Nagorno-Karabakh Conflict," Agreement II, point 2, July 1997. Many of the elements regarding this proposal were based on confidential negotiations conducted between the personal representatives of the presidents of Armenia and Azerbaijan from December 1995 to November 1996.

18. *Ibid.*, points 5–15.

19. OSCE Minsk Group, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict," agreement on the cessation of armed conflict, November 7, 1998.

20. Former Azeri-majority district in Nagorno-Karabakh.

21. Former Armenian-majority district adjacent to Nagorno-Karabakh.

22. OSCE Minsk Group draft, "On the Principles of a Comprehensive Settlement of the Nagorno-Karabakh Armed Conflict," November 7, 1998.

23. Find a detailed discussion in Levon Zourabian, "The Truth about the Peace Negotiations," *Aravot*, March 31, 2001, <http://www.archive.aravot-arm/March/31/u09.htm>.

24. November 1998 draft Minsk Group proposal, Section II and Section IV, Article II, Paragraph B, Clause (2).

25. See, for instance, International Crisis Group Europe Report no. 167, Nagorno-Karabakh: A Plan for Peace, <http://www.crisisgroup.org/> (accessed October 11, 2005).

26. See letter dated February 24, 2005 from the permanent representative of Azerbaijan to the United Nations, addressed to the secretary-general, <http://www.reliefweb.int/rw/>

RWB.NSF/db900SID/EGUA-67JPAD?OpenDocument/.

27. CoE PACE, Resolution 1416, point 1, January 25, 2005.

28. See, for example, an article by NATO Parliamentary Assembly Chair Pierre Lelouche and former Spanish Minister of Foreign Affairs Anna Palacio, "Putin or the Ghosts of Empire," *Le Figaro*, December 18, 2004.

29. International Crisis Group Europe Report no. 167, Nagorno-Karabakh: A Plan for Peace.

30. See, for example, Michael P. Scharf, "Earned Sovereignty: Legal Underpinnings," *Denver Journal of International Law and Policy* 31, no. 3. http://www.law.du.edu/ilj/online_issues_folder/scharf.pdf/.

31. *Ibid.*