

# The Legal and Political Impossibility of Autonomy or ‘Status’ for Karabakh’s Ethnic Armenians

## In Light of the Ongoing Peace Process and the Outcome Document of the Latest Sochi Summit

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*“Our position is clear and precise: Karabakh is Azerbaijan. The rights and security of the Armenian population of Karabakh will be ensured in accordance with the Constitution of Azerbaijan. We are not going to discuss our internal issues with anyone.”*

– Ilham Aliyev, 14 October 2021

This IDD analytic policy brief is published in the immediate aftermath of the 31 October 2022 trilateral summit in Sochi involving President Ilham Aliyev of Azerbaijan, Prime Minister Nikol Pashinyan of Armenia, and President Vladimir Putin of Russia. The signed outcome document of this meeting makes neither mention of nor allusion to the issue of the autonomy or ‘status’ of the ethnic-Armenian population of the Karabakh region of the Republic of Azerbaijan. This represents a clear and probably fatal setback for those whose speeches and deeds in the days and weeks leading up to this summit suggested a renewed interest to re-internationalize the issue, in blatant disregard of the fact that both Baku and Yerevan had agreed to remove it from the ongoing peace process between Armenia and Azerbaijan following the former’s victory in the Second Karabakh War.

In some circles, furthermore, the issue of autonomy or self-rule had been mistakenly entangled with the international legal status of the territory of the former

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Nagorno-Karabakh Autonomous Oblast (NKAO) or, more narrowly, the territory that falls within the zone of deployment of the Russian peacekeeping contingent as defined by the terms of the 10 November 2020 tripartite statement that ended the Second Karabakh War, which was signed by the aforementioned individuals representing their respective states.

Whereas the issue of autonomy is essentially a question of the degree of self-rule or special representation rights, or arrangements concerning the relationship between any sort of local government in any part of Karabakh and the central authorities of the Republic of Azerbaijan, the question of territorial status represents, in this case, an attempt to entrench and legitimize an unlawful occupation under international law. In other words, the issue of autonomy pertains to the Azerbaijani Constitution and legislation, as well as to the norms of international law concerning minorities that are part of its international legal obligations, whereas the issue of ‘territorial status’ is about furthering or legitimizing territorial claims upon Azerbaijan.

In the following sections of this IDD analytical policy brief, I will first consider the issue of autonomy and argue that the Constitution of Azerbaijan excludes the possibility of autonomy based on ethnic criteria, primarily due to its adoption of the political conception of citizenship and people of Azerbaijan. I will furthermore argue that international law does not require of Azerbaijan to provide group-differentiated rights to its ethnic minorities, either. I will then argue that the only international legal status of Karabakh was and, in a limited instance, remains that of an occupied territory of Azerbaijan, which explains Azerbaijan’s firm rejection of any inclusion of its discussion in the peace process between Armenia and Azerbaijan, or of a return to any negotiation format that had such a discussion on its agenda in the past—an explanation that is consistent with the agreed outcome document of the 31 October 2022 Sochi summit.

## *Azerbaijan’s Constitutional Approach to Nationhood and the Possibility of Ethnic Autonomy*

The Constitutional Act on State Independence of Azerbaijan (October 1991) and the Constitution of the Republic of Azerbaijan (November 1995) both embrace a political, rather than a cultural or ethnic concept of the Azerbaijani people or nation that constitutes the Republic of Azerbaijan. In an influential 1992 article titled “Constitutional Powermaking for the New Polity,” Ulrich Preuss distinguishes this French concept of nation as *demos*, or “the nation-state formed by the totality of its citizens,” from the concept prevailing in Germany, according to which the nation (*ethnos*) is a “prepolitical community which is constituted by the commonness of such properties as origin, race, language, religion, culture, history, and the like.”

The French or political concept of the nation is reflected in Article 1 of the Constitution of Azerbaijan, titled “The Source of Power”:

The People of Azerbaijan is constituted by the citizens of the Republic of Azerbaijan living within and beyond the territory of the Republic of Azerbaijan.

Moreover, according to Article 155 of the Constitution itself, this provision is unalterable and may not be amended even by referendum, that is, changing this approach would require the adoption of a new constitution.

The French or civic concept is also manifested in the approach to the unitary arrangement of Azerbaijani state, where it is easy to discern the division of the country into rayons and regions based on economic and geographical rather than ethnic divisions, similar to “a rational division of the national territory” into departments following the French revolution, as Sergio Bartole explains in an article published in the *Oxford Handbook of Comparative Constitutional Law* (2012). Bartole contrasts this approach with, *inter alia*, the Spanish approach to unitarism, whereby Autonomous Communities, such as the Basque country or Catalonia, are based on cultural or ethnic criteria and have territorial boundaries (see Article 147.2 of the Spanish constitution).

The ‘equal citizenship without autonomy’ approach can be demonstrated by a decision of the French Constitutional Council from 9 May 1991, where it held that the reference to the Corsican people in France was contrary to the French Constitution:

Considering that France, as proclaimed in Article 2 of the 1958 Constitution, is an indivisible, secular, democratic, and social Republic which ensures equality before the law of all citizens regardless of their origin; [...] the reference made by the legislator to the “Corsican people, component of the French people” is contrary to the Constitution, which only recognizes the French people, made up of all French citizens without distinction of origin, race, or religion.

A similar understanding is reflected in Article 5 of the Constitution of Azerbaijan, titled “Indivisibility of the People”:

The People of Azerbaijan are indivisible. The indivisibility of the People of Azerbaijan is the foundation of the Azerbaijani state. The Republic of Azerbaijan is the common and indivisible homeland of all citizens of the Republic of Azerbaijan.

Unlike the constitutional arrangements that governed the Soviet Union (which had various levels of autonomies based on, *inter alia*, ethnic criteria), Azerbaijan does not envisage territorial autonomies or self-government based on ethnic, racial, or religious grounds. This represents, at least in part, a conscious rejection by Azerbaijan of failed Soviet-era nationalities policies conceived and first executed by Lenin and Stalin—one of the (many) fatal flaws of the communist system that had as a goal to artificially divide historic Karabakh into two parts for the purpose of advancing a ‘divide-and-conquer’ strategy to consolidate Bolshevik rule in the South Caucasus. What was known then as the NKAO, which was part of the Azerbaijan SSR according to Article 87 of the Constitution of the USSR, was abolished immediately following Azerbaijan’s independence on 26 November 1991. This act constituted a soundly reasoned assessment that the former NKAO was an artificial creation that directly and intentionally opened the door to ethnic-based illegal secessionism, which no sovereign state anywhere in the world has an interest in enabling.

Whereas Azerbaijan is ethnically, linguistically, and religiously diverse, the Azerbaijani state is constituted by single and indivisible people (nation) of Azerbaijan, which encompasses the totality of its citizens on an equal and non-discriminatory basis. Therefore, Azerbaijan cannot afford to grant self-government along ethnic or linguistic lines to its ethnic-Armenian citizens without fundamentally altering its constitutional fabric and reconceptualizing the Azerbaijani people and nation. This is a path fraught with considerable and unacceptable political risk, perhaps even opening the way to the country's disintegration, not to mention the necessity of drafting and ratifying a new constitution and absorbing the prohibitive costs of the wholesale social transformation that this would entail. This path is, thus, unequivocally a non-starter. The prospect of increased self-government may only be conferred within the ethnically-neutral framework of geographic and economic administrative-territorial arrangements that rejects *a priori* the possibility of even the hint of establishing or reinforcing a precedent that could inflict harm on the territorial integrity of Azerbaijan, a UN member state.

### *Does International Law Require Azerbaijan to Accord Autonomy to Its Ethnic-Armenian Minority?*

The Republic of Azerbaijan has obligations under international human rights law (specifically, Article 27 of the 1966 International Covenant on Civil and Political Rights) to accord to members of ethnic minorities, including the Armenian one, the right “to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Furthermore, as Azerbaijan is also a party to the Council of Europe's Framework Convention for the Protection of National Minorities (1998), it has an obligation under Article 15 to promote, *inter alia*, “decentralised or local forms of government” and to create conditions for the “effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”

However, there is *no* international legal obligation for Azerbaijan to accord either autonomy or self-government along ethnic lines. The ongoing evolution of existing forms of local self-government (municipalities), characterized by the right of equal participation for all citizens regardless of their ethnic origin, fully accommodates the requirements of international human rights law towards individual members of the ethnic-Armenian minority.

Moreover, there is *no* international legal obligation to accord rights to the group itself, beyond its individual members. As the UN Human Rights Committee explains in its 1994 General Comment No. 23 Regarding Article 27 of the International Covenant on Civil and Political Rights Concerning Minority Rights, “Article 27 [...] relates to rights conferred on individuals as such” and the “enjoyment of the rights to which Article 27 relates does not prejudice the sovereignty and territorial integrity of a State party.”

Therefore, the international law governing human rights and rights of minorities *does not* require from Azerbaijan to accord any group rights, let alone a territorial ‘status,’ to the ethnic-Armenian minority in Karabakh.

## *Legal Status of Karabakh According to International Law*

The unelected, newly-installed Azerbaijani authorities of the Soviet Union established the NKAO from the mountainous parts of the Karabakh region on 7 July 1923. On 1 December 1989, the Armenian SSR claimed the territory of this same NKAO by adopting a resolution titled “On the Reunification of the Armenian SSR and Nagorno-Karabakh,” but by its 10 January 1990 decision, the Supreme Council of the USSR declared this act as null and void by virtue of it being in breach of the Constitution of the Soviet Union.

Nevertheless, the Declaration of Independence of the Republic of Armenia, adopted on 23 August 1990, ignored the decision of the Supreme Council by reiterating its illegal (under both Soviet and international law) territorial claims against a part of the territory of Azerbaijan, referring to the “1 December 1989 joint decision of the Armenian SSR Supreme Council and the Artsakh National Council on the ‘Reunification of the Armenian SSR and the Mountainous Region of Karabakh’” in its Preamble. Moreover, Article 1 of the Constitution of Armenia refers to the Declaration’s “nation-wide objectives,” thus maintaining Armenia’s disregard for the territorial integrity of Azerbaijan.

In other words, there can be no doubt where international law places the Karabakh region. In April 2008, the UN General Assembly adopted Resolution 62/243 titled “The Situation in the Occupied Territories of Azerbaijan” that

recognizes the necessity of providing normal, secure and equal conditions of life for Armenian and Azerbaijani communities in the Nagorno-Karabakh region of the Republic of Azerbaijan, which will allow an effective democratic system of self-governance to be built up in this region *within the Republic of Azerbaijan*; [and] Reaffirms that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.” [emphasis added]

Moreover, in the landmark *Chiragov and Others v. Armenia* (2015) decision, the European Court of Human Rights held that the Republic of Armenia is an occupying power in Karabakh “within the meaning of the 1907 Hague Regulations,” as it “exercises actual authority over the territory, or part of the territory, of an enemy State” and that the “requirement of actual authority is widely considered to be synonymous to that of effective control.”

Following the Second Karabakh War, Azerbaijan reestablished control over most of the formerly occupied territories, with some towns, including Khankendi, Khojavend, Aghdere, Khojaly, and Askeran, and surrounding areas falling within the zone of deployment of the Russian peacekeeping contingent and thus *de facto* remaining under the control of a universally unrecognized ethnic-Armenian secessionist entity. The first section of Article 4 of the 10 November 2020 tripartite statement states that

“the peacemaking forces of the Russian Federation shall be deployed concurrently with the withdrawal of the Armenian troops.” Nonetheless, all Armenian forces have not yet withdrawn from the zone of deployment of the Russian peacekeeping contingent, in violation of said document. In fact, reports indicate that the Armenian government has dramatically increased both military and economic presence in the occupied areas. Notwithstanding various sorts of indications by Armenia that its territorial ambitions against Azerbaijan have been relegated to the past, Yerevan’s actions on the ground suggest that it may effectually be demanding some sort of ‘status’ for all or part of the former NKAO in exchange for the withdrawal of Armenian troops. It would thus seem that the presence of Russian peacekeepers in part of the territory under consideration is being used as protection against a military operation that would eliminate the aforementioned illegal armed groups, which in turn suggests that the usurpation of state power by an ethnic separatist entity has managed to maintain a foothold in the area. All this is contrary to international law.

### “Normal, Secure, and Equal Conditions”

The aforementioned UN General Assembly Resolution 62/243 provides for “normal, secure, and equal conditions of life for Armenian and Azerbaijani communities,” but does not envisage the provision of any territorial status or autonomy beyond a self-government mechanism within the framework of the Constitution of Azerbaijan.

Should Yerevan continue pursuing what amounts to a tactic of prevarication, it would not be surprising to see Baku counter with an insistence that any agreement on the delimitation of the border between Armenia and Azerbaijan be conditional on the *actual* and *verifiable* withdrawal of all Armenian forces from its sovereign territory, in addition to the five principles that Yerevan accepted in February 2022 as the basis for peace talks.

(In the event of diplomatic pushback, Baku could parry with a narrower interpretation of the scope of Article 6 of the 10 November 2020 tripartite statement as it pertains to the role of Russian peacekeepers along the Lachin Corridor. It seems that Russia would not be opposed to such a development, given what Deputy Prime Minister Alexei Overchuk said on 30 September 2022 upon his return from Yerevan: “in the course of the negotiations a principle has been worked out [...]: ‘Sovereignty over the road is exercised by the country through whose territory the road passes.’ This means that if the road passes through Armenian territory, then this is an Armenian road, if along Azerbaijani territory, then it is Azerbaijani.”)

In the context of Karabakh, the logic deriving from the aforementioned conditionality should then open the way for the full reintegration of the territory falling within the zone of deployment of the Russian peacekeeping contingent into the Azerbaijani state. And this, in turn, should eliminate the argument for extending the mandate of that foreign troop presence or, for that matter, granting a new mandate to any other on the sovereign territory of Azerbaijan.

The bottom line is that autonomy or ‘status’ based on ethno-territorial criteria is neither an international legal obligation nor effectually constitutionally possible for Azerbaijan—not to mention the fact that it is fundamentally unsound as a matter of public policy. The historical record in the context of Karabakh or, for that matter, in other parts of the former Soviet space, overwhelmingly confirms that provisions of this sort have, in and of themselves, failed to guarantee security to individuals identifying with ethnic-minority populations. It is simply ludicrous to continue advocating antiquated, extremist policies that produced massive internal displacement, an untold number of refugees, and both insurgencies and armed conflicts for a century or more in the belief these could now, somehow, result in a different outcome—certainly in the context of Karabakh. Building lasting peace, security, and reconciliation on the basis of an omnibus peace treaty between Armenia and Azerbaijan—a process for which the latest Sochi summit expresses full support, in accordance with the expressed intentions of both Baku and Yerevan—represents a much more solid foundation for sustainably ensuring the security of *all* the citizens of Azerbaijan, including those residing within the zone of deployment of the Russian peacekeeping contingent.