

ARMENIAN RIGHTS COUNCIL PUBLICATION No. 1

**NAGORNY KARABAKH'S RIGHT  
TO STATE INDEPENDENCE  
ACCORDING TO INTERNATIONAL LAW**

*by*

**PROF. DR. OTTO LUCHTERHANDT**

University of Hamburg  
Seminarabteilung für Ostrechtsforschung

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**C o n t e n t s**

<b>Foreward</b>	<b>7</b>
1. <b>The peoples' right to self-determination as a basis for the independence of Nagorny Karabakh</b>	<b>9</b>
2. <b>The right to self-determination of peoples - a norm of international law</b>	<b>10</b>
3. <b>The subject of the right to self-determination in the case of Nagorny Karabakh</b>	<b>14</b>
3.1 The meaning of "people" as the subject of the right to self-determination in international law	14
3.2 The subject of the right to self-determination in the case of Nagorny Karabakh	15
3.3 Objective and subjective factors for the constitution of the Armenians of Nagorny Karabakh as an ethnic group	18
3.3.1 The objective factor	18
3.3.2 The subjective factor	22
4. <b>Has the ethnic group of the Armenians of Nagorny Karabakh exercised its right to self-determination in a binding manner at an earlier date and thereby exhausted it?</b>	<b>29</b>
4.1 Voluntary integration into the Republic of Azerbaijan	29
4.2 Exhaustion of the right to self-determination by claiming the autonomous status	29

4.2.1	The origin of the territorial autonomy of Nagorny Karabakh	30
4.2.2	The fictitious character of the autonomy	36
4.3	Exhaustion of the right to self-determination by taking part in the elections of the Soviets	41
5.	<b>Does the sovereignty of the Republic of Azerbaijan take precedence over the right to self-determination, in the form of secession, of the Armenian ethnic group of Nagorny Karabagh?</b>	42
6.	<b>Is the Armenian ethnic group of Nagorny Karabakh limited to the status of national minority?</b>	48
6.1	The general standard for the determination of minority status	44
6.2	The minorities standard in international law	49
6.3	The minorities standard of the CSCE	52
6.4	Adequate minority status under Azerbaijanian constitutional law	55
7.	<b>Did the ethnic group of Armenians from Nagorny Karabakh find itself in an unbearable condition of discrimination for which the Republic of Azerbaijan was responsible?</b>	57
7.1	Official evaluations of the situation in Nagorny Karabakh	57
7.2	The socio-economic situation in Nagorny Karabakh	59
7.3	The national-cultural situation in Nagorny Karabakh	62

7.4.	The demographic development in Nagorny Karabakh	65
8.	<b>Conclusions and result: Precedence of the right of secession</b>	69
9.	<b>Summary</b>	71
	<b>Notes</b>	75

## FOREWARD

This is a detailed study of the Nagorny Karabakh (Artzakh) issue according to international law: it affirms that Nagorny Karabakh Armenians, basing their claim on the inalienable right to self-determination, have every reason to demand the establishment of an independent state of Karabakh, or the detachment of the territory from Azerbaijan.

The author, Dr. Otto Luchterhandt, is a well-known specialist in international law. Born in 1943, he received his doctorate in jurisprudence in 1974 from the University of Cologne, Germany, for his thesis "The Soviet Union and the Russian Orthodox Church." In 1986 he won the Venia Legendi award from the University of Cologne for his work in public law, East European law and cannon law. Since 1991 he is director of East European Law Research Department at the University of Hamburg, Germany.

Beginning in 1975, Dr. Luchterhandt has studied the laws of East European socialist states, concentrating, in particular, on the former Soviet Union, with special emphasis on the legal status of individuals and communities under national and international law. During 1987-1988 he was secretary of a commission established at the Ministry of Justice by the Federal Republic of Germany to report on human rights in the Warsaw Pact states.

Since 1992 Dr. Luchterhandt gives periodic lectures on constitutional law at the Constitutional Court in Russia.

Assisting Dr. Luchterhandt in the preparation and translation of this work was the Institute for Armenian Studies in Germany, established in 1989 by Zolak Ter Harutunian, having as its goal promotion of Armenological studies in Germany in collaboration with the Association of German Research Foundation. It also aims at establishing relations between Armenia and the Armenian community in Germany.

The Institute holds conferences, studies the traumatic experience of the survivors of the Genocide, conducts research on

Armenian-German relations (1878-1923), and examines the creation of an Armenian collective identity in the Diaspora.

By publishing Dr. Luchterhandt's most interesting study, the Armenian Rights Council hopes that it will have assisted in the creation of a positive attitude toward a just solution of the Karabakh issue.

**Armenian Rights Council**

**1. The peoples' right to self-determination as a basis for the independence of Nagorny Karabakh**

The question of expert opinion can only be answered in a positive sense if:

- (a) the right to self-determination is not only a political principle but a rule of existing international law;
- (b) the people of Nagorny Karabakh is the subject of the right to self-determination;
- (c) the people of Nagorny Karabakh has not yet exercised its right to self-determination in another direction and, thereby, exhausted it;
- (d) the people of Nagorny Karabakh can claim for itself the highest level fulfillment of the law of self-determination - secession from the state of Azerbaijan, because on the one hand
- (e) its restriction to the status of a national minority stands in no reasonable relation to its legitimate interests in development and protection, and on the other hand
- (f) the measure of its oppression has reached such unbearable proportions, that remaining in the federation of Azerbaijan has become unacceptable and
- (g) it has announced its will for self-determination in an unmistakable and convincing manner.

The chain of these preconditions is to be examined in detail in the following study. We are concerned here with one of the most difficult problems of the latest developments in international law and of existing international law, namely the question of the legal nature of the right to self-determination of peoples, its bearer (subject), the range of its legal contents (object) and its relation to the principle of state sovereignty, as well as the manner of its enforcement. The questions are hotly debated in part and in many cases still unexplained.

## 2. The right to self-determination of peoples - a norm of international law

Among all the diverse aspects of the right to self-determination, its legal nature can be said to have been settled to a sufficient degree. Whereas in the sixties considerable skepticism predominated in literature on international law as to whether the right to self-determination should not only be seen as a moral-political principle but also as part of the general legal basis of international law, today a wide international consensus recognizes it as a norm of valid international law<sup>1</sup>. The United Nations have played an important role in this. Whilst the statutes of the League of Nations had remained silent about the right of self-determination, Art. 1 Paragraph 2 of the Charter of the United Nations recognized the "equal rights and self-determination of peoples" as a fundamental "principle". Since the late fifties, the process of decolonization has, on a practical level, fostered quite fundamentally the opinion that this formula should mean more than a non-commitment. Especially the USSR has played no small part in this development. It has, with reference to Lenin's Declarations during the October Revolution, always, even if mainly with partisan propagandistic intent, taken a stance as a resolute advocate of the right to self-determination<sup>2</sup>.

A breakthrough on the way to the recognition of the legally binding character of the right to self-determination was its embodiment in both the United Nations Human Rights Conventions of December 16, 1966, namely in Art. 1, Paragraph 1 of the International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights respectively.

It has the following wording<sup>3</sup>:

*"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*

The paraphrasing of the contents of the right to self-determination was defined more precisely and further developed by

the Declaration of the UN General Assembly on "Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations" of October 24, 1970 (hereafter: Friendly Relations Declaration)<sup>4</sup>. In the present context the following passages are of special significance:

*"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter ... The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people ... Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color."*

The "Principle Catalogue" of the CSCE-Final Act from Helsinki on August 1, 1975, which confirmed "equal rights and self-determination of peoples" as its (eighth) principle<sup>5</sup>, showed unmistakably that the relevance of peoples' right to self-determination was not and should not be restricted only to the colonial territories of the Third World which had not yet been freed, but extend also to Europe.

*"The participating States will respect the equal rights of peoples and their right to self-determination, acting at*

*all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.*

*By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.*

*The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle."*

Although the Friendly Relations Declaration of 1970 already leaves hardly any doubt as to the binding character of the right to self-determination, supported therein by the CSCE Final Act, the entry into force of the two Covenants on Human Rights of January 16, 1966, on January 3 and March 23, 1976, as well as the accession of over 100 states in the meantime, has led to the certainty that today the peoples' right of self-determination is a norm of universal international law.

In the course of recent developments, a growing number of people have accorded to the right of self-determination the quality of "cogent international law" (*ius cogens*). According to Art. 53 clause 2 of the Vienna Convention on the Law of Treaties of May 23, 1969<sup>6</sup>:

*"A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."*

The resulting legal consequences are determined by Art. 53 clause 1 and Art. 64 of the Vienna Convention of the Law of Treaties. According to the latter, every treaty of international law which is contradictory to the *ius cogens* norm is invalid or lapses.

The two Union Republics of Azerbaijan and Armenia involved in the Karabakh conflict, who since 1989, when their Declarations of Sovereignty and of national Independence were passed, have claimed the right of their peoples to self-determination in opposition to the "Moscow Headquarters", whom they felt to be foreign rulers, and who successfully achieved state independence<sup>7</sup>, are themselves as (partial) successor states of the Soviet Union, legally bound to the Human Rights Conventions and therefore bound by the right of self-determination, since the USSR joined the Conventions on 16 October 1973 with effect also for its Union Republics<sup>8</sup>.

With their formal admittance into the CSCE on the January 30/31, 1992, in Prague, Azerbaijan and Armenia (also) have agreed to respect and observe the CSCE-Final Act from Helsinki and the Final Documents of the CSCE-follow-up-meetings as well as the reaffirmation of the right of self-determination proclaimed there<sup>9</sup>.

### 3. The Subject of the right to self-determination in the case of Nagorny Karabakh

The ascertainment that the peoples' right of self-determination is perhaps a cogent and certainly a norm of international law, leads to the question whether Nagorny Karabakh can invoke this law. This would be possible, if, in the case of Nagorny Karabakh, a "people" were concerned in the sense of the described foundations of the right of self-determination in international law. Hence there are two questions to be answered:

1. What does "people" mean in the sense of the right of self-determination under international law?
2. Is the population of Nagorny Karabakh, or at least part of it, a "people" in that sense?

#### 3.1 *The meaning of "people" as the subject of the right to self-determination in international law*

"People" (Fr.: *peuple*) is an ambiguous term, which, from a legal, political, sociological and geographic point of view, can be understood on the one hand as a nation, i.e. the entirety of all the citizens living in a national territory (a state territory defined by international law); on the other hand, "people" can be understood in the sense of an ethnic community ("ethnos"), i.e. a group of people that is linked by certain mutualities such as language, culture, religion, mentality, historically fateful experiences etc., and thus distinct. From the fact that in the discussion on Art. 1 of both Human Rights Conventions the alternative suggestions of calling the subject of the right of self-determination either "nation" or "state" were both rejected, it can be concluded that a confinement of the definition of the subject of the right to self-determination to the term "Staatsvolk/nation" or even its identification with "state" is impermissible. This does not mean that the "people" who is the subject of the right to self-determination can not also be the people constituting that nation, but its meaning is not limited by the latter. This conclusion also follows from paragraph 4 of the "principle of equal rights and self-determination of peoples" according to the

Friendly Relations Declaration of 1970 cited above, because the right to establish a sovereign, independent state presupposes a national community that is not yet a "nation".

"People", therefore, as the subject of the right of self-determination, is to be understood in a broad sense and can mean the "people constituting a nation" as well as the "ethnos" which is not constituted as a state. As an ethnos, the "people" of the right to self-determination can of course find itself in a situation where it is a minority (*minorité*) but it still can't be identified with this. The "minority" (alone) as the subject of the right of self-determination was also, with due consistency, rejected during the formation process of Art. 1 of the Human Rights Conventions of 1966<sup>10</sup>.

#### 3.2 *The subject of the right to self-determination in the case of Nagorny Karabakh*

It is questionable, in the case of Nagorny Karabakh, who is the subject of the right of self-determination because the name itself only designates a territory and not a "people". The only fact that is certain is that the population of Nagorny Karabakh is not the subject of the right of self-determination in the sense of a "people constituting the nation" because Nagorny Karabakh does not fulfill the requirement of a territorial entity of state quality with original sovereignty, but rather, from the standpoint of the Soviet and Azerbaijani constitutional law, only forms an administrative unit having the special status of an "autonomous region"<sup>11</sup>.

The broader concept of a "people" in the sense of the right of self-determination under international law, however, in no way excludes the inhabitants of Nagorny Karabakh as a community in its entirety from being the subject of the right to self-determination. The prerequisite for this is that the population of the autonomous region understands itself as an at least relatively independent group, and that it shows the will to be regarded as a "people" (in the sense of the right of self-determination). This prerequisite, however, is in contradiction to the ethnic discord in Nagorny Karabakh, which in the last few years has escalated to a state of extreme polarization and hostility between the majority of Armenians who inhabit

Nagorny Karabakh, and the Azerbaijani minority. The ethnic composition of Nagorny Karabakh shows the following structure<sup>12</sup>: at the last official (Union) census in 1979 before the bloody upheavals in the region, the population of Nagorny Karabakh numbered 162,200. Of these 123,100, i.e. 75.9 % were Armenians and 37,300, i.e. 22.9 % were Azerbaijanis. In addition there were 1,300 Russians (0.8 %). In view of these circumstances, the population of Nagorny Karabakh (as such) cannot be regarded as the subject of the right of self-determination, as the necessary minimum of political agreement required to claim the right of self-determination has not been attained.

The Armenian part of the population of Nagorny Karabakh however, could be considered as the subject of the right to self-determination. The question arises as to whether it can cite the right of self-determination of a people in the sense of an "ethnos".

"People" in this case would mean the territorially connected Ethnos of the Armenians living in the Transcaucasus (the question of spatial boundaries can remain undecided). It is certain, however, that the Armenians in Nagorny Karabakh form only a part of the Armenian people as an "ethnos" or rather as the subject of the right of self-determination. The question, therefore, arises as to whether "people" in the meaning of international law of the right of self-determination can also be a part of the people, i.e. an "ethnic group". The answer to this is, understandably, hotly debated in literature on international law, because the latent tension that exists between the right of self-determination of a people and the principle of state sovereignty turns - or rather, escalates - into open conflict. The state sees itself threatened in its political stability, sovereignty and territorial integrity by a restless, rebellious minority.

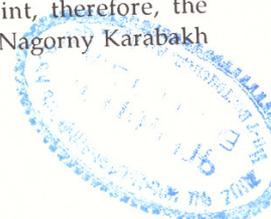
In older literature on international law, traditionally emphasizing and defending the principle of sovereignty of the states, the clearly predominant view was that a national minority does not possess the right to self-determination<sup>13</sup>. The Soviet Union was an outstanding advocate of this view. As far as its contents were concerned, the right of self-determination was practically treated as equivalent here to the right of secession: the granting of a special autonomous or minority status below the threshold of the right of

secession, whilst maintaining state sovereignty was not considered as a form of realization of the right of self-determination, but as a completely different act (aliud).

This point of view is too narrow in more than one respect. First it understands the contents of the right of self-determination too one-sidedly in the meaning of secession, obviously because it fails to see the internal, actual connections between the aim of self-determination - the possibility of free development of the individual nature of the people (nation) - and the nature of the socio-cultural autonomy. Secondly it fails to recognize that national self-determination of an ethnic group, including secession, is the nearest and most convincing way of fulfilling the right of self-determination of the corresponding ethnos (in its entirety), and overcoming the territorial-political separation of the people.

In the meantime, developments in international law have forced this view into a minority position. The referendums in disputed areas and the Conventions on the Protection of Minorities after the First World War were (partly limited) forms of the realization of the national right of self-determination in a compromising balance with the principle of state sovereignty. The League of Nations Åland-expertise recognized - even beyond the regulations of international agreements - (for the first time) also "fractions de la population" or "fraction de peuples", in other words, (also) "ethnic groups", as the subject of the right of self-determination and had further tacitly expressed this by awarding them the right "to choose between two already existing states"<sup>14</sup>. One can sum up the view that prevails today in international law in the formula that (also) the ethnic group is the subject of the right of self-determination, but that this does not yet entail a decision regarding the degree of intensity and dimension, regarding the contents in which the ethnic group can make use of the right of self-determination, and prevail against the principle of state sovereignty; in other words: Whether the ethnic group can realize the right of self-determination in the form of a foundation of their own states or the integration into another state, by achieving an autonomous status (within the State) depends on additional preconditions in international law. At this point, therefore, the question whether the Armenian ethnic group of Nagorny Karabakh

9293



can constitute a state of their own by virtue of the right of self-determination is not to be pursued here. In any case it is certain, and that is all that matters here, that, from the view of international law, it can be the subject of the right of self-determination<sup>15</sup>.

### 3.3 *Objective and subjective factors for the constitution of the Armenians of Nagorny Karabakh as an ethnic group*

Does the Armenian population fulfill the described requirements? In answering this question, a differentiation must be made between objective and subjective aspects. From the objective point of view, above all, the historical - ethnic, political and cultural - allocation of the territory or rather the area of settlement of Nagorny Karabakh, and furthermore its status within Azerbaijan within the limits of the USSR are of importance. From the subjective point of view, the acts of will with which the Armenian population express their wish for the right of self-determination with sufficient clarity are of significance. Whereas the objective criteria have more the character of (indirect) evidence and are therefore of limited weight, the subjective statements of will and the (subjective) awareness of identity are, in the end, the decisive factor in answering the question<sup>16</sup>. Aureliu Crisrescu describes this in the following apt sentence: "The fact is that, whenever in the course of history a people has been aware of being a people, all definitions have proved superfluous".

#### 3.3.1 The objective factor

It is important from the historical-political perspective for the question at hand, that on the one hand in contrast to the territory of the future Soviet Republic and the modern Republic of Armenia (Yerevan), since ancient times Nagorny Karabakh has always found itself under different administrations. On the other hand, it has been a territory with a profile of its own for a long time and at times was in fact even independent. The period of the union with Armenia is limited to the era of the Greater Armenian Kingdom, the downfall of which occurred in 428 AD. Nagorny Karabakh, under the

Armenian name "Artzakh", formed its easternmost, tenth province. After that, Artzakh, together with the east and south-eastern Transcaucasus, came under the rule of the (Persian) Sassanids, where it formed part of the Kingdom of Albania, while the western part of present-day Armenia (Yerevan) came under East Roman and Byzantine rule. When the Sassanid Empire was conquered by the Arabs in the 7th century, both Albania and Artzakh came under Arabian rule, and formed a large province that stretched from the Caspian Sea to Georgia and was named "Arran" or (also) "Albania"<sup>17</sup>. The attempt by the Armenian dynasty of the Bagratids in the 9th century to politically unite the Armenians, was resisted by the local rulers of Artzakh. In the middle of the 11th century the area came under the rule of the (Turkish) Seljuks, and after that under the rule of Seljukian Diadochi in what is now present-day Azerbaijan.

Artzakh became part of the Mongolian Empire from the middle of the 13th until the beginning of the 15th century, which was followed, in the middle of the 15th century, by the rule of the Turkmanians ("Kara Koyunlu"). The name of "Karabakh" originates from this time.

At the beginning of the 16th century, Artzakh came under the rule of the Persian Safawid Empire, where - together with the region of Yerevan - it formed one of the four administrative districts (beglerbeg). During this time Artzakh was ruled by the Armenian lords (Meliks) who became temporarily independent during the first half of the 18th century. The Ottoman influence became stronger and with the weakening of Persia during the middle of the 18th Century, a Turkish Khanate of Shushi Karabakh developed. In 1805 the Khanate was annexed by Russia, and the Russo-Persian Treaty of Gulistan (1813) handed it over to the Russian Empire once and for all. The Khanates of Yerevan and Nakhichevan didn't come under Russian rule until the Peace of Turkmenchai in 1828.

In 1827, i.e. at the beginning of Nicholas the First's reign, the proposals made by the Armenian side, that areas populated by Armenians in the Russian Empire should be united as one administrative unit, were rejected by the Tsar on the grounds that an ethnic-homogeneous territory would have meant a danger to the Russian (foreign) ruling powers. Only the Khanates of Yerevan and

Nakhichevan in 1828 and 1849 respectively were joined together to form the province of Yerevan. Karabakh, on the other hand, became part of the "Caspian Territory" in 1840, part of the province of Shemaka in 1846 and eventually in 1867 part of the province of Yelisavetpol (which was called Gandzak until 1804, Kirovabad between 1935 and 1989 and since then Gandja) together with the provinces of Kutaisi, Tiflis, Yerevan and Baku.

The only institutional connection with other parts of the Transcaucasus populated by Armenians during this time was the subjugation of Karabakh to the jurisdiction of the Catholicos of the Armenian Apostolic Church in Etchmiadzin.

As to the ethnic and cultural classification of the territory of Karabakh, the tight net of Christian monuments shows that, until far into the middle ages, Karabakh was predominantly populated by Armenians and that it is an essential part of the Armenian culture area. As a result of the universal Islamic supremacy, the Muslim-Turkish population increased in the modern age and in the second half of the 18th century formed the basis for the above mentioned Khanate.

By the end of the 18th century, the Armenian population had decreased substantially (about 10,000) as a result of armed conflicts, expulsions, epidemics and emigration. The Russian rule, which, objectively, strongly supported the Christian Armenians, led to a continuous remigration and immigration of Armenians, especially from the eastern parts of the Ottoman Empire in the 19th century. Between 1823 and 1897, the population increased from 30,850 to 106,363<sup>18</sup>. The number of "Tatars" (Azerbaijanis) increased during the same period from 5,370 to 20,409, concentrating essentially on the old capital of Shushi (Shusha). In all, the Armenian percentage of the population (in relation to the present-day territory of Nagorny Karabakh) was 84%, and even 94% if the town of Shushi was not taken into consideration.

#### The path towards the autonomy of Nagorny Karabakh

During the first Russian Revolution, riots broke out between Moslems and Armenians, which led to pogroms. In Karabakh clashes also occurred between the two ethnic groups, in the course of resisting

Azerbaijani-Turkish attempts at a pogrom. The national tensions that had been growing beneath the surface exploded during the Russian Revolution, or rather as a result of the dissolution of the Russian Empire, when, in the spring of 1918, Turkish troops crossed the Transcaucasian border and took the initiative of establishing an Azerbaijani state. Following Georgia (May 26, 1918) the Azerbaijani-Turkish forces in the region of Yelisavetpol proclaimed the Republic of "Azerbaijan", choosing a name which as a geographical reference originated at the time of Arab rule in the Transcaucasus. In view of these developments, Armenia (that is Yerevan and Nakhichevan) declared itself an independent Republic (May 28). The effects of the Declaration of Independence on Nagorny Karabakh and other mixed Armenian-Turkish areas (Nakhichevan, Zangezur) were at first unclear. Nagorny Karabakh was de facto independent in the summer of 1918. On August 5, 1918, a "Congress of the Armenians of Nagorny Karabakh", which sympathized with the (Armenian led) Bolshevik commune of Baku, was formed in the capital of Shushi. The requests that it should submit to the government of Gandzak (Yelisavetpol) were turned down. The intervention of Great Britain in Baku and the British support of the "white" National-Turkish government of Azerbaijan led, at the end of 1918/19, to the invasion of Azerbaijani troops in Nagorny Karabakh and on August 22, 1919, to the recognition of the government in Baku by the local Armenian leadership. Art. 1 of the treaty states:

*"The Contracting parties accept this temporary agreement in expectation of the decision that depends on the Peace Conference and whose same decision both parties agree to respect".*

After the Red Army had marched into Baku in April 1920, the new Bolshevik-led government of Azerbaijan managed, with the help of the Russian, Moscow-led troops, to subdue the Karabakh Armenians who, meanwhile, were supported by the national Dashnak Party from Armenia.

The basis for the creation of the autonomous territory of Nagorny Karabakh was a Resolution made by the "Caucasian Office

of the Central Committee of the Russian Communist Party" on July, 5, 1921<sup>19</sup>. It decided that:

*"in view of the necessity for national harmony between Moslems and Armenians, the economic ties between "Upper" (Nagorny) and "Lower"-Karabakh, the continuous bonds of both of them with Azerbaijan",*

Nagorny Karabakh should remain within the borders of the Azerbaijan Socialist Soviet Republic, and be given the status of an autonomous territory with Shusha (Shushi) as its administrative center. With a considerable time delay, the cause of which will be considered in detail below, the resolution was carried out. At the beginning of July 1924, the presidium of the Central Committee of the Azerbaijan Communist Party (B) sanctioned the elaborated foundation and "recommended" its adoption to the Presidency of the Azerbaijan Central Executive Committee (in other words the "small" Republican Parliament). On November 24, 1924, the "Statute of the Autonomous Territory of Nagorny Karabakh" was officially published<sup>20</sup>. The autonomy of Nagorny Karabakh entered into the foundations of the constitutional law of the USSR (to be portrayed in more detail later) and the Azerbaijan Socialist Soviet Republic. It has remained in existence until today.

### 3.3.2 The subjective factor

The aversion of the Nagorny Karabakh Armenians to their membership in Azerbaijan and their wish to be united with Armenia was continuously expressed after the establishment of autonomy (1923/24). A partisan movement operated in Azerbaijan in 1927 under the name of "Karabakh to Armenia"<sup>21</sup>, which also continued to make their demands public in the following years. The Armenian Communist Party leader, Aghasi Khanjyan, pleaded albeit in vain with the Union leadership for the annexation of Karabakh. He was shot in July 1935 during a discussion in Tiflis about these problems.

Ten years later, in November 1945, G. Arutinov, the Secretary of the Central Committee of the Armenian Communist Party addressed a letter to Stalin in which he explained the socio-

economic and national-cultural advantages of an annexation of Nagorny Karabakh to Armenia and asked (with explicit reference to the "wishes of the population of Nagorny Karabakh") in the name of the Central Committee and the Council of the Peoples' Commissars of Armenia and the Party and State leadership that they examine the change of status of Nagorny Karabakh<sup>22</sup>.

On May 19, 1963, kolkhos farmers and workers from Nagorny Karabakh as well as Armenians from the neighboring districts, addressed the Chairman of Ministers of the USSR and "Secretary of the Communist Party of the Soviet Union", Nikita Khrushchev, with a large petition in which, "completely discouraged by the growing difficulties in our living conditions", they asked for protection and approval of its annexation to Armenia. In a further petition of September 19, 1967, they told of, and complained about brazenly carried out murders which had been ignored by Azerbaijan's criminal prosecution authorities, and even about oppressive measures in Nagorny Karabakh in which armed forces had been deployed.

The (subjective) will of the Armenians of Nagorny Karabakh to decide their political fate themselves has been unmistakably expressed in various forms since 1986/87.

Encouraged by the weakening of the political-administrative suppression, which was a result of Gorbachev's Perestroika, in 1986/87 signatures were collected from the population in Nagorny Karabakh for a petition, which called for the annexation of the autonomous region to the Armenian Socialist Soviet Republic, and was supported by 75,000 Armenians, i.e. 60 % of the Armenian population in the region<sup>23</sup>. After having been given the signatures by delegations from Nagorny Karabakh, the Central Committee of the Communist Party of the Soviet Union reacted to this, after a long silence, with a sharply worded refusal written by a subordinate functionary. When the answer from Moscow became known in Nagorny Karabakh, riots broke out among the Armenian part of the population.

Students from the college of education in Stepanakert went on strike, leaflets and open letters appeared in public. Meetings were held in all administrative districts of Nagorny Karabakh on February 12/13, 1988, and resolutions passed with the demand to call an emergency session of the territorial Soviet concerning the fate of

Karabakh. The demand was supported by four of the five District Executive Committees and by 87 representatives of the territorial Soviet. On February 20, 1988, the 140 representatives of the territorial Soviet met (of these, 30 were Azerbaijanis and 110 Armenians). With 110:17 votes and 13 abstentions, the territorial Soviet decided to formally request the Supreme Soviets of Azerbaijan and Armenia to annex the autonomous region of Nagorny Karabakh to Armenia.

Immediately afterwards, the Politburo candidates P.N. Demitshev and G. Razumovski arrived from Moscow. In their presence the territorial Party Committee (Obkom) of the Azerbaijan Communist Party assembled (on February 21, 1988) and supported the decision of the territorial Soviet by 80:10 votes<sup>24</sup>.

As a result of his failure, the first Secretary of the Obkom, a Russian, was replaced by an Armenian, G. Pogosyan. The Central Committee of the Communist Party of the Soviet Union reacted to this by deciding (on February 23, 1988) that "an examination of the national territorial structure would not be in the interests of the working population of the Azerbaijanian SSR and the Armenian SSR".

On March 17, 1988, the Obkom of Nagorny Karabakh confirmed, by a large majority, its decision from February 20, 1988.

In the meantime, events had occurred which greatly deepened the national consensus not only of the Armenians in Nagorny Karabakh but also in the whole of the Transcaucasus and beyond it, and which had a lasting effect on the further developments in the region, namely the Massacre of Sumgait.

The case was as follows.

In the course of the mass movement which arose in Armenia, in solidarity with Karabakh, many of the Azerbaijani minority feeling threatened, left Armenia. This led to an increase of anti-Armenian emotions in Azerbaijan. On February 27, 1988, the deputy General Attorney of the USSR, A. Katuchev, announced on Azerbaijan radio that two young Azerbaijanis had been killed in the administrative district of Agdam, bordering on Nagorny Karabakh. Immediately after this, from February, 27 to 29, Azerbaijanis in the industrial town of Sumgait which lies to the north of Baku, carried out a bloody pogrom on the Armenian minority living there. This

atrocities reminded all of the Armenian people of the traumatic historic experience "Yeghern", the genocide carried out by the Turks in 1915. It mobilized and re-activated the same feelings of hate, and of revenge, that had led to the war between Armenia and Azerbaijan, to the mass flight and the expulsion of the Azerbaijanis from Armenia and Nagorny Karabakh, and of the Armenians from Azerbaijan.

The mass movement of solidarity with Nagorny Karabakh in Armenia led to the establishment of the "Karabakh Committee" on February 24, 1988, in the Armenian capital Yerevan, which, after further development of events, would become an informal national representative of the Soviet Republic of Armenia. A counterpart to this developed in the shape of the "Krunk" (Crane) Committee in Nagorny Karabakh, the Crane being the Armenian symbol for homesickness. Its 55 members were leading representatives of the party apparatus of Nagorny Karabakh: delegates of the territorial and town Soviets, a large number of factory directors, as well as the media and the cultural intelligentsia<sup>25</sup>. "Krunk" represented the leading class of Armenians in Nagorny Karabakh.

The Central Committee of the Soviet Communist Party rejected the demands from Nagorny Karabakh and decided on February 23, 1988, that "an examination of the national territorial structure would not be in the interests of the working population of the Azerbaijani SSR and Armenian SSR". On March 23, 1988, the presidium of the Supreme Soviet of the USSR formally rejected a change in the status of Nagorny Karabakh<sup>26</sup>. Unimpressed by this, and under pressure from the national mass movement, the Supreme Soviet of the Armenian SSR voted unanimously for the annexation of Nagorny Karabakh to Armenia<sup>27</sup> on June 15, 1988. In a resolution passed on June 17, 1988, the Supreme Soviet of Azerbaijan unanimously rejected the release of Nagorny Karabakh from the State Federation of the Republic. The nine Armenian members out of the ten representatives of Nagorny Karabakh in the Supreme Soviet of Azerbaijan had boycotted the meeting, while the 17 members of Armenian nationality, belonging to Azerbaijani constituencies outside of Nagorny Karabakh had followed the negative vote<sup>28</sup>. The Presidium of the Supreme Soviet of the USSR then renewed its

rejection made in March, citing the provision of the Union Constitution, which stated that the territory of a Union Republic could not be changed against its will (Art. 78)<sup>29</sup>.

In contrast to that, on June 21, 1988, the territorial Soviet of Nagorny Karabakh - in the presence of the Azerbaijani President of the Parliament, Suleiman Tatliev - re-enforced its resolution of February 20, 1988, and condemned the rejection on the part of the Supreme Soviet of Azerbaijan of their reunification with Armenia. At the same time, it requested that the Supreme Soviet of the USSR, for the time being, place Nagorny Karabakh under the Special Administration of the Ministerial Council of the USSR<sup>30</sup>.

On July 12, 1988, the territorial Soviet of Nagorny Karabakh decided, in the presence of 101 members (out of 140) and with one abstention, in favor of the "Separation from the Socialist Soviet Republic of Azerbaijan" and the renaming of Nagorny Karabakh as the "Artzakh Autonomous Territory in the Armenian Federation". The meeting of the Soviet was accompanied by a demonstration in which 40,000 Armenians from Nagorny Karabakh took part. The Presidium of the Supreme Soviet of the Azerbaijan Socialist Soviet Republic immediately declared the resolution to be unconstitutional.

On February 20, 1989, the anniversary of the first initiative, the territorial Soviet decided yet again its annexation to Armenia<sup>31</sup>.

Following a January 20, 1989 resolution, the Presidium of the Supreme Soviet of the USSR introduced regime of special administration in Nagorny Karabakh<sup>32</sup>. The territory was withdrawn from the jurisdiction of Azerbaijan and was placed directly under the administration of the USSR and a Committee. The latter controlled the destiny of Nagorny Karabakh in place of the suspended territorial institutions, until the dissolution of the Special Administration on November 28, 1989<sup>33</sup>. Even after that, the Union reserved the right of intervention in the form of a "Control-Observation Commission", which had a contingent of troops from the USSR Ministry of the Interior at its disposal. When in the beginning of January 1990, Soviet power in Azerbaijan was in danger, the Presidium of the USSR Supreme Soviet declared, in a decree on January 15, 1990, a state of emergency also in Nagorny Karabakh<sup>34</sup>.

Since during this time the territory had no political representation at its disposal, a new one was formed as the result of

widespread grass-roots initiative. On August 11, 1989, a "Congress of the Authorized Representatives of the Population of a Autonomous Territory of Nagorny Karabakh" assembled, which included practically the whole of the Armenian ruling elite (party, soviets, trade unions, komsomol, industry and associations of the intelligentsia). Representatives of the Azerbaijani minority of Shusha were also invited, but did not appear. The Congress declared Nagorny Karabakh an "independent Union territory", and elected a "National Council" consisting of 78 members, who, "in the name of the people" were given full state authority over Nagorny Karabakh. The Presidium of the "National Council", which consisted of 17 people, was supposed to exercise state power over Nagorny Karabakh until the reintroduction of territorial Soviet powers<sup>35</sup>.

On September 16, 1989, the Supreme Soviet of Armenia formally requested that the Supreme Soviet of the USSR recognize Nagorny Karabakh's right of self-determination<sup>36</sup>. In a resolution passed on September 26, 1989, the Presidency of the Supreme Soviet of Azerbaijan formally stated the illegality and invalidity respectively, of the founding of the Congress of the authorized representatives of Nagorny Karabakh<sup>37</sup>.

From November 4-6, 1989, the founding congress of the complete Armenian national movement took place in Yerevan, in which 1,011 delegates from the Soviet Republic of Armenia, from Nagorny Karabakh, from the Shahumyan district of Azerbaijan (which borders on Nagorny Karabakh) and the Armenian Diaspora from the rest of the USSR took part. They represented practically all the parties and political views of the Armenian people. The movement appealed to the public with the request that they recognize Nagorny Karabakh's right to self-determination and its "National Council" as a legitimate power. The Supreme Soviet of the Armenian SSR and the "National Council" of Artzakh reacted to the drastic decision, made on 28 November 1989 by the Supreme Soviet of the USSR, to dissolve the Special Administration of Nagorny Karabakh by calling a joint meeting<sup>38</sup>. On December 6, 1989, the "National Council" of Nagorny Karabakh admitted the Shahumyan district into the autonomous territory, in answer to the latter's

formal application<sup>39</sup>.

After the government of the Republic of Armenia had, on the basis of the catastrophic economic conditions, and in the knowledge of their restricted political room for maneuver, repealed all decisions and laws concerning the "reunification" of Nagorny Karabakh with Armenia, the "National Council" of Nagorny Karabakh proclaimed the "Republic of Artzakh" on September 2, 1991<sup>40</sup>. Its independence was supported by a referendum of the Armenian population on December 10, 1991. The formal Declaration of Independence followed on January 6, 1992.

In this manner, the Armenians of Nagorny Karabakh have expressed their will for self-determination in a form and a procedure, namely that of a referendum, which international law usually requires today for the effective exercise of the right of self-determination<sup>41</sup>.

It can be concluded, from the facts at hand, that the ethnic group of Armenians of Nagorny Karabakh, as regards the subjective and objective criteria, fulfills the prerequisites for being the subject of the right of self-determination according to international law.

**4. Has the ethnic group of the Armenians of Nagorny Karabakh exercised its right to self-determination in a binding manner at an earlier date and thereby exhausted it?**

The Armenian ethnic group of Nagorny Karabakh could have exhausted its right of self-determination by exercising it at an earlier date and thereby lost it.

The following possibilities have to be considered:

- (a) the subjugation to the government of Baku in August 1919
- (b) the claiming of territorial autonomy since 1921/1924
- (c) the 99% participation, during the whole Soviet period in the elections of the Soviets, not only of the territory itself but also of Azerbaijan and the Soviet Union.

*4.1 Voluntary integration into the Republic of Azerbaijan*

The right of self-determination of the Armenian ethnic group has not yet been effectively exercised and exhausted through the subjugation of Nagorny Karabakh to the government of Baku under the above mentioned Art. 1 of the Treaty of August 22, 1919. For that treaty, and the related conditions are proof that it was forced through massive military pressure and force. In addition, the Declaration was only of a "temporary" character. The unconditional will of the ethnic group to belong to the state of Azerbaijan for ever was, therefore, not declared.

*4.2 Exhaustion of the right to self-determination by claiming the autonomous status.*

This question is clearly to be answered to the effect that the autonomy of the territory of Nagorny Karabakh was and is neither as regards its establishment nor as regards its contents, suitable to exhaust the Armenian ethnic group's right to self-determination.

#### 4.2.1 The origin of the territorial autonomy of Nagorny Karabakh

As already noted above, the decision concerning the territorial autonomy of Nagorny Karabakh was made by the "Caucasian Bureau" of the Central Committee of the Communist Party of Russia. At that time (1921) they already had the political power to make such a decision, because in the states of Azerbaijan, Georgia and Armenia, which had risen from the ruins of the Tsarist Empire in 1918/19, Communist forces had come into power which collaborated with Moscow and which had concluded military-economic Union treaties with the RSFSR: first Azerbaijan (September 30, 1920), then Georgia (May 21, 1921) and finally - in narrower limits - Armenia (September 30, 1921).

The decision-making process in the Karabakh question went back and forth in a contradictory manner, thus showing how completely the population concerned was relegated to the status of an object. It was influenced by (1) the struggle for power between the Bolsheviks and anti-Bolshevik forces in the Transcaucasus, and by Moscow's interest in securing Communist rule in that part of the old Russian Empire; by (2) the interest of the national-Communist Party and state leadership in Baku in a narrow delimiting of the Armenian state; and by (3) the interest of the Turkish state, reorganized under Kemal Atatürk, in strengthening Turkish influence in the Transcaucasus.

The Bolshevik victory in Armenia in November 1920 seemed for a short time to be on the verge of realizing the formation of a Soviet Republic of Armenia, on the territorial basis of Yerevan, Nakhichevan and Nagorny Karabakh. Under the influence of these developments, Narimanov, the President of the Revolutionary Committee of Azerbaijan and Gusseinov, the Peoples' Commissar for External Affairs, stated publicly on November 30, 1920<sup>42</sup>:

*"As of today the old frontiers between Armenia and Azerbaijan are annulled. Nagorny Karabakh, Zangezur and Nakhichevan are recognized as integral parts of the Socialistic Republic of Armenia."*

On the next day Narimanov confirmed his statement in front of the

Soviet in Baku. He and Gusseinov sent the following telegraph message to the leaders of the Republic of Armenia on December 1, 1920, in the name of the Azerbaijani government<sup>43</sup>:

*"The frontier problems between Armenia and Azerbaijan are declared solved. Nagorny Karabakh, Zangezur and Nakhichevan are regarded as parts of the Republic of Armenia."*

In contrast to this statement made to Armenia, the "Kommunist", a paper published in Baku, on December 2, 1920, published a statement made by Narimanov to the Soviet in Baku, which deviated on the subject of Nagorny Karabakh<sup>44</sup>:

*"Zangezur and Nakhichevan are integrated parts of Soviet Armenia. The people of Karabakh are entitled to the full right of self-determination."*

The discrepancy remained unresolved. It can be seen from the course of the further events, however, that Azerbaijan had given up neither Karabakh nor Nakhichevan. This became evident during the border negotiations that took place between Turkey and the RSFSR in February/March 1921, at a time when, for a short while, the anti-Bolshevik Dashnaks regained power in parts of Armenia. Under pressure, the RSFSR declared, in a treaty that was initiated in Moscow on March 16, 1921, that Nakhichevan was "an autonomous territory under the protectorate (protektoratom) of Azerbaijan" and that "Azerbaijan was not allowed to surrender its protectorate to a third State" (Art. III, para. 1)<sup>45</sup>. Under the influence of Narimanov, too, the Moscow government had taken the side of Azerbaijan. The treaty that was finally ratified on October 13, 1921, in Kars (Turkey) by the three Transcaucasian Republics confirmed the provision on Nakhichevan (Art. V); it did not affect Nagorny Karabakh<sup>46</sup>.

Following this decision which was favorable to Azerbaijan, the Soviet Republic of Azerbaijan also stated its final position regarding Nagorny Karabakh, although on June 12, 1921 Armenia had stated, citing the above mentioned Declaration of the Revolutionary Committee of Baku and the "Consensus Between the

Socialist Soviet Republics of Armenia and Azerbaijan", that "from now on Nagorny Karabakh (is) an integral part of the Socialist Soviet Republic of Armenia". But this Declaration had only been signed by the Armenian side<sup>47</sup>. In contrast to this, the Politburo of the Communist Party of Azerbaijan decided on June 27, 1921, to disagree to the unification of Nagorny Karabakh with Armenia, on the grounds that Karabakh and Azerbaijan were linked by close economic ties.

Subsequently, the Caucasian Bureau of the Communist Party of Russia assumed the role of an arbitrator. At the first meeting on July 4, 1921, in which 7 people, i.e. 1 Azerbaijani, 2 Georgians, 2 Armenians, 1 Russian and 1 Jew took part, it was decided with a majority of 4:3 votes "to annex Nagorny Karabakh to Armenia again and to organize a referendum, restricted to Karabakh"<sup>48</sup>. When, as a result, Narimanov threatened to take the question before the Central Committee of the Russian Communist Party, the Bureau met again on July 5, 1921 - in the presence of Josef Stalin, who had arrived from Tiflis the day before - to reconsider the question and then - without discussion - made a contradictory decision:

*"Regarding the necessity of national peace between Muslims and Armenians, and the economic link between Nagorny and Lower-Karabakh, its constant tie to Azerbaijan, Nagorny Karabakh shall remain within the borders of the Azerbaijani SSR, while being granted extensive territorial autonomy."*<sup>49</sup>

The Caucasian Bureau instructed the Central Committee of the Azerbaijan Communist Party (B) to carry out the resolution and reserved the right of "confirmation" of the measures taken.

On July 16, 1921, the Central Committee of the Communist Party of Armenia protested formally against the decision made by the Caucasian Bureau, but could bring about no change in that decision. If it took a good three years until the decision could actually be realized, then this was due to the fact that the party and state leadership in Baku were not united in their plan for autonomy, and on the other hand, that the solution was found to be unsatisfactory by Nagorny Karabakh, i.e. on the Armenian side. The

so-called "Nagorny Karabakh question" remained controversial. After the Party Committee of the district of Shusha, the capital of Nagorny Karabakh at that time, had been dissolved in August 1921, and the Azerbaijani A. E. Karayev had been appointed as the extraordinary plenipotentiary of Karabakh, the United Politbureau and Organization Bureau of the Communist Party of Azerbaijan formally requested the Caucasian Bureau of the Peoples Communist Party (B) to reconsider its Declaration and to disregard territorial autonomy. During the following period, the Party and State leadership in Baku confined itself to setting up Commissions in order to disguise the fact that the Resolution had not been carried out. At the beginning of December 1922, the Committee of the Russian Communist Party (B) for the Transcaucasian region (in which, on March 12, 1922, the "Transcaucasian Federation" consisting of the Republics of Azerbaijan, Armenia and Georgia had been formed<sup>50</sup>) took up the "Karabakh question", and set up, first, a Central Commission for the Affairs of Nagorny Karabakh at the Council of the Peoples' Commissars in the Azerbaijan Soviet Socialist Republic, and second, a "Committee for the Affairs of Nagorny Karabakh". The latter consisted of the Chairman A.N. Karakozov, and seven other members, as well as a representative from each of the three county administrations of Nagorny Karabakh. The Committee fulfilled governmental duties concerning particular issues in the territory of Nagorny Karabakh.

In Baku one kept on searching for a solution which avoided an effective territorial autonomy. In addition to the national aspects, the economic interest in conserving the uniform economic area of "upper" and "lower" Karabakh also played an important role. In May 1923, with these interests at heart, the members of the Karabakh Committee made the suggestion of forming two enlarged counties, namely those of Nagorny Karabakh and "Kurdistan" with the seat of administration in Shusha, as well as Lower Karabakh, with its administrative center in Agdam. The joint questions of both districts were to be decided by a territorial organization (on the Party and Soviet level) with the rights of a district administration.

The Central Committee of the Presidium of the Communist Party of Azerbaijan initially agreed to this suggestion, but shortly afterwards, probably due to intervention from Moscow, changed its

stand and recommended that the Central Executive Committee of Azerbaijan decree (only) Nagorny Karabakh's autonomy and form an "autonomous Karabakh territory with the administrative center in Khankent (the later Stepanakert) under the administration of an Executive Committee"<sup>51</sup>. In order to realize this, the Presidium of the Central Committee set up a (territorial) Party Committee consisting of 5 members. A special commission led by the Azerbaijani A. G. Karayev, to which no Armenian belonged, received the order to determine the new borders of Nagorny Karabakh, Kurdistan and Lower Karabakh and to present their findings to the Presidium of the Central Committee of Azerbaijan for approval. On July 7, 1923, the Central Executive Committee of the Azerbaijan Soviet Socialist Republic published the decree "On the formation of the Autonomous Region of Nagorny Karabakh". It stated:

*"The elimination of national suppression and inequality in whatever form, the replacement of national enmity and national hate with the international solidarity of the workers and the brotherly cooperation of the peoples in a uniform state union, is one of the main tasks of the workers' and farmers' revolution of the Soviet power. In fulfilling this task, the Azerbaijani Central Executive Committee of the Soviets has decided:*

- 1) *to form an Autonomous Region out of the Armenian part of Nagorny Karabakh, with its administrative center in Khankent, as an integral part of the Azerbaijani SSR;*
- 2) *The administrative organizations of the Autonomous Region are the Regional Executive Committee and the local Soviets."*

A mixed commission of representatives of the (three) counties of Nagorny Karabakh, Lower Karabakh and Kurdistan, together with the Azerbaijan Central Government, first laid down the borders of the region by separating Nagorny Karabakh on the one hand and Lower Karabakh and Kurdistan (i.e. the territory between Nagorny Karabakh and the Republic of Armenia) on the

other, and secondly worked out a draft of the Organization Statute of Nagorny Karabakh.

On July 23, 1923, the Presidium of the Central Committee of the Azerbaijan CG (B) revised the draft and instead of the "Karabakh Committee" substituted the "Revolutionary Committee of the Autonomous Region" that was equally represented by two Azerbaijanis and two Armenians. In November 1923 the first (constituent) Soviet Congress of the autonomous region took place. Of its 132 delegates, 80% of whom belonged to the Communist Party of Azerbaijan, 116 were Armenians and 14 Azerbaijanis. It elected a Central Executive Committee, led by the Azerbaijani A. N. Karakozov, and to which, besides another Azerbaijani, five Armenians belonged. One of the Armenians was the Secretary of the Central Executive Committee, A.B. Ketikyan.

The work on the Organization Statute was continued in a special Commission, which probably acknowledged the interests of the Armenian population more strongly. In any case, the Commission was dissolved by the Presidium of the Azerbaijan Communist Party (!) because it was not satisfied with its work, and a new one was constituted in which there were no longer any Armenian members (Chairmen G. M. Musabekov, D. Ch. Buniadzade, A. N. Karakozov, I. I. Dovlatov, G. P. Djabiev). The Presidium obviously worked to the satisfaction of both the Party and the State leadership in Baku. The result was the Organization Statute of Nagorny Karabakh, which was published on November 24, 1924.

The decision-making process that led to the establishment of the territorial autonomy of Nagorny Karabakh shows that its population was denied even the most minimal possibility of participation. The following points must be emphasized:

1. The Caucasian Bureau, an organ of the Russian Communist Party, was in no way authorized to make such a wide ranging decision over the heads of the people concerned.
2. The refusal of the unification of Nagorny Karabakh with Armenia was based, to a large extent, on inappropriate considerations, which were prejudiced in favor of the interests of Azerbaijan:
  - a) on economical, ethnic interests and those concerned with

power politics, whereas the economic arguments that stood in the foreground were not convincing, because, from the geographical point of view, Nagorny Karabakh was part of the Armenian highlands in the west-Transcaucasus and no more strongly oriented to the industrial center of Baku than any other Armenian area;

b) on the disregard of the unmistakable ethnic situation, i.e. the fact that at the time, Armenians represented 94% of the population of Nagorny Karabakh, which was only separated from the Armenian Socialist Soviet Republic by a small corridor, an area in which mainly non-Azerbaijani ethnic groups, especially Kurds, lived;

c) the absence of consultation of the population of Nagorny Karabakh itself.

#### 4.2.2 The fictitious character of the Autonomy

The existence, at the time, of the Transcaucasian Socialist Federal Soviet Republic (TSFSR), which had been established on the initiative of the Russian Party leaders on March 12, 1922, between Azerbaijan, Armenia and Georgia on the basis of a Union Treaty<sup>52</sup> (Tiflis as its capital), in no way brought relief to the legal and overall political situation of the Armenian ethnic group of Nagorny Karabakh. Its constitution of January 16, 1923, made the Federation responsible for the economic, financial and legal unity (Art 31)<sup>53</sup>. It had no competence, however, in cultural areas; no responsibility in any inter-ethnic conflicts which might arise within the Federation. The constitution of the Federation did not provide for a special arbitration organ in case of conflicts between the Republics. Any dispute between Armenia and Azerbaijan could, at the most, have been brought before the Transcaucasian Soviet Congress (Art. 5 ff), the highest organ and parliament of the Federation. It is not known whether this had a protective effect.

The constitution of the Azerbaijani SSR was a decisive factor in the further course of events concerning the substance of the autonomy of Nagorny Karabakh.

In the constitution of Azerbaijan of March 14, 1937, the autonomy of Nagorny Karabakh was taken into consideration in many respects, but only formally, without taking the ethnic

characteristics of the region into consideration in any way<sup>54</sup>.

This can be seen from the following outline:

First: Nagorny Karabakh is mentioned in the list of territorial regional units (administrative districts) of the Republic (Art.14).

Second: "The confirmation of the borders and of the division of the districts of the Autonomous Region of Nagorny Karabakh" (Art 19 lit. d) and "the control of the realization of the budget...of the Autonomous Region of Nagorny Karabakh..." (lit. k) were explicitly mentioned in the catalogue of administrative jurisdiction of the Republic of Azerbaijan.

Third: Art. 31 assigns one of the three posts as deputy to the Chairman of the Presidium of the Supreme Soviet of the Azerbaijan SSR, to a representative of the autonomous region of Nagorny Karabakh.

Fourth: The Presidium of the Azerbaijan Supreme Soviet has the right, among other things, to repeal decisions made by the territorial Soviet of Nagorny Karabakh if these are in contradiction to the law.

Fifth: the Council of Ministers, i.e. the Government of the Azerbaijan SSR, has the right to "direct and examine the work of the Executive Committee of Nagorny Karabakh" (Art. 46 lit. e) and in this context, can repeal their decisions and suspend those of the regional Soviet of Nagorny Karabakh, on practical grounds (Art 47).

Sixth: unlike the autonomous Republic of Nakhichevan, Nagorny Karabakh had no seat in the Council of Ministers of the Republic. (Art.48)

Seventh: one chapter (VII) was dedicated to Nagorny Karabakh in the form of its state organizations (Art. 75. 85): The provisions differed only from those on the other local organizations (Art 86ff) in the regulation that the regional Soviet of Nagorny Karabakh must publish its decisions in "Armenian and Azerbaijanian" (Art. 78 para. 2). No areas of independent authority were assigned to the region. Its administrative organs were, in every way, subject to the organs of the Azerbaijani Republic. Art. 77, which stipulated that the regional Soviet of Nagorny Karabakh "directs the cultural, political and economic development" held no significance, in light of the extensive catalogue of jurisdiction in

favor of the Republic's organizations (compare Arts. 55,56).

Eighth: In the section on the judiciary (Art.110 ff.), it was decided that the regional court of Nagorny Karabakh (as well as the High Court of the Republic) was to be elected for five years (not, as in the case of the lower courts, for three years) (Art 115), and that the legal language in Nagorny Karabakh, and in the districts with a predominantly Armenian population, was to be Armenian (Art. 117).

Ninth: As for the rest, the regional Soviet of Nagorny Karabakh had the right to develop a "Statute on the Autonomous Region of Nagorny Karabakh" that "takes into consideration the national particularities of the autonomous region and to present this to the Supreme Soviet of Azerbaijan for confirmation" (Art 85). Such a Statute was not developed for Nagorny Karabakh (just as none was prepared for any other autonomous region of the USSR), although literature on constitutional law made continuous reminders of this fact<sup>55</sup>.

The chapter on the autonomous region of Nagorny Karabakh was shortened to two articles in the Azerbaijani Constitution on April 21, 1978. More detailed regulations were reserved for inclusion in "the Law of the Autonomous Region of Nagorny Karabakh" (Art. 84). A change for the worse was made in the regulation on the language to be used in court (Art. 117), in which Armenian was no longer explicitly mentioned but changed to the "language of the autonomous region".

The law of the Azerbaijanian SSR of June 16, 1981, "Concerning the autonomous region of Nagorny Karabakh"<sup>56</sup> contains no regulations which take into account the characteristic of the region as an enclave predominantly populated by Armenians. Regulations are also lacking that grant to the organizations in the region a limited area in which they have their own practical and organizational authority to take decisions (competencies). In many respects it represents a repetition of the framework law of the USSR for the autonomous regions<sup>57</sup>.

The "authorizations" mentioned in Art. 16 - 38 of the regional Soviet of Nagorny Karabakh do not constitute an independent decision-making process. They concern, without exception, matters that the Republic of Azerbaijan (or rather the whole of

the USSR) has a claim to, and therefore merely convey implementing powers. This is also the same in the case of the "authorizations in the popular education and science sectors" (Art. 28) and "the authorizations in the cultural-informational work and art sectors" (Art. 29). The question of the safeguarding of the national Armenian culture, the language in the schools, educational and cultural institutions, the preservation of monuments, etc., was not mentioned once in these regulations. Neither were the possible (special) cultural relations with the Armenian Socialist Soviet Republic mentioned. The competence of the regional Soviet of Nagorny Karabakh, to act in the interest of Armenian local culture, can be based solely on Art. 10, para. 3 of the law:

*"The regional Soviet decides on all questions of local importance, guided by the national interests and the interests of the citizens living in the territory of the Soviet, taking into consideration the national and other particularities of the autonomous region; it carries out the decisions of the superior state institutions, directs the activities of the subordinate Soviets of the representatives of the people, takes part in the discussion of questions of importance for the Republic and the Union as a whole, and makes suggestions in this respect."*

In contrast to the constitution of 1937, the law of 1981 does not mention the language in which the decisions of the local authorities were to be published (compare Art 42).

Article 64, para. 1, concerning the official language used in court shows, in particular, that the law deliberately avoids providing concrete regulations which fulfill the framework provisions of the Azerbaijani constitution, by taking into consideration the ethnic and cultural peculiarities of the region. It states:

*"In accordance with Art. 171 of the constitution of the Azerbaijanian SSR the judicial proceedings in the autonomous region of Nagorny Karabakh will be*

*carried out in the language of the autonomous region (!) or in Azerbaijani language (!) or in the language of the majority of the population of the concerned region."*

The law on the Armenian populated autonomous region of Nagorny Karabakh actually manages to explicitly mention the language of the regional minority - Azerbaijani - while ignoring the ethnic group for whom the autonomy was actually established. The result is that the responsible organizations of the Republic of Azerbaijan have taken it so far that "the language of the autonomous region" is defined at no point. A Nagorny Karabakhian language does not exist. So, if only Armenian can be meant by this - but this is deliberately not even mentioned in the private statute on Nagorny Karabakh - then this amounts to the qualified fact of the disregard of the national autonomy of the Armenians in Nagorny Karabakh. This throws a harsh light on the severity and scope of the attitude of denial of the organs of the Republic towards the legitimate interests of the largest national minority in their country.

It had also not been formally determined by the regional Soviet of Nagorny Karabakh itself, that Armenian should be the "language of the autonomous region of Nagorny Karabakh", but was even left open on that level. It was only on November 4, 1988 (!), that is approximately 10 months after the movement for the right of self-determination reached its first zenith, that the regional Soviet formally decided that Armenian was the official language of the autonomous region of Nagorny Karabakh<sup>58</sup>. The only jurisdictional decision of the law that had any actual significance for the independence of Nagorny Karabakh as an autonomous region was the regulation that, "the territory of the autonomous region may not be changed without the consent of the regional Soviet' (Art.3, Paragraph 2).

In his detailed examination of constitutional law, and the degree of autonomy of the national regional units in the USSR according to the Union constitution of 1936<sup>59</sup>, Jurgen Arnold writes that the autonomous regional units

*"are non-governmental regional federations with an*

*'autonomy' exhausting itself politically in the authority of secondary legislation with a partly intensified protection of the existent acts of legislation and culturally in the use of the native language as the official and teaching language."*

For Nagorny Karabakh these advantages did not exist by virtue of the law but, at the best, de facto. The possibility of attaining the right of self-determination at least regarding national and cultural matters was not conveyed by the autonomous status of the Armenian ethnic group.

#### 4.3. *Exhaustion of the right to self-determination by taking part in the elections of the Soviets*

Because of the undemocratic character of the elections in the totalitarian Soviet system, because of the various forms of administrative, political and social pressure to participate in this ritual of acclamation, and because of the more or less extensive scope of falsification concerning the actual percentage of the people that took part in the "elections", no authentic evidence can be gathered from these facts as to the political will of the Armenian ethnic group of Nagorny Karabakh.

The conclusion is that none of the occurrences mentioned had the effect of exhausting the right of self-determination by the ethnic group of Armenians in Nagorny Karabakh.

5. Does the sovereignty of the Republic of Azerbaijan take precedence over the right to self-determination, in the form of secession, of the Armenian ethnic group of Nagorny Karabakh?

Even though it has been established that the ethnic group of Armenians in Nagorny Karabakh can invoke the right of self-determination not only in principle but also in the current situation, because, until the outbreak of the conflict, it had not been bindingly exercised or "exhausted" in the past decades, this does not, however, mean that international law authorizes the Armenians to choose and enforce at will any of the mentioned forms of the right to self-determination (formation of their own state; unification with Armenia; national autonomy within Azerbaijan). Although it is true - as has been established - that the right of self-determination is a binding and valid norm of international law, it does not, as such, stand alone and isolated, but in the normative context of other, sometimes contrary, principles or rules of international law. The most definite contrast exists between the right of every state to the recognition and maintenance of its sovereignty on the one hand, and the right of self-determination on the other. The right of self-determination of the Armenians of Nagorny Karabakh collides with the right of sovereignty of the Republic of Azerbaijan. How can a solution, in accordance with international law, be found to the problem?

To begin with, it can be deduced from the fact that both rights from a formal point of view, are rules on an equal level, that the right of self-determination of the Armenians of Nagorny Karabakh does not, "automatically" as it were, have to take second place to the sovereignty of Azerbaijan. Even though the right of self-determination, compared with the sovereignty of the states, is a later achievement of international law, it is in no way a rule of lesser dignity, over which state sovereignty could claim absolute precedence. If the case were different, the right of self-determination would have no meaning; it would be a pseudo-right. The fact that, in principle, the right of self-determination and sovereignty are of equal strength and priority is implicitly recognized by the Friendly Relations Declaration of 1970; both

principles have found their firm place in Principle Catalogue. A glance at the CSCE Final Act from Helsinki leads to the same conclusion. In the latter case the principle of sovereignty is additionally emphasized by the fact that the "inviolability of the borders" was formally raised to the rank of a principle of behavior by the CSCE participating states (Principle III):

*"The participating States regard as inviolable one another's frontiers as well as the frontiers of all States in Europe and therefore will refrain now and in the future from assaulting these borders. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the region of any participating State."*

In the sphere of tension between the right of self-determination and state sovereignty, the aim is to bring both rights or rules into a justifiable state of balance, which takes into account the weight of each in the particular case. Principle X, para. 4 of the Principle Catalogue of the CSCE Final Act, attempts to express the same thought by formulating that every one of the 10 principles must be "interpreted taking into account the others"<sup>60</sup>. The principle of sovereignty finds its limits in the right of self-determination, just as conversely, the right of self-determination finds its limits in the principle of sovereignty. In other words, the problem is one of establishing a practical concordance between the right of Azerbaijan to the respect and observance of its sovereignty, the inviolability of its borders etc., on the one hand and the legitimate interest of the Armenians of Nagorny Karabakh in a national right of self-determination, on the other.

What the consequences of these general determinations are, is hotly debated in literature on international law and are, in many respects, unclear<sup>61</sup>. This results partly from the fact, as has been noted, that some authors practically identify the contents of the right of self-determination with the right of secession, instead of recognizing its firm connection with national autonomy. Precedence of the right of self-determination over state sovereignty is therefore

partly denied and partly affirmed, while the view in favor of the right of self-determination is restrictively oriented, i.e., it makes considerable demands on such a precedence.

The solution to the problem which attempts a practical concordance, has to take into consideration that within the existing system of international law, and in spite of the fact that the right of self-determination and sovereignty as norms of law are of the same legal quality, both principles or rights possess in fact different importance. Due to the fact that the present system of international law is (still) decisively a legal system of the states, and is dominated and formed by them, the sovereign equality and the integrity of the states are of outstanding significance and inevitably assure the right of sovereignty a very high status. From this point of view of the established international legal system, the right of self-determination in its offensive form appears as a dynamic principle which, with more or less revolutionary force, changes or even destroys existing structures and especially alters the borders of one or more states. This basic relation between sovereignty and self-determination must lead to the maxim that the realization of the right of self-determination can only take place, and is only justified, if the sovereignty of the states concerned is preserved to the greatest possible extent. The reasons for exercising the right of self-determination must meet higher and stricter standards: the greater the changes are, the greater effect the exercise of that right will have on the existing state. Quite rightly therefore, the prevailing opinion in literature on international law takes the view that the right of secession can only be claimed under special, restricted conditions, in other words, only in exceptional cases in contrast to the regular case of having to respect the sovereignty.

This opinion is also the basis of the Friendly Relations Declaration quoted above. Although it also legitimizes the right of secession in principle (para. 2), it immediately limits it again with a formulation that borders on negation (para. 7):

*"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part,*

*the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the region without distinction as to race, creed or color."*

The right of secession as the sharpest form of the right of self-determination can therefore only prevail in opposition to the sovereignty of a state, if the policy of the latter is not guided by the principle of equal rights and self-determination of peoples, and as a result, has a government which does not represent the whole population, but instead subjugates certain parts of it to a regime of discrimination. Naturally, this cannot mean an accumulation of cases, let alone single cases of discrimination, but rather a situation of discrimination must have arisen for the ethnic group as a whole to find it unbearable.

In the process of establishing practical concordance between the right of self-determination and sovereignty, or, to be more precise, in the establishment and estimation of the importance of sovereignty, it is necessary to determine whether the state concerned is an established subject of the community of international law, with generally recognized and secure borders, or whether it concerns a state that is itself still in its beginning stages, and finds itself politically, and as regards international law, in a transitional period. The commission of legal experts appointed by the Council of the League of Nations after the First World War, on the occasion of the Aland islands conflict between Sweden and Finland<sup>62</sup>, referred to this aspect with special emphasis. It stated:

*"Both from the viewpoint of state law and international law, real situations develop from the formation, re-organization and partition of states, and as a consequence of revolutions and wars, which largely elude the norms of positive law. If the most fundamental basis of these norms, namely the territorial sovereignty, is absent, either because the*

*formation of the state has not been completed, or the state is in a period of transition or dissolution, then, in legal respect, a questionable and uncertain situation arises. It only ends in the moment that developments are completed and a new, definitive and normal situation in regard to territorial sovereignty is established. This transitional situation",*

the experts continued:

*"between an actual and a definitive normal situation cannot be seen to be the exclusive responsibility of a state. It aims at changes in the overall relationship of the members of the community of states and their territorial status and their status under international law, and is therefore of the highest importance to this community from a political as well as a legal point of view".*

The specific consequences that can be drawn from this for the relationship between the right of self-determination (in the sense of a right of secession) and the sovereignty of the (new) state, are expressed by the commission of legal experts in the following sentence:

*"Under such conditions, the principle that the people should exercise self-determination, can apply. New aims of certain parts of a nation, that occasionally have old traditional ties or are based on a common language or civilization, can arise and lead to results in respect of internal and external freedoms."*

Regarding the case in hand, these remarks are especially worthy of note, because the Aland islands conflict and that of Nagorny Karabakh have certain things in common. Just as the Soviet Socialist Republic of Azerbaijan, since 1989 had, on its way to full state sovereignty and independence from the Soviet Unitary State, cited the right of self-determination of peoples, so too, did the

princedom of Finland in 1917, thereby freeing itself from the State Federation of the Russian Empire. The process of the dissolution of the Soviet Union, which formally began on November 16, 1988, with the Estonian Declaration of Sovereignty, and dragged on for three years, during which a multitude of new sovereign states were formed, can definitely be compared to the decay of Russia in the course of the 1917/18 Revolution. But the circumstances of Nagorny Karabakh, on the one hand, and the Aland islands on the other, also show significant mutual aspects: In both cases a territory is concerned which is mainly populated by ethnic members of an immediate neighbor nation - here Sweden, there Armenia - and which has at its disposal a special formal and legal status. In addition to that, both ethnic groups have expressed unmistakably their wish for annexation to the respective neighboring states of their own nation.

It can be concluded for the problem in question from the difference between the unstable and unclear situation that results from the dissolution of a state and the normal situation to be found in an established system of states, and with reference to the above-mentioned League of Nations expertise, and with Hermann Raschhofer<sup>63</sup>, that the importance of the state sovereignty of Azerbaijan must be ranked lower than the importance of the sovereignty of a state in "a normal situation" and therefore, compared to the right of self-determination (the right of secession) of the Armenians of Nagorny Karabakh it cannot be given the same consideration. In the process of establishing a practical concordance between both norms of international law, a certain change of emphasis in favor of the right of self-determination occurs which relativizes the generally existent strong supremacy of the principle of sovereignty.

**6. Is the Armenian ethnic group of Nagorny Karabakh limited to the status of national minority?**

*6.1 The general standard for the determination of minority status*

The conclusion can be drawn from the previous section, that, in principle, the Armenian group of Nagorny Karabakh, has to remain in the State Federation of Azerbaijan, but, as a compensation for this and for its own protection, receives a minority status, which does justice to the rights of the Armenian ethnic group in that it guarantees the protection and the development of its individuality. The intensity and strength of the status must be determined according to the particular situation and the characteristic of minority in the state concerned; they must be in appropriate relation to each other. On the basis of the universal and, therefore, also here valid principle of reasonableness, the following rule can be set up for the definition of the content of the minority status:

The more pronounced the characteristics of an ethnic group (national minority) are, the larger its number, the more compact and more homogeneous the settlement structure is and the more distinctly it differs from the national majority in language, cultural, religious and ethnic respects, then so much more solidly must the minority status be established and institutionally protected by the legal system of the state concerned.

When applying this rule to the case concerned, it can be established that the Armenian ethnic group of Nagorny Karabakh possesses a very distinct profile which makes it stand out clearly from the leading national element of Azerbaijan:

(a) whereas the Armenians belong, ethnically and linguistically to the Indo-European family of nations, the Azerbaijanis are part of the Turkish family of nations.

(b) whereas the Armenians are Christians practicing the special form of monophysite faith, the Azerbaijanis are Shiite Muslims.

(c) whereas the culture and mentality of the Armenians of Nagorny Karabakh have been fundamentally influenced by their Christian values, ethics and traditions, for the Azerbaijanis Islamic

law and oriental customs that bear its influence are decisive.

(d) The ethnic group of Armenians lives in Karabakh in compact settlements and thus represents (regionally) an overwhelming majority compared to the Azerbaijanis. With about 180,000 people it also has a considerable might in absolute numbers.

(e) The individual character of the Armenian ethnic group of Nagorny Karabakh is the result of a tradition rooted deeply in history.

From the sum and evaluation of these facts, the conclusion must be drawn that the Armenian ethnic group of Nagorny Karabakh can make claim to a strong minority status, and that means at least territorial autonomy, because only such a status seems to be suitable for establishing the necessary compensation for its legitimate interest in national self-determination within the state of Azerbaijan. If the minority status could not be sufficiently guaranteed either by international guarantees or by the circumstances of constitutional law and politics in Azerbaijan, then the Armenian ethnic group of Nagorny Karabakh could not reasonably be expected to remain in the state federation of Azerbaijan, and the question would have to be raised whether the specific preconditions for the exceptional relationship between sovereignty and national self-determination are given, i.e. whether the national right of self-determination of the Armenians of Nagorny Karabakh in the form of the right of secession has precedence over the state sovereignty of Azerbaijan. The examination is to be continued in accordance with this sequence of thoughts. First of all, the standard of minority protection provided by the definitive international documents must be examined. Two levels of protection come into consideration here:

1. The protection of minorities in international law, and
2. The political guarantee for the national (ethnic) minorities within the scope of the Conference on Security and Cooperation in Europe (CSCE).

*6.2 The minorities standard in international law*

The protection of national minorities in international law is

only in its initial stages. At the moment it forms hardly more than an annex to human rights. Its most important expression is Art. 27 of the International Covenant on Civil and Political Rights (ICCPR) of December 19, 1966, which has been previously mentioned. It states:

*"In those states, in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."*

As a successor state of the USSR which had ratified the pact in 1973<sup>64</sup>, Azerbaijan (together with Armenia) has become a member of the pact and is bound by its regulations.

Art. 27 contains no more than a minimal program for the protection of minorities, and in addition, its efficacy is questionable, because the jurisprudence in international law does not agree on the interpretation of some essential points made by it. This already concerns the question as to whether only the "members" of national minorities can cite Art. 27, or whether the legal subject of the provisions is the minority as such, in which case their possible representatives could also cite Art. 27<sup>65</sup>. On the basis of the wording and the fact that Art. 27 is part of a treaty that regulates the rights of the (individual) person and citizen, the prevailing opinion<sup>66</sup> in literature on international law understands Art. 27 to be an individual right which certainly also protects and should protect the minority itself. The Human Rights Commission of the United Nations confirmed the individual rights statement in Art. 27 in a formal "declaration" in March 1992, be passed as a resolution by the UN General Assembly in the autumn of 1992.

The term "minority" as such is also controversial. The question here is how much subjective criteria count in addition to objective criteria. Efforts to find a definition within the United Nations (reports from Francesco Capotorti/1977 and Jules Deschenes/1985) did not meet with unanimous approval.

More important however, than both the previous points of controversy, is the problem of the actual substance of guarantee

provided by Art. 27 (ICCPR): What does "enjoyment of their own culture", "profession and practise of their own religion" as well as "use of the native language" actually mean? This is extremely unclear and can be so narrowly defined by a reserved and restrictive interpretational approach that Art. 27 does not substantially convey more rights than are already contained in the two Human Rights Covenants and other Human Rights Conventions of the United Nations, especially in connection with the extensive prohibition of discrimination.

In the case of the practice of religion, Art. 27 in fact guarantees less than Art. 18 of the ICCPR. The right to use the native language leaves undecided, as well as the consequences this will have for state institutions (schools, courts, public authorities). Concretely determined legal positions, that meant more than the use of the language in social and private areas, do not follow from Art. 27 itself, but rather, for example, from Art. 14, para.3 (lit. f) ICCPR (Use of interpreters in court) and above all Art. 5, para. 1 (lit. c) of the UNESCO Convention Against Discrimination in Education of December 15, 1960<sup>67</sup>, whose provision reads:

*"The Contracting States agree... c) that it is essential to recognize the right of members (!) of national minorities to carry on their own educational activities, including the maintenance of schools and, in harmony with the educational policy of each State, the use or the teaching of their own language, provided however:*

- 1. That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which is detrimental to national sovereignty;*
- 2. That the standard of education in these schools is not lower than the general standard laid down or approved by the competent authorities; and*
- 3. That attendance at such schools is optional."*

This regulation is obviously meant for the situation in which

the national minority lives in dispersion and, at least territorially (regionally), finds itself in a weaker numerical position to the leading national element. The natural desire of a group such as the ethnic group of Armenians in Nagorny Karabakh, who - in the national view - represent a minority, but in fact form a majority in the region which they densely inhabit, to have a national educational system with obligatory schools, is not covered by the regulations cited Art. 5, para. 1 (lit. c) of the UNESCO Convention guarantees national schools only as private supplementary schools on a voluntary basis.

In summary, one can conclude that Art. 27 ICCPR and the other Human Rights instruments of international law only grant certain "rights" to the minorities but do not provide them a coherent and compact legal status. The minorities therefore hold no right established by international law, to demand at least the establishment of cultural autonomy from the states in which they live, by virtue of which they would have a protected institutionalized special area at their disposal within the state or public cultural and educational system. There can thus be no mention of a right of political (administrative) autonomy.

If one took the current minorities standard of international law as a standard for the regulation of the legal situation of the Armenian ethnic group of Nagorny Karabakh, then the state of Azerbaijan would not even be hindered in repealing the (formal) autonomous status of the region! The minimum standard guaranteed by international law for the national (ethnic) minorities is disproportionately short of the evident needs and the legitimate interests of the Armenian ethnic group of Nagorny Karabakh, regarding their national self-determination, and therefore fails to meet their right to suitable compensation for the expectation that they remain in the state federation of Azerbaijan.

### 6.3 *The minorities standard of the CSCE*

The CSCE Final Act from Helsinki (August 1, 1975) also looks systematically at the problems of national minorities from a human rights point of view: Principle VII (Respect for human rights

and fundamental freedoms) states in paragraph 4:

*"The participating States, on whose region national minorities exist, will respect the right of persons (!) belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner (!), protect their legitimate interests in this sphere."*

In the final documents of the CSCE experts' meetings in Copenhagen (June 1990)<sup>68</sup>, Geneva (July 1991)<sup>69</sup>, and Moscow (October 1991)<sup>70</sup> however, statements are to be found that go beyond the purely individual approach of the Final Act from Helsinki. Noteworthy is the reformulation of the general clause of principle VII, paragraph 4 from Helsinki, which was already done in Copenhagen:

*"Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will." (Copenhagen, point 32 at the beginning)*

Provisions that approach the problem of minorities more from the angle of the community are the following:

(a) *"Persons belonging to national minorities can exercise and enjoy their rights ... in community with other members of their group." (Copenhagen, point 32 at the end)*

(b) *"They (the participating States) will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, ..." (Copenhagen, point 33)*

(c) *"They (the participating States) further*

*consider that appropriate democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs." (Geneva, Section III, para.1)*

Certainly these regulations are qualified to upgrade the organizations and the representatives of national minorities taking part in administrative and political decision-making in their states, but such rights of participation do not yet mean a substantial rise in the status of the minorities.

If one looks from this point of view at the political obligations which the CSCE states have entered into with regard to the national minorities, then one can say that they also hardly exceed the obligations under international law above described. A systematic look reveals the following picture of the minorities standard that has developed in the meanwhile by CSCE documents:

- (a) Strengthening of basic and human rights, which secure an equal legal position in the state for the members of national minorities.
- (b) Prohibitions of discrimination.
- (c) free decision concerning the membership of national minorities ("the membership of a national minority is the subject of the personal decision of a person and as such must not be disadvantageous to him");
- (d) the private and public free use of the native language, particularly lessons in the native language and especially religious lessons in the native language as well as - under certain circumstances - the use of the mother tongue in affairs with public authorities.
- (e) the foundation and maintenance of educational, cultural and religious institutions, organizations and associations, their maintenance through private and, in certain circumstances also with state support,
- (f) the consideration of the history and culture of national minorities in education.
- (g) the foundation of other organizations and unions respectively, on a national group basis.

- (h) the participation in public affairs concerned with the protection or promotion of national minorities.
- (i) cross-border contacts with citizens of other states who are of the same ethnic or national membership.

Moreover, the documents contain all kinds of declarations of intent, as well as the basically positive valuation and recognition of institutes which exist in the various participating states of the CSCE, for the protection, promotion and development of national minorities. Mentioned by name are territorial autonomy, cultural autonomy, national schools, the (joint) financing by the state of the (private) educational system for minorities, representation of national minorities and other forms of political participation.

It must be emphasized once more, that these institutions for the protection of the national minorities did not become part of the political obligations that the CSCE participating states mutually assumed.

The guarantee standard formulated by the CSCE documents in favor of national minorities thus also falls far short of the right of the Armenian ethnic group of Nagorny Karabakh to an institutionalized minority status, which takes into consideration in an adequate, reasonable way its historical, geographical, ethnic, cultural and political particularities.

#### 6.4 *Adequate minority status under Azerbaijanian constitutional law*

It has already been explained in detail that the Azerbaijani regulations of constitutional law on Nagorny Karabakh do not justify the reference to a territorial autonomy. The regulations do not even begin to grant the Armenian ethnic group the possibility of self-administration. It is merely a fictitious legal institution, a legal facade, behind which a policy of discrimination in favor of the Azerbaijani majority of the population, could develop uninhibitedly. The actual absence of autonomy could not be compensated in favor of the Armenian ethnic group by effective human rights in accordance with the obligations of the USSR and Azerbaijan under international law, because as is known, the human

rights were not only not realized in the Soviet States, but were, on the contrary, systematically oppressed<sup>71</sup>. It is an open question to put it cautiously whether this situation in Azerbaijan will change over the medium term. The extremely weakly developed political and legal culture of the Republic, the outbreak, only at this time, of virulent nationalism and, not the least, the reislamization tendencies in the Azerbaijani society, which are in conflict with the modern ethics of human rights, seem to give a negative answer to this question.

Under such circumstances, the national protection of minorities in the case of the Armenian ethnic group in Nagorny Karabakh does not represent a realistic and reasonable perspective on a balance of constitutional law with the sovereignty of Azerbaijan. The prerequisites for solving the conflict between the right of self-determination of the Armenians from Nagorny Karabakh and the sovereignty of Azerbaijan, on the basis of their regular relationship in international law, have not been sufficiently fulfilled. It can be supposed from this, that Nagorny Karabakh belongs to one of the cases in which, as an exception, the right of self-determination in its strongest form, namely the right of secession, prevails for once in opposition to state sovereignty. The study must therefore turn to the question of whether the discrimination and oppression of the Armenian ethnic group of Nagorny Karabakh were of such dimensions and of such intensity that the precedence of the national right of self-determination, in the form of secession, over Azerbaijan's right of sovereignty according to the Friendly Relations Declaration is justified.

**7. Did the ethnic group of Armenians from Nagorny Karabakh find themselves in an unbearable condition of discrimination for which the Republic of Azerbaijan was responsible?**

*7.1 Official evaluations of the situation in Nagorny Karabagh*

It has been admitted and determined in a number of official documents and resolutions since 1988, especially those made by the Presidium of the Supreme Soviet of the USSR, that the population of Nagorny Karabakh, and in particular the Armenians have, for decades - not only during the tyranny of Stalin, but up until the outbreak of the conflict - been discriminated against.

In a resolution made on July 18, 1988, "Concerning the Decisions made by the Supreme Soviets of the Armenian SSR and the Azerbaijani SSR, on the question of Nagorny Karabakh", it stated<sup>72</sup>:

*"To correct the situation that has occurred in Nagorny Karabakh and to eliminate the serious faults, important measures were taken through resolutions made by the Central Committee of the Communist Party of the Soviet Union, the Presidency of the Supreme Soviet of the USSR and the Council of Ministers of the USSR, to ensure the greatest possible development of the economy and culture, to increase the wealth of the working people in the autonomous region of Nagorny Karabakh, to strengthen the socialistic legality and the public order and to improve the education of the population of the Azerbaijani SSR and the Armenian SSR in a spirit of brotherly friendship and cooperation. The necessary conditions were created for an expansion of the contacts between the autonomous region of Nagorny Karabakh and the Armenian SSR. The Presidium of the Supreme Soviet thinks it advisable to send its representatives to Nagorny Karabakh, who, in close contact with the representatives of the Azerbaijani SSR and the Armenian SSR, can work to ensure that the decisions*

*that have been made can find their unconditional fulfillment."*

In its resolution of October 20, 1989, on the results of the work presented to it by a commission of the Nationalities Soviet of the USSR concerning the Nagorny Karabakh question, the presidency of the Supreme Soviet came to the decision that the Azerbaijani SSR must

*"ensure absolutely solid and secure additional guarantees for the autonomous status of Nagorny Karabakh, eliminate resolutely the distortions which occurred in the satisfaction of the legal interests of the Armenian part of the population"*<sup>73</sup>.

In its resolution of November 28, 1989, in which the Presidium of the Supreme Soviet of the USSR dissolved the special administration of the Union in Nagorny Karabakh, it advised the Supreme Soviet of the Azerbaijani SSR (point 4)<sup>74</sup>:

*"To take legislative measures in the shortest time possible, to ensure the increase in the status of actual autonomy, effective guarantees for the Armenian population of the autonomous region of Nagorny Karabakh, the observance of legality, the protection of the lives and safety of its citizens, the constitutional settlement of all problems which occur; to elaborate and pass a new law within two months, under the participation of the state organizations of the autonomous region of Nagorny Karabakh, which have to be newly established in the autonomous region of Nagorny Karabakh, that guarantees to a full extent its equal development in all spheres of state, economic and cultural construction."*

The deputy division head in the headquarters of the Communist Party of the Soviet Union in 1988, who was responsible for Nagorny Karabakh, V.A. Michailow, explained to journalists in

the press center of the XIX Unions Party Conference on July 27, 1988<sup>75</sup>:

*"One must openly admit that at a certain stage, serious mistakes, primarily of a national-cultural character, were allowed in the implementation of the national policy in regard to this autonomous entity. The rights of the autonomy were limited. Mistakes were also made in the development of the economy... the mistakes were allowed... by the leaders of the Central Committee of the Communist Party of Azerbaijan and the government of Azerbaijan, in particular by the former First Secretaries of the Communist Party, G.A. Aliev and K. M. Bagirov. As we can see from the development of the situation, really a great deal of damage was done."*

Although, in the conflict with Nagorny Karabakh, the Party and State leadership of the Union always endeavored to show political consideration to the local party leadership in Azerbaijan, and to respect their national sensitivity, it can be clearly seen from officially publicized documents that the Armenian ethnic group of Nagorny Karabakh was and still is, without exception, in all spheres of life, in a clearly worse position than the national average, and that the administrative autonomy of the region totally lacked reality. The following survey of some of the more important areas of life confirms and deepens those global estimations.

## 7.2 *The socio-economic situation in Nagorny Karabakh*

The conditions of the especially strongly developed centralism of the planned economy that existed in the USSR left only a very narrow scope within which the autonomous region could make its own economic decisions. The central economic policy, pursued in Moscow and Baku, treated Nagorny Karabakh as an agricultural zone with the main emphasis on vine growing and dairy farming. Correspondingly, there was a one-sided development of capital in the region.

In the 60 years between 1913 and 1973 industrial production grew in the USSR 113-fold, in Armenia about 221-fold, in Azerbaijan about 40-fold, but in Nagorny Karabakh however, only 14.8-fold<sup>76</sup>. Only two firms were founded in Nagorny Karabakh between 1945 and 1965.

In 1970 only 10% of the population was employed in industry, compared to an average of 24% in the Republic of Azerbaijan. Between 1980 and 1986 the basic funds of production in the Republic of Azerbaijan rose by 43%, whereas in the same period they decreased by 17% in Nagorny Karabakh<sup>77</sup>. The capital investments in Nagorny Karabakh were far below the national average in the forties and stagnated at this low level. In 1986 in Azerbaijan 473 rubles were invested per head of the population, in Nagorny Karabakh it was less than a third of that, namely 181 rubles. The Autonomous Republic of Nakhichevan, meanwhile populated entirely by Azerbaijanis, was practically twice as well off with investments of 342 rubles per head<sup>78</sup>.

A large part of the investments went towards the building of the artificial lake of Sarsang, which was important to the economy of Azerbaijan but only stood to a small extent at the disposal of the people of Nagorny Karabakh for their water supply, even though the supply of water to the area was extremely strained. In the capital of Stepanakert water was only made available during two phases of the day even though it would have been possible to tap wells in the city area<sup>79</sup>. Because of this large-scale project and other one-sided concentration on points of emphasis, particularly in the wine industry, only minimal resources were left for capital investment.

Of the surplus earned by the region of Nagorny Karabakh, less than half was returned to the regional budget. As G.A. Poghosyan, the chairman of the regional Party Committee of Karabakh, reported on July 18, 1988, at a meeting of the Presidium of the Supreme Soviet of the USSR<sup>80</sup>, in the previous planning periods the autonomous region had paid out 91 million rubles on average, annually, to the Republic of Azerbaijan, whereas the (annual) budget of Nagorny Karabakh was, on average 42 million! Under these circumstances it was not especially surprising that the socio-economic development of Nagorny Karabakh was, and is, more or

less lagging behind in nearly all fields and according to nearly all indicators, in comparison to Azerbaijan and compared to the Union's average as a whole. The few factories for industrial manufacture (furniture and textile factories) existing next to the agricultural production, work with outdated technology, even compared to Soviet conditions, and are often still carried out by hand<sup>81</sup>.

The housing situation in the region of Nagorny Karabakh is very imbalanced<sup>82</sup>.

Statistically viewed, the average supply of residential space is relatively high - 80% of the population live in their own houses. At the same time, however, in Stepanakert and in some other towns there is a lack of housing with waiting lists of up to 20 years. The investments in state (cooperative) building of rented accommodation are well below the demand.

The traffic system in the region of Nagorny Karabakh is also poorly developed, with disadvantageous results for the possibility of communication between its citizens, for their employment relations and for the economic development capacity of the small towns and country regions. Only recently, the capital of Stepanakert was linked with the province town of Agdam, which lies outside the autonomous region, by an 18 km railway line and thereby connected to the railway network of Azerbaijan. However, the line is meaningless for inland communication. No other rail connections exist in the area. Transportation therefore, in essence, takes place by car, i.e., on the roads. Apart from two through roads of importance to the Union which cross the autonomous region, the road network is in a bad or largely unimproved state. The roads are built in such a way that long detours have to be made, sometimes over administrative districts outside Karabakh, in order to reach the district centers from the capital of Stepanakert<sup>83</sup>. The situation doesn't look any better in the administrative districts of the region.

Although Nagorny Karabakh is located in a favorable geographical position with regard to Georgia and Armenia, and could establish close economic contacts with them, the exchange of goods with them accounts for only 2% of Nagorny Karabakh's "total foreign trade volume". It seems safe to conclude from this that the government of Azerbaijan in Baku pursued, and pursues an economic policy that consciously hinders a strong economic involvement of

Nagorny Karabakh especially with the Republic of Armenia.

### 7.3 *The national-cultural situation in Nagorny Karabakh*

The analysis made above, of the legal basis of the autonomous status of Nagorny-Karabakh already throws a most disadvantageous light on the possibilities of the Armenian ethnic group of the region of fostering their national-cultural characters in a normal manner, according to international standards. A look at the actual situation confirms this impression to a large extent. Any sort of occupation with the Armenian national culture in history and present was not possible until at least 1988. Attempts of the members of the region to show an interest in and foster the culture in Nagorny Karabakh were quickly suspected by the authorities as "nationalism", and the people concerned were given the defamatory name of "Dashnak" (members of the anti-Bolshevik Armenian national party from the time of Independence)<sup>84</sup>. On the orders of the government in Baku the subject "Armenian history" was struck off the curriculum of the schools. An occupation with Armenian culture and history was not even possible in the only college in the autonomous region, the college of education in Stepanakert. Corresponding courses were not scheduled in the curriculum - drawn up in Baku<sup>85</sup>.

The Armenian authors living in Nagorny Karabakh had no possibility of publishing their works in the autonomous region even in Armenian. The investments in the cultural sector were extremely low. Up until the beginning of the seventies not one school building, "club", cultural center or even a sports site was built from the state budget<sup>86</sup>. The access to culture in the country regions was extremely poor. Armenian films were seldom shown in the cinemas. Under these circumstances, the educational system in the Autonomous region even managed to present a relatively favorable picture. The compact Armenian settlement (200 out of 215 settlements in the region can be attributed to them), or rather the actual separation from the residential areas of the Azerbaijanis led to the division of the educational system in the autonomous region into Armenian and Azerbaijani schools. This contributed to the fact that in 1979 96.3%

of the Armenian ethnic group in Nagorny Karabakh spoke Armenian as their native language. The extraordinary resistance, or even ethnic opposition to Azerbaijan was reflected in the fact that in 1970 only 3.44% of the Armenians of Karabakh could speak Azerbaijani-Turkish and that this number stayed practically constant (1979: 3.76%). In contrast to that, the percentage of Armenians who could speak Armenian and Russian, rose between 1970 and 1980 from 17.2% to 31.4%, directly after the Russification was strongly increased in the educational system at the beginning of the seventies<sup>87</sup>.

As regards the supply of materials for the educational system of Nagorny Karabakh, they are, in some respects, completely insufficient. Because of the demographic development (see below) the number of (Armenian) pupils decreased by approximately 13,000 between 1971 and 1977, in different places the supply of schools is not provided, because the building of schools was not adapted to meet the needs of the shifting population within Karabagh during the last 20 years. As a result (spring 1988) 3000 places were lacking for pupils in the capital of Stepanakert<sup>88</sup>. Those responsible for the situation were not the territorial Soviet but the government in Baku. The Azerbaijani central offices also decided alone on the building of pre-school facilities (creches, kindergartens). In 1988, in Stepanakert alone, a shortage of 1,400 places was calculated.

External cultural relations, especially the trans-border cultural contact of the Armenians of Nagorny Karabakh with the Soviet Republic of Armenia, were subject to extremely harsh restrictions. All contacts, in any area, required the explicit approval of the Azerbaijan government officials, who as a rule refused to give their permission<sup>89</sup>. Armenian literature could not be imported from the Republic of Armenia and the supply of learning materials for schools from the neighboring Republic was not allowed. Permission had to be obtained from Baku whenever a theater group from Yerevan wished to make a guest appearance. It was not until the spring of 1988, and after direct intervention from the Party and State leadership in Moscow and already as a result of the open mass protests in Nagorny Karabakh, were the media functionaries of Azerbaijan willing to take the steps necessary for setting up equipment for the reception of broadcast television from the Soviet Republic of Armenia in Nagorny Karabakh. Up until then, even

though it practically borders on Armenian region, the ethnic group of the area was cut off from the possibility of sharing even this form of contemporary Soviet Armenian culture. Programs from central Moscow television stations were more difficult to receive than those from Iran.

The rich testimony of Armenian-Christian mediaeval culture in the region of the autonomous area could not be cultivated or treated scientifically as part of their specific Armenian cultural history by the Armenians of Nagorny Karabakh. In regard to this historic inheritance the phraseology used by the scientific administration in Baku which called the monuments concerned "Albanian" and concealed their Armenian origin was, on the contrary, obligatory<sup>90</sup>. The Azerbaijan government took the view that the Azeri people, "Protoazerbaijanis", were preceded by the Caucasian ethnic group of "Albanians", an "ethnos" that had developed from different ethnic groups whose eastern parts had become Islamic and whose western parts had become Christian and had been mistaken for Armenians although (allegedly) they were ethnically "Azerbaijanis"<sup>91</sup>.

In the present case, the relevant aspect of the scientific controversy between Armenia and Azerbaijan lies in the fact that the Party and State leadership of Azerbaijan imposed their point of view through political and administrative methods on the Armenian ethnic group living on the region of the Republic.

The public practice of their religion was not possible for the ethnic group of Armenians in Nagorny Karabakh until 1988/89, because all the Armenian churches in the region had been officially closed decades before. This situation was only partially the result of the well-known anti-religious policy of the party and state leadership in Moscow. It was within the power of the authorities of the Republic of Azerbaijan to keep open at least one church to cater to the minimum elementary requirements of the Armenian ethnic group in Nagorny Karabakh. This attitude of refusal by the party and state leaders of Azerbaijan, which went beyond the restrictive, central religious policy, and which, in fact, favored the Islamic religious community in the Republic, meant a harsh additional discrimination of the Armenian ethnic group, especially in Nagorny Karabakh.

#### 7.4 *The demographic development in Nagorny Karabakh*

In 1913, i.e. before the upheavals caused by the World War and the Revolution, 176,000 people lived in the administrative districts of the later autonomous region of Nagorny Karabakh<sup>92</sup>. Their number decreased thereafter and at the establishment of "autonomy" (1923/24) numbered 157,800 people, of whom approximately 147,000 were Armenian, i.e. 94.4%. In 1926, at the first official census in the Soviet state, the population only numbered 125,300, of which 111,700 were Armenians (89%) and 12,600 Azerbaijanis (10.1%).

It can be seen from a comparison of numbers that - probably mainly because of disappointment with the questionable status of autonomy - a large percentage, practically 1/4 of the Armenian population, migrated.

The time up until the outbreak of the Second World War led to a limited consolidation. In Nagorny Karabakh in 1939 the population numbered 150,800: 130,288 Armenians and 14,100 Azerbaijanis. As a result of the Second World War, of Stalin's regime of terror, and of migration, the population sank by the census in 1959 to 130,400, the Armenians numbering only 110,100 and the Azerbaijanis increasing to 18,000. It can be seen from this that the loss was only on the Armenian ethnic group's side. The Azerbaijanis not only did not participate in this loss, but on the contrary there was a distinct rise in their proportion - this even though the rise in population in the USSR overall was 7.6%, in Azerbaijan 13% and in Armenia even as much as 33% due mainly to repatriation. The main reason for this deep demographic depression is the fact that a disproportionately high percent of residents were called to the front, namely 45,000, of whom only around 1,400 were Azerbaijanis. 22,000 people were killed. With war losses of 15% amongst the Armenian ethnic group of Nagorny Karabakh, the Armenians lost twice as many people as other nations or nationalities in internal Soviet comparison. A great many of the servicemen who came home from the war had to leave Nagorny Karabakh again because they couldn't find any work; some of them became victims of the

deportation action carried out in 1949 by Azerbaijan against the Armenians.

By the end of the sixties, a limited stabilization of the Armenian population took place. The census of 1970 showed that it had increased to 121,100 compared to the 150,300 people who inhabited the area again.

At the same time the number of Azerbaijanis grew disproportionately to 27,200 (18.1%). This considerable increase in the Azerbaijani population continued until the census of 1979. Numbering 37,200 out of a population of 162,200 inhabitants they now account for approximately 23% of the whole population, whilst the Armenians with a slight increase up to 123,100 barely account for 76%. Between 1979 and 1987, the last year before the great upheavals in Nagorny Karabakh, Armenia and Azerbaijan, the trend continued. Approximately 2,500 Armenians left Nagorny Karabakh annually<sup>93</sup>, whilst approximately 500 Azerbaijanis immigrated into the region annually. The reasons for the migration of the Armenian population, which was only slightly countered by the excess of births, are manifold. Firstly and probably of most importance are the relatively unfavorable work or professional and promotion possibilities in Nagorny Karabakh; secondly, the fact that in Nagorny Karabakh institutions for the cultivation of Armenian national culture were either lacking to a great extent or were oppressed; thirdly - and complementary to this - the tarry magnetic attraction of the immediately neighboring "Mother Republic" of Armenia; fourthly, the insidious diverse political-administrative-economic preference given by the government of Baku to the Azerbaijani members in Nagorny Karabakh.

A comparative look at the development of Azerbaijan as a whole, shows that the demographic process of change was not virtually the natural result of objective economic pressure and unspecified country-town migration; furthermore, it was not simply the result of national habits or mentalities etc., but directly an expression and the result of an anti-minority policy of the party and state leadership of Azerbaijan<sup>94</sup>.

Between 1921 and 1979 the nation of Azerbaijanis in Azerbaijan grew from just 1 million (56%) to 4.7 million (80%), in other words nearly five-fold. At the same time the number of

minorities grew by just 69% to approximately 1.85 million, their percentual proportion thus decreasing from 44% to 20%!

In Armenia, where already in 1926, in contrast to Azerbaijan, a higher percentage of the titular nation made up the population of the Republic (84.6%), the percentage of Armenians grew to nearly 90% in 1979, whilst the number of members of national minorities decreased to 10%. Between 1959 and 1979, the Armenian part of the population in the Armenian SSR grew by 75%, that of the national minorities in Armenia by 48%, and out of these, that of the Azerbaijanis by 49%, and the Russians by 25.6%.

The much greater assimilation and expulsion pressure of the Azerbaijan nationalities policy compared to that of the Armenians becomes especially clear from the fate of the Kurds. In 1926, 41,200 Kurds were living in the Azerbaijan SSR, and in Armenia 15,200 Kurds. In 1979, in contrast, 51,000 Kurds were living in Armenia, but in Azerbaijan there were only about 2000 left<sup>95</sup>. The fate of the Kurds in Azerbaijan is in no way a unique case. Especially from a demographic point of view there is another example of Azerbaijan minority policy that is a traumatic experience, especially for the Armenian nation, namely the fate of the Armenians in Nakhichevan, the Azerbaijan enclave in the Armenian SSR<sup>96</sup>.

Nakhichevan, which under pressure from Turkey, went not to Armenia but rather to Azerbaijan, received the status of "Autonomous Socialist Soviet Republic" on February 9, 1924, whereby, in the order of precedence of the autonomous regional units of the USSR, it stood one level higher than the Autonomous Region of Nagorny Karabakh. Of the approximately 50,000 Armenians, i.e. 40% of the population, that had lived there in 1917, only about 10,000 were counted in 1926. Finally, in 1979 only 2 Armenian villages existed in the Autonomous Republic of Nakhichevan, with approximately 3,400 inhabitants, i.e. 1.4% of the population (ca. 280,000). Their number sank further until 1987, and since 1989, no Armenian can call Nakhichevan his home.

The decrease in absolute and relative numbers, occurring in the Armenian population of Nagorny Karabakh - especially in direct comparison to the steep rise in the population in the

Azerbaijani enclave of Nakhichevan, provides the strongest proof of the massive discriminatory neglect of Nagorny Karabakh by the Azerbaijani government. The migration of a more or less large part of the Azerbadjani population in every generation, the continual decrease in the population exceeding the rising birth rate, clearly reflect the consciousness of the people of Nagorny Karabakh not to have an appropriate ethnic way of life or prospect of development. This silent "voting with the feet" is the sharpest reproach made towards the party and state leadership in Baku by the Armenian ethnic group.

## 8. Conclusions and result: Precedence of the right of secession

At the end of this general account, and taking into consideration the earlier analysis of the legal foundations of Nagorny Karabakh's autonomous status, it can be established and concluded that, apart from the (Armenian) educational system, functioning worse at a low standard, the autonomy of the region had no real substance. The formal legal title of an "autonomous region" constituted a facade, behind which a high degree of socio-economic, cultural and religious discrimination were the reality. This experience has completely destroyed the Armenian ethnic group's confidence in the value and the efficaciousness of an autonomous status within the Republic of Azerbaijan. Only against this background is it understandable that in 1987/88, when the first liberalizing effects of Perestroika in Moscow began to show in Azerbaijan, the Armenians immediately demanded the unification of Nagorny Karabakh with Armenia. The Armenian ethnic group in Nagorny Karabakh was, and that also deserves to be noted, one of the first to make public its unsatisfied, insulted national concern and made its demands for political revision. Its action was an essential contribution to the initiation of that process which led to the dissolution of the Soviet Union three years later. Conclusions can also be drawn from this fact about the degree of ethnic and national insult and discrimination the Armenians of Nagorny-Karabakh had to suffer.

The development that has taken place since 1988 in the Transcaucasus, the extreme unwillingness of the party and state leadership of Azerbaijan to make use of the modified political course in the central government of Moscow for a drastic change in their national policy with regard to Nagorny Karabakh, furthermore the de facto state of war that has been going on for several years between Azerbaijan and Armenia, and finally, the innumerable victims that the ethnic wars, expulsion and pogroms have claimed, must lead to the conclusion that the Armenian ethnic group can not be expected once again to look for a future in a renewed status of autonomy within the state of Azerbaijan. The Republic of Azerbaijan has forfeited the claim to keep the Armenian ethnic

group in its state federation by their 70-year juridical and actual denial of the regional autonomy of Karabakh. The statutory definition of discrimination is fulfilled in its chronological dimension and from an objective point of view, to such a degree that the Armenian ethnic group's right of self-determination intensifies to a right of secession, compared to which the interest of the Republic of Azerbaijan in the undiminished preservation of its territorial integrity and sovereignty is secondary. Important in this context, as already mentioned, is the fact that the Republic of Azerbaijan received its sovereignty and state independence at a time when the Armenian ethnic group in Nagorny Karabakh was already fully exercising its right of self-determination.

As a result of the expert study as a whole, it can be established that in accordance with current international law, the Armenian ethnic group of Nagorny Karabakh hold the right of self-determination in form of a right to separation from the Republic of Azerbaijan (right of secession), which takes priority over the Republic of Azerbaijan's right of sovereignty. By virtue of the right of self-determination, the Armenian ethnic group of Nagorny Karabakh is entitled either to form a State of its own or to unite with the Republic of Armenia, provided the latter so wishes.

## 9. Summary

The expert report examines, from a standpoint of international law, the conditions under which the ethnic group of Armenians from Nagorny Karabakh, based on the right of self-determination of peoples, could demand state independence or, to be more precise, the separation from the state of Azerbaijan, and whether these requirements are actually met.

The individual results are as follows:

9.1 The right of self-determination is not only a political principle but a norm of international law. "Ethnic groups" who -separated from the rest of the nation- live as a minority in a foreign state can rely on the right of self-determination. The Armenian minority of Nagorny Karabakh in the state of Azerbaijan is also subject of the right of self-determination because, from objective and subjective viewpoints, it fulfills all the characteristics of such an ethnic group.

9.2 The Armenian ethnic group of Nagorny Karabakh is, now as ever, entitled to the right of self-determination, because it has not yet exercised it in a binding manner and thereby exhausted it. A consumption of the right of self-determination is to be seen neither in the subjugation to the government of Baku, through the treaty of August 22, 1919, nor in the regional autonomy established for Nagorny Karabakh in 1923/24, nor in the Armenian ethnic groups' participation in the elections of the Soviets of Nagorny Karabakh, Azerbaijan and the USSR.

9.3 According to its normative substance, the territorial autonomy granted to Nagorny Karabakh by Azerbaijani constitutional law, conveys no freedom at all for national self-determination and cultivation of the national characteristics of the Armenian ethnic group.

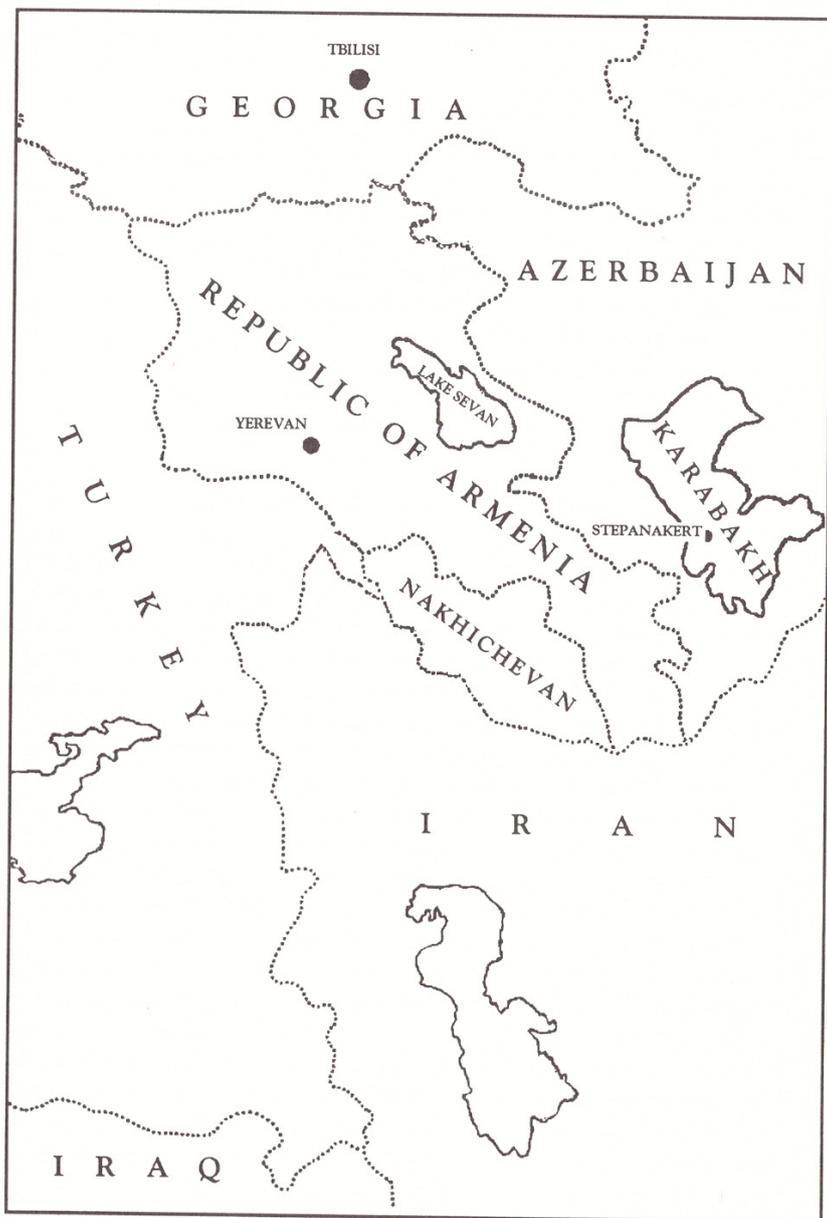
9.4 The right of self-determination of the Armenian ethnic group of Nagorny Karabakh collides with Azerbaijan's right of sovereignty. This conflict of international law is resolved by

differentiating between a normal case and exceptional cases. In a normal case the precedence of the principle of sovereignty applies, as it is the decisive foundation of the system of international law in general. The right of self-determination limits itself here to the cultivation and development of national characteristics on the basis of a minority status according to constitutional law, within the state of a foreign nation. In exceptional cases, that is to say, when a national minority is discriminated against in an unbearable manner, then the right of self-determination, in the form of the right of secession, has precedence over the sovereignty of the state concerned. In the case in question, the Azerbaijan's right of sovereignty loses weight in comparison to the right of self-determination, (right of secession), because Azerbaijan itself has only just broken free from the dissolved USSR by using its right of self-determination, and has not yet achieved a stable international status.

9.5 The contents and quality of the minority status (in a normal case) do not depend on the discretion of the legal policy of the state granting and guaranteeing it. Working on the principle of reasonableness, it should be insisted that, the more pronounced the characteristics, the greater the number and the more compact the settlements of the national ethnic group are, then the more distinctly the minority status should be developed. On the basis of these criteria, the Armenian ethnic group of Nagorny Karabakh can claim powerful territorial autonomy in the state federation of Azerbaijan. The minority status according to international law (compare Art. 27 of the UN Civil Rights Convention) and the CSCE Final Documents (compare in particular the Final Document of Copenhagen/1990), but also the regional autonomy of Nagorny Karabakh by virtue of the constitutional law of Azerbaijan fall far short of this claim. Both the limitation to a minority-minimum-standard shaped essentially by human and individual rights respectively, or the reference to the vague hope that in the future Azerbaijan might grant them appropriate regional autonomy, are for the Armenian ethnic group of Nagorny Karabakh equally unacceptable. The compensatory granting of minority status which is the solution kept in readiness for the normal case of the collision between sovereignty and the right of self-determination, is therefore out of the question for Nagorny

Karabakh.

9.6 In contrast to that, the preconditions of an exceptional case are given, because the analysis of Azerbaijan's policy in regard to Nagorny Karabakh as well as the living conditions in the area show that, from an administrative, national-cultural, socio-economic and demographic point of view, the Armenian ethnic group has been the subject of lasting and massive discrimination that has endured for decades. The state of Azerbaijan has forfeited its right for the subjugation of the Armenian ethnic group of Nagorny Karabakh to its sovereignty, even more so because Azerbaijan's right to sovereignty can not claim to have as much importance as the demand for self-determination from a state that is solidly established and has long been recognized by the community of international law.



## NOTES

1. In more detail, Kimminich, Otto: Rechtscharakter und Inhalt des Selbstbestimmungsrechts, in: Blumenwitz, Dieter/Meissner, Boris (Eds.): Das Selbstbestimmungsrecht der Völker und die deutsche Frage: Cologne, 1984, pp. 37 - 46 (39f.), as well as: Blumenwitz, Dieter: Selbstbestimmungsrecht und Volksgruppenrecht, in: Jahrbuch für Ostrecht, Vol. XXXII (1992), 1. half Vol., pp. 9 - 25.

2. More details on the complex "Soviet Union and the right of self-determination": Meissner, Boris: Sowjetunion und Selbstbestimmungsrecht, Cologne, 1962; *ibid.*: Die marxistisch-leninistische Auffassung vom Selbstbestimmungsrecht, in: Blumenwitz/Meissner (note 1), pp. 89 - 106.

3. Quoted from BGBl (Federal Republic of Germany) 1973, II, pp. 1534/1570 f.

4. Text: United Nations (Bonn) 1978, Vol.4, p. 138 f. (Resolution No. 2625/XXV).

5. Text BGBl 1985, II, pp. 926 f.

6. Text: Bulletin of the Press and Information Department of the (German) Federal Government of August 15, 1975 (No. 102), pp. 968 f.

7. Azerbaijan: Declaration of Sovereignty on September 23, 1989, Declaration of Independence on August 30, 1991; Armenia: Declaration of Sovereignty on August 23, 1990, Declaration of Independence on September 21, 1991 (Referendum).

8. VVS SSSR 1973, No. 40, pos. 564.

9. Cf. the Prague Document, Text: Bulletin of the Press and Information Department of the Federal Government. 1992, No. 12 (4.2).

10. The Right of Self-Determination. Study prepared by Aureliu Cristescu, Special Rapporteur of the Sub-Commission on Prevention

of Discrimination and Protection of Minorities, United States, E/CN.4/Sub.2/404/Ref.1, New York 1981, pp. 2; 37 f.

11. For a profile of the "autonomy" in more detail, see chapter 4.2.

12. Compare the numerical table in Chodzabekyan, V.E.: Problemy sozialnoekonomiceskogo i demograficeskogo razvitija NKAO, in: Vestnik obscestvennyh nauk, 1991, No. 1, pp. 20 - 31 (29).

13. Compare Verdross, Alfred/Simma, Bruno; Universelles Völkerrecht, 3rd edition, Berlin 1984, pp. 317 f. (§511 f.) with further references; Veiter, Theodor: Die Träger des Selbstbestimmungsrechts nach westlicher Auffassung, in: Kloss, Heinz (Ed.): Beitrag zu einem System des Selbstbestimmungsrechts. Völkerrechtliche Abhandlungen, Vol. 2, Vienna/Stuttgart 1970, pp. 132 - 149 (141 ff).

14. Société des Nations, Journal Officiel, Supplement Spécial Nr. 3 (October 1920: La Question des Iles d'Aland, Rapport de la Commission des Juristes); also in more detail, Raschhofer, Hermann: Das Selbstbestimmungsrecht in westlicher Sicht in: Internationales Recht und Diplomatie, 1962, Vol. 1/2, Cologne 1963, pp. 9 f.

15. Also Verdross/Simma (note 13), pp. 318 f., also recent findings of Blumenwitz, Selbstbestimmungsrecht (note 1), pp. 11 f.; Kimminich, Otto: Volksgruppenrecht und Recht auf Heimat, in Jahrbuch für Ostrecht, Vol. XXXII (1991), 1. half volume, pp. 27-42 (32 f.); Murswiek, Dietrich: Offensives und defensives Selbstbestimmungsrecht. Zum Subjekt des Selbstbestimmungsrechts des Volkes, in: Der Staat, Vol. 23 (1984), pp. 523 f.; *ibid.*: Systematische Überlegungen zum Selbstbestimmungsrecht des deutschen Volkes, in: Festschrift für Czaja, Cologne 1985, pp. 233-260 (238 f.).

16. The Rights of Self-Determination (note 10), p. 40; more details on the problem, Doehring, Karl: Das Selbstbestimmungsrecht der Völker als Grundsatz des Völkerrechts, Berichte der Deutschen Gesellschaft für Völkerrecht, Vol. 14, Karlsruhe 1974.

17. Donabédian, Patrick/Mutafian Claude: Histoire du Karabagh, Paris, 1990, pp. 9 f.

18. *Op. cit.*; pp. 34 f. (with reference to Russian sources).

19. Guliev, Dz.B.: Iz istorii obrazovanija Nagorno-karabachskoj avtonomnoj oblasti, in: Izvestija Akademii Nauk Azerbajdzanskoj SSR. Serija istorii, filosofii i prava 1973, No. 3, pp. 11 - 19 (12).

20. *Op. cit.*

21. Regarding the following, compare the documents in Libaridian, Gerard J.: Dossier Karabagh. Faits et Documents sur la Question du Haut-Karabagh 1918 - 1988. Paris, 1988, pp. 36-47.

22. Text of the document in Barsegyan, Chikar: Istina dorozhe, Yerevan, 1989, p.120.

23. Auch, Eva-Maria: "Ewiges Feuer" in Aserbajdschan. Ein Land zwischen Perestroika, Bürgerkrieg und Unabhängigkeit, Berichte des Bundesinstitut für Ostwissenschaftliche und Internationale Studien. 1992, No.8, pp. 5 f.; Vesti iz SSSR. Prava celoveka, edited by Kronid Ljubarskij, Kronid (Munich) 1988, No. 4, pp. 1 f.

24. Vesti iz SSSR, *op. cit.*

25. Vesti 1988, No. 14, p.3; No. 17/18, p.2.

26. *Op. cit.*, p.3.

27. Vesti 1988, No.11, p.2.

28. Vesti 1988, No. 12, p. 1.

29. VVS SSSR 1988, No. 29, pos. 464.

30. Vesti 1988, No. 12, p.1 (to this and the following).

31. Vesti 1989, No. 4, p.1.
32. VVS SSSR 1989, No.3, pos. 14.
33. VSVS SSSR 1989, No. 25, pos. 494.
34. VSVS SSSR 1990, No. 3, pos. 40.
35. Vesti 1989, No.15/16, p. 2.
36. Vesti 1989, No. 17/18, p. 4/5.
37. Op. cit., p.6.
38. Vesti 1989, No. 21/22, p. 6.
39. 20,500 residents lived there, of which 16,000 were Armenians, 3,800 Azerbaijanis (villages of Sevak and Zayvan). The Shahumyan district granted the request for unification of the inhabitants of the Getashenskoj village-union, where 7,000 Armenians live. Cf. Vesti 1989, No. 23/24, p. 3.
40. Manutcharyan, A.J.: Die politische Situation in Armenien (1988 - 1992), unpublished manuscript, p. 18. 85% of the citizens of full legal age took part in the voting. 98% of the (valid) votes were "yes" votes.
41. Verdross/Simma (note 13), p. 320.
42. Kommunist Yerevan of December 7, 1920.
43. Kommunist of December 2, 1920 (Baku, Russian).
44. Op. cit.
45. Text: Dokumenty vnesnej politiki SSSR, Vol. 3, edited by the Ministry for External Affairs of the USSR, Moscow 1959, pp. 597 - 604.

46. Treaty of Friendship between the Armenian SSR, the Azerbaijani SSR and the Georgian SSR on the one side and Turkey on the other, with the participation of the RSFSR in Kars, text: op. cit., Vol. 4. Moscow 1960, pp. 420 - 429.

47. The text was published in Baku as well as in Yerevan: Sovetakan Hayastan of June 19, 1921; Bakinskij Rabocij of June 22, 1920.

48. Protocol: Archives of the Central Committee of the Communist Party of the Soviet Union, fund 17, inv. 13, d. 384, f. 66, compare: Mikaelyan, Vardges/Churshudyan, Lendrush; Nekotorye voprosy Nagornogo Karabacha, in: Vestnik obschestvennyh nauk (Yerevan) 1988, No. 4, pp. 43 - 55 (53).

49. Quoted from Guliev (note 19), p. 12.

50. Compare: Istorija sovetskoj konstitucii 1917 - 1936, Moscow 1957, pp. 358 f.

51. Guliev; p. 14/15 (with further references); NKAO 50 let v druznoj sovetskoj sem'e (1923 - 1973), Stepanakert 1974, p. 4. The further presentation follows his ideas.

52. Text: Istorija sovetskoj konstitucii (note 50), pp. 358 f.

53. Op. cit., pp. 374-383. In detail: Istorija gosudarstva i prava Azerbajdzanskoj SSR (1920 - 1934), Baku 1973, pp. 248 f.

54. Text: Konstitucija (osnovnoj zakon) SSSR. Konstitucii (osnovnye zakony) Sojuznyh Sovetskich Socialisticeskich Respublik, Moscow 1960, pp. 659-692.

55. Compare e.g. Azovkin J.A./Jezuitov, V.M; Nazrevsie voprosy pravovogo polozenija avtonomnoj oblasti, in Sovetskoe gosudarstvo i pravo 1959, No. 5, pp. 69 f. (75 f.).

56. Text: VVS Azerbajdzanskoj SSR 1981, No. 12, pos. 157.

57. On the primary powers of the regional Soviets, the area Soviets of the peoples' deputies, the Soviets of the peoples' deputies of the Autonomous Region and the Autonomous Districts on June 25, 1980 in: VVS SSSR 1980, No. 27, pos. 526.
58. Vesti iz SSSR 1988, No. 21, p. 3.
59. Die nationalen Gebietseinheiten der Sowjetunion, Cologne 1973, pp. 94 f. (106).
60. See Blech, Klaus: Die Prinzipienklärung der KSZE-Schlu-akte, in: Europa-Archiv 1976, pp. 257-270 (265).
61. Compare here Gros Espiell, Héctor: The Right to Self-Determination, Implementation of United Nations Resolutions, New York 1980, E/CN4/ Sub2/405/Rev.I, pp. 13 f.; Kimminich: Rechtscharakter und Inhalt des Selbstbestimmungsrechts (note 1), pp. 40 f.; Klein, Eckart: Selbstbestimmungsrecht- Idee und Aufgabe, in: Politische Studien 34 (1983), pp. 635 f. (639).
62. Commission of legal experts of the Council of the League of Nations (note 14).
63. Raschhofer, Das Selbstbestimmungsrecht, p. 16 (note 14).
64. VVS SSSR 1973, No. 40, Pos. 564 (October 16, 1973).
65. See in more detail Brunner, Georg: Internationale Menschen- und Gruppenrechte, in Blumenwitz, Dieter/ von Mangoldt, Hans (Eds.): Menschenrechtsverpflichtungen und ihre Verwirklichung im Alltag. Auswirkungen für die Deutschen, Cologne 1990, pp. 33 - 48 (40 f.).
66. Comprehensive and with further evidence Tomuschat, Christian: Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights, in: Völkerrecht als Rechtsordnung. Internationale Gerichtsbarkeit. Menschenrechte, Festschrift für Hermann Mosler, Berlin/Heidelberg/New-York, 1983, pp. 949 - 979.

67. The Agreement entered into force on October 17, 1968; compare BGBl, 1969 II, p. 956.
68. Text: Europa Archiv 1990, pp. D 380 - D 394 (D 390 f.).
69. Text: Bulletin of the Press and Information Department of the Federal Government (Bonn) 1991, No. 109 (October 10).
70. Text: Bulletin, op.cit.
71. In more detail: Menschenrechte in den Staaten des Warschauer Paktes, Bericht der unabhängigen Wissenschaftlerkommission, Cologne 1988.
72. VVS SSSR 1988, No. 29, Pos.464.
73. VSVS SSSR 1989; No. 20, Pos.374.
74. VSVS SSSR 1989, No. 25, Pos.494.
75. Argumenty i fakty 1988, No. 27.
76. Compare Narodnoe chozjajstvo SSSR 1975, Moscow 1976, p. 198; Nagornyj-Karabach za 50 let, Stepanakert 1974, p. 27.
77. Narodnoe chozjajsto Azerbajdzanskoi SSR. Yubilejnij statisteskij ezegodnik K 70 - letin Velikoj Oktjabrja, Baku 1987, p. 266,279.
78. Op. cit., p. 3, 11, 262.
79. Khodzabekyan (note 12), p. 24.
80. For more details on the industrial situation, Valeryan, L.A./ Muradyan, Ju.A.: O nyekotorych itogach i problemach ekonomiceskogo razvitja Nagornogo-Karabacha, in: Vestnik obscestvennyh nauk 1989, No. 5, pp. 3 - 18 (9).

81. Valeryan/Muradyan, op.cit., pp. 9 f.
82. Chodzabekyan (note 12), pp. 21 f.; Valeryan/Muradyan op.cit., p. 10.
83. As regards the traffic situation, cf. Valeryan/Muradyan, op.cit., pp. 15 f.
84. Chodzabekyan (note 12) p. 22.
85. Compare Argumenty i fakty 1988, No. 27.
86. Chodzabekyan (Footnote 12), p. 21.
87. For details of the Union census of 1970 and 1979, compare Ter Sarkisyanc, A.E.: Nekotorye tendencii etno-kulturnogo razvitja Armjan Nagornogo-Karabacha, in: Vestnik obscestvennyh nauk 1988, No. 8, pp. 14 - 23 (22).
88. Sovetskij Karabach from May 13 and June 18, 1988.
89. Arakelyan, Ju./ Kadymbekov, Z./Ovcarenko, G.: Emocii i razum, in: Pravda of March 21, 1988, p. 2; Izvestija of March 24, 1988; cf. the editions of the Sovetskij Karabach newspaper published in Stepankert on the May 5, 10, 13, 18, and 25, 1988.
90. In more detail Asratyan, M.M.: Arcachskaja skola armanskoi architecturey: Fauty i falsifikacii, in: Vestnik obscestvennyh nauk 1989, No. 9, pp. 3 - 14 (10).
91. Cf. Farida, Mamedova; K voprusu ob al'banskom (kanzakskom) etnose, in: Izvestija Akademii Nauk Azerbajdzanskoj SSR. Serija istorii, filosofii, prava 1989, No. 3, pp. 108 - 117.
92. As to the following, cf. Chodzabekyan (Footnote 12), S. 27 ff. Mirzoyan, B.S.: Nagornyi Karabach. Rasmyslenija nad statistikoj, in: Vestnik obscestvennyh nauk 1988, Nr. 7, pp. 43-56 (m.w.N.).
93. Chodzabekyan, pp. 28 f.

94. Mirzoyan, pp. 44 f.

95. Narodnoe chozjastvo SSSR 1922 - 1982. Moscow 1982, pp. 34-40.

96. Donabédian/Mutafian (Footnote 17), pp. 90f.