

Why Negotiations in the Nagorno-Karabakh Conflict Have Failed

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This paper will consider the negotiations and peace proposals associated with the Nagorno-Karabakh conflict, with a particular focus on the 1997-2001 period, in which a peace deal came closest to being agreed upon. It will analyse the ways in which the confederal 'Common State' proposal and the 'land-swap' package could have assured the conflicting parties, the reasons why they ultimately proved unsuccessful, and how this period informs the modern-day situation in the region.

Introduction

The years of impasse in the negotiations to bring an end to the Armenian-Azerbaijani conflict over the Nagorno-Karabakh region gave it a reputation as an unsolvable dispute, in which reconciling Azerbaijan's territorial integrity and the right to self-determination of the Karabakh Armenians amounted to squaring a circle. Indeed, the failure of the two sides to agree to the basic preconditions for negotiations in the latter years of the 1994-2020 inter-war status quo would suggest a degree of inevitability in the return to armed conflict. However, the late 1990s and early 2000s saw a range of detailed conflict resolution proposals which brought Armenia and Azerbaijan close to agreement under pressure from international mediators. Among these were federal solutions affording Nagorno-Karabakh a high degree of self-rule within Azerbaijan. "Territorial power-sharing is often seen as a mode of compromise in secessionist conflicts. Rather than changing the international borders of the state, or endorsing the status quo, territorial power-sharing offers states and non-state actors a mechanism of compromise" (Wise, 2018, p. 5). Of course, victory on the battlefield in the 2020 war brought Azerbaijan most of its negotiating demands without the need to compromise, and contemporary attitudes on the Armenian side are inconducive to peaceful integration into Azerbaijan. However, if the parties wish to free themselves from the cycle of conflict, a federal solution with strong international guarantees may be the most realistic avenue.

It is worth briefly outlining the use of aspects of institutional design found in the ethnic conflict literature in the region. The first notable instance in this regard was the reserving of seats for minorities in the parliament of the short-lived Azerbaijan Democratic Republic from 1918-1920. In the 120-seat legislature, 21 seats were reserved for ethnic Armenians (proportional to their population in Azerbaijan at that time), with 8 of these assigned to the

Shushi/Shusha Armenian Population Committee in what would later become Nagorno-Karabakh; many chose not to take their seats at a time of turmoil, as Armenia and Azerbaijan's young republics fought out territorial disputes (Reynolds, 2019). The principle of proportionality is one of the pillars of consociational democracy outlined by Lijphart (1977), however it was not provided for outside parliamentary seats, nor were the other provisions for grand coalition, minority veto or segmental autonomy present. It therefore remained a majoritarian parliamentary democracy, from which it is difficult to draw any conclusions about the effectiveness of this limited element of corporate consociationalism, given how briefly it was in place before the country was incorporated into the Soviet empire. In any case, classic consociational theory is "too internalist, insufficiently attuned to the salience of national self-determination disputes, [and] too focused on executive and legislative institutions" (McGarry & O'Leary, 2006, p. 63) to be applicable to cases such as Nagorno-Karabakh. "The issues at stake are not simply about sharing power, or even primarily about sharing power. Questions of autonomy, sovereignty, irredentism, symbols, explicit recognition as national communities and institutional links across state frontiers are also crucial" (McGarry & O'Leary, 2006, p. 58).

The institutional makeup of the "Soviet ethno-federal state architecture" (Hughes & Sasse, 2001, p. 2), Soviet Nationalities Policy and the initial decision-making over the allocation of territory to union republics were all partly responsible for bringing the modern conflict about. Within the new ideological framework of Soviet rule and their confirmed allocation to the Azerbaijani SSR, "the Karabakh Armenian Bolsheviks tried to emphasise the Armenian dominated part, the Mountainous Karabakh" (Saparov, 2012, p. 299). This was in order to ensure the creation of some form of autonomous territorial unit, rather than be treated as part of wider Karabakh, in which Armenians would have been a minority. The Autonomous Oblast status given to Nagorno-Karabakh was the lowest autonomous status in the Soviet system, and therefore did not warrant its own constitution (Saparov, 2012, p. 319). During its existence, the Nagorno-Karabakh Autonomous Oblast (NKAO) had a majority ethnically Armenian regional Soviet, an Armenian leader, and some Armenian cultural autonomy. However, the Azerbaijan SSR retained ultimate control, with the power to move on any officials who agitated over the status of Karabakh Armenians, and to resettle ethnic Azeris in the region (de Waal, 2013). Potier (2001) posits that autonomy should be understood as "the means whereby an authority, subject to another superior authority, has the opportunity to determine, separately from that authority, specific functions entrusted upon it, by that authority, for the general welfare of those to whom it is responsible" (p. 54). By this definition, the oblast was 'autonomous' in name only. Indeed, earlier scholars such as Duchacek (1988) argued that the territorial diffusion of power found in federal systems was "not compatible with authoritarian socialist and fascist one-party systems and military juntas" (pp. 16-17) such as the USSR, which only became meaningfully federal with the regional elections of 1990 (Hale, 2004, p. 168). The 'autonomy' of the NKAO within the Soviet Union is therefore of limited use in terms of informing later institutional prescriptions for the region. However, no matter the extent to which the autonomy was superficial, "local elites congregated within and around the institutions of autonomy, and developed a political and economic interest in the continuation

of autonomy” (MacFarlane, 2018, pp. 28-29). Broers (2005) importantly points out that the experience of dysfunctional federalism under Soviet rule served to discredit concepts of autonomy in the region: “Secessionist minorities in the South Caucasus regard promises of autonomy with the same lack of seriousness as the leaders of majority groups who make them. Outsiders prescribing autonomy arrangements as solutions to the region’s conflicts must take this context into account” (p. 10).

Among the more innovative strategies of conflict management put forward for Nagorno-Karabakh was the ‘land-swap’ package. This proposal, discussed at Key West in April 2001, envisaged the relinquishing of Azerbaijani sovereignty over Nagorno-Karabakh and the Lachin corridor connecting it to Armenia, while Armenia would cede its southern border with Iran to Azerbaijan, creating a corridor between the latter and its Nakhchivan exclave. There is some precedent for the exchange of territory in international law, such as the agreement between India and Bangladesh in 2015, which simplified a complex network of enclaves along their border (Banerjee, Chaudhury, & Guha, 2017). It has also emerged as a proposed solution to ethnic conflict in formative proposals in the disputes between Serbia and Kosovo, and Israel and Palestine. In the latter case: “The concept of land swapping is more accepted than other ideas that have been raised as a solution to demographic problems since it refers to a shift of sovereignty and does not involve the physical transfer of people out of their homes” (Arad, 2006, p. 12). The principles of “territorial contiguity, cultural/ethnic homogeneity, and minimum transfer of peoples” (Arad, 2006, p. 12), which such a partition would have entailed, would have mapped neatly onto the ethnically homogeneous territorial units created by the mass population transfers between Armenia and Azerbaijan at the end of the USSR. Although it would have delivered the ultimate prize of Armenian sovereignty over Nagorno-Karabakh, the land-swap plan was deemed “unsellable to the Armenian public” (de Waal, 2013, p. 277), largely due to the surrendering of Armenia’s only land connection with its friendly neighbour Iran. In Azerbaijan too, President Heydar Aliev’s willingness to negotiate away Nagorno-Karabakh proved “too bold and too cynical for the rest of the Azerbaijani elite” (de Waal, 2013, p. 278). Later proposals specified only an intentionally vague “interim status” for Nagorno-Karabakh, with guarantees of self-governance and security, and some form of referendum to follow later (Babayev, 2020, p. 42). However, by this point in the late 2000s, the Armenian economy and military were becoming dwarfed by Azerbaijan’s, weakening its negotiating position and setting in motion a policy of delay.

Turning to the 1997-1999 period in which a territorial solution came closest to being agreed upon, this appeared at the time to be what Zartman (2001) described as a “ripe moment” in a peace process, in which both sides are locked in a “mutually hurting stalemate” (p. 8). Armenia’s first post-Soviet president Levon Ter-Petrosyan (2018) certainly believed it was time to compromise to ensure continued Armenian habitation in Nagorno-Karabakh: “The alternative to compromise is war. It is not possible to maintain the status quo for too long because neither the international community nor Armenia’s economic resources will permit it” (p. 37). Ter-Petrosyan was ousted by the Karabakh faction, headed by his successor Robert Kocharian, in 1998. The conflict was the source of these elites’ power, and they were therefore

more willing to endure the vast costs to Armenia of maintaining the Nagorno-Karabakh Republic (NKR) as a viable entity, while preserving their own positions through the clientelist political networks which monopolised the weak post-independence state institutions. Nonetheless, the ascendancy of a Karabakh Armenian to the presidency did bring hope that Kocharian would be able to effectively negotiate on behalf of both Armenia and the Karabakh Armenians. Both Armenia and Azerbaijan were rated as 'partly free' by Freedom House in its 1998-99 report (1999, pp. 70, 76); an important factor, given that, in general, "the more democratic a state, the more likely the government will be to negotiate a settlement to war" (Walter, 2002, p. 11).

The 'Common State' proposal was brought forward by the Minsk Group in November 1998, building upon the package proposals of 1996 and 1997. It formulated a primarily confederal solution to the conflict: "Nagorny Karabakh is a state-territorial formation in the form of a Republic and constitutes a common state with Azerbaijan in the latter's internationally recognized borders" (OSCE, 1998). Nagorno-Karabakh would have its own constitution, providing for independent legislative, executive and judicial bodies, and its own national guard; the army and security forces of Azerbaijan would not have the right to enter Nagorno-Karabakh without its permission. Armenian would be the principal official language. There would be some vertical relations, with the right for Nagorno-Karabakh to participate in the parliamentary and presidential elections of Azerbaijan. A Joint Committee of presidents, prime ministers and speakers of parliament would determine areas of joint jurisdiction, whilst Nagorno-Karabakh would have the right to "enter into direct external relations with foreign states" (OSCE, 1998). Azerbaijan already possesses a degree of institutional asymmetry, with 66 regions, and 10 cities under the direct jurisdiction of the central government, as well as the majority-Azerbaijani autonomous parliamentary republic of Nakhchivan. The latter's powers fall significantly short of those proposed for Nagorno-Karabakh, and it has in effect been ruled as a "personal fiefdom" since 1993 by a member of the same ruling oligarchy as in the rest of Azerbaijan (Freedom House, 2012, p. 98). The implementation of a 'Common State' would therefore be the first provision of a territorial diffusion of power on an ethnic basis in the country.

The categorisation and utility of such a confederal system is a matter of debate in the wider literature on federalism and ethnic conflict. Confederation is among the nine forms of states with federalist components set out by Elazar (1985); a federal system being one that depends on dispersed majorities, as opposed to the generally aterritorial, con-current majorities found in consociational systems (p. 19). "Being 'federal' in its broad sense means, first the governmental organisation is based on some legally binding treaty or constitution; second, the operation of such governmental organisation adheres to the principle of 'diversity within unity'. It is in this broad sense that we say confederation and federation are both federal in nature" (Song, 2000, p. 184). Whereas federation has become a widely prescribed means of pacifying conflict, confederation is regarded by many as an inherently unstable system of government which operates invariably as a stepping stone to either a more unitary system or separate statehood. Heraclides (2020) finds little evidence for the idea that increased autonomy is a 'slippery slope' to secession; however, "it would seem that the stepping stone

problem appears mainly with secessionist merger movements whose aim is union with the ‘mother country’ as in the case of the Armenians of Nagorno-Karabakh” (p. 15). Weller and Wolff (2005) highlight the importance in such cases of providing the autonomous territory with some foreign policy powers, as the Common State proposals do, “in order to establish and maintain meaningful relationships with its kin-state and nation” (p. 18). Crucially, this can only succeed if all territorial claims at the international level have been withdrawn by the kin-state (Weller & Wolff, 2005, p. 18); this element would play a role in ensuring that Nagorno-Karabakh does not begin agitating for secession or union with Armenia immediately in the new confederal arrangement.

The involvement of international actors beyond the kin-state is another important element of the Common State proposals, and has been brought back to the fore in the ceasefire document that ended the 2020 war in Karabakh. The 1998 proposals outlined the complete demilitarisation of Nagorno-Karabakh, overseen by an OSCE peacekeeping force, while the normalisation of relations between Armenia and its neighbours Azerbaijan and Turkey would have followed its implementation. Danspeckgruber (2016) argues in favour of a strategy of “maximized self-governance and regional integration” (p. 327), which aligns closely with the Common State proposals. This combination can “serve as an instrument to avoid secession, independence and classical sovereignty while offering maximal autonomy to the community. In many situations, this could offer an ideal – and cost-effective – situation for a community that looks for greater independence from the central authority and/or other communities within the state territory without establishing full independence” (Danspeckgruber, 2016, p. 327). The Russian-brokered ceasefire agreement of 2020 included the provision to unblock “all economic and transport connections in the region... the Border Guard Service of the Russian Federal Security Service shall be responsible for overseeing the transport connections” (President of Russia, 2020). For most of its period of de facto statehood, Nagorno-Karabakh has been able to access the outside world only via a single mountainous road to southern Armenia. As borders and transport corridors open under Russian supervision, “intensive participation in global integration may actually diminish the appeal of traditional statehood” (Danspeckgruber, 2016, p. 327). The potential economic dividend of peace and guaranteed autonomy may create an environment in which the issue of the status of Nagorno-Karabakh could become less salient, and any future discussions around changes to its constitutional arrangements could be conducted through exclusively political means. “The most potent way to assure that federalism or autonomy will not become just a step to secession is to reinforce those specific interests that groups have in the undivided state” (Wolff, 2008, p. 336). This presents a major challenge as such interests are entirely lacking in the Azerbaijan - Nagorno-Karabakh relationship, and would take a number of years to develop. The relative sizes of the two polities are worthy of mention, with the roughly 150,000 Karabakh Armenians dwarfed by the 10 million inhabitants of Azerbaijan. In more conventional ethno federal arrangements, Azerbaijan would constitute what Hale (2004) describes as a “core ethnic region”, with a dramatic superiority in population. The presence of such a region makes a federation more prone to collapse, including as a result of security

threats from the majority making trust-building less credible (Hale, 2004, p. 175). The granting of near-total autonomy, as provided for in confederal arrangements such as the Common State proposals ensures that the “confederal components cannot and do not accept a subordination to a numerical majority of other sovereignties” (Duchacek, 1985, p. 46).

Conclusion

The Common State proposals were met with a positive reaction from the Armenian side, as a result of the more explicit formulation of horizontal Nagorno-Karabakh – Azerbaijan relations than in previous plans, however it ultimately failed as Baku said it would impair Azerbaijan’s sovereignty (Babayev, 2020, pp. 30-31). It is clear that the only federal solution that would be acceptable for the Armenian side would be one with strong confederal elements, providing maximised self-governance and unlimited contact opportunities between Armenia and Nagorno-Karabakh. A common criticism of means of managing conflict is that institutions based on ethnic segments merely serve to reinforce division. However, in deeply divided areas, “a clear (functional, as opposed to enforced physical) separation between groups that does not have any discriminating aspects to it might... facilitate de-escalation and prevention and/or settlement of a conflict as it would decrease the number of potentially conflictual issues handled by both groups together” (Weller & Wolff, 2005, p. 18). For now, the separation will remain physical, as immediate humanitarian issues are resolved, and the societies come to terms with the recent war. The territories controlled by either side now conform more closely to the pre-1988 habitation patterns of the ethnic groups, with almost all previously Azerbaijani-majority areas back under its control. A situation akin to the separate mono-ethnic entities of Cyprus, in which issues of status are frozen and both sides rule out the use of force, is likely to persist for now, until federal, or indeed any, long-term solutions are brought back to the table.

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