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Beyond exclusion: rethinking approaches to status in the Nagorny Karabakh peace process

Status – of territory, of parties to the conflict and of those mandated to resolve it – is central to the Nagorny Karabakh (NK) conflict. The question of what status NK should have lies at the heart of the dispute: independence, autonomy, self-government or some other formulation. Status issues are also controversial in the Karabakh peace process, in which people living in NK today have no formal presence. Those displaced from NK are also amongst the most marginalised, yet most directly affected, groups outside of the process.

As probably the most divisive issue at the Armenian–Azerbaijani negotiating table, status casts a long shadow over virtually all others. It therefore demands engagement, in order both to navigate the potential for alternative approaches, and to mitigate its destructive impact on dialogue about other issues. What seems clear is that for as long as status is understood as a unilateral act of will by one group to the exclusion of another, rather than an expression of aspirations legitimated by fair and inclusive process, it will remain a fundamental blockage to agreement.

Photo: Artwork by children from displaced Armenian families, at the Naregatsi Art Institute in Shusha (Shushi), NK.

Building of the de facto National Assembly in Stepanakert (known as Khankendi to Azeris).

While acknowledging the many points of disagreement, this discussion paper identifies possible entry points for further Armenian–Azerbaijani dialogue on status. These may not, at this point in time, be acceptable in their current form to one or all parties. However they may offer platforms where there is either clearer agreement on where the disagreement lies or, more exceptionally, indicate where there are points of convergence on future directions. The paper also offers recommendations for the international community to engage with the underlying political processes necessary for more legitimate outcomes relating to status in the future.

1. Status in the Nagorny Karabakh conflict – key points of disagreement

There are a number of fundamental points of disagreement in Armenian and Azerbaijani debates on status:

A. The meaning of status

Armenians understand the issue of status within the framework of the principle of self-determination,

inseparable from independence. In this perspective the Armenians of NK determined their status by voting for separation from Azerbaijan in the referendum of December 1991. From an Armenian perspective this resulted in a new reality: the existence of a new, independent state, the Nagorno-Karabakh Republic (NKR), which should sooner or later be recognised internationally.

Azerbaijanis understand the issue of status within the framework of the principle of territorial integrity, and the inviolability of Azerbaijan's Soviet and later independent borders. In this perspective, NK's status must be decided within the framework of Azerbaijani statehood. Although President Ilham Aliyev has referred to the "highest possible level of autonomy", this concept has not been defined but would presumably include institutions of self-government, extensive cultural and linguistic rights and symbols of sovereignty such as a flag.

These different understandings are the basis for a game of mutual misinterpretation when Armenians and Azerbaijanis discuss status, identified by one KCG participant: "we are in a psychological trap where Armenians assume that Azerbaijanis

> *'We are in a psychological trap where Armenians assume that Azerbaijanis mean "autonomy" when they say status, and where Azerbaijanis assume that when Armenians say status, they mean "independence".'*

mean 'autonomy' when they say status, and where Azerbaijanis assume that when Armenians say status, they mean 'independence'…"

B. The timing of status

Proceeding from these different understandings, Armenians and Azerbaijanis also disagree on the timing of status. Armenia – and especially Karabakh Armenians – see the issue of status as decided; it is already a part of history. Any future decision on NK's status cannot turn the clock back, but should instead be oriented towards international ratification of the reality: an independent Armenian-majority polity in NK. Armenians therefore lay particular emphasis on timeframes for this ratification: in their view, it should happen as soon as possible.

Azerbaijan sees the issue of status as yet to be decided. Baku rejects the referendum of 1991 as an independence vote for NK due to the fact that it did not consent to this vote, and Karabakh Azeris (who constituted more than 22 per cent of NK's population in 1989) also boycotted the vote. Baku also sees NK's current situation as the result of what it defines as an invasion by another state, namely Armenia. The status of NK within Azerbaijan is therefore still an object of negotiation. This approach is tied to more vague timelines on any future population vote or decision on status, evidently assuming that time will allow for reconciliation and Azerbaijan's further consolidation as a regional economic power.

C. The sequencing of status

The current peace proposal under negotiation in the Minsk Group-mediated talks, known as the Madrid Principles, consists of a series of different ideas, the sequencing of which is controversial. Armenian and Azerbaijani positions disagree on where status determination should come in this sequence. Armenian positions argue that final status determination should come first, since this is seen as the essential guarantor of security, and once this is agreed, all other issues can be decided.

Azerbaijani positions argue that other steps must come first, in particular the return of displaced people. This in turn drives Armenian fears that the demography of the Karabakh Azeri community will be distorted to increase its proportions beyond the share of NK's population it held at the outset of the conflict.

D. The owner of status

There is also disagreement on defining who owns the right to the status under discussion. Armenian positions define the current population of NK as the holder of the right to status. While a range of rights is provided for non-Armenian inhabitants in the legislation in force in NK today, NK is defined as an Armenian entity in which there may be other national minorities, but no other state-forming (titular) nation.

Azerbaijani positions define the beneficiary of status as a composite unit consisting of two populations claiming Karabakh as their homeland: the Armenians and Azerbaijanis of Karabakh. This 'community approach' is rejected especially in NK itself; a key implication of this approach is that only a 'joint society' can decide on the status of NK.

E. The right to negotiate on status

Finally, Armenians and Azerbaijanis disagree on who their relevant negotiating partner is on status issues. Karabakh Armenians see themselves as the relevant interlocutor in negotiations with Azerbaijan to define their own status, and are particularly sensitive to the fact that they have no formal place in the peace process.

Defining the conflict as an inter-state conflict between itself and Armenia, and citing the forced expulsion of the Karabakh Azeri population, Baku has for many years rejected the de facto authorities of NK as a legitimate negotiating partner, especially under conditions of continuing occupation. In Baku's perspective, the relevant interlocutor for Karabakh Armenians is the Karabakh Azeri population, thereby affirming the bi-ethnic nature of NK. Baku therefore conducts negotiations about status indirectly via Yerevan, 'over' the heads of the de facto authorities in NK (explaining Armenian reservations sometimes expressed at language about the conflict 'over' NK). This arrangement creates additional tensions, greater scope for misinformation and misperception, and significantly narrows the field of stakeholders in the peace process.

2. Points of convergence

Despite these differences, there are certain points of convergence, even if only implicit, between Armenian and Azerbaijani positions.

A. Thin and thick understandings of status

Positions on both sides have a strong tendency to frame status as an outcome occurring at a narrow point in time, almost as an event. Narrowed down in this way, status is portrayed as the property of a single group, which will 'win' on the 'day' that status is 'decided'; another group or population must, by definition, lose. This might be called a 'thin' understanding of status.

A 'thick' understanding of status, however, might focus more on deeper, ongoing processes such as legitimate governance, institutional capacities and the fulfilment of a broad range of rights for all groups. In this understanding status is seen as a

Members of an Azerbaijani family displaced from Shusha living in Baku. Source: bbcrussian.com

series of relationships that allow a political identity to be seen, and recognised, as legitimate. It is not an event, but a long-term and incremental process, defined by responsibilities as well as rights.

The Karabakh conflict has for a long time provided a convenient framework for selective portrayals of governance issues as either irrelevant to addressing one's own grievances, or as 'the problem of the other side'. Yet Armenians and Azerbaijanis share similar frameworks for critiquing the governance deficit when approaching status issues. This is evident in circular arguments around a number of referendums and popular votes carried out in the early 1990s, which are taken to legitimate the status of different actors today. These votes are selectively rejected on each side, yet generally on strikingly similar grounds: mainly (the absence of) inclusivity, mandate and peaceful conduct. In KCG debates mutual exclusion was a recurrent explanation, if not the only one, of a lack of cross-conflict legitimacy for these outcomes.

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B. The rights of displaced persons can and must be addressed

Sequencing of status determination and return of displaced people is the source of much disagreement. However, in contrast to other conflicts where flows of displacement have been more one-sided and/or demographic majorities are more narrow or non-existent, there is more potential in the NK conflict to acknowledge the rights of displaced people as a shared problem.

In the specific context of a discussion on the status of NK, this question takes the form of whether Karabakh Azeris will be enabled to return to NK, should they wish this. When this question is framed as a stand-alone issue, it is more likely to attract controversy. Framed as one component of a cluster of issues surrounding different categories of displaced people, however, agreement is more possible.

In KCG debate there was cross-conflict agreement that the return of Karabakh Azeris to NK was both possible and necessary, if certain conditions were met. First, this would need to be implemented as part of a comprehensive, reciprocal programme allowing for the rights of all people displaced by the conflict – Azerbaijanis, Armenians and others – to be addressed. Second, this would be possible if the return process was voluntary and secure for both returnees and the communities that would receive them.

C. Closing the rhetorical gap

Militant rhetoric and threats of the use of force reduce the issue of status to an existential question of whether NK and its current population will continue to exist. Again, the status issue is distilled to a simple black and white question, whose existential undertone makes discussions of institutions and process irrelevant. However, affirmations of the status quo are also, in essence, affirmations of the results of the use of force. There is a therefore a point of convergence around the unhelpful nature of rhetoric affirming the use of force, past or future, to resolve the Karabakh conflict. In the words of one

participant: "even the best peace plan will fail in the current rhetorical climate."

Beyond threats of the use of force, contemporary rhetoric about status often refers to terms suffused with unhelpful baggage from the Soviet past. The term 'autonomy', for example, both invites an immediate reflex rejection from those people presumed to be its beneficiaries, and is not a useful starting point for dialogue. New terminology is needed that does not import loaded meanings associated with a history of dysfunctional governance into contemporary debates.

D. The missing conversations strategy

The Karabakh conflict emerged at multiple levels: interethnic, intercommunal, centre-periphery and international. The current peace process collapses these levels into a single dialogue track between the presidents of Armenia and Azerbaijan. This leaves several other conflict-affected groups and constituencies unable to talk to each other, highlighting several 'missing conversations' which must one day be opened for peace to be viable.

On some level all sides both participate in the missing conversations strategy, as a way to avoid giving legitimacy to claims made against them, and condemn it, as the denial of what they see as their legitimate claims. Two examples relevant for discussions of status are the missing conversations between the *de facto* authorities in NK and Baku, and between Karabakh Armenians and Karabakh Azeris. An effective dialogue process culminating in a legitimate outcome on status is difficult to imagine without extensive, long-term dialogue between these actors. Armenians and Azerbaijanis may disagree on how, when, where and by whom these missing conversations should be opened. Yet there is a point of convergence around the perception that without these conversations, dialogue will remain partial, less than legitimate and removed from on-the-ground realities.

3. Areas of policy relevance

A. Standards and status

Armenian–Azerbaijani disagreement about standards of governance and their relationship to status reflects their different starting points for entering this discussion. Armenian positions argue that status is decided, but not yet recognised. They also argue that NK has a strong empirical claim to functioning institutions of governance that are legitimate in a number of dimensions, at least in the eyes of the population living in NK. From a moderate Armenian perspective the discussion is about *standards before*

> '*Even the best peace plan will fail in the current rhetorical climate.*'

recognition, although in practice this position can easily change to a more defensive one of *recognition then standards*. Armenian arguments also typically reject an exclusive focus on standards in NK alone, arguing instead for a comprehensive approach including discussion of standards in Azerbaijan (and to a lesser extent Armenia). In other words, *standards should be symmetrical*.

Since Azerbaijani positions argue that status is undecided and will be determined at an unspecified date in the future, the discussion is about *standards before status*. In practice, however, most Azerbaijani perspectives on standards in NK are constrained by the imperative of preventing the possibility of NK's legalised independence. Azerbaijani positions therefore easily tip into their corresponding inversion, *status before standards*, where status is assumed to be less than independence.

Yet between *standards before recognition* and *standards before status* there is the possibility of convergence around the centrality of *standards*. On the one hand, Karabakh Armenians are keen to demonstrate standards worthy of recognition. On the other hand, to be remotely feasible both the Azerbaijani offer of autonomy and the practical aspects of Azeri return to NK would need to be premised on some degree of acceptance of the institutions existing in NK today. Development across a range of governance capacities, including the rule of law, representative institutions, freedom of expression, property rights and the development of a free market economy, has a direct bearing on Karabakhi society's capacity to one day accept and incorporate a population of returnees. Standards in NK therefore matter, whatever the preferred endgame of the relevant conflict party is.

B. External dimensions of status

Armenian starting positions on the possible external dimensions of NK's status centre around how the international community might engage with the current authorities of the *de facto* NKR, with emphasis on preserving today's unrecognised institutions as they are. Azeri perspectives proceed from the assumption that Azerbaijan would have some influence on how the international community would engage with the authorities in NK. This is also tied to assumptions that interaction with the outside world would be linked into the formation of a 'joint society' including Azerbaijanis from NK.

There is therefore a deficit in understanding as to whether a hypothetical interim status would result in more or less independent decision-making power for

NK compared to the situation today. In an expression of the status versus return dilemma, however, there were differing views in KCG debate as to the nature of the Karabakhi institutions enjoying this access: should a 'joint society' be formed first as a condition for international access, or should international access be seen as a factor contributing to the eventual formation of a 'joint society'? The necessity for, type and composition of any peacekeeping operation are also a major source of disagreement.

However, beyond these starting positions there is more potential for agreement in the assumption that external engagement is needed even to create a basis for a safe and secure joint society. Again, while endgames may differ there is common ground in the need for external interaction with authorities and society in NK.

Where security is concerned the potential for external support is not limited to hard security. KCG participants agreed that support on human rights, the rule of law and the protection of minority rights would be needed. At first, participants from NK rejected this idea, seeing this as a potential infringement on their sovereignty and arguing that current institutions would be able to fulfill these obligations. However, after discussion about how current institutions had evolved without needing to address the needs of a vulnerable and mistrustful community, they agreed that some changes would be needed. All participants also agreed that there needed to be internationally agreed mechanisms for movement of people and trade in and out of NK. There was some margin of agreement that preserving and improving the integrity of today's *de facto* institutions in NK could enable them to evolve into institutions with wider credibility.

C. Status-neutral engagement and engagement without recognition

There may be partial and grudging cross-conflict convergence in the wider policy-making community engaged on secessionist conflicts that isolation of *de facto* entities does not work. Strategies of isolation have not succeeded in reintegrating *de facto* states in the South Caucasus; these strategies have advanced their integration with outside parties and reinforced hardline positions within their societies. More generally, isolation embeds inaccurate perceptions on each side, hardens hostile stereotypes sustaining conflict, and contributes to uninformed and ineffective policy by international actors.

While endgames differ, there is common ground on the potential offered by limited forms of

engagement. Currently, no single international interlocutor working on the official level enjoys the full trust of the societies affected by the NK conflict. Yet discussion on the external dimensions of status demonstrated that this trust will be needed. Effective engagement can create opportunities for the European Union (EU) and other international actors to build trust that will be necessary for the implementation of any agreement. Unfortunately, European structures have had minimal contact with NK, not extending beyond the necessary contact for observation of the Line of Contact (LOC).

International neglect or ignoring of governance and institutions in NK transmit the unhelpful message that standards in NK do not matter. KCG participants discussed the related but distinct concepts of status-neutral engagement and the policy elaborated by the EU on 'engagement without recognition'. It was agreed that the approach of engagement without recognition, as outlined in the 48th point of the European Parliament resolution of 7 April 2011, holds out many positive opportunities to counter the harmful effects of isolation.

Engagement without recognition, however, needs to be accepted on its own terms as a 'half empty, half full' concept. This means that the *de facto* authorities in NK need to accept non-recognition along with engagement, and to acknowledge that the EU needs to consider Azerbaijani concerns as well as their own. Similarly, Azerbaijan needs to accept engagement alongside the non-recognition, and to acknowledge legitimate interaction between NK and the outside world during an interim period, both independently of as well as reinforcing NK's capacity to eventually accommodate returnees.

It will require a principled approach by the EU to advocate for the potential peace dividends of engagement for all parties. It also requires engagement without recognition to encompass the needs of Azeris from Karabakh. This need was both articulated by Azerbaijani participants and acknowledged by Armenian participants, including those from NK.

Engagement without recognition would allow for the EU to have a gently integrating influence in the spheres of civil society development and political cultures across societies in Armenia, Azerbaijan and NK. This kind of convergence in standards should not be linked to a pre-determined conflict outcome, but seen as a vital contribution to the conflict parties' capacities for dialogue within and across their societies.

> '*Between standards before recognition and standards before status there is the possibility of convergence around the centrality of standards.*'

Public sculpture in the centre of Stepanakert.

D. Interim status

Reflecting the key points of disagreement already mentioned, the meaning and scope of interim status are among the most fiercely contested of the Madrid Principles.

In the absence of clear leads from peace process negotiators, interim status is not a clearly defined concept and is vulnerable to a similar focus on status-as-event, rather than status-as-process. The sides tend to understand it as either 'confirmation' or 'negation' of the status quo, rather than as a mechanism for movement to a different situation. The resulting uncertainty about its meaning, timeframe and re-lationship to final status makes interim status controversial. It is particularly vulner-able to criticism from NK itself, that it is being negotiated 'over the heads' of the people whose status it is supposed to address. Many in Azerbaijan also fear that interim status may serve as an 'institutional trick' to legalise NK's secession.

Moderate Azerbaijani perspectives frame interim status as a long-term, incremental mechanism allowing for the normalisation of relations, and the re-establishment of forms of co-existence in the form of inclusive and representative institutions. According to this logic, as relations normalise and a degree of coexistence is achieved, it would be easier to address the most difficult issue of the final status of NK. Invoking Azerbaijani constitutional restrictions, Azerbaijani positions are generally reluctant to fix timeframes and to admit the possibility of a binding, localised and popular vote in favour of independence in the foreseeable future.

Armenian perspectives view interim status with suspicion as a delaying tactic and are more inclined to talk about its timeframe and the final outcome it would lead to, without addressing the details of the concept itself. Armenians are generally reluctant to discuss the concept of interim status without the prospect of a vote at a specific date, widely seen as guaranteeing a favourable outcome based on a local demographic majority.

Karabakh Armenians are hostile to interim status as a notion that in the words of one analyst "demands concessions of us and gives only promises in return". Compared to today's absolutist understanding of independence (whether *de jure* or *de facto*) interim status is seen as a relativising concept meaning less, not more, sovereign decision-making power than today.

Interim status therefore remains a divisive concept, lacking both public elaboration and popular legitimacy. There are no simple ways forward. It is clear, however, that a key stumbling block for interim status is the tying of this concept to a pre-determined outcome. For the interim element to contribute to a conflict resolution process, it may help to de-couple interim from final status. In this way interim status may be seen more as a 'negotiating plateau', rather than a set of fixed solutions or blueprint for final status.

Interim status, according to this logic, marks a point where negotiations cannot go forward, hence a number of issues are set to one side and some time is bought for negotiations to continue. This allows the main actors some time to keep talking, but more importantly it would open the field to other kinds of interaction at civil society and ordinary human levels. Interim status is therefore not a preset 'black box' containing prescriptions or solutions. Instead, it is an empty box into which people are encouraged to place ideas for social and political change bringing the sides to a different, more open, situation.

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Interim arrangements have a tendency of becoming permanent, however. If this has the effect of 'normalising' interactions, filling the gaps identified above as 'missing conversations', this could provide significant new resources for an eventual peace agreement at a later date. But unless interim status can avoid the same polarising points of disagreement surrounding the status issue overall, this idea will be unlikely to contribute to resolution of the NK conflict.

Possible entry points for further dialogue

A. Status-as-event and status-as-process

All sides in debates on status have a strong tendency to talk about status in terms of mutually exclusive and pre-determined outcomes, "independence" or "autonomy". This debate needs to be reframed to open up space for points of possible convergence, such as common governance, security and economic needs. This can be understood as a shift from an event-focused understanding of status – as something happening at a given moment in time – to a process-focused understanding of status based on rights and responsibilities.

B. Sharing perspectives on the governance deficit

The governance deficit, a root cause of illegitimate outcomes in the past, is a common framework allowing multiple entry points for further dialogue on status-as-process, rather than status-as-event. Discussion of governance standards must, however, be comprehensive to be effective. This implies the necessity of a 'parallel introspective' approach, since any discussion about governance is never purely a horizontal, cross-conflict discussion, but necessarily also a vertical discussion about one's own standards.

C. Governance in NK: moving beyond the cold shoulder

International neglect or condemnation of its governance and institutions ultimately diminishes NK's capacity to participate legitimately in an eventual resolution of the conflict, and to accommodate returnees. Principled engagement, through means such as engagement without recognition, is strongly recommended to take the international community beyond the politics of the cold shoulder. As a first step, the EU can explore the possibility of opening an informal information office, through partnership with local NGOs, to disseminate information in NK about European values and structures.

D. Karabakh Azeris: finding a voice

Azerbaijan needs visibly to demonstrate interest and commitment to legitimate governance in NK. At present, one important way it can do this is by investing in the 'governance capital' of the Karabakh Azeri community. This is needed not only to allay Karabakh Armenian fears that returnees would serve as a fifth column, but to create a basis for confident returnees with the skills and aptitudes to survive in what would be a challenging political environment. It could be achieved, for example, through an elected leadership, demonstrating qualities of transparency, fairness and legitimacy. At the same time, Baku should offer clear signals that wider, informal dialogue between Karabakh and Baku beyond the Karabakh Armenian-Karabakh Azeri format is possible, without prejudice for eventual status or recognition.

E. Moving beyond the 'rude suitor' syndrome

Meaningful discussion of governance standards cannot happen in a climate of militant rhetoric, or one where the use of force goes unquestioned. Participants in the KCG likened several key relationships in the NK peace process to that between a 'rude suitor' and his selected bride: instead of wooing her, he bullies her or refuses to talk to her. Suitor and bride identities may change across different relationships; 'brides' in one relationship are 'rude suitors' in another. Across all of these relationships, however, new opportunities are needed for calm, direct interaction in an atmosphere free both of threats to use force, and of acceptance, even if implicit, that 'might is right'.

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