

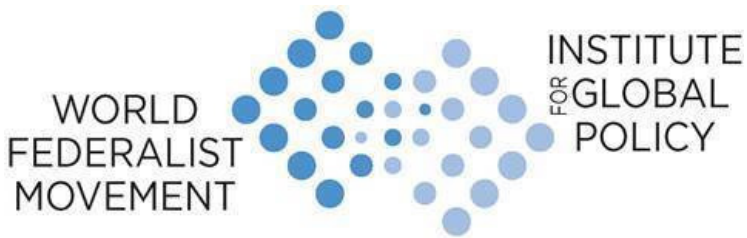
NEVER AGAIN!!!

44-day war: war crimes and international law



PHOTOLURE/ Hayk Baghdasaryan

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Introduction

The first day of the ceasefire agreement, November 10, 2020, stopped the 44-day aggression of Turkey-Azerbaijan alliance against the unrecognized, small Republic of Nagorno Karabakh, young woman journalist from NK wrote on her Facebook page: “I went to kiss the walls of my Amaras¹ monastery, as I know I will never see it again.”

That first day of peace, many people drove to visit the Dadivank² monastery for the last time, to bid farewell to the spiritual treasure that was an inseparable part of their historic, centuries-old identity as Armenians of Nagorno Karabakh. People were confident that after some days they can no longer be able to visit any of their national treasures so dear to their hearts—treasures of intellectual history they have grown up with.

The videos broadcast and shared by Azeri soldiers over the internet showed them standing on the Green Church³ taking off the cross and destroying the bell tower—it left the local Armenian population with very little hope on the preservation of the sites. The newly drawn map had handed over to Azerbaijan the control of these national treasures, dear to their hearts and part of their geographic landscape of historical monuments.

As true for all world nations, the lives of the Armenians can't be separated from their intellectual, cultural heritage. In that sense, both cultural and ethnic cleansing are closely interrelated phenomena: both aim to carry out heinous crimes that shock the human conscience and social ethics.

Politics of hatred carried out by Azerbaijan over the last three decades, shaped the entire strategy of the 2020 war: direct and indiscriminate attacks on the civilian population killed and uprooted over 100,000 people from their homes, left over 40.00 homeless. The forces attacked journalists and aid workers, targeting and destroying

1. Amaras Monastery (Armenian: Ամարաս վանք) is a monastery in the Martuni Province of Artsakh. It was a prominent religious and educational center in medieval Armenia.

2. Dadivank, or Khutavank, is an Armenian monastery in the Karvachar province of Artsakh. It was built between the 9th and 13th centuries. Currently, it is under the control of Azerbaijan.

3. Saint John the Baptist Church, commonly known as Kanach Zham (Armenian: Կանաչ ժամ), is an Armenian Apostolic church located in Shushi, Artsakh, just uphill from the Ghazanchetsots Cathedral. Kanach Zham means “Green Chapel” in Armenian. Currently, it is under the control of Azerbaijan.

Cathedral, schools, and hospitals, using sophisticated drones and weapons of mass destruction and cassette munitions. Using white phosphorus they aimed to not only kill the populace, but to burn ancient forests, livestock and destroy human habitat. In recruiting terrorist mercenaries from Syria, the war turned more merciless with beheadings and mutilations of the bodies of civilians, and torture and humiliation of the POWs.

This long list of crimes, described as crimes against humanity and war crimes in international and humanitarian law, has been committed against the population of Nagorno Karabakh. The country that fought for the centuries to preserve its Armenian identity, strived to become a democratic state though strengthening its democratic institutions and rule of law, running fair elections and receive recognition by the International community. It's destiny, the geographic space it is within, which has not been famous by supporting democracy, so were some democratic states, who failed to support the emerging democracy of Nagorno Karabakh.

Unlike the first war in 1990, the crimes committed during the 2020 war have been subject to thorough fieldwork and documentation by both Ombudsmen of Nagorno-Karabakh and Armenia, and such international agencies as ICRC, Human Rights Watch, and various members of the international media that covered this war. This documentation based on 44 complaints on the cases of 228 individuals was filed and referred to ECHR by the Government of Armenia, and as a result granted by the ECHR as the interim measures in the Azerbaijan and Turkey case. Though this important decision failed to prevent further violence, result in further international condemnations, multiple failed truces, and end civilian casualties, its critical political value was the recognition of the crimes.

The government of Armenia filed an inter-state application against Azerbaijan with the European Court of Human Rights, asserting that Baku violated several international conventions during and after it unleashed a war against Nagorno Karabakh. Specifically, the Armenian government claims that Azerbaijan violated the right to life, the prohibition of torture and inhuman treatment, the right to liberty, property, personal and family life, education, and several other international conventions that protect the rights of the population in Artsakh and Armenia. The government raised issues about protecting the rights of prisoners of war, individual civilian captives, displaced

people, deceased and wounded persons and their relatives, personal property loss, and the rights of local and international reporters. Government submitted a vast trove of evidence with the application.

We base this publication on the facts and documents collected and recorded by the Ombudsmen of Armenia and Nagorno Karabakh, International organizations and media sources aim to provide with the analysis of the war crimes committed during this short, but devastating war. It also introduces a rich pool of corresponding definitions and articles from the international legal framework adopted and ratified by the states to address such war crimes.

We divide it into two parts:

The first part focuses on attacks on civil population, children, journalists, members of humanitarian missions and religious, cultural, educational institutions and civil property, tortures and inhuman treatment of civil population and POWs.

The second part focuses on the methods and strategies of conducting the war: recruitment of terrorist mercenaries, use of drones and weapons of mass destruction.

What has been unveiled are new, disturbing signs of mass atrocities committed during this war which act as strong, early warning signals and as a reminder of the importance of recognition of crimes against humanity and specifically those committed by the Ottoman Empire against Armenians 106 years ago.

We keep repeating “Never Again”!!!! But failure to recognize these crimes and bring perpetrators to justice invests in the development and perpetuation of a culture of impunity and in the multiplication of patterns of these crimes of Genocide in many parts of the world: Rohingya in Myanmar, Nuer, and other ethnic groups in South Sudan, Christians and Yazidis in Iraq and Syria, Christian and Muslims in the Central African Republic, Darfuris in Sudan and still many, many others.

Can the world turn a blind eye on genocides and ethnic and cultural cleansing taking place today?

Short term pragmatic and financial interests of some states who prefer to close their eyes on long-term practiced by Turkey’s “innovative” army recruitment system through recruiting terrorists to fight against civil population, results in spreading terrorism in many parts of the world, even more with no criticism of these practices it

might lead to certain way of legalization of such practice of recruitment as it was with ISIS who with its new practices of enslavement tried to legalese slavery and even developed special legislation. There have been even more worrying facts brought up by many mercenaries telling that for each beheading they have been promised 100 dollars. Another perturbing practice introduced and legalized by the Azerbaijani Government long ago – the awarding with the State medals those who have committed beheading of Armenians. The very fact of awarding for cutting Armenian heads today might become accepted practice worldwide in some places in the future.

Universal condemnation of such practices must urgently follow.

The Responsibility to Protect is the important international norm that seeks to ensure that the international community Never Again cannot halt the mass atrocity, crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity. There are sufficient existing mechanisms of early response and reaction to crimes of genocide and ethnic and cultural cleansing and mechanisms to address mass atrocities and highly committed professionals in every sphere. What is essential is a strong political will by the states, and the proactive role of the international community to stand for protecting each life, and realize that the crime of war committed in one part of the world has a powerful impact on the entire world? There is also an urgent demand to reassess for the more effective use of the existing appropriate diplomatic, humanitarian, and other peaceful means to help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Each situation requires deeper understanding; superficial diplomatic egalitarian approach plays a destructive role. Effective, strong, long-term support from states and the international community to operationalize the RtoP commitments is critical. Each time the world cannot prevent and respond to such war crimes in a timely fashion, the democratic space is being narrowed down, so the opportunities to protect of rights of people worldwide.

Recognition and justice can restore people's confidence and lay down the fundamentals of co-existence and the true prospects of peace.

"Democracy Today" team



Sevak Avanesyan performing Krunk by Komitas in the bombed Cathedral of Shushi, Artsakh

Chapter 1: Attacking people and their identity: ethnic and cultural cleansing

During the past few decades, culture has moved to the frontline of war, both as collateral damage and as a target for belligerents who use the cultural destruction to foster violence, hatred and vengeance. Through years it became an integral part of a global strategy of cultural cleansing which seeks to eliminate all forms of diversity. Destruction and replacement of cultural heritage have been a regular practice in many conflicts across the world with the central aim to erase history and conquer not only lands but people's heritage, identity and history. Cultural cleansing and ethnic cleansing are similar phenomena; both aim at dramatic crimes that shock the human conscience and social ethics. The protection of heritage is inseparable from protecting human lives.

The ethnic cleansing committed in Artsakh against the local civilian population goes hand in hand with the destruction and vandalizing Armenian cultural and religious heritage. It is a result of long-term state supported propaganda of hatred towards Armenian identity and the culture.

The policy of ethnic cleansing of Armenians by the Azerbaijani state, Armenophobia was subject to various publications, including in the Artsakh Ombudsman interim public report on Armenophobia in Azerbaijan, Organized Hate Speech Animosity towards Armenians and publications of Ombudsman of Armenia.⁴

This war raised many concerns and left open questions, the one which is called as "cultural cleansing", the concept is used in parallel with the term ethnic ceasing, coined in the early 1990s to describe mass atrocities in the former in the former Yugoslavia. This term has no formal legal definition. Both in situations when President Aliiev of Azerbaijan calls Nagorno Karabakh Azerbaijani territory, or the territory occupied by the Armenians or even with Artsakh being "legally" defined as an unrecognized state the actions and crimes committed during this war and even after it can be defined as a crime of "ethnic and cultural cleansing".

Having a small territory of 4.400 km², Artsakh is remarkably rich in cultural treasures. According to estimation, there are around 4000 Armenian cultural sites, including 370 churches, 119 fortresses and other cultural of monuments, with some churches dating from the 4th

4. See: <https://artsakhombuds.am/hy/document/792?fbclid=IwAR1a8IU->

to 21st century. Artsakh is also rich with valuable archeological sites such as Tigranakert dating back to the 1st BC-13thc AD period that has civilizational and historic value.⁵

On 8 October 2020, Azerbaijani armed forces carried out two attacks against St. Ghazanchechots cathedral in Shushi city, using military aircraft and UAV (Turkish "Bayraktar" as alleged by military experts). The first attack by the military aircraft (according to witnesses) already targeted and damaged the Cathedral. Further, the use of aerial bombing and long-distance weapons by Azerbaijan has made the destruction of cultural property even more devastating.

They carried the second attack out when journalists were recording the damages made to the cathedral by the first attack. Because of attack conducted by the UAV, the cathedral was further damaged and they reported three journalists to be wounded. It has to be stressed that many families, specifically elderly and children, have been hiding from bombing in the Cathedral.

It has to be stressed that St. Ghazanchechots Cathedral is in an open space; they have not used it for military, nor there was in its vicinity military base or any military object. Because both the military aircraft and the UAV could precisely foresee and attack an objective, we can conclude it that the attacks were directed with the aim specifically to damage the Cathedral.⁶

New trilateral ceasefire agreement, being important in the sense that it stopped the military activities, brought enormous concern and raised alarm over protection of Armenian culture. According to signed trilateral agreement many cultural treasures have been moved under Azerbaijani control thus receiving the new political geography. It is according to that agreement that many ancient monuments, having vital importance for human civilization have been left under Azerbaijani control, among them at least 1456 Armenian cultural and historical monuments, including 161 Armenian churches, archeological site Tigranakert, ancient Christian Cathedral Dadivank, Azokh Paleolithic cave, Nor Karmiravan tombs, Mirik, Keren and archeological monuments, palaces, bridges. Artsakh has around 19311 exhibits and

5. See: <https://artsakhombuds.am/hy/document/792?fbclid=IwAR1a8IUbAygSMK6GlzsEy4PrNiY-CPI1159lqqlfZfMYUSaTQxYkv2Ht-xg>

6. See the report, <https://artsakhombuds.am/hy/document/570>

private museums.⁷ Artsakh is a land of priceless treasures whose security under Azerbaijani rule leave grave concerns. Despite the short time of Azerbaijani control, there have been documented a considerable number of known cases of vandalism against Armenian cultural heritage in Artsakh in the places that were occupied by Azerbaijan during September 27-November 9 war.⁸ According to October 3rd report by the archaeologist Hamlet Petrosyan, the 2,000-year-old Hellenistic Armenian city of Tigranakert was also struck by Azerbaijani artillery. "The best-preserved city of the Hellenistic and Armenian civilizations" of the Caucasus "is in the area of intensive war activity," Petrosyan's team said in a statement, noting that it had been "shelled several times".⁹

After ceasefire has been established on November 9, 2020, UNESCO made a proposal both to Armenia and Azerbaijan to send an independent mission of experts to draw a preliminary inventory of significant historical and cultural heritage sites in and around Nagorno-Karabakh as a first step towards the effective safeguarding of the region's heritage.

For the same purpose, the members of the intergovernmental Committee of the Hague Convention of 1954 for the Protecting Cultural Property in the Event of Armed Conflict and its Second Protocol (1999), adopted a declaration on December 11, 2020 and welcomed UNESCO's initiative and confirmed the need for a mission to take stock

7. See: <https://artsakhombuds.am/hy/document/792?fbclid=IwAR1a8lU bAysMK6GlzsEy4PrNiY-CPI1159loqfIZfMYUSaTQxYkv2Ht-xg>

8. See: <https://fip.am/en/14568?fbclid=IwAR26CEl-yIZFsurotMSCBLj4a0keNKb2bwmr-wIKAP-F7vb2P5Smf3pgR-Fw>

9. 1) A Plea to Save Artsakh's Armenian Heritage | Christianity Today; Armenian monuments in line of fire in Nagorno-Karabakh conflict | The Art Newspaper - <https://www.theartnewspaper.com/news/monuments-in-line-of-fire-in-nagorno-karabakh-conflict>

2) ICOMOS Heritage at Risk Report: 2006/2007, "Azerbaijan: Destruction of the Armenian Cemetery at Dju-lfa," https://www.icomos.org/risk/world_report/2006-2007/pdf/H@R_2006-2007_09_National_Report_Azerbaijan.pdf?fbclid=IwAR0Y-X43lCTPrnNAMg1PM_qSxnNr_OHvb_OAhOBQIFNnbR3C_l1_me9G24M; The ceasefire agreement with Azerbaijan comes with great risks for Armenia | Dale Berning Sawa | Opinion | The Guardian - <https://www.theguardian.com/commentisfree/2020/nov/19/ceasefire-agreement-azerbaijan-great-risks-armenia>;

Azerbaijan: Famous Medieval Cemetery Vanishes | Institute for War and Peace Reporting (iwpr.net); 71828_icomos_umschl_neu - <https://iwpr.net/global-voices/azerbaijan-famous-medieval-cemetery-vanishes>;

A Regime Conceals Its Erasure of Indigenous Armenian Culture (hyperallergic.com); Armenian monuments destroyed. Some call it 'cultural genocide' - Los Angeles Times (latimes.com) <https://www.latimes.com/entertainment-arts/story/2019-11-07/armenian-monuments-azerbaijan>

3) Council of Europe, Parliamentary Assembly Documents 2002 Ordinary Session (First Part) , Volume I, "Maintenance of historical and cultural heritage in the Nagorno-Karabakh Republic", p.35, <https://assem-bly.coe.int/nw/xml/XRef/X2H-Xref->

of the situation regarding cultural properties in and around Nagorno-Karabakh. The Committee requested each of the parties to render the mission possible.

Despite the urgency of the matter as acknowledged by UNESCO, Azerbaijani Government creates the obstacles for the mission to arrive by not responding to the request.

Legislation

Attacks against cultural objects in the course of a military operation in armed conflict are prohibited as an offence under customary international law regardless of adherence to a particular treaty (Articles 27, 56, Hague Regulations annexed to the 1907 IV Hague Convention Respecting the Laws and Customs of War). Cultural objects may lose their protection from an attack only when being used at that time for military purposes (Article 27, Hague Convention of 1907).¹⁰

*In addition to the 1907 Hague Convention, the 1977 Additional Protocol 1 to the 1949 Geneva Conventions prohibits “any acts of hostility directed against the historic monuments, works of art or places of worship which make up the cultural or spiritual heritage of peoples”. The rules for protecting cultural heritage are found in several multilateral treaties and in customary international law. The centerpiece of the relevant treaty-law is the Hague Convention for protecting Cultural Property in the Event of Armed Conflict (1954 Hague Convention), the Regulations for the Execution of the Convention, concluded in 1954, and the two Protocols.¹¹ **The 1954 Hague Convention was ratified by Azerbaijan on 20 September, 1993.**¹² Armenia is also the party to Convention. **The First Protocol was accepted by Azerbaijan on the same date as the 1954 Hague Convention, and the Second Protocol was ratified on 17 April, 2001.***

10. See: The 1954 Hague Convention, http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=-DO_TOPIC&URL_SECTION=201.html

<https://en.unesco.org/countries/azerbaijan/conventions>

11. See: http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

12. See: <https://en.unesco.org/countries/azerbaijan/conventions>

Attacks on the children, the civil population, the humanitarian workers and the journalists.

The question of morality on attacking civil population is the key.



Since the first days of the Azerbaijani-Turkish offensive civilian population and civil objects have been a matter of direct target that took place not only along the line of contact but also in towns and villages situated about 90-100 km deep. The cost on civil population, children and women, their private property and civil objects in results of this war is heavy. It uprooted 100.000 people who found protection in Armenia and left 40.000 homeless. These people can never return to their homes. According a to a recent report of Artsakh Ombudsman from September 27 to January 28, 2021, 72 civilian casualties were recorded: 41 were killed because of targeted strikes, (among them little girl, 7 women and 33 men), 31 persons have been killed in captivity. They have documented cases of torture of civilians and mutilation of corpses. The Human Rights Ombudsman also recorded the cases

of 163 civilian injuries, most of which are results of the strikes and eventually resulted in the deaths.

Many people hoping the war will end soon, as it was in the earlier years, stayed closer to their sons, brothers, husbands and have been hiding in safe places, sometimes with no opportunity to come out for days. Children suffered tremendously, as their life have been completely been changed and they lived between the stories and information on war and hopes for its completion and peace.

Some 5,800 private properties have been destroyed, besides that 520 private vehicles. They have caused damage to 960 pieces of civilian infrastructure, public and industrial objects. Ombudsman had thoroughly recorded all related facts making video and photo documentations. Using high-precision weapons against civilian population strongly shows the intentional nature of such attacks. For instance, a high-precision Israeli UAV "Harop" targeted a civilian person and a house in Hadrut on September 27. Similarly, missiles, including ballistic missiles targeted the civilian population and houses in capital Stepanakert and other cities, whereas there were no military objects near relevant areas.¹³ According to Ombudsman of Artsakh, from 27 September to 31 October the armed forces of Azerbaijan directed attacks against over 160 civilian areas, including densely populated cities and villages such as capital Stepanakert, towns of Shushi, Hadrut, Martuni, Martakert, Askeran, Karvajar, Berdzor, villages of Taghaser, Vardashat, Spitakshen, Maghavus, Nerkin Horatagh, Alashan, Mataghis, using heavy missiles, artillery, (aircrafts and UAVs).

An example is the targeting of a civilian person and a house in Hadrut on 27 September with a precise Israeli UAV "Harop".¹⁴ UAV attacks continued further. On 16-17 October three civilian persons injured, houses damaged from the UAV and missile attacks in Stepanakert. Similarly, missiles, including ballistic missiles, targeted the civilian population and houses in capital Stepanakert and other cities.

The capital city Stepanakert has suffered the most with the most deaths, wounded and having appeared in ruins and covered with the remnants of the unexploded missiles in the city. Azerbaijan

13. See: The report of the Ombudsman of Artsakh

14. See 05:00 minute of the video: https://www.facebook.com/watch/live/?v=340369097076183&ref=watch_permalink

continued attacking Stepanakert with cluster missiles, destroying houses, wounding civilians and using missiles, resulting in burning of the gas pipeline, a car, buildings, shops. The regions of Martuni, Martakert, Askeran, Shushi and Karintak village near Shushi also had been subjected to heavy missile, artillery and aerial attacks. On 28 October Azerbaijani armed forces directed more than 15 attacks against different areas of Stepanakert and Shushi, including on the hospital and central market of Stepanakert causing severe damage and destruction.

Attacks against the civilian objects and population by the Azerbaijani armed forces on 27 September – 1 October were reported also in the territory of Armenia, in Gegharkunik Province, around Vardenis city, specifically Vardenis-Sotk highway, Shatvan, Kut villages. Earlier Armenia had denied the Azerbaijani claim they had taken control of Vardenis-Sotk highway. According to the ad hoc report of the ombudsman of Armenia, the artillery, UAV, including Turkish “Bayraktar”, attacks were directed against the civilian persons and objects because of which they killed one civilian. The targeting of the civilian population and objects was evidenced, among others, by the explosion site about 20-50 meters away from the houses, schools and by the fact that no military objects were in their vicinity. Investigation of Armenia’s Human Rights Defender supports the fact that Azerbaijan uses different drones to target peaceful population in Armenia and Nagorno Karabakh: intelligence drones, Orbiter - 2, Orbiter - 3, Aerostat, among others; striking drones, including Harop, Zaoba-1K, Sky Striker; intelligence-striking drones, Bayraktar TB-2, AN-2, etc

Drone attacks have been recorded in different civilian villages and cities of Armenia and Azerbaijani armed forces directed attacks also against the south of Armenia, Syunik region. On 10 October Azerbaijani armed forces employed striking UAVs in Yeritsvank village in Artsvanik village of Kapan region in Armenia’s Syunik province. They killed one person. They directed 30 October more artillery attacks against Davit Bek village of Syunik province of Armenia. Armenia’s Obudsman reported that on 2 November, at around 6 p.m. Azerbaijani forces struck Davit Bek village again, in the result of which 1 civilian was killed, 2 wounded, civilian houses damaged.¹⁵

15. See <https://www.ombuds.am/images/files/de3634c257bb698735db318a33f280bf.pdf>

Gegharkunik province of Armenia was also targeted on 14 October and onwards. In the morning of October 14 an Azerbaijani UAV targeted and wounded a 14 years old child working in the field during the harvest in Sotk village near Vardenis city. According to the fact-finding mission of Armenia's ombudsman, the UAV carried out several attacks on the civilians working in the field. After wounding the child, they directed more attacks at the same place of the field, while the rest of the villagers had already escaped. It was also reported that the UAV attacks damaged the schools of Sotk and Kut villages.

The President of Azerbaijan Ilham Aliyev accepted publicly that their armed forces targeted the civilians and civilian objects in his interview¹⁶ to "Fox News" on 25 October: This information have been supported also by Human Rights Watch: "Azerbaijani forces carried out apparently indiscriminate air and ground strikes hitting civilian structures in Nagorno-Karabakh's largest city that should be impartially investigated .While the hostilities may have stopped, the civilian population continues to suffer from possibly disproportionate attacks on critical infrastructure."¹⁷ Survivors and families in the affected areas have been forced to flee their homes fearing for their lives.

Targeting journalists

It specifically protects journalists under international humanitarian law because of their vital role in bringing to the attention of the horrors and reality of conflict, and they are also protected as civilians. The civilian journalists are protected against attacks as long as they are not taking a direct part in hostilities under customary international humanitarian law (Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, 2005, pp. 115-118. Article 79(2), AP I: "provided that they take no action adversely affecting their status" having the same meaning as "direct participation in hostilities").

Several journalists from Armenian and international media have been present in the civilian areas in the cities and villages of Artsakh. They and their vehicles had specific identification signs "PRESS".

16. See 10:49 minute of the interview <https://www.youtube.com/watch?v=2yEgnsp8bPw&feature=youtu.be>

17. See <https://www.hrw.org/news/2020/12/11/azerbaijan-unlawful-strikes-nagorno-karabakh>

Irrespective if the clear and seen from distance signs dozens of journalists from international (e.g. "Le Monde", "Agence France-Presse", "Dozhd") and local (e.g. "24news", "ArmeniaTV") news agencies were injured¹⁸ because of artillery attack of the Azerbaijani forces directed against cities Martuni, Martakert, Hadrut.

On 8 October, Azerbaijani armed forces attacked twice Ghazanchetsots Cathedral in Shushi allegedly using military aircraft and UAVs. Because of the second attack three journalists that were recording the consequences of the first attack were seriously injured. Given UAVs in the area, the Azerbaijani armed forces had clear advance information on the presence of journalists in the cathedral.¹⁹ In both cases, the information indicates the attack was directed also against the journalists. None of them were taking direct part in hostilities, they all had distinctive signs, so did their vehicles, no military objectives were in the areas of the attacks.

Attacks against Humanitarian help personnel

Humanitarian help personnel and objects are specifically protected under international humanitarian law due to their vital role in protection and help to the protected persons.

On 27 September when Azerbaijan began its attack against the civilian population and the civilian objects of the cities of Artsakh, such attacks were also carried out near the vehicles and buildings of the humanitarian organizations, such as ICRC and HALO Trust, located in the capital city Stepanakert.

Attacking Rescue Servicemen

On 2 October Azerbaijani armed forces directed missile attacks against the permanent administrative building of Artsakh (Nagorno Karabakh) emergency service, ten personnel were wounded, one of

18. See: <https://artsakhombuds.am/sites/default/files/2020-10/Artsakh-Ombudsman-second-interim-report-on-the-Azerbaijani-atrocities-in-September-October-2020.pdf>

19. See: <https://artsakhombuds.am/sites/default/files/2020-10/Artsakh-Ombudsman-second-interim-report-on-the-Azerbaijani-atrocities-in-September-October-2020.pdf>

whom died shortly after and they damaged the materials.

On 28 October an Azerbaijani missile attack was directed against the rescue personnel during the conduct of their humanitarian functions in Shushi. One person died and 5 seriously wounded.

On 1 November an Azerbaijani UAV targeted a rescue service's fire truck of Askeran region and burnt it. The rescue service was transporting fresh water to the civilians at the time of the attack.

Attacking hospitals

On 11 October an ambulance vehicle transporting wounded was damaged in capital Stepanakert as a result of an attack by Azerbaijani armed forces.

On 14 October Azerbaijani armed forces targeted the military hospital in Martakert of Artsakh. According to a witness, they carried the attack out by three aircraft which dropped bombs and missiles at the direction of the hospital. They damaged the hospital; medical vehicles were burnt: both the hospital and the vehicles clearly marked and seen from a distance as medical. Later on 30 October Azerbaijani sources close to the government published their claims that another military hospital, in Berdzor (Lachin) was used by the Armenians side for military purposes.

On 28 October Azerbaijani armed forces directed over 15 attacks against different areas of Stepanakert and Shushi. They directed an attack on Stepanakert hospital including the maternity ward.

Legislation

International customary law strictly prohibits direct attacks or directly targeting civilian population, individuals as well as directing attacks (targeting) the civilian population, individual civilians (Article 51(2), Additional Protocol I of 1977 to Geneva Conventions (AP I); para. 49.) and civilian objects (Article 52, AP I; Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, 2005, pp. 25-26.)

It is considered as a war crime. Civilians become a legitimate target only when they take direct part in hostilities (ICTY, Prosecutor v. Galic, Trial Chamber, Judgment of 5 December 2003, para. 48.). The definition of civilians as persons who are not members of the armed forces is set forth in Article 50 of Additional Protocol I, to which no reservations have been made. It is also contained in many military manuals (data base of ICRC). It refers to all State parties or not, or not party to Additional Protocol I.

Military objectives are defined as those objects which location, purpose or use contribute effectively to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling offers a definite military advantage (Article 52(1), AP I, 1977.). The Fourth Geneva Convention comprises numerous provisions addressing protection of children. The 1949 Conventions specifically stress the importance of protection of children during the war. However, the principle on which the rules relating to children is based is not clarified anywhere in that Convention. Protocol I fill this gap, by providing, under article 77, stating that: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason." The principle of the special protection of children during international armed conflicts is thus explicitly laid down.²⁰ Given the special importance of protecting and promoting Children's Rights in all circumstances, and even more so in crisis situations, the Human Rights Defender of Artsakh deems it necessary to introduce the results of the investigations regarding the impact of the ongoing military action by Azerbaijan on the livelihood of children in Artsakh, calling the attention of UN, UNICEF, UNESCO, UN Committee on the Rights of the Child, COE Commissioner for Human Rights and other international stakeholders to respond to the current situation in prevention of further gross violations of the Rights of Children of Artsakh.²¹ Survivors and families in the affected areas have been forced to flee their homes fearing for their lives.

According to international law a civilian is anyone who is not a member of the armed forces or organized military group of the party to the conflict (Article 51(2), Article 43, AP I; ICTY, Prosecutor v. Galic, Trial Chamber, Judgment of 5 December 2003, para. 47.).

20. See: <https://www.icrc.org/en/doc/resources/documents/article/other/57jmat.htm>

21. Human Rights Ombudsman of Artsakh, "Press Conference on Second Interim Report," 05:00 minute, Video, 11 October 2020.

As for civilian objects we define them as the ones which are not military objectives (Article 52(1), AP I.). Military objectives are defined as those objects which location, purpose or use contribute effectively to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling offers a definite military advantage (Article 52(1), AP I, 1977).

Crimes against prisoners of war (POW) (hors de combat) and captured civilian population.

While presenting atrocities committed against prisoners of war, wounded combatants and captured civil population it is important to describe the background political and ideological situation in Azerbaijan. Through the over three decades Azerbaijan was conducting politics of inhibition of hate towards Armenians on various levels including even first grade school children. The manipulation of people with inhibition of threat is dangerous tool also for internal use, as admissibility of crime and no punishment might become a powerful way for destabilization in the country. The Azerbaijani social media is rich with expressing hatred against Armenians. Recently Ombudsman of Armenia has been addressing hate speech in his specially dedicated to the theme reports.²²

In an authoritarian system of Azerbaijan with the politics of closed doors and pressure on freedom of speech, hate policy has become an unquestionable instrument of policy of suppression, leaving no space for coexistence or good neighboring relations. Numbers of awards announced for head cutting off Armenians by the eminent authorities have much encouraged nationalistic moods. Rare voices have punished rare voices who spoke against this politics. This politics of unquestionable hatred and anti-Armenian propaganda allowed to happen the horrendous unseen crimes committed against Armenian civilian population and POWs and even more to video the crimes and put them on social media as a matter of boasting. Among some sources of evidence, social media is factual and widely referred.

Majority of the crimes that took place during this war and after the

22. See: https://www.ombuds.am/images/files/2032f021fe81176414a649d588ad0e86.pdf?fbclid=IwAR-0GrjadK_8nRRDU_ORNAUMSMBjl2MN6GMIgvhLWHeKhrARKLOHcfCC_L6Q

ceasefire agreement have been concluded, have been documented and extensive evidence gathered on these crimes committed by Azerbaijani Armed Forces such as willful killings, beheadings, torture, ill-treatment, humiliation, body mutilation and other heinous crimes against ethnic Armenians, including former combatants and members of peaceful civilian population. Such information has been justified by the following sources: information published by Azerbaijani soldiers in social media, reports of Azerbaijani media, extensive body of evidence collected and published in six ad hoc reports by both Armenia and Artsakh Ombudsmen and submitted to international bodies and International media in particular reports of Human Rights Watch and Guardian.²³

Until now, the mass media, particularly the Azerbaijani social media sources, have been ceaselessly publishing videos and photos, depicting the degrading treatment by the Azerbaijani military towards the bodies of ADA (Artsakh Defense Army members) members, torture and degrading treatment of the captives, putting no difference whether the people are civilians or former combatants. These footages are being documented, translated for better understanding and analyzed by the two Human Rights Institutions and independent journalists. Several videos and photos were posted and circulated in social media showing the crimes against Armenians such as killing, beheading, ill-treatment of hors de combat and civilians, mutilation of dead bodies. According to the interrogation of a Syrian mercenary who had been captured and later being prosecuted under the Criminal Code of Armenia, both his immediate commander Abu Hamshan and Turkish and Azerbaijani commanders gave orders to "behead, kill and slaughter all Armenians". 100 USD was promised for each beheading.

Humiliating dead bodies

The International Humanitarian Law protects the dignity of persons involved in armed conflicts both during their lifetime and after death, and prohibits any outrages upon personal dignity. The key principle is

23. Available at <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mis-treated?search=execution>. Available at <https://www.theguardian.com/world/2020/dec/15/two-men-be-headed-in-videos-from-nagorno-karabakh-war-identified>.

that the persons rendered hors de combat (surrendered, wounded or otherwise disabled) and it should protect the dead bodies from any kind of ill-treatment. Similarly, the bodies of enemy combatants should be treated with respect. These points have also been developed in the Customary International Humanitarian Law and were applied by international judicial instances (such as International Criminal Tribunal for the former Yugoslavia). According to customary international humanitarian law attacking, killing or wounding, ill-treatment or torture of persons hors de combat and civilians (e.g. Article 23, Hague Regulations; Article 41, AP I; Article 3 common to GCs; Article 6(b) IMT (Nuremberg); Article 12, GC I and GC II; Article 17 GV III; Articles 27, 32, GC IV.) is strictly prohibited and identified as a war crime.

In particular, Article 16 of the Geneva Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War prescribes that (...) each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, (...) and to protect them against pillage and ill-treatment.

The Article 34 (1) of the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) provides that the remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died because of hostilities shall be respected (...).

In addition, the Rome Statute of the International Criminal Court states that committing outrages crimes upon personal dignity constitutes a war crime in both international and non- international armed conflicts (Article 8(2)(b)(xxi)). The elements of this crime include the humiliating, degrading or otherwise violating the dignity of one or more persons, including dead persons by perpetrator.

International Humanitarian law differentiates between combatants and non-combatants. Non-combatants are to be spared from various forms of harm. This category includes not only civilians but also former combatants, such as prisoners of war and fighters rendered hors de combat because they are wounded, sick or have surrendered. Geneva Convention of 12th of August 1949 on the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field establishes

protection of wounded and sick in armed conflicts.

According to Article 16 of the mentioned Convention members of the armed forces (...) who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture (...), they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created. Article 46 of the mentioned Convention provides that reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

The Article 13 of the Geneva Convention relative to the Treatment of Prisoners of War adopted on 12 August 1949 states that prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity is of importance here to be cited.

According to the Article 17 of the mentioned Convention: no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Killing civilians²⁴

It is worth to stress out again that the International Humanitarian Law protects all non-combatants from various forms of harm in armed conflict. The prohibition of the violence to life is one of the most fundamental principles of the International Humanitarian Law, which is strictly prohibited by four Geneva Conventions of 1949.

24. The Updated Edition of the Second Interim Report on the Azerbaijani Atrocities Against the Artsakh population in September-October 2020, October 13, 2020. Available at: <https://artsakhombuds.am/en/document/735>.

It is clearly specified in the common Article 3 of the four Geneva Conventions, that violence to life, in particular murder of all kinds are prohibited regarding persons taking no active part in the hostilities, including members of armed forces placed hors de combat by wounds, or any other cause.

Under the Rome Statute of the International Criminal Court, willful killings of persons protected under the relevant Geneva Convention makes up a war crime (Article 8 (2)(a)(i)).

Besides, the recognition of the special respect and protection because of the disabled is contained in various provisions of the Third and Fourth Geneva Conventions relating to their evacuation and the treatment of persons deprived of their liberty. The Fourth Geneva Convention provides that the infirm "shall be the object of particular protection and respect" (Article 16).

During armed conflicts, persons with disabilities are at greater risk of violence. According to the International Humanitarian Law, state parties should ensure the protection and safety of persons with disabilities. The Artsakh Human Rights Ombudsman highlights that the obligation to treat persons with disabilities humanly and protect their right to life should be applied under all the circumstances.

The acts of extreme violence towards the peaceful civilian population, especially towards persons with disabilities and women by Azerbaijani armed forces should be strictly condemned by the international organizations and world community.

At this point, it should be emphasized that Azerbaijani authorities are artificially protracting the process of exchange of bodies and captives, which has been the case during the military activities, and continues now after the completion of military actions. By doing so, Azerbaijan grossly violates the fundamental requirements guaranteed by International law, including Geneva Conventions.

It is obvious that the aim of Azerbaijani side is to create an atmosphere of uncertainty and tension in the Armenian society, disrupt the mental immunity, cause mental suffering to the family members of the deceased soldiers and prisoners of war. Mr. Nils Melzer, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and a working group Working Group on

Enforced or Involuntary Disappearances; Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions had issued statement expressing their alarm over the situation: "We are seriously alarmed at reported acts of ill-treatment and the desecration of bodies," the experts said. "We note that both parties have begun the return of prisoners of war and other captives, and we call on them to complete the all for all exchange, to clarify the fate and whereabouts of the disappeared, and to treat dead bodies with dignity. They issued an appeal to the governments of Armenia and Azerbaijan.

"We appeal to the authorities of Armenia and Azerbaijan to carry out thorough, prompt, independent and impartial investigations into allegations of serious human rights violations committed during the conflict and its aftermath in order to hold perpetrators to account and provide redress to the victims. These actions will facilitate truth, reconciliation and healing," they said.²⁵

25. See: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26702&LangID=E&fbclid=IwAR22daSzZEcRsQ37neuYb9_LbZTgnXe84bZdxliT0lrRsVhDLIDzoTRT5H8



Chapter 2: Methodologies of war

Use and trafficking in mercenaries in fight against population of Artsakh

In preparation and execution of this war, Azerbaijan was not only getting direct support from Turkey in a form of modern military armory, personnel and administration but also in a form of organized deployment of mercenaries from Syria to fight against people of Artsakh, which was reported in the international media,²⁶ and indicated in the official statements of several states, including France,²⁷ Russia,²⁸ Iran,²⁹ Syria,³⁰ as well as statements of MPs from USA,³¹ European Parliament³² and UK.³³ Turkish companies have been

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26. 1) France 24, <https://www.fr24news.com/a/2020/10/france-accuses-turkey-of-sending-syrian-mercenaries-to-nagorno-karabakh-2.html>; The Moscow Times, <https://www.themoscowtimes.com/2020/09/30/russia-says-syria-libya-fighters-deployed-to-karabakh-conflict-a71610>; Reuters, <https://www.reuters.com/article/us-armenia-azerbaijan-putin-macron/france-accuses-turkey-of-sending-syrian-mercenaries-to-nagorno-karabakh-idUSKBN26L3SB>; <https://www.reuters.com/article/armenia-azerbaijan-int/assad-blames-turkey-for-nagorno-karabakh-fighting-russia-sees-terrorism-risk-idUSKBN26R1DZ>
- 2) The Jerusalem Post, <https://www.jpost.com/breaking-news/mercenaries-from-syria-being-deployed-in-nagorno-karabakh-assad-644705>;
- 3) Foreign Policy, <https://foreignpolicy.com/2020/10/05/nagorno-karabakh-syrians-turkey-armenia-azerbaijan/>;
- 4) Radio France Internationale, <https://www.rfi.fr/en/international/20201001-macron-claims-syrian-jihadists-active-in-conflict-between-armenia-and-azerbaijan-nagorno-karabakh>
- 5) BBC, <https://www.bbc.com/news/world-europe-54366616>
- 6) Middle East Monitor, <https://www.middleeastmonitor.com/20201001-we-were-deceived-says-syria-mercenary-fighting-in-azerbaijan>
- 7) Independent, <https://www.independent.co.uk/news/france-fears-turkey-sending-mercenaries-caucasus-turkey-emmanuel-macron-nagornokarabakh-vladimir-putin-azerbaijan-b738440.html>;
- 8) The Australian, <https://www.theaustralian.com.au/world/erdogan-sends-mercenaries-to-tinderbox-conflict-in-caucasus/news-story/c7e4972257b2a9afc251b2ecb8b26f1b>;
- 9) Gulf News, <https://gulfnews.com/opinion/editorials/erdogans-use-of-mercenaries-under-the-spotlight-again-1.74315976>;
27. E.Macron, https://www.youtube.com/watch?v=OCQqW1A5kuM&feature=emb_logo; <https://www.reuters.com/article/us-armenia-azerbaijan-putin-macron/france-accuses-turkey-of-sending-syrian-mercenaries-to-nagorno-karabakh-idUSKBN26L3SB>
28. S.Lavrov, <https://www.reuters.com/article/us-armenia-azerbaijan-putin-macron/france-accuses-turkey-of-sending-syrian-mercenaries-to-nagorno-karabakh-idUSKBN26L3SB>; S.Narishkin <http://www.svr.gov.ru/smi/2020/10/o-situatsii-vokrug-nagornogo-karabakha.htm>
29. H.Rouhani, <http://www.president.ir/en/117707>; S.Khatibzadeh, <https://bit.ly/2l1CQca>
30. B.Assad, <https://www.youtube.com/watch?v=LgwonSJlPlpw>; <https://www.reuters.com/article/armenia-azerbaijan-syria-assad-int-idUSKBN26R0V6>
31. USA Congressmen A.Schiff, <https://www.facebook.com/watch/?ref=external&v=831208917617724>; D.Titus, <https://twitter.com/repdinatitus/status/1310636287918067716>; B.Sherman, <https://twitter.com/BradSherman/status/1310335797799813122>; J.Chu, https://anca.org/press-release/members-of-congress-blast-azerbaijan-and-turkey-as-attack-on-artsakh-expands-to-armenia/?fbclid=IwAR2DrUCNcN-Wlc38HNrlYyYDRDclK8Ivvhj7xlrPRZ94GcFmelc00GrI3_5-l
32. European Parliament Plenary Session, <https://hetq.am/en/article/122709?fbclid=IwAR06a1e1mg9PQ-j4MWcfIRc1aDqWK3ePwOqvxY9YpG1nZnouGzDnhA8aPXgg>
33. UK Members of All-Party Parliamentary Group for Armenia, <https://en.armradio.am/2020/10/06/uk-mps-condemn-azerbaijani-attack-against-artsakh-and-armenia/>

recruiting former Syrian fighters, as well as impoverished citizens under the pretense of guarding pipe line in Azerbaijan under the very favorable conditions, in reality these people found themselves forced to fight on the frontlines of the war against people in Artsakh.

Several independent media sources have interviewed Syrians now in Azerbaijan as well as in Syria, and these interviews reveal that since August 2020 Syrians were recruited, many from the Syrian National Army, "the umbrella organization of all Syrian opposition factions backed by Turkey,"³⁴ to serve as security forces at military installations in Azerbaijan, but once the conflict began they were forced into front line battle under the threat of imprisonment if they refused.³⁵ The mercenaries were transported to Azerbaijan from Syria through Turkey.³⁶ There have been also reports that these people have been brought to Azerbaijan violating all the norms of air security without passport and any other security control.

Turkey has a history of recruiting mercenaries, and besides Syria it has also deployed mercenaries in Libya. Its military operations in these countries have led to uncontrollable armed clashes, exacerbated by gross violations of human rights, involving paramilitary groups and ISIS militants.³⁷ Turkey this was supporting policy of terrorism spread and instability in the regions and currently this is step to destabilize the Caucasus. Concerns over that have been expressed by high ranking officials in Russian Federation.³⁸

It is also to be noted that not many persons who have been recruited to fight on the side of Azerbaijan from Syria have been leaders of terrorist groups, though many have been fighters, but also impoverished by the war former Syrian soldiers looking for jobs and

34. The Investigative Journal, <https://investigativejournal.org/turkeys-syrian-mercenaries-in-azerbaijan-feel-tricked-as-bodies-pile-up/?fbclid=IwAR1Oxlb8VpeLEnWUh0qXlIIjrfGoAGfCqWXyak7ihK-BapRiqimLa8GGQIfY>

35. Id., and The Guardian, https://www.theguardian.com/world/2020/sep/28/syrian-rebel-fighters-pre-prepare-to-deploy-to-azerbaijan-in-sign-of-turkeys-ambition?fbclid=IwAR1VIR_1YfNjEtRy5MkEiSQnb-vMAR-VbK5mbAhJc1JtWFSNirL7fJiSDqIA

36. France 24, <https://youtu.be/e9k1d1CPf6g>

37. OHCHR, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26258&LangID=E>, <https://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=25970&LangID=E>

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

38 https://arminfo.info/full_news.php?id=57632&lang=3

money to be able to feed their families.³⁹ "This is a population that has suffered immensely - displacement, chemical weapons, starvation, sieges, extermination in prisons - and now Syrians are basically just accepting the logic of an international community that does not value their lives and sees them as pawns."⁴⁰ These people have been used as human shield, as cannon fodder "in these operations.

The recruiters similar to human trafficking criminal rings seem to have used the state of poverty of these people, need of money in recruiting them. Some of the articles refer to such groups being recruited. In Interview to BBC "a person joined the rebel Free Syrian Army as a student at the start of the revolution, asks those who would judge the Syrians who travelled to Azerbaijan to imagine what it is like being unable to afford milk or nappies for their children."⁴¹ "Those who see us as mercenaries, they don't see our poverty and our need. We would do anything to help our children. It's the worst thing to see your child needing milk and you can't provide it. In our place you too would make the same decision."

So the vulnerability of these people has been used to recruit them in criminal ring and continue the process of exploitation. Many modes of operandi described in the media have been very similar to ones used by traffickers to force people to do the work under threat. Many interviews mention that the recruiters have been threatening by imprisonment or death if they do not fight or return. All the elements of definition of Palermo Protocol to Convention of translational organized crime are employed in the process: use of vulnerability, many articles have been describing impoverished after war solders and male population , who had no means to take care of their family, transfer: the mercenaries have been transported from Turkey to Azerbaijan , provided with passports , misinformed on the nature of the work, as many were saying that they have been promised to guard pipeline, instead were placed at the front line of fighting, complaints of partial payment. The army have been forcing them to fight, even promising as reward 100\$ for the head of "an Armenian". (this information was placed in social media by Azerbaijan. Many wanted to return, but were not allowed. The panic started after first death. There have been

39. See: <https://www.bbc.com/news/stories-55238803>

40. Ibid

41. Ibid

different statistics on number of death during fighting.⁴² The facts that they have been cheated and trafficked in also prove the interview with returned person done by BBC correspondent.⁴³ It was also noteworthy that these people did not know the nature of the work and were not mercenaries before proves the interview. I feel ashamed,” says Samir, even though he refused to fight after just three days on the front line.

“When people ask me, ‘Did I travel?’ I say no - even though they know that I went. I feel like I am very small in their eyes... When I got there I did say no to war. I objected to what was happening. But I’m ashamed because I trusted the mercenaries. That’s why I feel shame.”

Turkey and Azerbaijan use mercenaries as a means of violating human rights of people of Artsakh, in addition to creating a heavy multinational layer to the conflict and shaking the regional stability. According to intelligence data of Artsakh authorities, Turkish President has reached an agreement with the leader of the Islamic Party of Afghanistan, a terrorist included in the UN black list, to involve new terrorist groups.⁴⁴

UNODC in its report on Trafficking in Persons in the context of wars in 2018 has been referring to many forms of trafficking during conflicts for various purposes, as child soldiers, prostitution, forced labor, but no mention of such new emerging form of trafficking in humans. Trafficking in human is a very demand oriented form of crime and emergence in this context, requires intensive study and preventive address.

The UN Human Rights Council by its 42/9 resolution of 26 September 2019 has strongly condemned use of mercenaries to impede the exercise of the right of peoples to self-determination, considering mercenaries’ activities crimes and threat to security, peace and human rights.

42. See https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict_embargoed.pdf

43. See <https://www.bbc.com/news/stories-55238803>

44. See <https://www.panorama.am/en/news/2020/10/07/Artsakh-Vahram-Poghosyan/2376724>

Legislation

The United Nations Mercenary Convention, officially the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, is a 2001 United Nations treaty that prohibits the recruitment, training, use, and financing of mercenaries. Azerbaijan is party to the Convention since 1997, Armenia ratified in 2020

UN Convention on Transnational Organized Crime, Palermo protocol, Convention of CoE on actions against trafficking in humans

As noted earlier, 'enslavement' is deemed a crime against humanity under Article 7(1)(c) of the Rome Statute and defined at Article 7(2)(c) as: "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

Human trafficking finds mention in the Statute as enslavement under article 7(2)(c) that defines enslavement to include "the exercise of powers attaching to the right of ownership in the course of trafficking". The sine qua non under article 7(2)(c) is the existence of a right of ownership over the trafficked persons which can be carried out by means of trade or sale of one or more persons, and other acts that comprise a similar deprivation of liberty. However, trafficking in people emanating independently of slave trade is broader than slavery and other slavery-like practices.

The Use of Banned Munitions and weapons containing "white phosphorus" and drones

"The continued use of cluster munitions – particularly in populated areas – shows flagrant disregard for the safety of civilians," said Stephen Goose, arms division director at Human Rights Watch and chair of the Cluster Munition Coalition. "Cluster munitions should never be used by anyone under any circumstances, much less in cities, due to the foreseeable and unacceptable harm to civilians."⁴⁵

45. See <https://www.hrw.org/news/2020/10/23/azerbaijan-cluster-munitions-used-nagorno-karabakh#>

In recent years there has been growing international concern about the humanitarian effects of cluster munitions, particularly following their use in Afghanistan, Chechnya, Iraq, and Kosovo, Lebanon and in Nagorno Karabakh. Research indicates that, in the limited set of conflicts in which they have been used, submunitions from cluster weapons are a disproportionate hazard to civilians, both at the time of their use as well as post conflict. The growing world concern over use of cluster munitions raised by UN, humanitarian workers in the field and NGO's is related to the humanitarian threats that cluster munitions pose to civilians both at the time of use and after conflict has ended because of their wide-area effect, and the inaccuracy and unreliability of the sub munitions. The humanitarian effects of cluster munitions are very dangerous. At the time of use, cluster munitions can kill and maim civilians. After use, sub munitions that have failed to explode threaten civilians who come into contact with them, either accidentally or deliberately. Many experts seem to agree that, unlike, say, anti-personnel mines, cluster munitions are not inherently indiscriminate. By their very design, cluster munitions have an indiscriminate wide area effect that can make them difficult to target accurately. In practice, cluster munitions have often been used in the vicinity of civilians, against fixed targets, isolated vehicles or perhaps in a counter-fire role. If a sub munition fails to explode as intended, it poses an explosive hazard to anyone—whether soldier or civilian—who might encounter it. Manufacturers of cluster munitions have customarily claimed that their weapons are highly reliable. However, terrain and weather conditions, the age of the components, the explosive mixture in the sub munitions, or the way the sub munitions have been stored or handled can all affect reliability considerably. This means that, in practice, the reliability of sub munitions is much lower than the figures proclaimed by manufacturers and recited by purchasing governments, as shown by the sheer number of so-called “duds” remaining after conflicts have ended.⁴⁶ The very use of cluster munitions is itself an indication of nature of the attack and use of methodology of targeting civilian population, taking into account certain factors of their use, such as the nature of the weapon from which the cluster munitions were fired, the absence of military objectives nearby, as well as the statements by the responsible military-political leadership for such attacks (See e.g.: ICTY,

46. International Committee of the Red Cross, 2000 (revised 2001), *Cluster Bombs and Landmines in Kosovo: Explosive Remnants of War*, Geneva, at.

Prosecutor v. Martić, Trial Chamber decision on Rule 61, 8 March 1996, paras 18, 23-31; ICTY, Prosecutor v. Martić, Trial Chamber judgment, 12 June 2007, paras 236, 240, 263, 462.). The cluster munitions cannot distinguish between military objects and civilian, specifically in the densely populated areas so they target indiscriminately

Forbidden by the international law cluster munitions and white phosphorus have been also used by Azerbaijan against population of Artsakh, its flora and fauna. There is large documented evidence on the repeated use of cluster munitions by Azerbaijan against the civilians of Artsakh. A video demonstrating the attack and its impact on the surrounding civilian residential area of Stepanakert was released. The ombudsman of Artsakh reported the use of LAR-160, as well as "Smerch" cluster-warhead missiles against the capital Stepanakert, towns of Shushi and Hadrut and the village of Shosh near Stepanakert, Martuni. Cluster bombs were found in homes and streets, according to the HALO Trust, one of the very few international humanitarian organizations present in Artsakh (Nagorno Karabakh). Amnesty International identified Israeli-made M095 DPICM cluster munitions fired by Azerbaijan against Stepanakert. Most recently, on 23 October, Human Rights Watch confirmed the repeated use of cluster munitions by Azerbaijan against the populated areas of the cities of Artsakh that showed "flagrant disregard for safety of civilians"

According to available reports, Azerbaijani armed forces employed weapons containing white phosphorous and allegedly other chemicals on the forests of Artsakh. Videos were released demonstrating the use of such weapons. According to the fact-finding of Artsakh (Nagorno Karabakh) ombudsman, Azerbaijani armed forces have already burnt about 1.815 hectares of forests as of 2 November. According to the available data, they are used in all regions, with the most damage to Kashatagh, burnt 910 hectares forests. This number is growing rapidly due to the continuous and more active use of such weapons.

These are incendiary weapons/munitions which are "primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target" (Article 1, CCW Protocol III.).

In addition to the environmental catastrophe, the use of these

weapons threatens the civilian populations that have found shelter in the forests as a result of Azerbaijani targeting of cities and villages. Besides, their use may cause unnecessary suffering to the combatants.

The damage to people and nature is fatal and long term. According to doctors report the injuries result in long term suffering and death. Many people who received burns face long term cure which in majority situations ends with fatal results. The report of Ombudsman comes with the following conclusions as a result of the monitoring on fatal impact on people, the forests have been burned in all regions of Artsakh (overall at least 1815 hectares of forest area); many animals slaughtered and several objects indispensable to of human activity have been severely destructed.⁴⁷

Legislation

*There is no treaty specifically addressing issues related to use of white phosphorus, as munitions contacting “white phosphorus, as a means of war warfare, but there are several treaties addressing the issue. The Protocol III to the 1980 Convention on Certain Conventional Weapons sets clear definition of the incendiary weapon. Article 1 Para1 states “[I]ncendiary weapon” means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target.*⁴⁸

Furthermore, as it is stated in the Subparagraph (a) of the same paragraph, [I] incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances

Use of the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus) against the civilians and civilian objects of Artsakh, by

47. See <https://artsakhombuds.am/en/document/785>

48. See the 1980 Protocol on Incendiary Weapons (Protocol III to the 1980 Convention on Certain Conventional Weapons), [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/B409BC0DCFA0171C-C12571DE005BC1DD/\\$file/PROTOhttps://www.unog.ch/80256EDD006B8954/\(httpAssets\)/B409BC0DCFA0171CC12571DE005BC1DD/\\$file/PROTO](https://www.unog.ch/80256EDD006B8954/(httpAssets)/B409BC0DCFA0171C-C12571DE005BC1DD/$file/PROTOhttps://www.unog.ch/80256EDD006B8954/(httpAssets)/B409BC0DCFA0171CC12571DE005BC1DD/$file/PROTO)

Azerbaijan constitutes clear violation of the International Humanitarian Law and relevant Customary Law.

The Protocol restricts use of incendiary weapons as a means or method of warfare during armed conflict, prohibiting its use against civilians and civilian communities. In particular, according to the Article 2 Paragraph 1 of the Protocol, [I]t is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons. Meantime, it is stated in the Paragraph 3 of the Article 1, that “[M]ilitary objective” means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁴⁹

Taking into account the definition of the civilian object in the context of the Protocol and the facts discussed, it can be easily concluded that the attacks were made towards civilian objects and violate the very essence and core principles of the Protocol.

Furthermore, according to the Article 2 Paragraph 2, [I]t is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons. In the context of the Protocol (Article 1 paragraph 2), “[C] concentration of civilians” means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.

The investigation of the Human Rights Defender of Armenia and the official statement of him following the damages caused to the civilian communities as a result of the Azerbaijani Armed Forces’ indiscriminate and in some cases targeted civilians attacks, sheltered in the forests close to their homes. Therefore, those forests became camps of evacuees, where the civilians of Artsakh were hiding from the Azerbaijani Armed Forces’ attacks. So, by targeting the forest areas used as a camps for evacuees (civilians population of Artsakh), the Azerbaijani Armed Forces grossly violated also another fundamental principle of the Protocol on targeting civilian objects and civilians by the Azerbaijani Armed Forces as the violation of the Customary International Humanitarian Law.

49. Ibid

Furthermore, the rule of distinction in attacks in the International Humanitarian Law (IHL) holds that in the conduct of hostilities during an armed conflict parties to the conflict must target only lawful military objectives and never civilians or civilian objects. An attack that does not target one or more lawful military objectives is an indiscriminate attack. This includes the use of an inherently indiscriminate weapon. While conducted intentionally it may constitute a war crime.

In particular, according to the Article 8 Paragraph 2 Subparagraph (b) Point (iv) of the Rome Statute of the International Criminal Court, the following constitutes a war crime: “[I]**ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated**”.

The rule of distinction - the duty to distinguish in attacks between lawful military objectives on the one hand (e.g. combatants and military materiel) and civilians and civilian objects on the other - can be considered the most fundamental of all IHL rules governing the conduct of hostilities. Its application and respect in international armed conflict are generally more straightforward than in non-international armed conflict. In any armed conflict the use of an inherently indiscriminate weapon violates the rule of distinction and is prohibited. So it must be concluded that the use of the incendiary ammunition of mass destruction (i.e. incendiary weapon) containing chemical elements (possibly white phosphorus) by the Azerbaijani Armed Forces, violates also the IHL fundamental law on the prohibition of indiscriminate attacks and use of indiscriminate weapon. Moreover, this constitutes a war crime.

The Protocol restricts the use of incendiary weapons against forests as well. Specifically, according to the Article 2 Paragraph 4, [I]t is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives. The forests can be solely targeted in cases when there are military objects.

The prohibition on the attacks that might cause long-term and severe damage to the natural environment, including through use of incendiary weapons is strict. It is enshrined in various IHL documents including

the Additional Protocol I to the 1949 Geneva Conventions (hereinafter referred to as "the Additional Protocol"). In particular, the Article 35 Paragraph 3 stipulates that "[I]t is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment". The article directly protects the natural environment and applies to intentional damage, as well as expected collateral damage.

Furthermore, the Article 55 Paragraph 1 of the Additional Protocol provides specific protection of the environment as part of the protection granted to civilian objects and it explicitly prohibits attacks on the environment by way of reprisals. In particular, it states that "[C]are shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population". The rule underlines the importance of the protection of the natural environment from the damage, which may cause a threat to the people around. Furthermore, the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (hereinafter referred to as "the ENMOD Convention") is an instrument of international disarmament law specifically intended to protect the environment in the event of armed conflict. It prohibits hostile use of the environment as a means of warfare, such as the engagement in the military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury. The provisions of Additional Protocol I of 1977 to the Geneva Conventions of 1949 form an essential complement to those of the ENMOD Convention, as they directly prohibit damage to the environment during armed conflict. Other rules and principles of international humanitarian law also confer protection on the environment during armed conflict, though without mentioning it specifically.

This is particularly the case with general customary principles regarding the conduct of hostilities, such as the principle of distinction, which prohibits attacks on environment, and that of proportionality, which prohibits the use of means and methods of warfare that cause excessive damage to nature.

Moreover, under the Fourth Geneva Convention, extensive

destruction of property “not justified by military necessity and carried out unlawfully and wantonly” constitutes a grave breach. This rule is restated in other instruments with respect to the natural environment. Regardless of specific treaty obligations, all parties to the conflict are bound by the Geneva Conventions and customary international law and must abide by the fundamental principles of international humanitarian law, which requires armed forces to distinguish between combatants and civilians, and between military objects and civilian objects, at all times. It is also forbidden to carry out indiscriminate attacks or attacks that cause excessive civilian damage to the anticipated concrete military advantage.



The Government of the Republic of Armenia



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