



# Asamblea General Consejo de Seguridad

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Temas del programa 32, 37, 68, 70, 75 y 83

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## **Carta de fecha 3 de febrero de 2020 dirigida al Secretario General por el Representante Permanente de Azerbaiyán**

A finales de 1991 y comienzos de 1992 Armenia desató una guerra total contra Azerbaiyán, que se cobró la vida de decenas de miles de personas y causó una destrucción considerable de infraestructura civil, propiedades y medios de vida en mi país.

Una parte importante del territorio de Azerbaiyán, que comprende la región de Nagorno Karabaj, los siete distritos adyacentes y algunos exclaves, fue ocupada por Armenia y continúa bajo su ocupación en violación del derecho internacional y las resoluciones [822 \(1993\)](#), [853 \(1993\)](#), [874 \(1993\)](#) y [884 \(1993\)](#) del Consejo de Seguridad. En los territorios ocupados se procedió a la depuración étnica de todos los azerbaiyanos, de resultas de lo cual más de un millón de personas se vieron obligadas a abandonar sus hogares y propiedades en esos territorios.

Tengo el honor de presentarle un informe sobre los crímenes de guerra en los territorios ocupados de la República de Azerbaiyán y la responsabilidad de la República de Armenia (véase el anexo)\*\*. El informe fue preparado a petición del Gobierno de la República de Azerbaiyán por el eminente abogado internacional Malcolm Shaw, QC, abogado, Essex Court Chambers, Londres, Investigador Superior del Centro Lauterpacht de Derecho Internacional de la Universidad de Cambridge (Reino Unido de Gran Bretaña e Irlanda del Norte) y Miembro Asociado del Instituto de Derecho Internacional, y por Naomi Hart, abogada, Essex Court Chambers, Londres.

\* Publicado nuevamente por razones técnicas el 27 de febrero de 2020.

\*\* El anexo se distribuye únicamente en el idioma en que fue presentado.



En el informe se examinan los principales crímenes de guerra cometidos por Armenia, sus agentes y funcionarios, y aquellos de los que es directamente responsable en los territorios de Azerbaiyán actualmente bajo ocupación, y se examinan también los hechos y aspectos legales pertinentes. En la conclusión del informe se afirma que Armenia es responsable de una serie de crímenes de guerra, entre ellos los relacionados con la muerte o las lesiones de civiles; la propiedad civil; el maltrato de detenidos y prisioneros de guerra; la toma de rehenes; la limpieza étnica, el desplazamiento forzado y el cambio de carácter del territorio ocupado; la destrucción del patrimonio cultural; y los daños al medio natural.

Según el informe, algunas de las conductas que constituyen crímenes de guerra pueden también alcanzar el grado de delito de genocidio, ya que han tenido como blanco a personas de etnia azerbaiyana en razón de su nacionalidad o etnia, y la intención pertinente ha sido la de destruir el grupo en parte.

Resulta evidente que serían necesarios volúmenes enteros para examinar en mayor detalle los crímenes cometidos durante la agresión armenia, y que el informe dista mucho de ser exhaustivo. Sin embargo, en el informe se aportan pruebas convincentes sobre el alcance, la variedad y la continuidad de las violaciones del derecho internacional humanitario cometidas por Armenia y sobre la comisión de múltiples crímenes de guerra de los que Armenia es responsable en virtud del derecho internacional y de los que se derivan también responsabilidades penales individuales.

El rechazo por parte de Armenia de su responsabilidad por los delitos examinados en el informe y otros muchos actos delictivos cometidos contra Azerbaiyán y sus ciudadanos en el curso de la guerra constituye una clara violación del derecho internacional, así como un desafío a los derechos humanos, un obstáculo directo a la paz duradera y la reconciliación genuina y una amenaza para la seguridad y la estabilidad en la región.

Los hechos recogidos en el informe requieren la adopción de medidas por parte de las Naciones Unidas, sus órganos y mecanismos competentes, los Estados Miembros, otras organizaciones internacionales pertinentes y la comunidad internacional en su conjunto para garantizar que se produce una rendición de cuentas, de conformidad con el derecho internacional sobre la responsabilidad de los Estados y el derecho penal internacional.

Le agradecería que tuviera a bien hacer distribuir la presente carta y su anexo como documento de la Asamblea General, en relación con los temas 32, 37, 68, 70, 75 y 83 del programa, y del Consejo de Seguridad.

(Firmado) Yashar Aliyev  
Embajador y  
Representante Permanente

## **Anexo de la carta de fecha 3 de febrero de 2020 dirigida al Secretario General por el Representante Permanente de Azerbaiyán**

### **Report on war crimes in the occupied territories of the Republic of Azerbaijan and the Republic of Armenia's responsibility**

#### **Introduction**

1. This Report constitutes an examination of Armenia's responsibility for war crimes committed by it, its agents and officials and those for whom it is directly responsible, in the territories of Azerbaijan currently under occupation. It also covers Armenia's responsibility for actions and omissions of the so-called "Nagorno-Karabakh Republic" ("NKR") or alternatively the "Republic of Artsakh", the subordinate local administration whose existence is maintained solely by virtue of Armenia's overwhelming political, economic and military support and for which Armenia has thereby assumed international responsibility.

2. The Report seeks to outline the major war crimes committed, discussing the relevant facts and law. It cannot be comprehensive given the vast evidence of contraventions of international humanitarian law attributable to Armenia, but it is believed that it provides convincing evidence as to what has been, and is, going on in the Azerbaijani sovereign territories occupied by Armenia.

3. The Report is divided into the following sections. Part I consists of the factual and historical background; a general overview of international humanitarian law; and an analysis of the responsibility of Armenia. Part II consists of the war crimes examined in the following order. First, war crimes relating to civilian deaths and injuries; second, war crimes related to civilian property; third, war crimes relating to the mistreatment of detainees and prisoners of war; fourth, war crimes relating to the taking of hostages; fifth, war crimes relating to ethnic cleansing, forced displacement and changing the character of occupied territory; sixth, war crimes relating to the destruction of cultural heritage; and seventh, war crimes relating to damage to the natural environment. There then follows a brief conclusion.

## **Part I: The Essential Framework**

### ***(i) Factual and historical background***

4. Armenia and Azerbaijan were both part of the former Union of Soviet Socialist Republics ("USSR") as the Soviet Socialist Republic of Armenia ("the Armenian SSR") and the Soviet Socialist Republic of Azerbaijan ("the Azerbaijan SSR"). They became independent on 21 September 1991 and on 18 October 1991, respectively.<sup>1</sup> Captured by the Bolsheviks in 1920 together with the rest of Azerbaijan, Nagorny Karabakh<sup>2</sup> was established within the Azerbaijan SSR on 7 July 1923 as an autonomous oblast.

<sup>1</sup> Azerbaijan declared independence from the Soviet Union on 30 August 1991. This was subsequently formalised by means of the adoption of the Constitutional Act on the State Independence of 18 October 1991 then confirmed by a nationwide referendum on 29 December 1991.

<sup>2</sup> Note that "Nagorny Karabakh" or "Nagorno-Karabakh" is a Russian translation of the original name in Azerbaijani language — "Dağlıq Qarabağ" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. "Nagorny Karabakh" is conventionally used as a free-standing proper noun, whereas "Nagorno-Karabakh" is conventionally used as an

5. Nevertheless, the Armenian SSR has always shown interest in this part of Azerbaijan,<sup>3</sup> which was populated by a majority of ethnic Armenians<sup>4</sup> as a result of the artificial drawing of the limits of the oblast by the Soviets. However, this was not the case with regard to the other parts of Azerbaijan's territories occupied by Armenia: with the exception of some villages, ethnic Armenians were not in the majority in those territories. As pointed out by the International Crisis Group, basing itself on the 1989 census of the population of the USSR, before the war, the inhabitants of the occupied districts "were almost exclusively Azeris".<sup>5</sup> After 1987 Azerbaijanis<sup>6</sup> were the subject of attacks both in the territory of the Armenian SSR and in the Nagorno-Karabakh autonomous oblast of the Azerbaijan SSR,<sup>7</sup> which was followed by a series of claims as to the "unification" of Armenia and Nagorny Karabakh<sup>8</sup> or the latter's "independence". On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of such claims without Azerbaijan's consent was confirmed at the highest constitutional level. Besides the decisions taken by Azerbaijan itself, these claims were consistently invalidated also by the bodies of the USSR with the primary relevant authority, such as the Supreme Soviet, the Presidium of the Supreme Soviet, the State Council or the Committee of the Constitutional Oversight.<sup>9</sup>

6. With the declaration of Armenian independence on 21 September 1991 and that of Azerbaijan on 18 October that year, the conflict over Nagorny Karabakh became an international one. Both Armenia and Azerbaijan came to independence within the boundaries that they had had as republics of the USSR by agreement of the successor States and Russia and were recognised as such in accordance with international law.<sup>10</sup>

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attributive noun in conjunction with another noun (such as in "the Nagorno-Karabakh region" or "Nagorno-Karabakh forces"). This Report adopts these conventions.

<sup>3</sup> See H. Krüger, *The Nagorno Karabakh Conflict: A Legal Analysis* (Springer, 2010), pp. 17–18.

<sup>4</sup> As noted by the European Court of Human Rights: "According to the USSR census of 1989, the NKAO had a population of 189,000, consisting of 77% ethnic Armenians and 22% ethnic Azeris, with Russian and Kurdish minorities": *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 13.

<sup>5</sup> Crisis Group Europe Report No. 166, Nagorno-Karabakh: Viewing the Conflict from the Ground (14 September 2005), p. 7.

<sup>6</sup> In this Report, save where context indicates otherwise, the term "Azerbaijani" is used to refer to individuals who are ethnically Azerbaijani (or, equivalently, towns inhabited or property owned by ethnic Azerbaijanis). That is without prejudice to the fact that there are many ethnic Armenians, including those who lived in the now-occupied territories prior to occupation, who are also nationals of Azerbaijan and are therefore "Azerbaijani" in the broader sense.

<sup>7</sup> See "Non-compliance by the Republic of Armenia with Security Council Resolutions 822(1993), 853(1993), 874(1993) and 884(1993)", Annex to the Letter dated 23 May 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/67/875-S/2013/313 (24 May 2013), para. 1. See also S.E. Cornell, *The Nagorno Karabakh Conflict*, Department of East European Studies, Uppsala University, Report no. 46 (1999), pp. 13, 15.

<sup>8</sup> H. Krüger, *The Nagorno Karabakh Conflict: A Legal Analysis* (Springer, 2010), pp. 20–21; S.E. Cornell, *The Nagorno Karabakh Conflict*, Department of East European Studies, Uppsala University, Report no. 46 (1999), pp. 23–24.

<sup>9</sup> "Report on the Fundamental Norm of the Territorial Integrity of States and the Right to Self-determination in the light of Armenia's Revisionist Claims", Annex to the Letter dated 26 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/664-S/2008/823 (29 December 2008), paras. 152–166; "Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia's responsibility", Annex to the Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/66/787-S/2012/289 (3 May 2012), paras. 2–14; Identical Letters dated 20 September 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, UN Doc A/74/450-S/2019/762 (23 September 2019), pp. 1–3.

<sup>10</sup> See also the Declaration of Minsk (8 December 1991), 31 ILM, p. 138 (1992), Article 5; Alma-Ata Declaration of 21 December 1991, 31 ILM, p. 148 (1992); Charter of the Commonwealth of Independent States of 22 January 1993, 34 ILM, p. 148 (1995), p. 1283, Article 3.

This meant that the Nagorno-Karabakh region was internationally accepted, both politically and legally, as falling with the territory of Azerbaijan.<sup>11</sup>

7. Fighting in the Nagorno-Karabakh region intensified after independence of Armenia and Azerbaijan, followed by the increased involvement of troops from the Republic of Armenia during this period. The first armed attack by Armenia against Azerbaijan after the independence of the two Republics — an attack in which organised military formations and armoured vehicles operated against Azerbaijani targets — occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun.<sup>12</sup> Armenia's action turned the situation into an international armed conflict because two independent States were involved from this point on. Direct artillery bombardment of the Azerbaijani town of Lachin — mounted from within the territory of the Republic of Armenia — took place in May of that year.<sup>13</sup> Other Azerbaijani cities within and outside of Nagorny Karabakh, such as Shusha and Kalbajar, were subsequently occupied.<sup>14</sup> Neutral sources have described massacres of Azerbaijani civilians and disarmed soldiers by Armenian forces — particularly after the fall of the cities of Khojaly and Kalbajar.<sup>15</sup> In the words of the European Court of Human Rights:

“In early 1992 the conflict gradually escalated into full-scale war. The ethnic Armenians conquered several Azeri villages, leading to at least several hundred deaths and the departure of the population.”<sup>16</sup>

8. In 1993, the United Nations Security Council adopted a series of four resolutions on that matter. In the first resolution of 30 April, Resolution 822 (1993), the Security Council demanded “the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire, as well as immediate withdrawal of all occupying forces from the Kelbajar district and other recently occupied areas of Azerbaijan”.<sup>17</sup>

9. In its second resolution on that matter, Resolution 853 (1993) of 29 July 1993, the Security Council condemned the seizure of new districts and areas in Azerbaijan

<sup>11</sup> Armenia refers to the entity it has set up in the occupied Nagorno-Karabakh region of Azerbaijan as either the “Nagorno-Karabakh Republic” or the “Republic of Artsakh”. This self-proclaimed entity is entirely unrecognised as a State, even by Armenia. “NKR” will be used hereafter, as appropriate, without prejudice to the status of the territory as an internationally recognised part of Azerbaijan and without exoneration of Armenia from its responsibility.

<sup>12</sup> See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* 170 (2003). A brief factual account of the fall of Khojaly can be found in a Judgment of the European Court of Human Rights in *Fatullayev v Azerbaijan*, App. No. 40984/07, ECtHR, 22 April 2010, para. 87: “It appears that the reports available from independent sources indicate that at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town, who were reportedly assisted by the 366th Motorised Rifle Regiment”.

<sup>13</sup> See the Statement by the Ministry of Foreign Affairs of the Republic of Azerbaijan, Annex to the Letter from the Permanent Representative of Azerbaijan addressed to the President of the Security Council, UN Doc S/23926 (14 May 1992).

<sup>14</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), fn 8 and p. 7.

<sup>15</sup> See, e.g., *ibid.*, p. 84; Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), p. 195; Thomas De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (NYU Press, 2004), p. 337.

<sup>16</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 18.

<sup>17</sup> United Nations Security Council Resolution 822, UN Doc S/RES/822 (30 April 1993), para. 1.

and “attacks on civilians and bombardments of inhabited areas”.<sup>18</sup> It further called on “the parties concerned to reach and maintain durable cease-fire arrangements”.<sup>19</sup>

10. These resolutions were reiterated a few months later,<sup>20</sup> but despite the Security Council’s position, the attacks continued and other Azerbaijani cities were occupied. This was immediately noted by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorno Karabakh who stated that the continuing attacks and the expansion of the occupation was “in flat contradiction with past Nagorno Karabakh Armenian assurances that they remained committed to a peaceful settlement of the conflict”.<sup>21</sup>

11. In a Report dated 14 April 1993, the Secretary-General of the United Nations stated that the use of “heavy weaponry” seemed “to indicate the involvement of more than local ethnic forces”.<sup>22</sup>

12. Finally, the Security Council, in its last resolution on that matter, Resolution 884 (1993) of 12 November 1993, called upon “the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorno Karabakh region of the Azerbaijani Republic” with its previous resolutions.<sup>23</sup>

13. A ceasefire was established in May 1994.

14. To the present day, Armenia’s occupation covers 20 per cent of Azerbaijan’s territory, including the Nagorno-Karabakh region and the surrounding seven districts.<sup>24</sup> Furthermore, the ceasefire was followed by sporadic episodes of violence that led the Security Council’s President to reiterate the Council’s concerns “at recent violent incidents”, and to reaffirm all the Council’s “relevant resolutions, *inter alia*, on the principles of sovereignty and territorial integrity of all States in the region”,<sup>25</sup> more than a year after the signature of the ceasefire agreement.<sup>26</sup>

<sup>18</sup> United Nations Security Council Resolution 853, UN Doc S/RES/853 (29 July 1993), para. 2.

<sup>19</sup> *Ibid*, para. 3.

<sup>20</sup> United Nations Security Council Resolution 874, UN Doc S/RES/874 (14 October 1993).

<sup>21</sup> Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorno Karabakh to the President of the Security Council (27 July 1993), Annex to the Letter dated 28 July 1993 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council, UN Doc S/26184 (28 July 1993), para. 12.

<sup>22</sup> Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorno-Karabakh, UN Doc S/25600 (14 April 1993), para. 10.

<sup>23</sup> United Nations Security Council Resolution 884, UN Doc S/RES/884 (12 November 1993), para. 2.

<sup>24</sup> “Report on the Legal Consequences of the Armed Aggression by the Republic of Armenia against the Republic of Azerbaijan”, Annex to the Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/662–S/2008/812 (24 December 2008), para. 19.

<sup>25</sup> Statement by the President of the Security Council, UN Doc S/PRST/1995/21 (26 April 1995), p. 1.

<sup>26</sup> Official declarations in relation with the recent military incidents have deplored the number of casualties and called on the parties to avoid escalation: see, e.g., the Statement by the High Representative of the European Union for Foreign Affairs and Security Policy/Vice President of the European Commission Federica Mogherini, 2 April 2016: <[https://eeas.europa.eu/headquarters/headquarters-homepage/2921/statement-by-high-representativevice-president-federica-mogherini-on-the-escalation-in-the-nagorno-karabakh-conflict\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/2921/statement-by-high-representativevice-president-federica-mogherini-on-the-escalation-in-the-nagorno-karabakh-conflict_en)>; Statement attributable to the Spokesman for the Secretary-General of the United Nations on the Nagorno-Karabakh conflict, 2 April 2016: <<https://www.un.org/sg/en/content/sg/statement/2016-04-02/statement-attributable-spokesman-secretary-general-nagorno-karabakh>>; Press Release by the Co-Chairs of the OSCE Minsk Group, 2 April 2016: <<http://www.osce.org/mg/231216>>; Statement by the NATO Secretary General, 5 April 2016: <[http://www.nato.int/cps/en/natohq/news\\_129719.htm](http://www.nato.int/cps/en/natohq/news_129719.htm)>.

15. Attempts for mediation have been made, mostly through the Organization for Security and Co-operation in Europe (“OSCE”, formerly the Conference for Security and Co-operation in Europe (“CSCE”)) Minsk Process. However, “[n]o political settlement of the conflict has so far been reached” and “[s]everal proposals for a peaceful solution of the conflict have failed”.<sup>27</sup>

16. Both the Security Council and General Assembly of the United Nations have recognised that a situation of armed conflict exists in the occupied territories.<sup>28</sup> Other organs of the United Nations have recognised the same. The UN Human Rights Committee, for example, has referred with regard to Azerbaijan explicitly to “[t]he situation of armed conflict with a neighbouring country”.<sup>29</sup> The Committee on the Elimination of Racial Discrimination noted in its Concluding Observations on Azerbaijan on 12 April 2001 that:

“After regaining independence in 1991, the State party was soon engaged in war with Armenia, another State party. As a result of the conflict, hundreds of thousands of ethnic Azerbaijanis and Armenians are now displaced persons or refugees. Because of the occupation of some 20 per cent of its territory, the State party cannot fully implement the Convention”.<sup>30</sup>

17. A similar position has been adopted by the UN Committee on Economic, Social and Cultural Rights. In its Concluding Observations on Azerbaijan on 22 December 1997, it was noted that “the State party is also faced with considerable adversity and instability due to an armed conflict with Armenia”.<sup>31</sup> That there was and remains a situation of armed conflict has been recognised by other international organisations including the OSCE,<sup>32</sup> the Council of Europe,<sup>33</sup> and the Organization of Islamic Cooperation.<sup>34</sup>

18. Further, the United Nations Security Council, its President and the General Assembly have repeatedly reaffirmed that the parties to the conflict are bound by

<sup>27</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 28–29.

<sup>28</sup> See, e.g., the Statement by the President of the Security Council, UN Doc S/PRST/1995/21 (26 April 1995), p. 2; United Nations General Assembly Resolution 62/243, A/RES/62/243 (14 March 2008), Preamble.

<sup>29</sup> See the Concluding Observations of the Human Rights Committee: Azerbaijan, UN Doc CCPR/C/79/Add. 38 (3 August 1994), para. 2. The reference to “armed conflict” was repeated in the Committee’s Concluding Observations on Azerbaijan: UN Doc CCPR/CO/73/AZE (12 November 2001), para. 3.

<sup>30</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Azerbaijan, UN Doc CERD/C/304/Add.75 (12 April 2001), para. 3.

<sup>31</sup> Concluding Observations of the Committee on the Economic, Social and Cultural Rights: Azerbaijan, UN Doc E/C.12/1/Add.20 (22 December 1997), para. 12.

<sup>32</sup> See, e.g., CSCE, First Additional Meeting of the Council, Helsinki (24 March 1992), Summary of Conclusions, para. 3.

<sup>33</sup> See, e.g., Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), “The Conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference”, paras. 2, 6.

<sup>34</sup> See, e.g., Organization of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), para. 13.

rules of international humanitarian law.<sup>35</sup> It is to an overview of those rules that this report now turns.

***(ii) An overview of the international humanitarian law and war crimes***

19. International humanitarian law (“IHL”), or what used to be termed the laws of war or the laws of armed conflict, concerns in essence the regulation of the conduct of hostilities. This includes the treatment of prisoners of war, civilians in occupied territory, sick and wounded personnel, prohibited methods of warfare and human rights in situations of conflict. Although IHL is primarily derived from a number of international conventions, some of these represent in whole or in part rules of customary international law, and in addition a number of customary international law principles exist over and above conventional rules. Key instruments include the 1907 Hague Convention IV and Regulations on the Laws and Customs of War on Land regarded as declaratory of customary law,<sup>36</sup> and the Four Geneva ‘Red Cross’ Conventions of 1949 (“the First–Fourth Geneva Conventions”, respectively) which dealt respectively with the amelioration of the condition of the wounded and sick in armed forces in the field, the amelioration of the condition of wounded, sick and shipwrecked members of the armed forces at sea, the treatment of prisoners of war and the protection of civilian persons in time of war.<sup>37</sup>

20. The Fourth Convention was an innovation and a significant attempt to protect civilians who, as a result of armed hostilities or occupation, were in the power of a State of which they were not nationals. The foundation of the Geneva Conventions system is the principle that persons not actively engaged in warfare should be treated humanely.<sup>38</sup> A number of practices ranging from the taking of hostages to torture, illegal executions and reprisals against persons protected by the Conventions are prohibited, while a series of provisions relate to more detailed points, such as the standard of care of prisoners of war and the prohibition of deportations and indiscriminate destruction of property in occupied territory. In 1977, two Additional Protocols to the 1949 Conventions (“Additional Protocol I” and “Additional Protocol II”, respectively) were adopted. These built upon and developed the earlier Conventions and many of its provisions may be seen as reflecting customary law.

21. Of particular interest for present purposes is the Fourth Geneva Convention of 1949, which is concerned with the protection of civilians in time of war and builds

<sup>35</sup> United Nations Security Council Resolution 822, UN Doc S/RES/822 (30 April 1993), para. 3 (“reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law”); United Nations Security Council Resolution 853, UN Doc S/RES/853 (29 July 1993), para. 11 (“reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law”); United Nations Security Council Resolution 874, UN Doc S/RES/874 (14 October 1993), para. 9 (“Calls on all parties to refrain from all violations of international humanitarian law”); Note by the President of the Security Council, UN Doc S/26326 (18 August 1993) (“The Council reminds the parties that they are bound by and must adhere to the principles and rules of international humanitarian law”); United Nations General Assembly Resolution 62/243, A/RES/62/243 (14 March 2008), Preamble (“Reaffirming the commitments of the parties to the conflict to abide scrupulously by the rules of international humanitarian law”).

<sup>36</sup> See, e.g., “International Military Tribunal (Nuremberg), Judgment and Sentences”, 41 *American Journal of International Law*, 1947, pp. 172, 248–249; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136, p. 172.

<sup>37</sup> Note that as of October 2019, 196 States are parties to the Geneva Conventions: <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>>. See generally A. Clapham, P. Gaeta and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (Oxford, 2015).

<sup>38</sup> See, e.g., Article 1(2) of Additional Protocol I, 1977, which provides that, “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”



upon the Hague Regulations.<sup>39</sup> This Geneva Convention applies by Article 4 to those persons, “who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals”.

22. The Convention comes into operation immediately upon the outbreak of hostilities or the start of an occupation and ends at the general close of military operations.<sup>40</sup> Under Article 50(1) of Additional Protocol I a civilian is defined as any person not a combatant,<sup>41</sup> and in cases of doubt a person is to be considered a civilian. The Fourth Geneva Convention provides a highly developed set of rules for the protection of such civilians, including the right to respect for their person, honour, convictions and religious practices and the prohibition of torture and other cruel, inhuman or degrading treatment, hostage-taking and reprisals.<sup>42</sup> The wounded and sick are the object of particular protection and respect<sup>43</sup> and there are various judicial guarantees as to due process.<sup>44</sup>

23. The protection of civilians in occupied territories is covered in section III of Part III of the Fourth Geneva Convention.<sup>45</sup> Article 42 of the Hague Regulations provides that territory is to be considered as occupied “when it is actually placed under the authority of the hostile army” and that the occupation extends to the territory “where such authority has been established and can be exercised”,<sup>46</sup> while Article 2(2) of the Convention provides that it is to apply to all cases of partial or total occupation “of the territory of a High Contracting Party, even if the said occupation meets with no resistance”.

24. Article 43 of the Hague Regulations provides the essential framework of the law of occupation. It notes that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” This establishes several key elements. First, only authority and not sovereignty passes to the occupier. The former government retains sovereignty and may be deprived of it only with its consent. Secondly, the basis of authority of the occupier lies in effective control. Thirdly, the occupier has both the obligation and the right to maintain public order in the occupied territory. Fourthly, the existing laws of the territory must be preserved as far as possible.

25. In addition to the traditional rules of IHL, international human rights law may now be seen as in principle applicable to occupation situations. The International Court of Justice interpreted Article 43 of the Hague Regulations to include “the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory

<sup>39</sup> See, e.g., Y. Dinstein, *The International Law of Belligerent Occupation* (Cambridge, 2<sup>nd</sup> ed., 2019); E. Benvenisti, *The International Law of Occupation* (Oxford, 2<sup>nd</sup> ed., 2012). See also A. Clapham, P. Gaeta and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (Oxford, 2015), Part C.

<sup>40</sup> Article 6.

<sup>41</sup> As defined in Article 4 of the Third Geneva Convention, 1949 and Article 43 of Protocol I, 1977.

<sup>42</sup> See Articles 27–34.

<sup>43</sup> Article 16.

<sup>44</sup> See Articles 71–76. See also Article 75 of Protocol I, 1977.

<sup>45</sup> See also the Hague Regulations, Section III. See A. Clapham, P. Gaeta and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (Oxford, 2015), Part C.2.

<sup>46</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) (“Israeli Wall”)* [2004] ICJ Rep 136, p. 167; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (Judgment)* [2005] ICJ Rep 168, p. 229, reaffirming Article 42 as part of customary international law.

against acts of violence, and not to tolerate such violence by any third state”.<sup>47</sup> The UK Manual of the Law of Armed Conflict, 2004, for example, has underlined that “an occupying power is also responsible for ensuring respect for applicable human rights standards in the occupied territory” and that “[w]here the occupying power is a party to the European Convention on Human Rights the standards of that Convention may, depending on the circumstances, be applicable in the occupied territories”.<sup>48</sup>

26. War crimes are essentially serious violations of the rules of customary and treaty law concerning IHL, being essentially those crimes which have become accepted as criminal offences for which, in addition to State responsibility, there is individual responsibility. For example, Article 6(b) of the Nuremberg Charter included war crimes within the jurisdiction of the Tribunal, while the concept of grave breaches of the Geneva Conventions of 1949 recognised certain violations as crimes subject to universal jurisdiction. More recently, the Rome Statute of the International Criminal Court (“ICC”) has provided a list of war crimes over which the ICC has jurisdiction, many of which reflect acts for which individual criminal responsibility can exist under customary international law, meaning that they are applicable to individuals in Armenia, Azerbaijan and the occupied territories despite neither Armenia nor Azerbaijan being parties to the Rome Statute.

27. Traditionally, IHL has distinguished between international and non-international armed conflicts, with legal provision being relatively modest with regard to the latter. However, common Article 3 to the Geneva Conventions laid down certain minimum standards which were elaborated in Additional Protocol II of 1977. In the important *Tadić* case before the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), the Appeals Chamber in the jurisdictional phase of the case noted that an armed conflict existed whenever there was a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. IHL applied from the initiation of such armed conflicts and extended beyond the cessation of hostilities until a general conclusion of peace was reached; or, in the case of internal conflicts, a peaceful settlement achieved. Until that moment, IHL continued to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.<sup>49</sup>

28. Part II will detail the various war crimes committed in the Azerbaijani territories occupied by Armenia for which that State is responsible in international law and with regard to which individual criminal responsibility additionally lies.

**(iii) The responsibility of Armenia for war crimes in the Nagorno-Karabakh region and the other occupied territories of Azerbaijan**

29. This opinion details some of the war crimes committed in the Nagorno-Karabakh region of Azerbaijan and the surrounding areas occupied by Armenia either directly or through the local forces.

30. The current section reaffirms the responsibility of the Republic of Armenia with regard to all such activities. Such responsibility is established both under general international law and, particularly, with regard to the provisions of the European Convention on Human Rights. While Armenia bears responsibility for war crimes which it has committed, including its agents and officials and those for whom it must be deemed liable, particular Armenians will bear individual responsibility where the allegations may be proven against them. This section will not deal with such

<sup>47</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (Judgment)* [2005] ICJ Rep 168, pp. 231, 242 and following.

<sup>48</sup> UK Manual of the Law of Armed Conflict (Oxford, 2004), p. 282.

<sup>49</sup> *Prosecutor v Tadić*, IT-94-I-T, Decision of 2 October 1995, para. 70.

individual responsibility for war crimes, but that is not to deny that this exists and may be asserted before appropriate courts and tribunals.

31. As far as general international law is concerned, Article 1 of the Articles on State Responsibility adopted by the UN International Law Commission (“ILC”) on 9 August 2001<sup>50</sup> and commended to States by the General Assembly on 12 December 2001,<sup>51</sup> declares that: “Every internationally wrongful act of a State entails the international responsibility of that State”, while Article 2 provides that:

“There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.”<sup>52</sup>

32. Several provisions of these Articles address the question of the attribution of conduct to a State, something of particular importance for the purposes of this opinion. Article 4(1) declares that:

“The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.”

33. This principle, which is one of long standing in international law,<sup>53</sup> was underlined by the International Court of Justice in the *LaGrand* case, where it was stated that: “the international responsibility of a State is engaged by the action of the competent organ and authorities of the State, whatever they may be”.<sup>54</sup> It was reiterated in the *Genocide Convention* case, where it was noted that it was:

“one of the cornerstones of the law of state responsibility, that the conduct of any state organ is to be considered an act of the state under international law, and therefore gives rise to the responsibility of the state if it constitutes a breach of an obligation of the state.”<sup>55</sup>

34. The ILC’s Commentary to the Articles on State Responsibility underlined the broad nature of this principle and emphasized that the reference to State organs in this provision:

“is not limited to the organs of central government, to officials at high level or to persons with responsibility for the external relations of the state. It extends to organs of government of whatever kind or classification, exercising whatever

<sup>50</sup> UN Doc A/56/10 (9 August 2001). See also J. Crawford, *The International Law Commission’s Articles on State Responsibility* (Cambridge, 2002); J. Crawford, A. Pellet and S. Olleson (eds), *The Law of International Responsibility* (Oxford, 2010).

<sup>51</sup> United Nations General Assembly Resolution 56/83, A/RES/56/83 (12 December 2001). See also United Nations General Assembly Resolution 59/35, A/RES/59/35 (2 December 2004); United Nations General Assembly Resolution 62/61, A/RES/62/61 (8 January 2008).

<sup>52</sup> This is confirmed as a rule of customary international law in, e.g., *Case Concerning the Factory at Chorzów*, PCIJ, Series A, No. 9 (26 July 1927), p. 21; *Rainbow Warrior (New Zealand v France)*, 82 ILR, 1990, p. 499.

<sup>53</sup> See, e.g., *Moses Case*, Moore, *International Arbitration*, vol III, 1871, pp. 3127, 3129.

<sup>54</sup> *LaGrand (Germany v United States of America) (Provisional Measures)*, [1999] ICJ Rep 9, p. 16.

<sup>55</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* [2007] ICJ Rep 43, p. 202 (where it was held that this principle constituted a rule of customary international law). See also *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* [1999] ICJ Rep 62, p. 87.

functions, and at whatever level in the hierarchy, including those at provincial or even local level.”<sup>56</sup>

35. Article 5 provides that the conduct of a person or entity which is not an organ of the State under Article 4, but which is empowered by the law of the State to exercise elements of governmental authority shall be considered as an act of the State under international law, provided that the person or entity in question was acting in that capacity in the instance in question. Accordingly, activities by armed units of the State, including those empowered so to act, will engage the responsibility of the State. Thus Armenia is responsible internationally for actions (and omissions) of its armed forces in their activities in Azerbaijan and those of its agents and officials operating in the occupied areas in whatever capacity.

36. A key basis for attribution, and one particularly significant for present purposes, is the rule enshrined in Article 8 that:

“The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that state in carrying out the conduct.”

37. This provision essentially covers two situations: first, where persons act directly under the instructions of State authorities and, secondly, where persons are acting under the State’s “direction or control”. The latter point is critical. It means that States cannot avoid responsibility for the acts of secessionist entities where in truth it is the State which is controlling the activities of the body in question. The difference between the two situations enumerated in Article 8 is the level of control exercised. In the former case, the persons concerned are in effect part of the apparatus of the State insofar the particular situation is concerned. In the latter case, the power of the State is rather more diffuse.

38. The International Court addressed the matter in the *Nicaragua* case, where it was noted that in order for the State to be responsible for the activities in question, it would need to be demonstrated that the State “had effective control of the military or paramilitary operation in the course of which the alleged violations were committed”.<sup>57</sup> This approach was reaffirmed in the *Genocide Convention* case.<sup>58</sup> Effective control is the key.

39. The European Convention on Human Rights, to which both Armenia and Azerbaijan are contracting parties, constitutes *lex specialis*. The European Court of Human Rights has made it clear that a contracting party’s responsibility covers not only the acts of its own agents and officials but extends on the basis of “effective overall control” to include acts of a “local administration” which survives by virtue of its support.<sup>59</sup>

40. The rationale behind this approach was explained by “the special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings” and by the mission of the Court, as set out in

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<sup>56</sup> See J. Crawford, *The International Law Commission’s Articles on State Responsibility* (Cambridge, 2002), p. 95.

<sup>57</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Judgment (Merits))* [1986] ICJ Rep 14, pp. 64–65.

<sup>58</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* [2007] ICJ Rep 43, p. 207 and following.

<sup>59</sup> *Cyprus v Turkey*, App. No. 25781/94, ECtHR (Grand Chamber), 10 May 2001, para. 77.

Article 19 of the Convention, “to ensure the observance of the engagements undertaken by the High Contracting Parties”.<sup>60</sup>

41. This approach was further clarified in the *Ilaşcu* case, where it was noted that:

“According to the relevant principles of international law, a State’s responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – it exercises in practice effective control of an area situated outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control, whether it be exercised directly, through its armed forces, or through a subordinate local administration.”<sup>61</sup>

42. The exception to the territorial principle of jurisdiction based on a Contracting State’s “effective control” over territory and/or a subordinate local administration was comprehensively discussed in the *Catan* case as follows:

“Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State’s military and other support entails that State’s responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see *Cyprus v. Turkey*, cited above, §§ 76-77, and *Al-Skeini and Others*, cited above, § 138).”<sup>62</sup>

43. This critical formulation was repeated and reaffirmed in other cases. In *Chiragov and Others v. Armenia*, described by the Court as “its leading case on the matter” of Armenia’s responsibility for conduct of the “NKR” and the surrounding occupied areas of Azerbaijan,<sup>63</sup> it was emphasised that, in order to determine whether Armenia had jurisdiction under Article 1 of the Convention, it was “necessary to assess whether it exercises effective control over Nagorno-Karabakh and the surrounding territories as a whole”.<sup>64</sup> The conclusion was reached that:

“it is hardly conceivable that Nagorno-Karabakh – an entity with a population of less than 150,000 ethnic Armenians – was able, without the substantial military support of Armenia, to set up a defence force in early 1992 that, against the country of Azerbaijan with a population of approximately seven million people, not only established control of the former NKAO but also, before the end of 1993, conquered the whole or major parts of seven surrounding Azerbaijani districts.”<sup>65</sup>

<sup>60</sup> *Ibid*, para. 78.

<sup>61</sup> *Ilaşcu v. Moldova*, App. No. 48787/99, ECtHR (Grand Chamber), 8 July 2004, para. 314. See also *Loizidou v. Turkey*, App. No. 15318/89, ECtHR (Grand Chamber), Preliminary Objections, 23 February 1995, para. 62; *Loizidou v. Turkey*, App. No. 15318/89, ECtHR (Grand Chamber), Merits, 18 December 1996, para. 52; *Banković v. Belgium*, App. No. 52207/99, ECtHR (Grand Chamber), Admissibility, 12 December 2001, para. 66 and following; *Medvedyev v. France*, App. No. 3394/03, ECtHR (Grand Chamber), 29 March 2010, para. 62 and following.

<sup>62</sup> *Catan v. Republic of Moldova and Russia*, App. Nos. 43370/04, 8252/05 and 18454/06, ECtHR (Grand Chamber), 19 October 2012, para. 106.

<sup>63</sup> *Muradyan v. Armenia*, App. No. 11275/07, ECtHR, 24 November 2016, para. 126.

<sup>64</sup> *Chiragov and Others v. Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 170.

<sup>65</sup> *Ibid*, para. 174.

44. And that:

“All of the above reveals that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the ‘NKR’, that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the ‘NKR’ and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin. The matters complained of therefore come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention.”<sup>66</sup>

45. It is important to consider why the Court came to this conclusion. The case concerned the district of Lachin, one of the areas of Azerbaijan, outside of Nagorno Karabakh but occupied by Armenia. The Court referenced a range of factors which led ineluctably to the conclusion of Armenia’s responsibility under Article 1. The first of these was military involvement where it was noted that Armenia had provided “substantial military support” to the Nagorno-Karabakh forces as from the start of the conflict in 1992. This involvement was formalised in the 1994 “military agreement” which “notably provides that conscripts of Armenia and the ‘NKR’ may do their military service in the other entity”. Other indices of proof included the conclusion of the Parliamentary Assembly of the Council of Europe (“PACE”) concerning “the occupation by Armenian forces of ‘considerable parts of the territory of Azerbaijan’” and the International Crisis Group report of September 2005 noting “on the basis of statements by Armenian soldiers and officials, that ‘[t]here is a high degree of integration between the forces of Armenia and Nagorno-Karabakh’”. The Court concluded that:

“it finds it established that Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date. This military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue, and the evidence, not least the Agreement, convincingly shows that the Armenian armed forces and the ‘NKR’ are highly integrated.”<sup>67</sup>

46. Secondly, the Court emphasised the political dependence of the “NKR” upon Armenia, demonstrated by, for example, the number of politicians who have assumed the highest offices in Armenia after previously holding similar positions in the “NKR” and the use by “NKR” residents of Armenian passports.<sup>68</sup> Thirdly, the Court emphasised that the facts of earlier cases before it (referring to *Zalyan, Sargsyan and Serobyanyan v. Armenia* ((dec.), nos. 36894/04 and 3521/07, 11 October 2007) demonstrated “not only the presence of Armenian troops in Nagorno-Karabakh but also the operation of Armenian law-enforcement agents and the exercise of jurisdiction by Armenian courts on that territory”.<sup>69</sup> Finally, the Court referenced the “substantial” financial support given by Armenia to the ‘NKR’”, concluding that “the ‘NKR’ would not be able to subsist economically without the substantial support stemming from Armenia”.<sup>70</sup>

47. The Court’s clear and firm finding of Armenian jurisdiction with regard to breaches or alleged breaches of the Convention occurring in either Nagorno Karabakh

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<sup>66</sup> *Ibid*, para. 186.

<sup>67</sup> *Ibid*, paras. 174–176 and 180.

<sup>68</sup> *Ibid*, paras. 181–182.

<sup>69</sup> *Ibid*, para. 182.

<sup>70</sup> *Ibid*, paras. 183–184 and 185.

or the surrounding occupied areas of Azerbaijan was reiterated in *Muradyan v Armenia*, where the Court concluded that:

“the Court considers that, by exercising effective control over Nagorno Karabakh and the surrounding territories, Armenia is under an obligation to secure in that area the rights and freedoms set out in the Convention and its responsibility under the Convention cannot be confined to the acts of its own soldiers or officials operating in Nagorno Karabakh but is also engaged by virtue of the acts of the local administration which survives by virtue of Armenian military and other support (see *Zalyan and Others*, cited above, §§ 214-215, as well as, *mutatis mutandis*, *Djavit An v. Turkey*, no. 20652/92, §§ 18-23, ECHR 2003-III; and *Amer v. Turkey*, no. 25720/02, §§ 47-49, 13 January 2009).”<sup>71</sup>

48. The Court emphasised that the responsibility of the State in question could be engaged by the acquiescence or connivance of the authorities of the State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction and that this was “particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community”.<sup>72</sup> It was also noted that under the Convention, a State’s authorities were strictly liable for the conduct of their subordinates and consequently under a duty to impose their will. They could not shelter behind their inability to ensure that it was respected.<sup>73</sup>

49. Thus, the State in question is responsible not only for its own activities, but for those of a “subordinate local administration *which survives there by virtue of its military and other support*”.<sup>74</sup> Whether such is the case is a matter of fact. In *Ilaşcu* the Court regarded a State’s responsibility to be engaged in respect of unlawful acts committed by a separatist regime in part of the territory of another member State in the light of military and political support given to help set up that separatist regime.<sup>75</sup>

50. The evidence available since the *Chiragov* judgment in fact serves to underscore the conclusions reached by the Court in that case and reaffirmed subsequently. For example, the International Crisis Group Report noted that “Armenian and de facto Armenian-Karabakh military forces are intertwined, with Armenia providing all logistical and financial support, as well as ammunition and other types of military equipment”. The footnote (no. 81) to this sentence reads as follows:

“Both Armenia’s and the de facto Nagorno-Karabakh’s leaderships used to strongly deny any close integration between the two structures. This changed after April 2016. In January 2017, a high-level military official from Armenia confirmed to Crisis Group the existence of close cooperation as well as Armenia’s support and control of Nagorno-Karabakh-based military troops; he added that this also was confirmed by the 2015 European Court of Human Rights ruling in ‘Chigarov and others v Armenia’, which found Armenia responsible for military operations inside Nagorno-Karabakh.”<sup>76</sup>

<sup>71</sup> *Muradyan v Armenia*, App. No. 11275/07, ECtHR, 24 November 2016, para. 126.

<sup>72</sup> *Ilaşcu v Moldova*, App. No. 48787/99, ECtHR (Grand Chamber), 8 July 2004, para. 318.

<sup>73</sup> *Ibid*, paras. 314–319. See also *Issa v Turkey*, App. No. 31821/96, ECtHR, 16 November 2004, para. 65 and following, especially para. 69; *Ireland v United Kingdom*, App. No. 5310/71, ECtHR (Grand Chamber), 18 January 1978, para. 159.

<sup>74</sup> *Ilaşcu v Moldova*, App. No. 48787/99, ECtHR (Grand Chamber), para. 316 (emphasis added).

<sup>75</sup> *Ibid*, para. 382.

<sup>76</sup> International Crisis Group, “Nagorno-Karabakh’s Gathering War Clouds”, Europe Report No. 244 (1 June 2017), p. 15.

51. In addition, footnote 120 on page 22 of this publication declares that: “In the official negotiation process, de facto NK is represented by Armenia’s officials. The president of de facto NK has often voiced full support for his Armenian counterpart in talks”.

52. This is reinforced by the comment by Laurence Broers in his research paper entitled “The Nagorny Karabakh Conflict: Defaulting to War” to the effect that the self-styled Nagorno-Karabakh Defence Army is “closely integrated with Armenian armed forces. This is reflected in the extent to which Armenian casualties in the April 2016 escalation originated in Armenia rather than in NK”.<sup>77</sup>

53. Further, in Resolution 2085 (2016) adopted by the PACE, it was noted that the Assembly:

“deplores the fact that the occupation by Armenia of Nagorno-Karabakh and other adjacent areas of Azerbaijan creates similar humanitarian and environmental problems for the citizens of Azerbaijan living in the Lower Karabakh valley”,

while:

“It notes that the lack of regular maintenance work for over twenty years on the Sarsang reservoir, located in *one of the areas of Azerbaijan occupied by Armenia*, poses a danger to the whole border region. The Assembly emphasises that the state of disrepair of the Sarsang dam could result in a major disaster with great loss of human life and possibly a fresh humanitarian crisis.”<sup>78</sup>

54. The Assembly called for “the immediate withdrawal of Armenian armed forces from the region concerned”.<sup>79</sup>

55. In addition, the fact that Armenia consistently presents papers to the UN purportedly on behalf of the so-called “Nagorno-Karabakh Republic” or the so-called “Republic of Artsakh”<sup>80</sup> cannot be taken other than as an assertion of an umbilical link, an inexorable connection between Armenia and its subordinate local administration in part of the occupied Azerbaijani territories. The existence of such a link and connection is evident also in purported “joint sessions” of the Security Council of Armenia and the *soi-disant* “Security Council” of the “NKR”.<sup>81</sup>

56. Further and specific details evidencing the increasing hold of Armenia over the occupied territories have been provided by the Government of Azerbaijan. Two documents will be briefly referenced. First, the report on “Illegal economic and other activities in the occupied territories of Azerbaijan”, dated 15 August 2016,<sup>82</sup> provides a significant body of evidence that substantially reinforces and extends the factual

<sup>77</sup> Laurence Broers, “The Nagorny Karabakh Conflict: Defaulting to War” (Chatham House, July 2016), p. 6.

<sup>78</sup> Parliamentary Assembly of the Council of Europe Resolution 2085 (2016) (26 January 2016), paras. 4 and 6, respectively (emphasis added).

<sup>79</sup> *Ibid.*, para. 7.1.1.

<sup>80</sup> See, e.g., the Letter dated 10 October 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc A/74/497–S/2019/810 (15 October 2019) (enclosing a Memorandum from the “Ministry of Foreign Affairs of the Republic of Artsakh”); Letter dated 29 July 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc A/74/282 (7 August 2019). See the Letter dated 19 August 2019 from the Chargé d’Affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/74/320–S/2019/669 (20 August 2019).

<sup>81</sup> Office of the Prime Minister of the Republic of Armenia, “Armenia, Artsakh Security Councils hold joint session in Yerevan” (23 December 2019): <<https://www.primeminister.am/en/press-release/item/2019/12/23/Nikol-Pashinyan-meeting-Security-Council/>>.

<sup>82</sup> “Illegal economic and other activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016–S/2016/711 (16 August 2016).



basis underlying the Court's conclusion as to Armenia's responsibility in the *Chiragov* case. It covers in detail the close military links between Armenia and the "NKR",<sup>83</sup> the continued incorporation by Armenia of the occupied territories into its socioeconomic space and its customs territory,<sup>84</sup> the high dependence of the "NKR" upon external financial support primarily from Armenia and the Armenian diaspora,<sup>85</sup> and the close political links at all levels between Armenia and the "NKR".<sup>86</sup> In addition, and critically, Armenia has facilitated the transfer of Armenian settlers from Armenia and elsewhere into the occupied territories.<sup>87</sup> For example, according to a former *de facto* official, a secret order issued by the "NKR" *de facto* authorities "under Yerevan's supervision" called on ethnic Armenians to settle in the town of Lachin and nearby villages in order to control the one road connecting Armenia with Nagorny Karabakh.<sup>88</sup> It is also to be noted that in 2006, the "NKR" adopted a "constitution" claiming full but temporary jurisdiction over the adjacent territories and thus the settlements.<sup>89</sup> In October 2017, the "president" of the "NKR" identified expending the settlement of the adjacent territories as a priority for the period 2017-20.<sup>90</sup>

57. Secondly, Azerbaijan has presented to the UN, in a letter dated 20 May 2019, a joint report of the Azercosmos OJSCo (the satellite company of Azerbaijan) and the Ministry of Foreign Affairs entitled "Illegal activities in the territories of Azerbaijan under Armenia's occupation: evidence from satellite imagery".<sup>91</sup> This report provides considerable evidence testifying to ongoing activities in the occupied territories of Azerbaijan, including the implantation of settlers in those territories depopulated of their Azerbaijani inhabitants; depredation and exploitation of natural, agricultural and water resources; infrastructure changes; and destruction and desecration of historical and cultural heritage. It graphically demonstrates the implantation of settlers,<sup>92</sup> the economic exploitation of the occupied areas by Armenia and its local subordinate administration<sup>93</sup> and the exploitation of agricultural and water resources.<sup>94</sup>

58. It is clear that substantial evidence is available from third party, Armenian and Azerbaijani sources to enable the determination to be made that, since the *Chiragov* judgment in 2015, the process of control exercised by Armenia over Nagorny

<sup>83</sup> *Ibid*, pp. 17–20.

<sup>84</sup> *Ibid*, pp. 20–21.

<sup>85</sup> *Ibid*, pp. 21–27.

<sup>86</sup> *Ibid*, pp. 30–31.

<sup>87</sup> *Ibid*, pp. 32–42. See also "Digging out of Deadlock in Nagorno-Karabakh", Crisis Group Europe Report No. 255, 20 December 2019, p. 4, noting that settlers comprise around 11% of the population and their numbers continue to grow, citing in footnote 11 "Demographic Handbook of Artsakh 2019", "National Statistical Service of the Republic of Artsakh", 2019, which was cross-checked with other sources and further detailed in Appendix C, p. 32 and following.

<sup>88</sup> *Ibid*, p. 4, citing an interview with a former *de facto* official in Yerevan, April 2018.

<sup>89</sup> *Ibid*, p. 7. Article 142 of the "NKR" "Constitution" declares that: "Until the restoration of the state territorial integrity of the Nagorno-Karabakh Republic and the adjustment of its borders public authority is exercised on the territory under factual jurisdiction of the Republic of Nagorno-Karabakh", *ibid*, footnote 38.

<sup>90</sup> *Ibid*, p. 9.

<sup>91</sup> Identical Letters dated 20 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, A/73/881–S/2019/420 (22 May 2019). See also Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019).

<sup>92</sup> Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019), pp. 8–22.

<sup>93</sup> *Ibid*, pp. 24–35.

<sup>94</sup> *Ibid*, pp. 50–71.

Karabakh and the surrounding areas has quickened and become more deeply embedded.

59. Accordingly, the conclusion must be that due to its initial and continuing aggression against Azerbaijan and persisting occupation of internationally recognized Azerbaijani territory accomplished both directly through its own organs, agents and officials and indirectly through local Armenian forces and the subordinate local administration in the occupied Nagorno-Karabakh region over which the Republic of Armenia exercises the requisite degree of effective control required by international law and the European Convention on Human Rights system, the Republic of Armenia bears full international responsibility for the breaches of international law that have occurred and continue to occur. This applies *a fortiori* to breaches of international law that constitute war crimes. It is important to note that the factual situation meets the requirements laid down both in general international law through the rules of State responsibility as interpreted by the International Court and in the somewhat more flexible provisions of the European Convention on Human Rights.

## Part II: War Crimes

### 1. War crimes relating to civilian deaths and injury

#### (i) Applicable legal principles

##### The principle of distinction

60. The protection of civilians from direct and indiscriminate attacks is one of the cardinal objectives of the international humanitarian legal regime and there are numerous prohibitions on acts that undermine this objective, as set out below. A breach of these prohibitions will often constitute a war crime. The heart of IHL is the principle of distinction, according to which the parties to a conflict must at all times distinguish between civilians and combatants. Armed attacks may only be directed against combatants and cannot be directed against civilians.<sup>95</sup> Further, there exists an international law prohibition against attacking persons recognised to be *hors de combat*<sup>96</sup> and a rule that civilians are protected from attack unless and until they take a direct part in hostilities.<sup>97</sup>

61. Article 25 of the Hague Regulations attached to the Convention Respecting the Law and Customs of War on Land 1907 (regarded as part of customary international law) prohibits “the attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended”.

62. The principle of distinction is now codified in a number of provisions of Additional Protocol I. Article 48 (declared to constitute “the basic rule”) states that:

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”<sup>98</sup>

63. Article 51(2) of Additional Protocol I further states that:

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<sup>95</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 1, p. 3 and following.

<sup>96</sup> *Ibid*, Rule 47, p. 164.

<sup>97</sup> *Ibid*, Rule 6, p. 19.

<sup>98</sup> See also D. Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford, 3<sup>rd</sup> ed., 2013), p. 232.

“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

64. Article 85(3) of Additional Protocol I identifies further acts which “shall be regarded as grave breaches ... when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health”, including “(a) making the civilian population or individual civilians the object of attack”.

65. The International Court of Justice has described the principle of distinction and the prohibition of unnecessary suffering as the two “cardinal principles contained in the texts constituting the fabric of humanitarian law” and “intransgressible under customary international law”.<sup>99</sup> The International Court defined the principle of distinction in the following manner: “States must never make civilians the object of attack”.<sup>100</sup> It is clear and absolute. It is aimed at the protection of civilians and civilian objects and establishes a dividing line between civilians and combatants.<sup>101</sup> The principle appears in the law of war manuals of many countries. For example, the UK Manual of the Law of Armed Conflict provides that:

“Since military operations are to be conducted only against the enemy’s armed forces and military objectives, there must be a clear distinction between the armed forces and civilians, or between combatants and non-combatants, and between objects that might legitimately be attacked and those that are protected from attack”.<sup>102</sup>

66. Domestic courts have similarly described the principle of distinction as “one of the cornerstones of international humanitarian law”<sup>103</sup> and “[o]ne of the fundamental principles of international humanitarian law”.<sup>104</sup>

67. Article 8(2)(b)(i) of the Rome Statute identifies as a war crime “[i]ntentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” — a provision that reflects a rule of customary international law which establishes individual criminal responsibility for such conduct. Indeed, in light of the treaty provisions and other extensive State practice accompanied by the necessary *opinio juris*, the International Committee of the Red Cross has identified as a rule of customary international law that:

“The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”<sup>105</sup>

68. Aside from amounting to a violation of IHL, the unlawful killing of civilians in the context of an armed conflict will in many circumstances violate the prohibition

<sup>99</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, p. 257.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.* See also Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge, 3<sup>rd</sup> ed., 2016), pp. 12, 102; S. Casey-Maslen and S. Haines, *Hague Law Interpreted: The Conduct of Hostilities under the Law of Armed Conflict* (Oxford, 2018), p. 10.

<sup>102</sup> UK Manual of the Law of Armed Conflict (Oxford, 2004, as amended in 2010), paras. 2.5–2.5.1.

<sup>103</sup> *Constitutional Case No. C-291/07*, 25 April 2007 (Constitutional Court of Colombia), p. 70.

<sup>104</sup> *Physicians for Human Rights v Prime Minister of Israel*, 19 January 2009 (High Court of Justice of Israel), para. 21.

<sup>105</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 1, p. 3 and following. This principle was also held to constitute a rule of customary international law in Eritrea-Ethiopia Claims Commission, Western Front, Aerial Bombardment and Related Claims, Partial Award, 45 ILM, 2006, pp. 396, 417, 445.

on the arbitrary deprivation of life under international human rights law.<sup>106</sup> The International Court of Justice has stated that “the test of what is an arbitrary deprivation of life ... falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities”,<sup>107</sup> while the European Convention on Human Rights (to which both Armenia and Azerbaijan are parties) states in Article 2 that “[e]veryone’s right to life shall be protected by law” and that “[n]o one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. Accordingly, the killing of a civilian in violation of IHL, as well as constituting a war crime, is likely also to constitute a breach of human rights.

*The murder of civilians is prohibited*

69. A rule closely allied to the principle of distinction is the prohibition on the killing of civilians. This prohibition was included as a war crime in Article 6(b) the 1945 Charter of the International Military Tribunal at Nuremberg, while Common Article 3 of the Geneva Conventions 1949 prohibits “violence to life and person, in particular murder of all kinds” of civilians and persons *hors de combat*. Murder constitutes a fundamental violation of the laws and customs of war, is prohibited under customary international law and “is a clearly established underlying offence for war crimes”.<sup>108</sup>

70. All four of the Geneva Conventions include “wilful killing” of protected persons as a grave breach. For example, Article 147 of the Fourth Geneva Convention defines as “grave breaches” of the Convention certain acts taken in relation to civilians (who are persons protected under that Convention), including “wilful killing” and “wilfully causing great suffering or serious injury to body or health”.

71. Article 75(2)(a) of Additional Protocol I stipulates that “violence to the life, health, or physical or mental well-being of persons”, and in particular “murder”, are “prohibited at any time and in any place whatsoever”.<sup>109</sup>

72. The Rome Statute identifies as war crimes the grave breaches listed in the Fourth Geneva Convention, cited above.<sup>110</sup> The ICRC has identified the prohibition of murder as a rule of customary international law.<sup>111</sup>

*Attacks which cause indiscriminate or disproportionate harm to civilians are prohibited*

73. In addition to the prohibition on attacks directed against civilians, there exists a prohibition on attacks which indiscriminately or disproportionately harm civilians. Article 51(4) of Additional Protocol I states:

“Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- a) those which are not directed at a specific military objective;
- b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

<sup>106</sup> See, e.g., the International Covenant on Civil and Political Rights, Article 6(1).

<sup>107</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, p. 240.

<sup>108</sup> S. Knuckey, “Murder in Common Article 3” in A. Clapham, P. Gaeta and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (Oxford, 2015), p. 449.

<sup>109</sup> See also Article 4(2)(a) of Additional Protocol II.

<sup>110</sup> Rome Statute, Articles 8(2)(a)(i), 8(2)(a)(iii).

<sup>111</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 89, p. 311.

- c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.”

74. Article 51(5) lists examples of attacks which “are to be considered as indiscriminate”, and these include:

- “(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

75. Parties to a conflict must also endeavour to limit harm to civilians by taking certain precautions in attack, as set out in article 57 of Additional Protocol I. Article 57(1) states that “[i]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects”. Articles 57(2)(a) and 57(2)(c) stipulate certain measures that must be taken in order to comply with this rule, including that those who plan or decide upon an attack must: “do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects ... but are military objectives”; “take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life [and] injury to civilians”; “refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”; and give “effective advance warning ... of attacks which may affect the civilian population, unless circumstances do not permit”. An attack that is underway must be terminated if it becomes apparent that the objective is not a military one or that the attack would cause disproportionate civilian harm (Article 57(2)(b)).

76. Article 85(3) of Additional Protocol I makes clear that violations of the prohibitions on attacks causing indiscriminate or disproportionate harm to civilians are war crimes, stating that acts which “shall be regarded as grave breaches ... when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health” include:

- “(b) launching an indiscriminate attack affecting the civilian population ... in the knowledge that such attack will cause excessive loss of life [or] injury to civilians.”

77. Based on relevant provisions of Additional Protocol I and other treaties, as well as State practice accompanied by *opinio juris*, the ICRC has identified a rule of customary international law to the effect that “[i]ndiscriminate attacks are prohibited”.<sup>112</sup> It has further identified more specific rules of customary international law that support this prohibition, including the prohibition on bombardment (as defined in Article 51(5)(a) of Additional Protocol I),<sup>113</sup> the prohibition on attacks which cause disproportionate harm to the civilian population (as described in Article 51(5)(b) of Additional Protocol I),<sup>114</sup> the rules concerning precautions in attack,<sup>115</sup>

<sup>112</sup> *Ibid*, Rule 11, p. 37.

<sup>113</sup> *Ibid*, Rule 13, p. 43.

<sup>114</sup> *Ibid*, Rule 14, p. 46.

<sup>115</sup> *Ibid*, Rule 15, p. 51.

and the prohibition on weapons which are by their nature indiscriminate.<sup>116</sup> Further, proportionality constitutes an indispensable requirement of collateral damage to civilians or civilian objects.<sup>117</sup> In other words, as Judge Higgins put it: “even a legitimate target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack”.<sup>118</sup>

78. Consistently with these rules of customary international law, Article 8 of the Rome Statute similarly defines as war crimes “[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 ... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”,<sup>119</sup> “[a]ttacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives”,<sup>120</sup> and the use of certain weapons “which are inherently indiscriminate in violation of the international law of armed conflict”.<sup>121</sup>

79. Supporting these texts, the International Court of Justice has described the rule that parties to an armed conflict must “never use weapons that are incapable of distinguishing between civilian and military targets” as one of “[t]he cardinal principles contained in the texts constituting the fabric of humanitarian law”.<sup>122</sup>

War crimes, crimes against humanity and genocide

80. In addition to war crimes, consideration needs to be given to the category of crimes against humanity, defined in Article 6(c) of the Nuremberg Charter of the International Military Tribunal to include: “murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the law of the country where perpetrated”. Similar provisions appear in the Statute of the ICTY referring to acts committed in armed conflict, whether international or internal in character, and directed against any civilian population (Article 5) and in Article 3 of the Statute of the International Criminal Tribunal for Rwanda (“ICTR”), provided that the crimes in question have been committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. Article 7 of the Rome Statute ICC is in similar terms. The necessity of a widespread or systematic attack as the required framework for the commission of acts amounting to crimes against humanity not specifically appearing in the ICTY Statute was subsequently incorporated by caselaw.<sup>123</sup>

81. Many of the same acts may constitute both war crimes and crimes against humanity, but what is distinctive about the latter is that they do not need to take place during an armed conflict. However, to constitute crimes against humanity the acts in question have to be committed as part of a widespread or systematic activity, and to

<sup>116</sup> *Ibid*, Rule 71, p. 244.

<sup>117</sup> Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge, 3<sup>rd</sup> ed., 2016), p. 152.

<sup>118</sup> Dissenting Opinion, *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, p. 587.

<sup>119</sup> Rome Statute, Article 8(2)(b)(iv).

<sup>120</sup> *Ibid*, Article 8(2)(b)(v).

<sup>121</sup> *Ibid*, Article 8(2)(b)(xx).

<sup>122</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, p. 257.

<sup>123</sup> See, e.g., *Prosecutor v Tadić*, IT-94-1-T, Trial Decision of 7 May 1997, 112 ILR, pp. 1, 214, para. 644. See also para. 645 and following. This was reaffirmed in the decision of the Appeals Chamber of 15 July 1999, 124 ILR, pp. 61, 164, para. 248.

be committed against any civilian population. Provided this can be demonstrated, acts of murder, torture and other inhumane acts that have been committed by Armenia and which are discussed below may be classed both as war crimes and crimes against humanity.

82. The crime of genocide, however, is different and distinctive in requiring evidence of the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such” (Article II of the Genocide Convention 1948) in addition to the objective criteria of, for example, killing members of the group or causing serious bodily or mental harm to members of the group or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. As set out below, some of the conduct which constitutes war crimes set out below also has targeted ethnic Azerbaijanis because of their nationality and/or ethnicity, and the relevant intent has been to destroy the group in part. This same conduct may also constitute the crime of genocide.

***(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan***

83. Over the course of the conflict, Armenia has engaged in numerous violations of the prohibitions on attacks directed at civilians, on the murder and wilful killing of civilians, and on attacks that cause indiscriminate or disproportionate harm to civilians. Indeed, the European Court of Human Rights has described the fact that, since the earliest days of the conflict, “ethnic Armenians conquered several Azeri villages, leading to at least several hundred deaths and the departure of the population”.<sup>124</sup> A report published in 1994 by a reputable and independent NGO stated that “Karabakh Armenian violations of the rules of war” since the outbreak of the conflict had included “forced displacement of the Azeri population by means of indiscriminate and targeted shelling of civilian populations”, and urged the Nagorno-Karabakh forces to “cease attacks on the civilian population and civilian objects, especially by the use of such inaccurate weapons as Grad rocket launchers”.<sup>125</sup>

84. Atrocities against civilians began in late 1991. The Azerbaijani village of Kerkijahan was attacked twice in land assaults by Armenian forces — on 5–6 December 1991 and again on 28 December 1991. One woman who attempted to return to the village to retrieve her documents and money, “[o]n her way out of the village, ... was reportedly killed along with her husband, and her body mutilated”.<sup>126</sup>

85. Former residents of the two villages of Malybeyli and Gushchular reported that in December 1991 their towns were subject to “heavy shooting and shelling”.<sup>127</sup> Over the night of 9–10 February 1992, “Armenian forces attacked these villages with heavy artillery and armed personnel carriers”, killing eight people (some of whom were women and children) and forcing the departure of all the other Azerbaijani residents, who reported “that as they fled they saw, from atop a hill a kilometer away, houses in flames”.<sup>128</sup> One former resident reported that the Armenian forces had entered his home and killed his 110-year-old mother.<sup>129</sup>

<sup>124</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 18.

<sup>125</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. xiii, xvi.

<sup>126</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 27.

<sup>127</sup> *Ibid.*, p. 25.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*, p. 26.

86. In late 1991 and early 1992, other Azerbaijani villages such as Dhemili and Akhlou were shot at or shelled frequently by Armenian forces.<sup>130</sup>

87. February 1992 saw the most notorious of Armenia's violations of the IHL rules concerning civilian deaths — namely, the massacre of civilians in Khojaly.<sup>131</sup> Before the conflict, 7,000 people had lived in this town. From October 1991, the town was entirely surrounded by Armenian forces. Throughout the winter of 1991–1992 the town was shelled on an almost daily basis, including in attacks that were either indiscriminate or directly aimed at civilian targets.<sup>132</sup> Over the night of 25–26 February 1992, following heavy bombardment, the town was overrun from various directions.<sup>133</sup> The assault was carried out by Armenian armed forces, with the assistance of the infantry guards regiment No. 366 of the former USSR, the personnel of which was composed mainly of Armenians.<sup>134</sup> As a result of the attack and capture of the town, hundreds of Azerbaijanis, including women, children and the elderly, were killed, wounded or taken hostage, while the town was razed to the ground.<sup>135</sup> According to the report of an impartial and respected NGO:

“Residents fled the town in separate groups, amid chaos and panic, most of them without any belonging or clothes for the cold weather. As a result, hundreds of people suffered – and some died – from severe frostbite.”<sup>136</sup>

88. Many of the hundreds of civilians who were killed in the assault on Khojaly were “killed while fleeing across open territory”.<sup>137</sup> News reports that surfaced over the following days revealed the scale of the brutality: atrocities committed by the Armenian forces included scalping, beheading, bayoneting of pregnant women, and mutilation of bodies.<sup>138</sup>

<sup>130</sup> *Ibid.*, pp. 27–28.

<sup>131</sup> In addition to the sources below, see for further occasions on which this atrocity has been brought to the attention of the United Nations: “Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory”, Annex to the Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/692–S/2009/51 (27 January 2009), para. 18; Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973–S/2017/585 (7 July 2017), p. 2. See also F. MacLachlan and I. Peart (eds), *Khojaly Witness of a War Crime: Armenia in the Dock* (Reading, 2014).

<sup>132</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), pp. 20, 32.

<sup>133</sup> *Ibid.*, p. 20; “The crime in Khojaly: perpetrators, qualification and responsibility under international law”, Annex to the Letter dated 21 February 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/67/753–S/2013/106 (22 February 2013), p. 3.

<sup>134</sup> “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475–S/2009/508 (6 October 2009), para. 93; Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), p. 6.

<sup>135</sup> Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), p. 1.

<sup>136</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992) p. 21.

<sup>137</sup> Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), p. 237 and sources cited therein.

<sup>138</sup> “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475–S/2009/508 (6 October 2009), para. 94. See also the reporting of the scalping and mutilation of corpses in Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992) p. 23, as well as the media coverage cited in the Letter dated 6 February 2017 from the Permanent Representative of



89. As a result of the attack, 613 civilians were killed, including 106 women, 63 children and 70 elderly people. Another 1,000 people were wounded and 1,275 people were taken hostage. To this day, 150 people from Khojaly remain missing.<sup>139</sup> Because the civilian inhabitants of Khojaly were intentionally slaughtered only because they were Azerbaijanis,<sup>140</sup> the massacre has properly been characterised as an act of genocide<sup>141</sup> and as an instance of ethnic cleansing.<sup>142</sup>

90. A reputable international NGO, Human Rights Watch, has stated that during the assault on Khojaly the Armenian forces “deliberately disregarded” the prohibition on attacks that cause disproportionate civilian casualties.<sup>143</sup> It has further stated that:

“[Eyewitnesses] indicated that there was sufficient light to allow for reasonable visibility and, thus, for the attackers to distinguish unarmed civilians from those persons who were armed and/or using weapons. Further, despite conflicting testimony about the direction from which the fire was coming, the evidence suggests that the attackers indiscriminately directed their fire at all fleeing persons. Under these circumstances, the killing of fleeing combatants could not justify the foreseeably large number of civilian casualties.”<sup>144</sup>

91. International courts and organisations have recognised the gravity of the atrocity in Khojaly. In a declaration on 11 March 1992 — just weeks after the massacre — the Committee of Ministers of the Council of Europe issued a declaration in which it expressed deep concern “about recent reports of indiscriminate killings and outrages” in Azerbaijan and firmly condemned “the violence and attacks directed against the civilian populations in the Nagorno Karabakh area of the Azerbaijan Republic”.<sup>145</sup> The European Court of Human Rights has concluded that the massacre in Khojaly involved “acts of particular gravity which may amount to war crimes or crimes against humanity”.<sup>146</sup> The Organization of Islamic Cooperation (“OIC”) has called for international and national recognition of what it has described as the “mass massacre of Azerbaijani civilians perpetrated by the Armenian armed forces in the town of Khojaly” as a “genocidal act” and a “crime against humanity”.<sup>147</sup> One expert commentator has described the Khojaly massacre as “by a large margin the worst single atrocity of the Armenian-Azerbaijani war”.<sup>148</sup>

92. The breaches of protections accorded to civilians under IHL in Khojaly were tragically not unique, with civilians in numerous other Azerbaijani villages and cities

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Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), pp. 3–4.

<sup>139</sup> “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475–S/2009/508 (6 October 2009), para. 93.

<sup>140</sup> Letter dated 23 December 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/608–S/2009/670 (24 December 2009), pp. 2–3; Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 2. See also above, footnote 12.

<sup>141</sup> “Military occupation of the territory of Azerbaijan: a legal appraisal”, Annex to the Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/491–S/2007/615 (23 October 2007).

<sup>142</sup> Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), p. 235 and sources cited therein.

<sup>143</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 24.

<sup>144</sup> *Ibid.*

<sup>145</sup> Declaration on Nagorno-Karabakh, adopted by the Committee of Ministers on 11 March 1992 at the 471bis meeting of the Ministers’ Deputies, Doc No. CM/Del/Concl(92)471bis.

<sup>146</sup> *Fatullayev v Azerbaijan*, App. No. 40984/07, ECtHR, 22 April 2010, para. 87.

<sup>147</sup> Organization of Islamic Cooperation, Resolution No. 8/43-C on Affiliated Institutions, 18–19 October 2016, para. 8; Organization of Islamic Cooperation, Final Communiqué of the Twelfth Session of the Islamic Summit Conference, 6–7 February 2013, para. 117.

<sup>148</sup> Laurence Broers, *Armenia and Azerbaijan: Anatomy of a Rivalry* (Edinburgh, 2019), p. 37.

subject to similar atrocities by Armenian forces. A similar atrocity occurred in the village of Garadagli in February 1992, where Armenian forces executed 33 civilians out of 118 taken hostage, and killed dozens more civilians during their occupation of the surrounding Khojavend district.<sup>149</sup> The European Court of Human Rights has found that, since May 1992, “[t]he district of Lachin, in particular the town of Lachin, was attacked many times”, including by “aerial bombardment”.<sup>150</sup> In May 1992, the city of Shusha and 30 villages in the Shusha district were forcibly captured by Armenian forces. As a result of the Armenian offensive, 195 civilians were killed, 165 were wounded and 58 persons went missing.<sup>151</sup> Even before the occupation, Shusha had been “a target for shell fire from Stepanakert” that was “either indiscriminate or intentionally aimed at civilian targets”, including a hospital.<sup>152</sup> In August 1992, a massacre occurred near Baligaya village of the Goranboy district: Armenian soldiers attacked six Azerbaijani herding families who had been expelled from Lachin and were sheltering in the village, killing 24 individuals (including men, women, children and elderly people) and seriously wounding 9 more.<sup>153</sup>

93. Armenian forces committed further violations of the IHL rules intended to safeguard civilians in 1993. Human Rights Watch stated: “During 1993, the vast majority of violations of the rules of war, such as indiscriminate fire, ... were the direct result of Karabakh Armenian offensives, often supported by forces from the Republic of Armenia”.<sup>154</sup> In particular, it reported that “many Azeris were killed by indiscriminate fire as they attempted to escape” towns that had been captured by Karabakh Armenian forces.<sup>155</sup>

94. Armenian forces launched an operation on the Kalbajar district in Azerbaijan that lasted from 27 March until 5 April 1993, an offensive which Human Rights Watch described as involving “several violations of the rules of war, including ... indiscriminate fire” and violations of the prohibition on targeting civilians. According to Human Rights Watch, Kalbajar, including its hospital, came under major shelling, artillery fire and bombardment (including by Grad rockets) by Karabakh Armenian or Armenian forces for several days. Human Rights Watch reported that “civilians had little or no advance warning of the actual attack and even less time to make their escape after the limited routes still available were closed by advancing Karabakh Armenian forces”. Civilians were fired on even as they sought to escape their villages. In particular, “[w]hile Karabakh Armenian forces initially allowed the majority of Kelbajar province’s civilian population to flee, after a time it seems most escape routes, except those over the treacherous Murov mountains, were closed”. Numerous

<sup>149</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Victims of the Genocide: Women and Children”: <<http://www.human.gov.az/en/view-page/92#.XfZHxp7TOR>>; State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Garadagli Tragedy”: <<http://www.human.gov.az/en/view-page/69/QARADA%C4%9ELI+Q%C6%8FTL%C4%B0AMI#.XfZI1ZP7TOR>>.

<sup>150</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 19. See also “Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory”, Annex to the Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/692-S/2009/51 (27 January 2009), para. 18.

<sup>151</sup> Letter dated 15 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/73/878-S/2019/406 (20 May 2019), p. 1.

<sup>152</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 31.

<sup>153</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Balligaya Massacre”: <<http://www.human.gov.az/en/view-page/98#.XfTq-JP7TOR>>.

<sup>154</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), p. 12.

<sup>155</sup> *Ibid.*, p. xii.

civilians attempting to flee over the Murov mountains were targeted and wounded or killed by Armenian forces. Human Rights Watch reported that “thousands trekked over the Murov mountains to escape the Karabakh Armenian offensive”. Some 200 Azerbaijanis were killed, “mostly from exposure, during the mountain crossing”. Helicopter flights to evacuate civilians had to be terminated because of shelling around the helicopter pad.<sup>156</sup>

95. In the village of Bashlibel (in the district of Kalbajar) alone, 27 civilians (including 13 women and one child) were killed, including in a direct and targeted attack on a grotto in the mountains where the villagers were hiding after having fled their homes.<sup>157</sup>

96. In April 1993, a United Nations mission travelled to Azerbaijan to investigate the atrocities which had been reported. When the mission visited the Azerbaijani town of Fuzuli, it reported that “[t]he town appeared to be under military attack and incoming and outgoing shell-fire was audible”.<sup>158</sup> It also received reports of shelling in Gubadly and Aghdam, which had led to civilian deaths.<sup>159</sup>

97. In response to these atrocities, on 30 April 1993, in Resolution 822, the Security Council demanded “the immediate cessation of all hostilities and hostile acts with a view to establishing a durable ceasefire, as well as immediate withdrawal of all occupying forces from the Kelbadjar district and other recently occupied districts of Azerbaijan”.<sup>160</sup>

98. The next significant attack came in June 1993 and was against the town of Aghdam and the towns that surrounded it. According to Human Rights Watch:

“Karabakh Armenian forces would ... shell[] Agdam and the villages that surrounded it. This use of imprecisely aimed artillery at population centers was indiscriminate, in violation of the rules of war. Qiyasli, about three kilometers east of Khidirli, was shelled on June 20, from the direction of the Karabakh town of Khanabad (ten kilometers to the southwest), according to Gonul, whose family worked on the Dzerzhinskii Collective farm in the village. The shelling continued and on June 22, Gonul was wounded by indiscriminate fire and her home damaged. ... En route, [one witness'] son saw the bodies of several civilians killed by indiscriminate and targeted Karabakh Armenian fire. ... On the morning of June 12, [Karabakh Armenian forces] entered the villages of Merzili and Yusufjanli, about seven kilometers southeast of Agdam. There Karabakh Armenian forces killed civilians, took hostages, and destroyed civilian dwellings. ... Several hours later that day, the Karabakh Armenian forces withdrew from Yusufjanli. Several of the village men, including Kerim, Ali, and Zaman, plus some Azeri soldiers entered the village one last time. Five Azeri civilians lay where they were killed.”<sup>161</sup>

99. Just weeks after the attacks on civilians in Aghdam, the Chairman of the Minsk Conference issued recommendations, including proposing that the Security Council should condemn “all bombardments and shelling of inhabited areas and population

<sup>156</sup> *Ibid.*, pp. 12–27.

<sup>157</sup> *Bashlibel Tragedy: Armenian Atrocities through the Eyes of Witnesses* (Baku, 2013), pp. 107, 114–115, 133–134.

<sup>158</sup> Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny-Karabakh, UN Doc S/25600 (14 April 1993), para. 5.

<sup>159</sup> *Ibid.*, para. 6.

<sup>160</sup> United Nations Security Council Resolution 822, UN Doc S/RES/822 (30 April 1993), para. 1.

<sup>161</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. 32–49 (internal references omitted).

centres in the area of conflict”.<sup>162</sup> Two days later, on 29 July 1993, in Resolution 853, the Security Council noted “with alarm the escalation in armed hostilities and, in particular, the seizure of the district of Aghdam in the Azerbaijani Republic”.<sup>163</sup> Further, it condemned “the seizure of the district of Aghdam and all other recently occupied areas of the Azerbaijani Republic”<sup>164</sup> as well as “all hostile actions in the region, in particular attacks on civilians and bombardments of inhabited areas”.<sup>165</sup>

100. An attack took place on Fuzuli in mid-August 1993. One set of parents who were taken hostage during the attack stated that their two children “were among 25 unarmed inhabitants of the village of Gajar in the Fizuli district of Azerbaijan who were surrounded on 17 August 1993 and shot by Armenian fighters”.<sup>166</sup>

101. In a note dated 18 August 1993, the President of the Security Council referred to the recent seizures of Kalbajar and Aghdam by Armenian forces and stated:

“The Council demands a stop to all attacks and an immediate cessation of the hostilities and bombardments, which endanger peace and security in the region, and an immediate, complete and unconditional withdrawal of occupying forces from the area of Fizuli, and from the districts of Kelbadjar and Agdam and other recently occupied areas of the Azerbaijani Republic.”<sup>167</sup>

102. Ignoring the condemnation and demands of the Security Council, Armenian forces continued their attacks on Azerbaijani towns and villages in violation of the applicable rules of IHL. In August and September 1993, Armenian forces expanded their occupation to cover the area all the way to the Araks river, Azerbaijan’s border with Iran. In this region, “Karabakh Armenian forces killed several Azeri civilians who were trying to flee, shooting into towns and villages even after Azeri soldiers had fled and no resistance to their advance was offered”, and “continued their practice of shooting at villages where they encountered no resistance in order to force the civilian population to flee”. Those displaced were trapped between the Araks river to the south, Armenia to the west, and Armenian forces advancing from the north; the only thin finger of land extending east along the Araks river towards unoccupied Azerbaijani territory was shelled by Armenian forces from time to time.<sup>168</sup>

103. The next major assault on civilians came in the seizure of the Zangilan district in October 1993. According to Human Rights Watch:

“During this offensive, [Armenian forces] forcibly evicted the civilian population, took hostages, killed civilians with indiscriminate fire, and looted and burned civilian property. ... Before the start of the Karabakh Armenian offensive on October 23, Karabakh Armenian authorities reportedly made radio broadcasts to the Azeri population ordering them to leave the area. Those who

<sup>162</sup> Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council (27 July 1993), Annex to the Letter dated 28 July 1993 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council, UN Doc S/26184 (28 July 1993), para. 16.

<sup>163</sup> United Nations Security Council Resolution 853, UN Doc S/RES/853 (29 July 1993), Preamble.

<sup>164</sup> *Ibid*, para. 1.

<sup>165</sup> *Ibid*, para. 2.

<sup>166</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000), p. 4.

<sup>167</sup> Note by the President of the Security Council, UN Doc S/26326 (18 August 1993).

<sup>168</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. 50–65.

heard and heeded the warning were able to escape into Iran using the Horadiz bridge. Subsequently, the bridge was destroyed by Karabakh Armenian shelling, and Azeri refugees were forced to swim across the Araks river to escape. Many drowned. [One witness who fled] saw many dead Azeri civilians, including some who appeared to have been shot at close range. ... The Karabakh Armenians struck Horadiz station on October 25. Shelling, which started a few days before, inflicting civilian casualties. ... On October 28, the Karabakh Armenian forces resumed their operation to seize Zangelan and force out its population. The Karabakh Armenian troops came from the north, the east, and the west. Early on October 28, they hit Alibeyli, Zangelan province, a village of about 500 families about ten kilometers northeast of Zangelan just south of the Akera River. ... [The] Karabakh Armenians shelled it and set fire to the houses. ... As a result of 1993 Karabakh Armenian offensives, often supported by the Republic of Armenia, ... many [civilians] were killed by indiscriminate fire.”<sup>169</sup>

104. Further details of atrocities in the Zangilan district have subsequently come to light. For example, one former inhabitant “reported that on 23 October 1993, 26 out of 40 defenceless persons detained in the district of Goradiz village were killed”.<sup>170</sup>

105. The outrages in the Zangilan district elicited an international response. In a letter to the President of the United Nations Security Council dated 27 October 1993, Turkey described “a new and large-scale attack on the Zangelan region of Azerbaijan and the town of Horadis” which Armenian forces had launched during a visit of the CSCE Chairperson to the area, from which there had been “alarming reports” of the region’s civilian inhabitants “desperately striving to evacuate the city in order to reach safer areas”.<sup>171</sup>

106. Weeks later, in Resolution 884 (dated 12 November 1993), the Security Council noted “with alarm the escalation in armed hostilities as consequence of the violations of the cease-fire and excesses in the use of force in response to those violations, in particular the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic”<sup>172</sup> and “condemn[ed] the occupation of the Zangelan district and the city of Goradiz, attacks on civilians and bombardments of the territory of the Azerbaijani Republic”.<sup>173</sup>

107. In 2003, more than a decade after Armenia first occupied Azerbaijani territory, Azerbaijan reported further attacks on civilians. In the summer of 2003 there was an acute increase in the Armenian side’s violations of the ceasefire. In addition to shelling and killing Azerbaijani soldiers along ceasefire lines, Armenians also attacked civilians. For example, on 22 March 2003, Armenian militants abducted a resident of Gaymaqli (a village in the Gazakh district) as well as a resident of the Ganja city. On 12 May 2003, on the day of the ninth anniversary of the ceasefire, as

<sup>169</sup> *Ibid*, pp. 68–80.

<sup>170</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000), p. 4.

<sup>171</sup> “Support by States Member of the United Nations and international organizations to Azerbaijan’s position on the conflict in and around the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/730–S/2009/103 (20 February 2009).

<sup>172</sup> United Nations Security Council Resolution 884, UN Doc S/RES/884 (12 November 1993), Preamble.

<sup>173</sup> *Ibid*, para. 1.

a result of the violation of the ceasefire by Armenia, a resident of Gapanli (a village in the Tartar district) was wounded.<sup>174</sup>

108. On 8 March 2011, Armenian armed forces opened fire from positions in the occupied village of Shykhlar in the Aghdam district of Azerbaijan. As a result of this, a nine-year-old resident of the village of Orta Garvand (in the Aghdam district), who at the time was playing with other children in the yard of his home, received a bullet wound to the head and died on the way to hospital. In the course of the forensic examination it was established that the injuries that caused his death were typical of cases involving shots of this kind from snipers' weapons.<sup>175</sup>

109. On 14 July 2011, as a result of the blast of an explosive device built in a toy, a 13-year-old Azerbaijani girl was killed and her 32-year-old mother was seriously injured. This took place in the Alibayli village of the Tovuz district of Azerbaijan, bordering with the Republic of Armenia. The toy stuffed with an explosive device was found by the victim in the Tovuz River, springing from the territory of Armenia and flowing through the village of Alibayli. According to the conclusion of the investigation, the booby trap toy was made in Armenia and was dropped to the river intentionally, and its target were children of the neighbouring Azerbaijani settlements.<sup>176</sup>

110. On 11 July 2014, the Armenian armed forces brutally killed an Azerbaijani civilian, Hassan Hassanov, and captured Dilgam Asgarov and Shahbaz Guliyev, who were attempting to visit the graves of their parents in the occupied Kalbajar district of Azerbaijan. The Armenian side not only did not release these civilians but also fabricated charges against them and unlawfully sentenced D. Asgarov to life imprisonment and Sh. Guliyev to 22 years in jail, while the body of H. Hassanov was returned to Azerbaijan, with the facilitation of the International Committee of the Red Cross, after almost three months, on 2 October 2014. The images of D. Asgarov and Sh. Guliyev before and after their capture, which the Armenian side made available to the public to exert psychological pressure on their families and relatives, clearly demonstrate that they were subjected to torture and other inhuman and degrading treatment.<sup>177</sup> This series of violations is now the subject of a complaint before the European Court of Human Rights.<sup>178</sup>

111. From late 2015, there has been a re-escalation of violence in and around the Azerbaijani territories occupied by Armenia. Armenia has continued to commit war

<sup>174</sup> "Report on the results of Armenian aggression against Azerbaijan and recent developments in the occupied Azerbaijani territories", Annex to the Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/58/594-S/2003/1090 (13 November 2003).

<sup>175</sup> Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 3; Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973-S/2017/585 (7 July 2017), p. 2.

<sup>176</sup> Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), pp. 2–3; Letter dated 19 January 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/754-S/2017/57 (20 January 2017), pp. 1–2; Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973-S/2017/585 (7 July 2017), p. 2.

<sup>177</sup> Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782-S/2017/110 (7 February 2017), p. 7; Letter dated 24 July 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/940-S/2018/738 (26 July 2018), p. 2; Letter dated 16 July 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/73/953-S/2019/581 (19 July 2019), pp. 1–2.

<sup>178</sup> *Asgarova and Veselova v Armenia*, App. No. 24382/15, ECtHR (lodged 15 May 2015, pending).

crimes against Azerbaijani civilians, including by attacking schools and other civilian establishments along the so-called “Line of Contact”.<sup>179</sup>

112. A report of the PACE dated 11 December 2015 described recent attacks by Armenian forces which involved the “deliberate targeting of civilian settlements”.<sup>180</sup> The report detailed descriptions provided by Azerbaijani parliamentarians of “shooting by the Armenian side ... not only targeting the military but also civilians in villages near the line of contact”.<sup>181</sup> One Azerbaijani official had described “a recent incident in which a wedding party on the Azerbaijani side of the line was shot at and several people, including children, were seriously wounded”.<sup>182</sup> A representative of PACE conducted a field visit to an Azerbaijani village which had been “systematically and intentionally targeted from across the line of contact, even though there are no Azerbaijani army facilities there”, writing:

“Many residents reports having been under fire and wounded while working in the fields. Many houses were damaged. ... Local children have to walk along this road in order to get to school and, reportedly, there have been times when schoolchildren were fired at.”<sup>183</sup>

The report concluded that the Assembly should “strongly condemn the deliberate targeting of civilian settlements close to the line of contact and remind the parties of their obligations under the Geneva Conventions to protect the safety and security of non-combatants”.<sup>184</sup>

113. The next major outbreak of violence against civilians by Armenian forces occurred in April 2016. In the beginning of this month, the armed forces of Armenia increased fighting from their positions in the occupied territories of Azerbaijan, subjecting the armed forces of Azerbaijan along the front line and the adjacent densely populated areas to intensive fire with heavy artillery and large calibre weapons.<sup>185</sup> For example, in the early hours of 2 April 2016, civilians were killed by Armenian artillery fire in the Tartar district. The following day, one Azerbaijani civilian was killed and others were wounded in the same area.<sup>186</sup> As a result of Armenia’s attacks starting in April 2016, 34 towns and villages in Azerbaijan were shelled, causing casualties among civilians and the servicemen of the armed forces of Azerbaijan as well as destroying or substantially damaging private and public property, including residences, schools and kindergartens.<sup>187</sup> Six civilians were killed, and 33 civilians (including children) were wounded.<sup>188</sup>

<sup>179</sup> Statement by the Permanent Representative of Azerbaijan to the United Nations at the Security Council open debate on children and armed conflict, 2 August 2019: <<http://un.mfa.gov.az/files/file/statements/Statement%20on%20children%20and%20armed%20conflict%2002.08.19.pdf>>.

<sup>180</sup> Parliamentary Assembly of the Council of Europe, “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan”, Doc No. 13930 (11 December 2015), p. 1.

<sup>181</sup> *Ibid*, para. 69.

<sup>182</sup> *Ibid*, para. 109.

<sup>183</sup> *Ibid*, para. 122.

<sup>184</sup> *Ibid*, para. 128.

<sup>185</sup> Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973-S/2017/585 (7 July 2017), p. 2.

<sup>186</sup> Laurence Broers, “The Nagorny Karabakh Conflict: Defaulting to War” (Chatham House, July 2016), p. 12.

<sup>187</sup> Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973-S/2017/585 (7 July 2017), p. 2; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/725-S/2018/77 (1 February 2018), p. 5.

<sup>188</sup> Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 3.

114. The atrocities were of such a scale and gravity to elicit an international response. In a resolution from April 2016, the OIC “condemned in the strongest terms the continuous attacks carried out by the Armenian armed forces in the occupied territories of the Republic of Azerbaijan as a result of which civilian population suffered, mosques have been attacked, praying people died and social and economic infrastructure have been destroyed”.<sup>189</sup> In a further resolution from October 2016, the same organisation stated that it considered “the actions perpetrated by the Armenian forces against the civilian Azerbaijani population and other protected persons during the conflict as crimes against humanity and underscores in this regard that the perpetrators of such crimes must be held accountable” and that it:

“Strongly condemns the use of military force starting from April 2, 2016, by the armed forces of Armenia from their positions in the occupied territories of Azerbaijan, subjecting the armed forces of Azerbaijan and the adjacent populated areas to intensive fire with heavy artillery and large-caliber weapons, resulting in casualties among Azerbaijani civilians, including children, and substantial damages to the private and public property”.<sup>190</sup>

115. The United Nations High Commissioner for Refugees (“UNHCR”) in Azerbaijan published a report dated 15 May 2016 which described the forced displacement that had resulted from the most recent Armenian attacks on civilians. The report stated that of the 121,761 people who lived in towns and villages affected by violence (which included “intense shelling” and the “use of rockets and heavy artillery [which] resulted in numerous casualties”), an estimated 58,594 were “at various stages of displacement”, meaning they were “either leaving their residences every night fearing the nightly artillery bombardments, relocate more vulnerable family members away from the frontlines or move to a safer location altogether”.<sup>191</sup> The UNHCR reported that the violence which had started in April 2016 had “changed fundamentally” the lives of people living near the “Line of Contact” “due to the use of new and heavier types of military hardware inflicting worse damage and reaching further behind the frontlines”.<sup>192</sup>

116. Violations of the IHL rules protecting civilians continued into 2017. On 12 January 2017, an explosive device consisting of an electric detonator, a detonation cord, a large amount of shrapnel and batteries for activation was identified in the Tovuz district of Azerbaijan, in the vicinity of the State border. The explosive device, prohibited under the relevant international instruments, was thrown into the area by an unmanned aerial vehicle belonging to the armed forces of Armenia and was aimed at targeting both the civilians residing in the area and the servicemen of the armed forces of Azerbaijan deployed there.<sup>193</sup>

117. On 4 July 2017, the armed forces of Armenia violated the ceasefire, subjecting the armed forces of Azerbaijan along the front line and the nearby inhabited areas to intensive fire with 82 and 120 mm mortars and heavy grenade launchers. As a result of Armenia’s attacks, a 51 year old resident of the village of Alkhanli of the Fuzuli district of Azerbaijan, Sahiba Guliyeva, and her 2 year old granddaughter, Zahra

<sup>189</sup> Organization of Islamic Cooperation, Final Communique of the 13<sup>th</sup> Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2016), para. 17.

<sup>190</sup> Organization of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), paras. 2 and 20.

<sup>191</sup> UNHCR Azerbaijan, “Assessment Mission Report: Populations affected by the violence on the Line of Contact in April 2016” (15 May 2016), p. 2.

<sup>192</sup> *Ibid*, p. 4.

<sup>193</sup> Letter dated 19 January 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/754–S/2017/57 (20 January 2017), p. 1.



Guliyeva, were killed, and another woman, 52 year old Sarvinaz Guliyeva, was seriously wounded, while civilian objects were substantially damaged.<sup>194</sup>

## 2. War crimes relating to civilian property

### (i) Applicable legal principles

#### The principles of distinction and proportionality in relation to civilian objects

118. Civilian property is subject to many of the same protections as apply to civilians themselves. In particular, under customary international law, the principle of distinction operates such that attacks may only be directed against military objectives, and must not be directed against civilian objects.<sup>195</sup> “Civilian objects” consist of “all objects that are not military objectives”, with the latter defined as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.<sup>196</sup>

119. Many of the cardinal provisions cited in relation to the protection of civilians also apply to civilian property. For example:

- a. Article 25 of the Hague Regulations prohibits “the attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended”, encompassing not only civilians themselves but also civilian property.
- b. Article 48 of Additional Protocol I applies the principle of distinction to both “the civilian population and civilian objects”, demanding that parties “shall direct their operations only against military objectives”.
- c. Article 85(3) of Additional Protocol I identifies further acts which “shall be regarded as grave breaches ... when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health”, including “(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects”.

120. In addition, Article 52 of Additional Protocol I provides for the “[g]eneral protection of civilians objects” in the following terms:

- “1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.
2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make 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.

<sup>194</sup> Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973-S/2017/585 (7 July 2017), p. 1.

<sup>195</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 7, p. 25. See also Y. Dinstein, *The Conduct of Hostilities under the Law of Armed Conflict* (Cambridge, 3<sup>rd</sup> ed., 2016), chapters 2 and 5.

<sup>196</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rules 8–9, pp. 29, 32, respectively.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”

121. Article 51 of Additional Protocol I, set out above in relation to civilians, also extends to civilian objects. Civilian objects are defined as “all objects which are not military objectives”(Article 52(1)). Article 57 also requires that, in the conduct of military operations, a party must take “constant care” to “spare ... civilian objects”, including by taking precautions as set out above in relation to civilians themselves.

122. Indiscriminate or disproportionate destruction of civilian property will in many circumstances constitute a war crime. Article 147 of the Fourth Geneva Convention defines as “grave breaches” of the Convention certain acts taken in relation to civilians (who are persons protected under that Convention), including “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”. The Rome Statute (reflecting customary international law in this instance) identifies as war crimes: the grave breach set out in Article 147 of the Fourth Geneva Convention (Article 8(2)(a)(iv)); “[i]ntentionally directing attacks against civilian objects, that is, objects which are not military objectives” (Article 8(2)(b)(ii)); “[i]ntentionally launching an attack in the knowledge that such attack will cause incidental ... damage to civilian objects ... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” (Article 8(2)(b)(iv)); “[a]ttacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives” (Article 8(2)(b)(v)); and “[d]estroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war” (Article 8(2)(b)(xiii)).

*Pillage is prohibited*

123. Pillage (or plunder or spoliation) is the subject of specific prohibitions under IHL. For example, Articles 28 and 47 of the Hague Regulations outlaw pillage in all circumstances. The second paragraph of Article 33 of the Fourth Geneva Convention states with stark clarity: “Pillage is prohibited.” Article 8(2)(b)(xvi) of the Rome Statute states that “pillaging a town or place, even when taken by assault” constitutes a war crime in international armed conflicts. The Elements of Crimes of the Statute of the International Criminal Court also enumerates the elements of the war crime of pillage as follows:

- “1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

124. The Trial Chamber of the ICTY defined pillage in terms of the unlawful appropriation of public or private property by individual soldiers for private ends.<sup>197</sup> While pillage is usually committed by a member of the armed forces, it may be committed also by civilians in appropriate circumstances. The ICRC has identified

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<sup>197</sup> *Prosecutor v Delalić*, IT-96-21-T, Judgment of 16 November 1998, paras. 590–591.

the prohibition of pillage as a rule of customary international law.<sup>198</sup> Where the pillage takes place with the permission of the State concerned, that State will bear responsibility.<sup>199</sup>

Property in occupied territory

125. Under customary international law, in occupied territory, private property must be respected and may not be confiscated, except where destruction or seizure of such property is required by imperative military necessity.<sup>200</sup> This rule of custom reflects the prohibition of the confiscation of private property enshrined in Article 46 of the Hague Regulations, subject to Article 53, which permits a State to confiscate property, including that belonging to private property, for military purposes provided that the property is “restored and compensation fixed when peace is made”.

126. Several national military manuals give effect to this prohibition. For example, Australia’s Defence Force Manual states that private property seized in the course of an occupation does not become the property of the occupying power; rather, “[t]he seizure operates merely as a transfer of the possession of the object to the occupying power while ownership remains with the private owner”.<sup>201</sup> The UK Manual of the Law of Armed Conflict underscores that “[p]rivate property must be respected”, while any destruction of enemy property whether it belongs to private persons or the State is prohibited, unless the destruction is absolutely necessitated by military operations.<sup>202</sup>

127. There are also a number of international instruments dealing specifically with the property rights of displaced persons, which must be respected as a matter of customary international law.<sup>203</sup> For example, Principle 21(3) of the Guiding Principles on Internal Displacement states that “property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use”.

The interaction with rules of human rights

128. Protocol No. 1 to the ECHR, to which both Azerbaijan and Armenia are parties, states that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

129. This rule of human rights law remains applicable in the occupied territories of Azerbaijan, although what is deemed to be “in the public interest” will be affected by the existence of an occupation and the applicability of IHL. In its 1996 judgment in *Loizidou v Turkey*, the European Court of Human Rights found a violation of the right to respect for the peaceful enjoyment of property of displaced persons.<sup>204</sup>

<sup>198</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 52, p. 182.

<sup>199</sup> Eritrea-Ethiopia Claims Commission, Western Front, Aerial Bombardment and Related Claims, Partial Award, 45 ILM, 2006, pp. 396, 405.

<sup>200</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 51, p. 178.

<sup>201</sup> Defence Force Manual (1994), para. 329.

<sup>202</sup> UK Manual of the Law of Armed Conflict (Oxford, 2004), p. 299.

<sup>203</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 133, p. 472.

<sup>204</sup> *Loizidou v Turkey*, App. No. 15318/89, ECtHR (Grand Chamber), Merits, 18 December 1996, para. 64.

(ii) *Armenia's violation of these legal rules in the occupied territories of Azerbaijan*

130. Over the course of the conflict, Armenia has engaged in numerous violations of the prohibitions on attacks directed at or causing indiscriminate or disproportionate harm to civilian objects. It has also engaged in pillage and breached the rules applicable to civilian property in occupied territory. This conduct has been sufficiently serious to amount to war crimes under IHL, as well as breaching the human rights of individual Azerbaijanis whose property is located in the occupied territories.

131. In as early as September 1992, Human Rights Watch reported that Armenian forces had engaged in “shelling” of Azerbaijani villages including Malybeyli and Gushchular in December 1991 and that residents, after having fled their town, “saw, from atop a hill a kilometer away, houses in flames”.<sup>205</sup> Eyewitnesses quoted by Human Rights Watch reported seeing Armenian forces “enter the houses, and when they went out, the houses burned”, and also cars hauling things away from the houses, including carpets”.<sup>206</sup> Human Rights Watch also referred to “Western press reports from the region [that] described the burning and looting of Azerbaijani houses in Lachin by Armenian self-defense forces”.<sup>207</sup> Civilian houses were also burned in offensives on the villages of Kerkijahan and Kiusular in this early phase of the conflict.<sup>208</sup> Various civilian structures such as a central market, a makeshift hospital and houses were destroyed by shelling and then by looting and burning during Armenian offensives on Aghdam and Fuzuli in March 1992.<sup>209</sup> The Secretary-General of the United Nations reported that civilians in Fuzuli “complained about the frequent theft of livestock by Armenian forces”.<sup>210</sup> Similar reports of the destruction and pillaging of property emerged from the offensives on the Azerbaijani villages of Baghanis-Ayrim, Meshaly, Karkijahan, Bashguneypeya between March 1990 and March 1992.<sup>211</sup>

132. In its subsequent report, Human Rights Watch confirmed that “[w]ide-scale looting and destruction of civilian property” by Armenian forces continued throughout the Armenian offensives of 1993, often orchestrated in advance by Armenian authorities in Nagorny Karabakh and “supported by forces from the Republic of Armenia”.<sup>212</sup> It identified that violations of the rules of war in these offensives included the “looting and burning of civilian homes”<sup>213</sup> and recommended that the Armenian authorities in Nagorny Karabakh “cease conducting a policy of “scorched earth” on captured enemy territory, particularly looting, pillaging, and burning of civilian objects”.<sup>214</sup> In particular, it confirmed that “[l]ooting and

<sup>205</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 25.

<sup>206</sup> *Ibid*, p. 25–26.

<sup>207</sup> *Ibid*, p. 14.

<sup>208</sup> *Ibid*, pp. 27–28.

<sup>209</sup> *Ibid*, p. 33; Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), p. 237.

<sup>210</sup> Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorno-Karabakh, UN Doc S/25600 (14 April 1993), para. 6.

<sup>211</sup> Information from the Military Prosecutor’s Office of the Republic of Azerbaijan, “On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan” (31 May 2019).

<sup>212</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. xii, 12.

<sup>213</sup> *Ibid*, pp. xiii.

<sup>214</sup> *Ibid*, pp. xvi.

destruction of civilian property are also prohibited but occurred frequently during the offensive” on Kalbajar; it provided evidence of attacks on hospitals and other civilian objects.<sup>215</sup> It also stated that, after Agdam was captured in July 1993, “it was intentionally looted and burned under orders of Karabakh Armenian authorities, another serious violation of the rules of war”.<sup>216</sup> It stated further:

“Over the next several weeks, Karabakh forces systematically and methodically looted and burned Agdam and the villages surrounding it. According to witnesses, smoke rising from the Agdam area during August 1993 was visible for ten to twenty miles. ... A Western diplomat active in the OSCE Minsk Group talks said that the burning and looting of Agdam was not the result of undisciplined troops, but was a well-orchestrated plan organized by Karabakh authorities in Stepanakert.”<sup>217</sup>

133. In April 1993, during the Armenian offensive on Bashlibel village, residents saw their houses burned and their valuable items, including carpets, stolen. Cattle and small livestock were stolen over the following month, and most of the village’s administrative buildings, as well as its secondary school building, were burned.<sup>218</sup>

134. Further violations of the laws of war were committed during the Armenian offensive towards the Iranian border in August 1993. Human Rights Watch stated:

“During their two-stage offensive, Karabakh Armenian forces committed several violations of the rules of war, including ... the looting and destruction of civilian objects. ... Then around 2:00 P.M. Grad rockets started to fall near the village, shaking the walls and breaking the windows of [one witness]’ home. ... The captives were held in Hoje, during which time Mr. G saw several big trucks enter and rob twelve to fifteen of the sixty houses in Hoje; he could not see the rest of the houses. They were held two days in Tartumaj village of Jebrayil, where the men were beaten but not interrogated. Tartumaj was burned down when they arrived. Only two public buildings used to house the battalion were still standing.”<sup>219</sup>

135. Then, in the Armenian offensive against the Zangilan district in October 1993, Armenian forces “looted and burned civilian property”, including the Horadiz bridge and civilian dwellings.<sup>220</sup> When a Human Rights Watch delegation visited the occupied territories in April–May 1994, they could see “[t]he still-burning villages of the displaced”.<sup>221</sup>

136. The Minsk Group of the CSCE (later the OSCE) condemned the destruction and pillage of civilian property from its earliest days of operation. In July 1993, the Chairman of the CSCE Minsk Conference on Nagorny Karabakh proposed that the Security Council should “[d]emand [] an immediate and unconditional withdrawal from all recently occupied territories, as already requested in Security Council resolution 822 (1993), including the city of Agdam, which should be kept free from further destruction and looting, and other territories occupied after that resolution was

<sup>215</sup> *Ibid*, pp. 12–27. See also Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), p. 237.

<sup>216</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. 32–49.

<sup>217</sup> *Ibid*, pp. 32–49.

<sup>218</sup> *Bashlibel Tragedy: Armenian Atrocities through the Eyes of Witnesses* (Baku, 2013), pp. 131–132.

<sup>219</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. 50–62 (internal citations omitted).

<sup>220</sup> *Ibid*, pp. 68–80.

<sup>221</sup> *Ibid*, pp. 85–87.

approved”.<sup>222</sup> In November of the same year, the Minsk Group issued a Declaration stating that “[t]he nine countries also condemn the looting, burning and destruction of villages and towns, which cannot be justified under any standards of civilized behaviour”.<sup>223</sup>

137. To give a sense of the scale of the devastation, more than 900 settlements and 6,000 industrial, agricultural and other enterprises have been looted, plundered and destroyed as had 150,000 homes. More than 4,300 social and cultural facilities have been destroyed, including 693 secondary schools, 855 pre-schools, 695 medical institutions, 927 libraries, 473 historical monuments, palaces and museums, and six State theatres and concert halls. Armenian forces have pillaged 6,000 Azerbaijani factories, destroyed 1,200 km of irrigation systems, driven 244,000 sheep and 69,000 cattle from Azerbaijani land into Armenia, and destroyed 160 bridges, 2670 km of road and 2000 km of gas distribution lines.<sup>224</sup>

138. Armenia has also flagrantly violated the rules of IHL concerning the ownership of property in occupied territory. In a report from September 2005, the Crisis Group Europe stated that “[t]he privatisation of land and business has been largely carried out without the participation of former Azeri inhabitants, which is likely to make the return of IDPs and the reintegration of Nagorno-Karabakh with Azerbaijan all the more difficult”.<sup>225</sup> By way of example, Armenian authorities have “turned a blind eye” to Armenians who have used the occupation to profit from the “scrap metal business” by “dismantling ... infrastructure, housing and other pre-war structures for the resale of metal, bricks and building materials”.<sup>226</sup> The report stated that this practice may “simply be termed either robbery or the purposeful and irreversible dismantling of community structures to impede the return of pre-war inhabitants”.<sup>227</sup> Land and public utilities in the occupied territories were largely privatised, with no share whatsoever being allocated to or reserved for the original Azerbaijani inhabitants of the territory who were forcibly expelled.<sup>228</sup> A more recent report by the International Crisis Group

<sup>222</sup> Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council, Annex to the Letter dated 28 July 1993 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council, UN Doc S/26184 (28 July 1993), para. 16.

<sup>223</sup> Declaration of the Nine CSCE Minsk Group Countries, Enclosure I to the Letter dated 9 November 1993 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council, UN Doc S/26718 (10 November 1993), para. 3.

<sup>224</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000), p. 2; “Report on the results of Armenian aggression against Azerbaijan and recent developments in the occupied Azerbaijani territories”, Annex to the Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/58/594–S/2003/1090 (13 November 2003); “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475–S/2009/508 (6 October 2009), para. 101; State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Results of Military Aggression of the Republic of Armenia”: <<http://www.human.gov.az/en/view-page/65/ERM%C6%8FN%C4%B0STAN+RESPUBLIKASININ+H%C6%8FRB%C4%B0T%C6%8FCAV%C3%9CZ%C3%9CN%C3%9CN+N%C6%8FT%C4%B0C%C6%8FL%C6%8FR%C4%B0+28R%C6%8FSM%C4%B0+XRON%C4%B0KA%29#.XefTsehKjIU>>.

<sup>225</sup> Crisis Group Europe Report No. 166, Nagorno-Karabakh: Viewing the Conflict from the Ground (14 September 2005), p. 12.

<sup>226</sup> *Ibid.*, p. 14.

<sup>227</sup> *Ibid.*, p. 14.

<sup>228</sup> *Ibid.*, p. 15.

records that “[t]he de facto authorities signed long-term land rent contracts with the local [Armenian] population [in Kalbajar and Lachin]”, suggesting that “neither the authorities nor the settlers view this as a temporary status or are contemplating return of the districts to Baku’s control”.<sup>229</sup>

139. In June 2015, the European Court of Human Rights issued its judgment in *Chiragov*, confirming what had long been known by former Azerbaijani residents of the occupied territories and the NGOs working there concerning the devastation and plundering of civilian property. In particular, the Court recorded the large-scale destruction of houses during the offensive on Lachin in May 1992 (both by aerial bombardment and by burning and looting by soldiers on the ground).<sup>230</sup>

140. Despite the damning judgment in *Chiragov*, Armenian forces have continued to flout the rules of international law pertaining to civilian property in the most recent phases of the conflict and occupation. The UNHCR reported in May 2016 of the damage caused to civilian property by artillery bombardments and unexploded ordnances (“UXOs”) in Azerbaijani villages close to the “Line of Contact”; for example, schools were forced to close and water supply had been disrupted.<sup>231</sup> Armenia’s attacks in April 2016 alone destroyed or substantially damaged 577 civilian buildings, including 532 residential houses, 5 schools, 3 kindergartens, 2 clinics and 1 community centre.<sup>232</sup> Further attacks by Armenian forces in July 2017 caused substantial damage to civilian objects at various points close to the “Line of Contact”.<sup>233</sup>

141. Azerbaijan has published several reports on the longer-term appropriation and destruction of civilian property in the occupied territories, in flagrant violation of the applicable rules of international law. In August 2016, Azerbaijan published a report based on evidence gathered mainly from Armenian public sources which provided compelling evidence of Armenian actors engaging in the depredatory exploitation and pillage of and illicit trade in assets, natural resources and other wealth in those territories, accompanied by substantial and systematic interference with public and private property rights.<sup>234</sup> The report is extremely detailed, and its content cannot be reproduced in full here. Its findings included that economic activities generated by Armenian settlements result in appropriation of land and natural resources and other public and private property;<sup>235</sup> that certain agricultural lands in the occupied

<sup>229</sup> International Crisis Group, “Nagorno-Karabakh’s Gathering War Clouds”, Europe Report No. 244 (1 June 2017), p. 20 (internal citations omitted).

<sup>230</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 19–20.

<sup>231</sup> UNHCR Azerbaijan, “Assessment Mission Report: Populations affected by the violence on the Line of Contact in April 2016” (15 May 2016), pp. 2–5. See also the Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), p. 6.

<sup>232</sup> Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 3. See also the Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), p. 6; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/725–S/2018/77 (1 February 2018), p. 5.

<sup>233</sup> Letter dated 5 July 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/973–S/2017/585 (7 July 2017), p. 1.

<sup>234</sup> Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016–S/2016/711 (16 August 2016), p. 1.

<sup>235</sup> “Illegal economic and other activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016–S/2016/711 (16 August 2016), p. 11.

territories have been illegally appropriated and extensively exploited by Armenia, its companies and the subordinate local regime;<sup>236</sup> that items of infrastructure have been dismantled (including for example the stripping of metals, pipes and bricks); and that there is an “organized system of pillage, under the direction and control of Armenia, with the scope and the geographic area of that pillage dramatically expanded to include also depredatory exploitation of natural resources and other forms of wealth across the occupied territories”.<sup>237</sup>

142. In April 2017, Azerbaijan published a “Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan” by eminent international lawyer, Alain Pellet, who is also a professor emeritus at Université Paris Ouest Nanterre La Défense and a former member (1990–2011) and Chair (1997) of the ILC. Professor Pellet’s Legal Opinion stated that “[t]he activities involving the natural resources of the occupied territories of Azerbaijan under the control of Armenia (exploitation and trade of natural resources and other forms of wealth, cutting of rare species of trees, timber exporting, exploitation of water etc.) fall under the scope of the legal principle of permanent sovereignty over natural resources, especially in relation with occupation”, and that “Armenia’s behaviour towards the natural resources of the occupied territories constitutes a breach of international law, especially of Azerbaijan’s permanent sovereignty over its national resources.”<sup>238</sup>

143. In 2019, Azerbaijan published satellite imagery showing the illegal appropriation and extensive exploitation of agricultural land, infrastructure and natural resources in the occupied territories by Armenia.<sup>239</sup> Again, the extensive detail of that report cannot be reproduced in full here.

144. Armenia’s conduct has not gone unanswered by international organisations. In April 2016, the OIC “expressed its grave concern” at, *inter alia*, “illegal economic and other activities and interference with the public and private property rights in the Nagorno-Karabakh region and other occupied territories of Azerbaijan”.<sup>240</sup> It also “condemned in the strongest terms the continuous attacks carried out by the Armenian armed forces in the occupied territories of the Republic of Azerbaijan as a result of which ... social and economic infrastructure have been destroyed”.<sup>241</sup> In October of the same year, the OIC expressed its “grave concern also over the destruction, plunder and appropriation of the public and private property in the occupied territories of Azerbaijan, as well as illegal exploitation of the natural resources in those territories, illicit trade in such resources and products made out of these commodities,”<sup>242</sup> and further strongly condemned Armenia’s use of military force from April 2016 that had caused “substantial damages to the private and public property”.<sup>243</sup>

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<sup>236</sup> *Ibid*, p. 13.

<sup>237</sup> *Ibid*, p. 14.

<sup>238</sup> “Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan”, Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/880–S/2017/316 (26 April 2017), pp. 36, 38.

<sup>239</sup> Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery” (2019).

<sup>240</sup> Organization of Islamic Cooperation, Final Communiqué of the 13<sup>th</sup> Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2016), para. 16.

<sup>241</sup> *Ibid*, para. 17.

<sup>242</sup> Organization of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), Preamble.

<sup>243</sup> *Ibid*, para. 20.



### 3. War crimes relating to mistreatment of detainees and prisoners of war

#### (i) Applicable legal principles

145. A range of rules of IHL prohibit the mistreatment of detainees (whether they are civilians or prisoners of war) and other persons who are *hors de combat*, including those who are incapacitated and therefore unable to defend themselves or who surrender. Indeed, such protections are considered to be a cornerstone of the IHL regime.

146. Article 23(c) of the Hague Regulations stipulates that it is forbidden “to kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion”.

147. Article 13 of the Third Geneva Convention states:

“Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.”

148. The wilful killing of a prisoner of war, subjecting such a prisoner to torture or inhuman treatment or denying such a prisoner the right to a fair and regular trial all constitute grave breaches of the Third Geneva Convention under Article 130. The same treatment committed against civilians constitutes a grave breach of the Fourth Geneva Convention under Article 147.

149. More generally, murder and torture of all kinds, whether physical or mental, as well as “outrages on personal dignity, in particular humiliating and degrading treatment”, are prohibited at any time and in any place whatsoever by virtue of Article 75(2)(a)–(b) of the First Additional Protocol. It is universally accepted that this rule applies to persons in the detention of an adversary.

150. Article 41(1) of Additional Protocol I states that “[a] person who is recognized or who, in the circumstances, should be recognized to be *hors de combat* shall not be made the object of attack”. Article 41(2) defines a person *hors de combat* if:

- “a) he is in the power of an adverse Party;
  - b) he clearly expresses an intention to surrender; or
  - c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;
- provided that in any of these cases he abstains from any hostile act and does not attempt to escape.”

151. A breach of the rule prohibiting attacks directed against a person *hors de combat* amounts to a grave breach of the Protocol under Article 85(3)(e). Correspondingly, the Rome Statute defines as a war crime “killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion” (Article 8(2)(b)(vi)) and the ICRC has recognised the prohibition as a rule

of customary international law.<sup>244</sup> It has also recognised that the rules that persons *hors de combat* “must be treated humanely”, and prohibiting torture, cruel or inhuman treatment and outrages upon personal dignity, have acquired the status of custom.<sup>245</sup> Torture, cruel and inhuman treatment are likewise war crimes under Articles 8(2)(a)(ii) and 8(2)(a)(iii) the Rome Statute.

152. A person arrested, detained or interned for actions related to the armed conflict is entitled to be informed promptly, in a language he understands, of the reasons why these measures have been taken, and no sentence or penalty may be executed on him except following a fair trial by a competent court: Additional Protocol I, Article 75(3)–(4). Similar guarantees are contained in Articles 102–108 of the Third Geneva Convention and Articles 5 and 66–75 of the Fourth Geneva Convention. Depriving a person of the right to a fair trial is a grave breach of the Third and Fourth Geneva Conventions (Article 130 and Article 147, respectively) and Additional Protocol I (Article 85(4)(e)), and is defined as a war crime in Article 8(2)(a)(vi) of the Rome Statute. The rule that no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees has attained the status of custom.<sup>246</sup>

153. These rules under IHL correlate with certain fundamental guarantees under human rights law, including the right not to be subjected to torture or cruel, inhuman or degrading treatment.<sup>247</sup> For example, the UN Convention against Torture, to which both Armenia and Azerbaijan are parties,<sup>248</sup> provides that all States parties are under an obligation to make torture a crime under their domestic law and to either prosecute alleged offenders found on their territory or extradite them to a country which will prosecute them,<sup>249</sup> while, under Article 3 of the ECHR, no-one may be subjected to torture or inhuman or degrading treatment or punishment. This right continues to apply when a person is detained and is non-derogable, even during armed conflict (Article 15).<sup>250</sup> The prohibition of torture is now accepted not only as a rule of customary international law and treaty law, but also as a norm of *jus cogens*.<sup>251</sup>

**(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan**

154. Armenia’s conduct during the conflict with Azerbaijan and its occupation of Azerbaijani territory has been flatly incompatible with these rules protecting detainees and other persons *hors de combat*.

155. In its report of September 1992, Human Rights Watch recorded numerous instances of Armenian forces killing or otherwise seriously mistreating persons *hors de combat*. One example was three soldiers who surrendered by waving a white flag as they approached Armenian soldiers, but were fired upon and killed.<sup>252</sup> One civilian

<sup>244</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 47, p. 164.

<sup>245</sup> *Ibid*, Rules 87, 90, pp. 306, 315.

<sup>246</sup> *Ibid*, Rule 100, p. 352.

<sup>247</sup> See Article 5 of the Universal Declaration of Human Rights, 1948 and Article 7 of the International Covenant on Civil and Political Rights, 1966. Armenia has been a party to the latter since 23 June 1993 and Azerbaijan since 13 August 1992: see <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en)>.

<sup>248</sup> Armenia since 13 September 1993 and Azerbaijan since 16 August 1996: see <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en)>.

<sup>249</sup> Articles 4 and 7.

<sup>250</sup> See also the European Convention on the Prevention of Torture 1987.

<sup>251</sup> *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment)* [2012] ICJ Rep 422, p. 457. See also *Al-Adsani v United Kingdom*, App. No. 35763/97, ECtHR (Grand Chamber), 21 November 2001, para. 61; and the *Prosecutor v Furundžija*, IT-95-17/1, Judgment of 10 December 1998, 121 ILR, pp. 213, 260–262.

<sup>252</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), pp. 25–26.

fleeing Khojaly was captured by Armenian forces and (along with 19 other Azerbaijanis) was returned to Khojaly where they were beaten with rifle butts before being imprisoned in “Stepanakert” (Khankandi) prison, where they were beaten by Armenian men who came into their cells over the 55 days he was imprisoned.<sup>253</sup>

156. In a subsequent report dated December 1994, Human Rights Watch stated that “Karabakh Armenian violations of the rules of war for the period the report covers include the following: ... the mistreatment and likely summary execution of prisoners of war and other captives”, while the “Republic of Armenia's violations of the rules of war for the period the report covers include grave breaches of the Geneva Conventions: ... and the likely killing of prisoners of war”.<sup>254</sup> It also called on the Armenian side to “cease the inhumane treatment, including summary execution, of all persons who are placed ‘hors de combat’”.<sup>255</sup> The report contains examples of (among others) a civilian who reported having her gold teeth pulled out without anaesthetic by her Armenian captors, of numerous civilians being detained without charge, slashed with knives or beaten while detained and forced to perform labour, of eyewitnesses who saw women being gang raped, and subject to ridicule and scorn by crowds of Armenian civilians.<sup>256</sup>

157. Other reported atrocities from the early phase of the conflict have included instances of dozens of hostages being taken and “immediately shot” by Armenian soldiers; of a baby in detention losing her sight as a result of “open wounds on her head and body” inflicted by her Armenian captors; of a fifteen-year-old girl who witnessed her father’s ear being cut off; of civilian captives being forced to eat grass and subjected to other outrages upon their dignity; and of Azerbaijani detainees being tortured by having their hands forced onto freezing stones, burning cigarettes pressed into their faces, or hot irons placed on their chests, or even being burned alive.<sup>257</sup>

158. A particularly egregious instance concerned the killing of eight Azerbaijani prisoners of war on 29 January 1994. The men had been in detention in a prison camp run by Armenia, which claimed that they had tried to escape and then, upon their escape being discovered, had committed suicide. Human Rights Watch stated:

“Human Rights Watch/Helsinki considers this serial suicide inherently improbable. ... Dr. Derrick Pounder, a Scottish forensic expert retained by the Azerbaijani government who performed autopsies in April 1994 on the eight bodies shortly after they were returned to the government of Azerbaijan, stated that the nature of wounds on six of them indicates summary execution. As of

<sup>253</sup> *Ibid*, pp. 42–43.

<sup>254</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. xiii.

<sup>255</sup> *Ibid*, pp. xvi.

<sup>256</sup> *Ibid*, pp. 32–49, 50–62, 88–98.

<sup>257</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Tortures”: <<http://www.human.gov.az/en/view-page/29/%C4%B0%C5%9E%C6%8FNC%C6%8FL%C6%8FR#.XefgV-hKjIU>>; Information from the Military Prosecutor’s Office of the Republic of Azerbaijan, “On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan” (31 May 2019).

this writing the Armenian government still has not issued comprehensive findings of a commission investigating the deaths.”<sup>258</sup>

Human Rights Watch called on Armenia to “allow an international investigation of the January 29, 1994 deaths of eight Azeri prisoners of war in custody of the army of the Republic of Armenia in Armenia; immediately release all autopsy reports and relevant findings; punish all culpable”.<sup>259</sup> To this day, Armenia has refused to do so.

159. Armenia’s practice of mistreating and even summarily executing prisoners of war and other captives has continued to the present day.<sup>260</sup> The example of Messrs Hassanov, Asgarov and Guliyev has already been described above.<sup>261</sup> The series of violations against these three individuals is now the subject of a complaint before the European Court of Human Rights.<sup>262</sup> Additionally, in December 2015, the PACE issued a draft resolution calling on Armenia and all other parties “directly involved in the illegal conviction of Dilgam Asgarov and Shahbaz Guliyev by unrecognised ‘courts’ in Nagorno-Karabakh and their continuing imprisonment there, to ensure their immediate release by the occupying power, Armenia”.<sup>263</sup> The Assembly’s report stated:

“We should call on all parties directly involved in the illegal conviction of D. Asgarov and S. Guliyev by unrecognised ‘courts’ in Nagorno-Karabakh and their continuing imprisonment there, to ensure a fair trial in a recognised court of the occupying power, Armenia, in accordance with the provisions of Article 6 of the European Convention on Human Rights.”<sup>264</sup>

160. Since the re-escalation of hostilities in 2016, there has been further evidence of atrocities committed by the Armenian side against civilian detainees and prisoners of war. For example, on 10 April 2016, the International Committee of the Red Cross facilitated the handover, between the sides, of the bodies of those killed in action following the recent escalation. Subsequently performed forensic medical examination registered numerous signs of post-mortem mutilation of the bodies of Azerbaijani servicemen.<sup>265</sup> The International Crisis Group has noted that applications have recently been brought before the European Court of Human Rights on behalf of Azerbaijani soldiers whose bodies were mutilated after they were killed in April 2016;

<sup>258</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. 97–98. See also the report of this atrocity in State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000).

<sup>259</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), pp. xv–xvi.

<sup>260</sup> Letter dated 24 July 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/940–S/2018/738 (26 July 2018), p. 1.

<sup>261</sup> See paragraph 110 above.

<sup>262</sup> *Asgarova and Veselova v Armenia*, App. No. 24382/15, ECtHR (lodged 15 May 2015, pending).

<sup>263</sup> Parliamentary Assembly of the Council of Europe, “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan”, Doc No. 13930 (11 December 2015), p. 4.

<sup>264</sup> *Ibid*, p. 22, para. 135.

<sup>265</sup> Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 3; Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), p. 6.

its report notes that “[n]one of these claims appears to have been investigated and remain unpunished” by Armenian authorities.<sup>266</sup>

#### 4. War crimes relating to the taking of hostages

##### (i) Applicable legal principles

161. The law on the taking of hostages is unequivocal. Article 34 of the Fourth Geneva Convention states clearly:

“The taking of hostages is prohibited.”

162. Further, under Article 147, the taking of hostages amounts to a grave breach of the Fourth Geneva Convention

163. Hostage-taking is similarly prohibited “at any time and in any place whatsoever, whether committed by civilian or by military agents” by virtue of Article 75(2)(c) of Additional Protocol I. The prohibition on this conduct is a rule of customary international law.<sup>267</sup> In the trial judgment of the ICTY in *Kordić and Čerkez*, it was stated that:

“It would, thus, appear that the crime of taking civilians as hostages consists of the unlawful deprivation of liberty, including the crime of unlawful confinement. ...

The additional element ... is the issuance of a conditional threat in respect of the physical and mental well-being of civilians who are unlawfully detained. The ICRC Commentary identifies this additional element as a “threat either to prolong the hostage’s detention or to put him to death”. In the Chamber’s view, such a threat must be intended as a coercive measure to achieve the fulfilment of a condition.”<sup>268</sup>

164. Further, the Appeals Chamber of the ICTY held in the *Blaškić* case, relying upon Article 1 of the International Convention against the Taking of Hostages of 1979, that:

“the essential element in the crime of hostage-taking is the use of a threat concerning detainees so as to obtain a concession or gain an advantage; a situation of hostage-taking exists when a person seizes or detains and threatens to kill, injure or continue to detain another person in order to compel a third party to do or to abstain from doing something as a condition for the release of that person.”<sup>269</sup>

165. Further, hostage-taking is recognised as a war crime under Article 8(2)(a)(viii) of the Rome Statute and the Elements of Crimes for the International Criminal Court defines the offence as consisting of the following:

- “1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.

<sup>266</sup> International Crisis Group, “Nagorno-Karabakh’s Gathering War Clouds”, Europe Report No. 244 (1 June 2017), p. 7.

<sup>267</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 96, p. 334. See also Y. Dinstein, *The Conduct of Hostilities under the Law of Armed Conflict* (Cambridge, 3<sup>rd</sup> ed., 2016), pp. 296–297.

<sup>268</sup> *Prosecutor v Kordić and Čerkez*, IT-95-14/2, Trial Judgment of 26 February 2001, paras. 311, 312–313.

<sup>269</sup> *Prosecutor v Blaškić*, (IT-95-14), Appeals Chamber Judgment of 29 July 2004, para. 639.

3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

**(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan**

166. Armenia has repeatedly flouted the unambiguous and unqualified prohibition on hostage-taking.<sup>270</sup>

167. In the earliest days of the conflict, from late 1991, Armenia took civilian hostages during its offensives on, for example, the towns of Meshaly, Karkijahan and Kurdmakhmudlu.<sup>271</sup> In its report of September 1992, Human Rights Watch provided evidence of further hostage-taking during Armenia’s early offensives: it detailed hostage-taking (often of scores of hostages at a time, and including men, women and children) in the towns of Malybeyli, Gushchular, Garadagly, Kerkijahan and Gushchular.<sup>272</sup>

168. Perhaps the most egregious instance of hostage-taking took place during the notorious assault on Khojaly in February 1992, in which 773 hostages were taken, “most of them civilians”, according to Human Rights Watch.<sup>273</sup> In its 2010 judgment in *Fatullayev v Azerbaijan*, the European Court of Human Rights, after having considered the evidence submitted to it, found that “at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town”.<sup>274</sup> The Court confirmed that the events in Khojaly were “acts of particular gravity which may amount to war crimes or crimes against humanity”.<sup>275</sup>

169. But the hostage-taking in Khojaly is far from the only example: 19 hostages were also taken during the offensive on Bashlibel (in Kalbajar) in April 1993.<sup>276</sup>

<sup>270</sup> Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), p. 7; Letter dated 24 July 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/940–S/2018/738 (26 July 2018), p. 1.

<sup>271</sup> Information from the Military Prosecutor’s Office of the Republic of Azerbaijan, “On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan” (31 May 2019).

<sup>272</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), pp. 26, 39, 40.

<sup>273</sup> *Ibid.*, p. 39.

<sup>274</sup> *Fatullayev v Azerbaijan*, App. No. 40984/07, ECtHR, 22 April 2010, para. 87.

<sup>275</sup> *Ibid.*

<sup>276</sup> *Bashlibel Tragedy: Armenian Atrocities through the Eyes of Witnesses* (Baku, 2013), pp. 107, 115.

170. The Human Rights Watch report also provided clear evidence of official complicity in these unlawful acts. For example, it stated:

“The Minister of Interior of Nagorno Karabakh openly acknowledged that twelve families in the region were holding Azerbaijani hostages during the time of Helsinki Watch’s visit to Stepanakert in April [1992].”<sup>277</sup>

171. Whole families were subject to the atrocity of hostage-taking in many locations. For example, on 26 February 1992, six members of the Mamedov family, including three women, escaping the carnage in Khojaly fell into the hands of Armenian soldiers. In March 1993, 15 members of the Guliyev family from the village of Kilsali in the Kalbajar district were taken hostage, and in July of the same year, 19 members of the Hukhiyev family, the oldest of whom was 80 and the youngest only 4, from Gerazyly in the Fuzuli district were also taken hostage.<sup>278</sup> In 1993 Amnesty International published a report describing the taking of six ethnic Azerbaijanis, three women and three children from the same family, who were taken hostage by Armenian forces as they were fleeing fighting in Khojaly.<sup>279</sup>

172. The CSCE quickly recognised the humanitarian disaster arising from such instances of hostage-taking by Armenia, calling for the immediate exchange of hostages in documents from 1992 and 1993.<sup>280</sup> But a later Human Rights Watch report made clear that the practice of hostage-taking had continued, mostly as “the direct result of Karabakh Armenian offensives, often supported by forces from the Republic of Armenia.”<sup>281</sup> The report provided details of hostages being taken during the assaults on Kalbajar, Aghdam, Garakishiler, and the Zangilan district (among others).<sup>282</sup> It called on the Armenian side immediately to cease the taking and holding of hostages and to release all hostages currently held, and also to investigate and punish past perpetrations of the practice.<sup>283</sup>

173. The scale of the hostage-taking by Armenian forces since the beginning of the conflict should not be underestimated. At the beginning of December 2019, 3,888 citizens of Azerbaijan were registered as missing as a result of the conflict, including 3,170 servicemen and 718 civilians. Among the civilians, 71 are children, 266 are women and 326 are elderly persons. It has been established that 871 of the 3,888 missing persons were either taken as prisoners of war or hostages, including 604 servicemen and 267 civilians, of whom 29 are children, 98 are women and 112 are

<sup>277</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 38.

<sup>278</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorno Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000), p. 5.

<sup>279</sup> Amnesty International, “Azerbaijdzhan: Hostages in the Karabakh Conflict – Civilians Continue to Pay the Price” (27 May 1993), pp. 7–8. In a report of the following year, Amnesty International had obtained no further information about these hostages: Amnesty International, “Azerbaijan: Hostages in the Context of the Karabakh Conflict — An Update” (June 1993), pp. 4–5.

<sup>280</sup> Conference on Security and Co-operation in Europe, Seventh Meeting of the Committee of Senior Officials, Journal No. 2, Annex 1 (1992); Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993), 853 (1993) and 874 (1993), Enclosure to the Letter dated 12 November 1993 from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council, UN Doc S/26732 (12 November 1993), p. 3.

<sup>281</sup> Human Rights Watch/Helsinki, “Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh” (December 1994), page 12.

<sup>282</sup> *Ibid*, pp. 12–27, 32–49, 50–62, 68–80, 88–98.

<sup>283</sup> *Ibid*, pp. xiii, xv.

elderly persons. In addition, 1098 Azerbaijani civilians, including 224 children, 354 women and 225 elderly persons, were taken hostage by Armenian forces but already released.<sup>284</sup>

## 5. War crimes relating to ethnic cleansing, forced displacement and changing the character of occupied territory

### (i) Applicable legal principles

#### Prohibition on changing the character of occupied territory

174. One of the cardinal principles of IHL is that an occupying power should not change the character of occupied territory. Article 43 of the Hague Regulations provides that:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and [civil life], while respecting, unless absolutely prevented, the laws in force in the country.”<sup>285</sup>

175. This principle is consistent with the entire philosophical underpinning of the law of occupation, which is that occupation cannot be used as a vehicle for the occupying State to acquire the territory on a permanent basis or assume sovereignty over it.<sup>286</sup> Occupation is intended to be a temporary state of affairs, leading to a peaceful settlement between the relevant parties and bringing the occupation to an end.<sup>287</sup>

#### Prohibition of ethnic cleansing

176. Closely allied to this principle is the international prohibition on the various forms of conduct which amount to “ethnic cleansing”, a term that is not found in the international treaties themselves but refers to the phenomenon of a party to a conflict attempting to change the demographic composition of a territory. The International Court of Justice has defined this term as being “in practice used, by reference to a specific region or area, to mean ‘rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area’”.<sup>288</sup>

177. Although ethnic cleansing can occur by other means which are dealt with elsewhere in this opinion (including through attacks against civilians, murder, and rape and other forms of sexual violence), in the particular conflict at issue in this report it has largely manifested in the practice of forced displacement and the denial of the basic rights of those displaced, including their right to return to their homes and their right to have their property rights respected, as well as a conscious policy on the part of Armenia of importing ethnic Armenians into the occupied territories as a means of cementing its control over those territories and facilitating its ultimate intention of assimilating the occupied territories into Armenia.

<sup>284</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Prisoners of War, Hostages and Missing Persons”: <<http://www.human.gov.az/en/view-page/27/%C6%8FS%C4%B0R.%20G%C4%B0ROV%20V%C6%8F%20%C4%B0TK%C4%B0N%20D%C3%9C%C5%9EM%C3%9C%C5%9EL%C6%8FR#.XeaDiehKjiU>>.

<sup>285</sup> See D. Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford, 3<sup>rd</sup> ed., 2014), p. 275 and following.

<sup>286</sup> See Y. Dinstein, *The International Law of Belligerent Occupation* (Cambridge, 2<sup>nd</sup> ed., 2019), p. 58 and following and E. Benvenisti, *The International Law of Occupation* (Oxford, 2<sup>nd</sup> ed., 2012), chapter 4.

<sup>287</sup> Y. Dinstein, *The International Law of Belligerent Occupation* (Cambridge, 2<sup>nd</sup> ed., 2019), p. 58.

<sup>288</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* [2007] ICJ Rep 43, p. 122.



*Prohibition on forced displacement*

178. One way in which IHL prevents ethnic cleansing and the changing of occupied territories' character is by outlawing forced displacement of the civilian population and by providing certain rights and guarantees to those who are displaced. Violation of these rules can amount to a war crime.

179. Article 49 of the Fourth Geneva Convention states:

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

180. Unlawful deportation or transfer constitutes a grave breach of the Fourth Geneva Convention under Article 147 and of Additional Protocol I under Article 85(4)(a). Forcible deportation or transfer will be lawful under these provisions only if it is “justified by military necessity” and not “carried out unlawfully and wantonly”.

181. Under Article 8(2)(b)(viii) of the Rome Statute, “the deportation or transfer [by the Occupying Power] of all or parts of the population of the occupied territory within or outside this territory” constitutes a war crime in international armed conflicts. Similarly, principle 6(2) of the Guiding Principles on Internal Displacement prohibit the “arbitrary” displacement of persons, which is defined as including displacement in situations of armed conflict, “unless the security of civilians involved or imperative military reasons so demand”. This is consistent with a rule of customary international law to the effect that parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.<sup>289</sup>

*Allowing the return of displaced persons*

182. Under IHL, displaced persons have a right to return voluntarily and in safety to their homes as soon as the reasons for their displacement have ceased to exist. This is recognised as a rule of customary international law.<sup>290</sup> Further, Article 49 of the Fourth Geneva Convention states that, if a civilian population has been evacuated on the grounds that “the security of the population or imperative military reasons so demand”, the persons evacuated “shall be transferred back to their homes as soon as hostilities in the area in question have ceased”. Principle 6(3) of the Guiding Principles of Internal Displacement similarly mandates that “displacement shall last no longer than required by the circumstances”.

*Prohibition on importing nationals of the occupying power*

183. The other side of the coin from forcibly expelling and preventing the return of a territory's current inhabitants is an occupying power moving its own nationals into occupied territory, thereby seeking to change the territory's character. This is also prohibited under IHL. Under Article 49 of the Fourth Geneva Convention, “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. Violation of this rule amounts to a grave breach of Additional Protocol I under Article 85(4)(a). Under Article 8(2)(b)(viii) of the Rome Statute, “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” constitutes a war crime in international armed conflicts. The ICRC considers these provisions to support a rule

<sup>289</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 129, p. 457.

<sup>290</sup> *Ibid.*, Rule 132, p. 468.

of customary international law to the effect that “States may not deport or transfer parts of their own civilian population into a territory they occupy”.<sup>291</sup>

184. Of course, other rules of IHL covered elsewhere in this opinion also prevent occupying powers from changing the character of occupied territory in other ways. These other rules include the rules demanding respect for public and private property in occupied territory (see section 2 above) and prohibiting attacks on items of cultural heritage (see section 6 below). This section does not repeat the evidence in relation to these rules.

***(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan***

***Armenia’s forcible expulsion and prevention of the return of the Azerbaijani inhabitants of the occupied territories***

185. Armenia’s conduct throughout the conflict has resulted in the forcible expulsion of more than 1 million Azerbaijanis from their homes and properties, both in Armenia and in the Azerbaijani territory which it occupies.<sup>292</sup> Armenia has repeatedly violated the rules concerning forced displacement and the rights of displaced persons, with at least some of its conduct rising to the level of war crimes and/or what may properly be characterised as “ethnic cleansing”. Indeed, Armenia’s agenda throughout the conflict has been to rid the occupied territories of their Azerbaijani inhabitants, to prevent the return of those expelled, and to replace them with ethnic Armenians, thereby attempting to engineer a *fait accompli* that the territories will be considered to be a natural part of Armenia. The expulsion of Azerbaijani from these territories has not been a mere by-product of the conflict or a means to an end: for the Armenians, it has been an end in itself.

186. Armenia makes purposeful efforts towards consolidating the current status quo of the occupation, strengthening its military build-up in the seized territories, changing their demographic, cultural and physical character and preventing the hundreds of thousands of forcibly displaced Azerbaijanis from returning to their homes and properties in those areas.<sup>293</sup>

187. An early example was during the assault on the Shusha district. On 8 May 1992, the city of Shusha and 30 villages in the Shusha district were forcibly captured by the Armenian forces. As a result of the Armenian offensive, the occupied territory was ethnically cleansed of its Azerbaijani population: more than 24,000 residents of Shusha were forced to leave their native lands and properties.<sup>294</sup>

188. In its report of September 1992, Human Rights Watch observed that, after Armenian forces gained control of certain villages, it became impossible for the previous Azerbaijani inhabitants who had fled to return.<sup>295</sup> A subsequent Human Rights Watch report documented that, by mid-1992, Armenian forces “had forced out

<sup>291</sup> *Ibid*, Rule 130, p. 462.

<sup>292</sup> Letter dated 24 July 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/940–S/2018/738 (26 July 2018), p. 1; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/725–S/2018/77 (1 February 2018), p. 3.

<sup>293</sup> Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782–S/2017/110 (7 February 2017), pp. 5–6.

<sup>294</sup> Letter dated 15 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/73/878–S/2019/406 (20 May 2019), p. 1.

<sup>295</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 25.

all of Nagorno-Karabakh's Azeri population".<sup>296</sup> It reported that the war crimes committed in the course of Armenian offences throughout 1993 included "the expulsion of the civilian Azeri population".<sup>297</sup> It provided further detail of forcible expulsions in Aghdam in July 1993,<sup>298</sup> and in towns and villages during the Armenian offensive towards the Iranian border in August 1993.<sup>299</sup> It estimated that during the Armenian offensive against the Zangilan district, some 60,000 Azerbaijanis were forced to flee into Iran; Armenian authorities "made radio broadcasts to the Azeri population ordering them to leave the area".<sup>300</sup> Summarising the scale of the forced expulsions, it stated:

"All 40,000 Azeris who lived in Nagorno-Karabakh were forced out by mid-1992. A Karabakh Armenian military offensive in May/June 1992 captured a large part of Lachin province, Azerbaijan, and created another 30,000 Azeri displaced, many of Kurdish descent. ... The biggest wave of displaced persons came in 1993, as Karabakh Armenian troops, often with the support of forces from the Republic of Armenia, captured the remaining Azerbaijani provinces surrounding Karabakh and forced out the Azeri civilian population: the rest of Lachin province, and Kelbajar, Agdam, Fizuli, Jebrayil, Qubatl, and Zangilan provinces. According to Azerbaijani government figures, these Karabakh Armenian offensives forced an estimated 450,000-500,000 Azeris out of their homes."<sup>301</sup>

189. This humanitarian disaster was not lost on international organisations responding to the conflict in its earliest days. For example, in its statement on the conflict of May 1992, the European Union condemned "in particular as contrary to these [OSCE] principles and commitments any actions against territorial integrity or designed to achieve political goals by force, including the driving out of civilian populations."<sup>302</sup>

190. As for the United Nations Security Council, in Resolution 822 of 30 April 1993, the Security Council expressed "grave concern at the displacement of a large number of civilians".<sup>303</sup> In Resolution 853 of 29 July 1993, the Security Council expressed "once again its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic"<sup>304</sup>; the same was said in Resolution 874 of 14 October 1993.<sup>305</sup> In Resolution 884 of 12 November 1993, the Security Council once again expressed "grave concern at the latest displacement of a large number of civilians and the humanitarian emergency in the Zangilan district and city of Goradiz and on Azerbaijan's southern frontier".<sup>306</sup>

<sup>296</sup> Human Rights Watch/Helsinki, "Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh" (December 1994), p. xx.

<sup>297</sup> *Ibid.*, p. 12.

<sup>298</sup> *Ibid.*, pp. 32–49.

<sup>299</sup> *Ibid.*, pp. 50–62.

<sup>300</sup> *Ibid.*, pp. 68–80.

<sup>301</sup> *Ibid.*, pp. 99–100.

<sup>302</sup> "Statement on Nagorno-Karabakh", cited in European Political Cooperation (EPC) Press Release, Brussels, 22 May 1992, European Political Cooperation Documentation Bulletin (1992), vol. 8, Doc 92/201, p. 260.

<sup>303</sup> United Nations Security Council Resolution 822, UN Doc S/RES/822 (30 April 1993), Preamble.

<sup>304</sup> United Nations Security Council Resolution 853, UN Doc S/RES/853 (29 July 1993), Preamble.

<sup>305</sup> United Nations Security Council Resolution 874, UN Doc S/RES/874 (14 October 1993), Preamble.

<sup>306</sup> United Nations Security Council Resolution 884, UN Doc S/RES/884 (12 November 1993), Preamble.

191. In Resolution 48/114 of 20 December 1993, the General Assembly of the United Nations noted with alarm “that the number of refugees and displaced persons in Azerbaijan has recently exceeded one million”.<sup>307</sup>

192. In 2001, the United States Committee for Refugees and Immigrants stated in its country report on Azerbaijan that “[b]ecause Armenian forces continue to control Nagorno-Karabakh and six surrounding provinces that make up about 20 percent of Azerbaijan’s territory, the vast majority of the displaced Azerbaijanis cannot return to their home regions.”<sup>308</sup>

193. In its Resolution 1416 (2005) of 25 January 2005, the PACE similarly “expresse[d] its concern that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing”.<sup>309</sup>

194. One scholar has summarised the forcible expulsions between 1992 and 2005 as follows:

“[A] key component of the Karabakh insurgency’s strategy was the cleansing of Azeri civilians from towns and villages inside Nagorno-Karabakh and in the territories separating Nagorno-Karabakh from Armenia. ... As each town was captured, remaining Azeri civilians were forcibly expelled. One of the most vicious expulsions took place during an attack on Khojali in February 1992, which was one of the largest remaining Azeri towns; Karabakh forces killed an estimated 485 Azeri civilians, many of whom were unarmed and were killed while fleeing across open country. After capturing Khojali, Karabakh forces captured Shusha and moved into Lachin, the main town within the corridor of Azerbaijani land separating Nagorno-Karabakh from Armenia. Like the other Azeri towns, Shusha and Lachin were cleansed of their Azeri inhabitants. Lachin had a prewar population of 47,400 Azeris, none of whom remained at the end of the conflict; they were replaced by 10,000 Armenian settlers. ... Major Azeri towns in the region, such as Agdam, Kelbajar, Jebrali, and Fizuli, were looted, burned, and ‘systematically levelled so that only foundations remained’, and their Azeri populations were forcibly expelled. ...

Almost all of the Azeri population was expelled from Nagorno-Karabakh; a decade after the war, in 2005, it was estimated that 99.7 percent of Nagorno-Karabakh was Armenian. The Azeri population was also displaced entirely from several districts surrounding Nagorno-Karabakh. ... Most major towns in these districts were destroyed; by the end of the conflict, it was estimated that no Azeri population remained. ...

Outside observers ... suggest that by cleansing Azeri populations from Nagorno-Karabakh and the corridor of Azerbaijani territory separating Nagorno-Karabakh from Armenia, the Karabakh insurgency likely sought to ‘make a fait accompli of its integration with Armenia’. ...

The evidence suggests that homogenizing the population by forcibly expelling Azeri civilians – a deliberate strategy of cleansing – was a central part of the effort by Karabakh insurgents to define the boundary of a new de facto state, connected by land to the territory of neighbouring Armenia.”<sup>310</sup>

<sup>307</sup> United Nations General Assembly Resolution 48/114, UN Doc A/RES/48/114 (20 December 1993), Preamble.

<sup>308</sup> World Refugee Survey 2001, country report on Azerbaijan.

<sup>309</sup> Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), “The Conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference”, para. 2.

<sup>310</sup> Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), pp. 237–239 (internal citations omitted).

195. In its Resolution 62/243 of 14 March 2008, the United Nations General Assembly reaffirmed “the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes”.<sup>311</sup>

196. In 2015, the Grand Chamber of the European Court of Human Rights confirmed that the results of “ethnic Armenians conquer[ing] several Azeri villages” included “at least several hundred deaths and the departure of the population”.<sup>312</sup>

197. After a re-escalation of violence in 2015, further evidence of forcible expulsions and ethnic cleansing at the hands of Armenian forces emerged. In December 2015, the PACE issued a report citing statistics from the UNHCR that, as a result of the conflict, the number of refugees and internally displaced persons (“IDPs”) in Azerbaijan amounted to more than one million, including 600,000 IDPs from Nagorny Karabakh and the seven surrounding territories and 250,000 refugees from Armenia.<sup>313</sup> As a result, a draft resolution attached to the report proposed that the Assembly express its concern “that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsions and the terrible concept of ethnic cleansing” and “reaffirm[] the right of displaced persons from the area of conflict to return to their homes safely and with dignity”.<sup>314</sup>

198. In October 2016, the OIC concluded a resolution that “[d]eplor[ed] the Armenia-backed aggressive separatism instigated in the Nagorno-Karabakh region of the Republic of Azerbaijan, followed by aggression and occupation by Armenia of about 20 percent of Azerbaijani territories and resulted in violent displacement of almost one million Azerbaijani people from their homes, which, as such, resembles the terrible concept of ethnic cleansing”.<sup>315</sup>

199. For more than a decade, Azerbaijan has been vigilant in bringing the international community’s attention to the scale and character of Armenia’s forced expulsions of Azerbaijanis from the occupied territories. It has referred to the concept of ethnic cleansing in official reports and statements.<sup>316</sup> In a statement of 30 March 2009, it referred to the urgent need to restore the “demographic situation” in the occupied territories to what it was before the conflict.<sup>317</sup>

200. In a letter dated 28 April 2010, Azerbaijan noted that “the policy and practice of the Republic of Armenia clearly testify to its intention to secure the annexation of Azerbaijani territories that it has captured through military force and in which it has carried out ethnic cleansing”, including by way of “settlement activities, destruction and appropriation of historical and cultural heritage and systematic interference with

<sup>311</sup> United Nations General Assembly Resolution 62/243, A/RES/62/243 (14 March 2008), para. 3.

<sup>312</sup> *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, para. 18.

<sup>313</sup> Parliamentary Assembly of the Council of Europe, “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan”, Doc No. 13930 (11 December 2015), para. 60.

<sup>314</sup> *Ibid.*, p. 3.

<sup>315</sup> Organization of Islamic Cooperation, Resolution No. 4/43-E on Economic Assistance to OIC Member States and Muslim Communities in Disputed/Occupied Territories and Non-OIC Countries within the OIC Mandate (18–19 October 2016), para. A.1.

<sup>316</sup> See, e.g., “Military occupation of the territory of Azerbaijan: a legal appraisal”, Annex to the Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/491–S/2007/615 (23 October 2007), p. 47; Statement by the Delegation of the Republic of Azerbaijan in the exercise of the right of reply to the statement by the Prime Minister of Armenia at the General Debate of the 74<sup>th</sup> session of the UN General Assembly, 26 September 2019: <<http://un.mfa.gov.az/files/file/statements/Right%20of%20reply%2026.09.19.pdf>>.

<sup>317</sup> “The Situation in the occupied territories of Azerbaijan”, Report of the Secretary-General, UN Doc A/63/804 (30 March 2009), comments of Azerbaijan, para. 10.

the property rights of Azerbaijani displaced persons”.<sup>318</sup> This letter attached an annex documenting in detail, exclusively from Armenian sources, the ongoing organised settlement practices and other illegal activities in the occupied territories of Azerbaijan.

201. In a report of April 2012, after summarising the international legal rules applicable to forced displacement, Azerbaijan stated:

“[I]t may be concluded that Armenia’s actions, whether by its own forces or by those forces for whom it bears responsibility, in precipitating and maintaining the forcible displacement (or expulsion or deportation or forcible transfer) of the Azerbaijani population of Nagorno-Karabakh and other occupied territories is consistent with the international law offence as described above. The intention to displace was manifestly evidenced by the expulsions themselves coupled with the restriction of such deportations to those of Azerbaijani ethnicity and the refusal to countenance the return of the displaced persons. ... Indeed, Armenia’s actions may be characterized as ‘ethnic cleansing’. ... It is clear that due to Armenian military operations and occupation of Azerbaijani territories, ethnic Azerbaijanis were forced to leave their homes and possessions in these territories and permission to return is refused. Ethnic Armenians do not suffer the same treatment from the Armenian authorities and forces. ... The military action taken by Armenia and those for whom it bears international responsibility on the territory of Azerbaijan had the aim of creating a mono-ethnic culture there, both by expelling the indigenous ethnic Azerbaijani population and by refusing to permit their return.”<sup>319</sup>

202. In a letter to the Secretary-General of the United Nations dated 10 May 2012, Azerbaijan stated that “the leadership of Armenia ... makes no secret of the promotion and dissemination of the odious ideas of racial superiority and differentiation and which has purged both the territory of its own country and the occupied areas of Azerbaijan of all non-Armenians and thus succeeded in creating mono-ethnic cultures there”.<sup>320</sup>

203. Professor Pellet’s Legal Opinion of April 2017 stated:

“I deem it quite clear that the Azerbaijanis in Nagorno-Karabakh and the surrounding districts were victims of an ethnic cleansing:

- while the Azerbaijani population constituted around 25 per cent of the population of the Nagorno-Karabakh area before the war, and constituted the almost exclusive population of the surrounding territories, the Armenian population is now usually estimated around 95 per cent of the total population of this area;
- the situation is indisputably the result of Armenian or Armenia’s controlled forces; and

<sup>318</sup> Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/760-S/2010/211 (28 April 2010).

<sup>319</sup> “Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia’s responsibility”, Annex to the Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/66/787-S/2012/289 (3 May 2012), pp. 21, 23.

<sup>320</sup> Letter dated 9 May 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/66/796-S/2012/308 (10 May 2012), p. 2.

- there seems to be wide evidence of brutalities which were the origin of the situation.”<sup>321</sup>

204. On 31 May 2019, the Military Prosecutor’s Office of Azerbaijan issued a report on the investigation of war crimes committed by Armenian forces in the occupied territories, which provided evidence of forcible expulsions of thousands of Azerbaijanis from towns and villages including Garadaghly, Baghanis-Ayrim, Meshaly, Karkijahan, and Bashguneypeya village in the Aghdara district.<sup>322</sup>

205. The evidence makes clear that Armenia’s conduct throughout the conflict has involved ethnic cleansing in the occupied territories of Azerbaijan, including the establishment of settlements and the implantation of ethnic Armenian settlers with a view to changing the demographic composition of those territories.<sup>323</sup>

Armenia’s transfer of ethnic Armenians into the occupied territories

206. Armenia’s agenda of assimilating the occupied territories into Armenia itself has been evident in its conduct of transferring ethnic Armenians into the occupied territories and otherwise changing the character of those territories.<sup>324</sup> The Armenian policy for implanting ethnic Armenian settlers in the occupied territories has involved various incentives being provided to Armenians who settle in the territories, such as free housing, social infrastructure, inexpensive or free utilities, low taxes or tax exemptions, money and livestock, newly built houses, plots of land, and advantageous loans.<sup>325</sup> This conduct has clearly contravened applicable rules of IHL.

207. The OSCE’s Fact-Finding Mission of 2005 gave extensive details of the forced expulsion of the inhabitants from most of the villages and cities in Nagorny Karabakh as well as the transfer of new ethnic Armenian inhabitants into the occupied territories, including of the incentives offered to those settlers.<sup>326</sup> Its cover letter stated:

“it is clear that the longer [the settlers] remain in the occupied territories, the deeper their roots and attachments to their present place of residence will become. Prolonged continuation of this situation could lead to a *fait accompli* that would seriously complicate the peace process.”

208. A later report of the OSCE Minsk Group Co-Chairs, based on a field assessment mission, expressed similar concern over Armenia’s efforts to change the character of

<sup>321</sup> “Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan”, Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/880–S/2017/316 (26 April 2017), p. 28 (internal citations omitted).

<sup>322</sup> Information from the Military Prosecutor’s Office of the Republic of Azerbaijan, “On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan” (31 May 2019).

<sup>323</sup> Letter dated 3 October 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/508–S/2017/836 (5 October 2017), p. 6.

<sup>324</sup> Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (Cambridge University Press, 2016), p. 239.

<sup>325</sup> “Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia’s responsibility”, Annex to the Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/66/787–S/2012/289 (3 May 2012), pp. 24–25.

<sup>326</sup> Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan surrounding Nagorno-Karabakh (NK), Annex II to the Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/59/74–S/2005/187 (21 March 2005).

the occupied territories, including by importing ethnic Armenians. It reported that few of the current inhabitants of the occupied territories had lived there prior to the conflict; instead, they were ethnic Armenians who had sought refuge in Armenia but had been forced to move into the occupied territories.<sup>327</sup> The mission also “observed that many settlements have been renamed with Armenian names or that only Armenian names are used to refer to settlements that previously had Azeri names”; for example, “[t]he city of Agdam, which had as many as 70,000 inhabitants prior to the NK conflict, no longer appears on maps or road signs”.<sup>328</sup> The report urged the parties to “refrain from additional actions that would change the demographic, social or cultural character of areas affected by the conflict (such as further settlement in disputed areas, the erection of monuments, and the changing of place names), or would make it impossible to reverse the status quo and achieve a peaceful settlement”.<sup>329</sup>

209. A 2005 report from the International Crisis Group recorded settlement of ethnic Armenians that appeared to be “for strategic purposes and with at least the tacit support of Stepanakert”.<sup>330</sup> The report quoted a representative of the “NKR” who claimed that “the Azeris must understand there is no way they can ever return to Fizuli and Jebrail”, while another stated, “once Armenians start burying their dead there, it will be difficult to move them again”<sup>331</sup> — statements that justify Azerbaijan’s fear that settlement of ethnic Armenians is being used in order to change irreversibly the demographic composition of the occupied territories, preventing the repatriation of Azerbaijanis and the *de facto* restoration of the territories to Azerbaijan. The report stated that the settlement policy “appears to be a violation of international law”.<sup>332</sup>

210. Azerbaijan has diligently brought Armenia’s conduct of transferring ethnic Armenians into the occupied territories to the attention of the United Nations and the OSCE.<sup>333</sup> It is not necessary to repeat all of the evidence previously provided. For

<sup>327</sup> Report of the OSCE Minsk Group Co-Chairs’ Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (2011), pp. 4, 7.

<sup>328</sup> *Ibid.*, p. 6.

<sup>329</sup> *Ibid.*, p. 8.

<sup>330</sup> Crisis Group Europe Report No. 166, Nagorno-Karabakh: Viewing the Conflict from the Ground (14 September 2005), p. 8.

<sup>331</sup> *Ibid.*, p. 8.

<sup>332</sup> *Ibid.*, p. 8.

<sup>333</sup> In addition to the documents cited below, see, e.g., “Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory”, Annex to the Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/63/692-S/2009/51 (27 January 2009), paras. 54–59; “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475-S/2009/508 (6 October 2009), paras. 108–109; Press release of the Ministry of Foreign Affairs of the Republic of Azerbaijan, Annex to the Letter dated 29 March 2011 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/65/801-S/2011/208 (30 March 2011), pp. 2–3; “Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia’s responsibility”, Annex to the Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/66/787-S/2012/289 (3 May 2012), pp. 24–26; Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016-S/2016/711 (16 August 2016), pp. 1–2; Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 2; Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782-S/2017/110 (7 February 2017), pp. 5–6; Letter dated 3 October 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/508-S/2017/836 (5 October 2017), pp. 6, 9; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the



example, in a report of October 2007, Azerbaijan described acts by Armenia which were “designed to consolidate the status quo, as well as to prevent the Azerbaijani population from returning to their homes, thereby imposing a fait accompli.”<sup>334</sup> It further stated:

“[A]ll of Armenia’s hopes for the recognition of an eventual fait accompli, and thus of the transfer of sovereignty over the occupied territories of Azerbaijan, involve an altering of the demographic composition of the occupied territories and prevention of a return to the pre-war situation. Indeed, the available information shows that Armenia has pursued a policy and developed practices that call for the establishment of settlements in the occupied Azerbaijani territories. There have been reports of a programme called ‘Return to Artsax’ whose purpose is to artificially increase the Armenian population in the occupied Azerbaijani territories to 300,000 by 2010. A working group set up to implement this resettlement programme under the leadership of the Prime Minister of Armenia includes both Armenian officials and representatives of non-governmental organizations operation in Yerevan.”<sup>335</sup>

211. In a further report of April 2010, Azerbaijan presented extensive evidence derived from Armenian sources testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan.<sup>336</sup> Based on this evidence, Azerbaijan explained that “the policy and practice of the Republic of Armenia clearly testify to its intention to secure the annexation of Azerbaijani territories that it has captured through military force and in which it has carried out ethnic cleansing”, including by way of “settlement activities, destruction and appropriation of historical and cultural heritage and systematic interference with the property rights of Azerbaijani displaced persons”.<sup>337</sup> It continued:

“[N]othing has been done to dismantle settlements and discourage further transfer of settlers into the occupied territories. Moreover, numerous reports, including Armenian ones in particular, ... show that the Republic of Armenia, directly by its own means or indirectly through the subordinate separatist regime and with the assistance of Armenian Diaspora, continued the illegal activities in the occupied territories of Azerbaijan. Thus, during this period Armenian settlers have been encouraged to move into these territories, including the districts adjacent to the occupied Nagorno-Karabakh region of Azerbaijan, in particular the districts of Lachin, Kalbajar and Zangelan. In addition, this period was marked by consistent measures aimed at altering the historical and cultural features of the occupied area depopulated of their Azerbaijani inhabitants. In this regard, alleged ‘reconstruction’ and ‘development’ projects for Shusha, one of the most beautiful cultural and historical centres of Azerbaijan, and ‘archaeological excavations’ in Aghdam, both carried out with the sole purpose of removing any signs of their Azerbaijani cultural and historical roots and substantiating the policy of

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Secretary-General, UN Doc A/72/725-S/2018/77 (1 February 2018), p. 2; Letter dated 15 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/73/878-S/2019/406 (20 May 2019), p. 2.

<sup>334</sup> “Military occupation of the territory of Azerbaijan: a legal appraisal”, Annex to the Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/491-S/2007/615 (23 October 2007).

<sup>335</sup> *Ibid.*

<sup>336</sup> “The facts documented by Armenian sources, testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/760-S/2010/211 (28 April 2010).

<sup>337</sup> Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/760-S/2010/211 (28 April 2010).

territorial expansionism, give rise to serious concern and justified indignation.”<sup>338</sup>

212. Two recent reports of Azerbaijan have provided particularly extensive and revealing evidence of the scale of Armenia’s efforts to change the character of the occupied territories. The first, published in August 2016, is entitled “Illegal economic and other activities in the occupied territories of Azerbaijan” and provides voluminous evidence of Armenia’s conduct in transferring ethnic Armenians into the territories (and offering generous incentives to the settlers); incorporating the occupied territories into its socioeconomic space and its customs territory (such as by regulating their banking and telecommunications sectors as if they were part of Armenia itself); replacing Azerbaijani names with Armenian ones; executing permanent energy, agriculture, social, residential and transport infrastructure changes; the exploitation of the territories’ natural resources, especially its agricultural land; and abusing tourism as a means of advancing its annexationist policies.<sup>339</sup> The second was published in 2019 by Azerbaijan’s national satellite operator and Ministry of Foreign Affairs, entitled “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery”, which (as its title suggests) provides satellite imagery which shows Armenia’s attempts to change irreversibly the character of the occupied territories by transferring in settlers, pillaging natural resources, executing infrastructure changes, exploiting agricultural land, and expropriating public and private property.<sup>340</sup>

213. International organisations and eminent legal scholars have recognised the illegality of Armenia’s conduct in attempting to change the character of the occupied territories. In 2012, the European Parliament resolved that there were “concerning reports of a settlement-building policy implemented by the Armenian authorities to increase the Armenian population in the occupied territories of Nagorno-Karabakh” and that there was a need to investigate such reports.<sup>341</sup>

214. In April 2016, the OIC expressed its grave concern at, *inter alia*, “unlawful actions aimed at changing the demographic ... character of the occupied territories”.<sup>342</sup> In October of the same year, the same body expressed again its “profound concern over the continued occupation of a significant part of the territory of Azerbaijan and actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories”,<sup>343</sup> resolving as follows:

“15. **Stresses** that fait accompli may not serve as a basis for a settlement, and that neither the current situation within the occupied territories of the Republic of Azerbaijan, nor any actions, including arranging voting process, undertaken there to consolidate the status quo, may be recognized as legally valid;

16. **Demands** to cease and reverse immediately the transfer of ethnic Armenian settlers into the occupied territories of Azerbaijan and all other

<sup>338</sup> *Ibid.*

<sup>339</sup> “Illegal economic and other activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016-S/2016/711 (16 August 2016).

<sup>340</sup> Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery” (2019).

<sup>341</sup> European Parliament Resolution 0128 (18 April 2012), para. 1(z).

<sup>342</sup> Organization of Islamic Cooperation, Final Communiqué of the 13<sup>th</sup> Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2015), para. 16.

<sup>343</sup> Organization of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), Preamble.

actions taken with a view of changing unilaterally the physical, demographic, economic, social and cultural character, as well as the institutional structure and status of those territories, which constitute a blatant violation of international humanitarian and human rights law and has a detrimental impact on the process of peaceful settlement of the conflict, and agrees to render its full support to the efforts and initiatives of Azerbaijan, aimed at preventing and invalidating such actions, including within the General Assembly of the United Nations, inter alia, through their respective Permanent Missions to the United Nations in New York”.<sup>344</sup>

215. In his Legal Opinion of April 2017, after citing extensive evidence recording mass forced displacement of Azerbaijanis from Nagorny Karabakh and their replacement with Armenian settlers,<sup>345</sup> Professor Pellet concluded:

“It results from the above that the establishment of settlements is clearly a breach of international law and that the actions purporting to change the demographic composition of the occupied territories of the Republic of Azerbaijan are contrary to the treaty provisions in force between Armenia and Azerbaijan and to customary rules of international law applied in the resolutions and decisions mentioned above. This is an absolute prohibition which does not tolerate any exception.”

## 6. War crimes relating to the destruction of cultural heritage

### (i) Applicable legal principles

216. Items of cultural heritage benefit from international legal protection in armed conflict.<sup>346</sup> Article 56 of the Hague Regulations, 1907, states that:

“The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

217. A number of points arise from this provision. First, such items must not be the object of attack. This flows from the fact that they are civilian objects and are entitled to protection as such (see section 2 above). Property of “great importance to the cultural heritage of every people” is granted special protection under the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict (to which both Armenia and Azerbaijan are parties). Under Article 4(1) and 4(2) of this instrument, parties must “refrain[] from any act of hostility, directed against such property”, a rule which “may be waived only in cases where military necessity imperatively requires such a waiver”. Article 53 of Additional Protocol I provides that:

<sup>344</sup> *Ibid*, paras. 15–16.

<sup>345</sup> “Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan”, Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/880–S/2017/316 (26 April 2017), pp. 34–36.

<sup>346</sup> See R. O’Keefe, *The Protection of Cultural Property in Armed Conflict* (Cambridge, 2006); R. O’Keefe, “Protection of Cultural Property” in D. Fleck (ed), *The Handbook of International Humanitarian Law* (3<sup>rd</sup> ed., 2013), pp. 425, 452; Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge, 3<sup>rd</sup> ed., 2016), p. 203 and following.

“Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and of other relevant international instruments, it is prohibited:

- (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples ...”

218. Article 8(2)(b)(ix) of the Rome Statute identifies as a war crime intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes or historic monuments is a war crime in both international and non-international armed conflicts, “provided they are not military objectives”.

219. Secondly, special care must be taken to spare items of cultural heritage during otherwise lawful attacks. For example, Article 27 of the Hague Regulations states:

“In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.”

220. Thirdly, parties to armed conflict must respect items of cultural heritage and seizure, destruction, wilful damage, theft, pillage and misappropriation of, as well as acts of vandalism directed against, such property are prohibited. For example:

- a. Article 56 of the Hague Regulations prohibits “all seizure of, and destruction, or intentional damage done to” institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science;
- b. Article 8(2)(b)(ix) of the Rome Statute defines as a war crime the destruction of buildings dedicated to religion, education, arts, science or charitable purposes and historic monuments and destruction and seizure that is not imperatively demanded by the necessities of the conflict;
- c. Article 4(3) of the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict requires that parties “undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party”. Article 4(4) of the same treaty requires that parties “refrain from any act directed by way of reprisals against cultural property”.
- d. Pillage of cultural property is in any event simply a specific example of pillage which is in all contexts prohibited (see section 2 above).
- e. A contracting party to the Hague Convention in occupation of the whole or part of the territory of another contracting party “shall prohibit and prevent any archaeological excavation in the occupied territory, save where this is strictly required to safeguard, record, or preserve cultural property” (Article 9 (1)(b), Second Protocol to the Hague Convention).

221. Fourthly, an occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory. In particular:

- a. The First Protocol (1954) to the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict (to which both Armenia and Azerbaijan are parties) requires States to “to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property”

(Article 1(1)) and “to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory” (Article 1(3)).

- b. Article 2(2) of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property obliges States to oppose the illicit import, export and transfer of ownership of cultural property, while Article 11 of the Convention states that “the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit”.
- c. The Second Protocol (1999) to the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict (to which both Armenia and Azerbaijan are parties) requires that an occupying power prohibit and prevent “any illicit export, other removal or transfer of ownership of cultural property” (Article 9(1)) and to suppress such violations (Article 21).

222. Aside from binding Armenia and Azerbaijan as States parties to the relevant treaties, all of the above rules have been recognised by the ICRC as reflecting rules of customary international law.<sup>347</sup>

**(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan**

223. Throughout the conflict, Armenia has violated its obligations to respect and protect the cultural heritage of the occupied territories.

224. In as early as September 1992, Human Rights Watch reported that the mosque in Shusha had been damaged during an Armenian offensive against the town.<sup>348</sup> Shusha has since suffered irreparable damage at the hands of and/or with the acquiescence of Armenia as the occupying power. For example, many unique historical, cultural and religious sites in the city of Shusha, such as Panah Khan Castle, Gara Boyukkhanyim Castle, Yukhary Govharagha, Ashaghy Govharagha, Saatly, Khoja Marjanly, Merdinli, Kocharli, Julfalar, Hajy Yusufli, Chol Gala, Taza Mahalla and Chukhur Mahalla mosques, the caravanserais and mosque of Mashadi Shukur Mirsiyab and Mashadi Huseyn Mirsiyab, the madrasas of the Yukhary and Ashaghy Govharagha mosques, the House of Natavan, the Shusha Museum of History, the Shusha branch of the Azerbaijan State Museum of Carpets, the Karabakh Museum of History, the Karabakh Museum of Literature, the State Gallery of Pictures, the House Museum of Uzeyir Hajybayov, the House Museum of Bulbul, the House Museum of Mir Mohsun Navvab and the mausoleum of Molla Panah Vagif, have been destroyed or plundered, while systematic actions have been taken to erase any signs of the city’s Azerbaijani cultural and historical roots and characteristics.<sup>349</sup>

225. By November 2000, the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons reported the destruction of 4,366 “social and cultural facilities”, including libraries, museums, theatres and concert

<sup>347</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rules 38, 40–41, pp. 127, 132 and following.

<sup>348</sup> Human Rights Watch/Helsinki, “Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh” (September 1992), p. 32.

<sup>349</sup> Letter dated 15 May 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/73/878–S/2019/406 (20 May 2019), pp. 1–2.

halls.<sup>350</sup> Soon after, a further report furnished by Azerbaijan described the “irreplaceable losses” inflicted on Azerbaijan’s cultural property as a result of Armenian aggression.<sup>351</sup> The report stated:

“Numerous historical, cultural, religious monuments and pieces of arts have been removed from the occupied Azerbaijani territories by Armenian armed forces. Many of them were put on sale in the auctions and shops throughout the world. In the process of these operations the attributes of Azerbaijani cultural property, their national, geographical origins and identity have been changed.

The Museum of History of Kalbajar region with its unique collection of ancient coins, gold and silver wares, rare and expensive stones, carpets and other handicraft wares, the Museums of History in Shusha region, the unique Bread Museum of Agdam region, the Stone Monuments Museum of Zangelan region, as well as many others were plundered and destroyed. 500 historical, architectural and more than 100 archaeological monuments, 22 museums (40 thousand museum pieces and exhibits), 9 historical palaces, 44 temples, 10 mosques, 4 art galleries have been left in the occupied territories of Azerbaijan and heavily damaged. Hundreds of ancient mausoleums and fortresses have been destroyed.

In Shusha region the 18<sup>th</sup> century Govhar-Aga mosque has been heavily damaged, other mosques in the occupied regions have been destroyed and burnt down. Many mosques have been turned into warehouses and depositories.

The occupation caused the levelling to the ground of the unique monuments of the Bronze Epoch - Khojaly Barrow Field that covered 50 hectares of land with more than 100 barrows. The Republic of Azerbaijan is deeply alarmed by the transformation of the Azykh Cave, a precious human prehistoric monument, which is one of the oldest cradles of the human civilization, into an ammunition dump. The fortune of Caucasian Albanian Round Temple and Khojaly Mausoleum of the 14th century also remains uncertain.”<sup>352</sup>

226. Further reports in 2007<sup>353</sup>, 2008<sup>354</sup> and 2009<sup>355</sup> drew attention to deliberate destruction and appropriation of Azerbaijan’s cultural heritage in the occupied territories. In its 2008 report, Azerbaijan stated:

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<sup>350</sup> State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, “Information on human rights violations with respect to prisoners of war and hostages kept in Armenia and the Nagorny Karabakh region of Azerbaijan”, Annex to the Letter dated 2 November 2000 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights, UN Doc E/CN.4/2001/107 (22 November 2000), p. 2.

<sup>351</sup> “Report on the results of Armenian aggression against Azerbaijan and recent developments in the occupied Azerbaijani territories”, Annex to the Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/58/594-S/2003/1090 (13 November 2003), p. 6.

<sup>352</sup> *Ibid.*

<sup>353</sup> “Military occupation of the territory of Azerbaijan: a legal appraisal”, Annex to the Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/491-S/2007/615 (23 October 2007), see section entitled “The situation in the occupied territories of Azerbaijan on the agenda of the United Nations”.

<sup>354</sup> “The War against Azerbaijani Cultural Heritage”, Annex to the Letter dated 12 February 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/691-S/2008/95 (13 February 2008).

<sup>355</sup> “The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences”, Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/475-S/2009/508 (6 October 2009), para. 101.

“The ongoing policy of deliberate destruction of this legacy following the occupation has been and continues to be an irreparable blow both to Azerbaijani culture and world civilization. As has clearly been demonstrated in the deliberate change of the cultural look of Shusha and other towns and settlements of Karabakh by destroying the monuments and changing architectural features, and making “archaeological” excavations, this Armenian policy pursues far-reaching targets of removing any sign heralding their Azerbaijani origins.

...

As for other districts, the “Imarat of Panah khan” complex, mosques in Aghdam town, Abdal and Gulably villages, the tomb of Ughurlu bay and the home museum of Gurban Pirimov in the Aghdam district, fourteenth century tombs in the Khojaly district, mosques in the Bashlybel and Otagly villages, ancient cemeteries in the Moz, Keshdak and Yukhary Ayrym villages and Kalbajar town in the Kalbajar district, mosques in the Zangilan, Gyrag Mushlan, Malatkeshin, Babayly and Ikinji Aghaly villages, medieval cemeteries in the Jahangirbayli, Babayly and Sharifan villages in the Zangilan district, ancient cemeteries in the Gayaly and Mamar villages, the mosque in Mamar village in the Gubadly district, the mosque in Garygyshlag village and the ancient cemetery in Zabukh village in the Lachyn district, the mosque complex in Chalabilar village and the ancient cemetery in Khubyarly village in the Jabrayil district, mosques in Fuzuli town and the Gochahmadli, Merdmli and Garghabazar villages in the Fuzuli district, the cemeteries of the Khojavand, Akhullu, Kuropatkino, Dudukchu and Salakatin villages and the old cemetery of Tugh village in the Khojavand district, the ancient hammams in Umudlu village in the Tartar district and the cemetery of Karki village in the Sadarak district, have been destroyed, burnt down and plundered.

The Museum of History in the Kalbajar district with its unique collection of ancient coins, gold and silverware, rare and precious stones, carpets and other handicraft wares, museums in Shusha, the Lachyn Museum of History, the Aghdam Museum of History and the Bread Museum and others have also been destroyed, plundered, and their exhibits put on sale in different countries...

Acts of barbarism are accompanied by different methods of defacing the Azerbaijani cultural image of the occupied territories. Among them are large-scale construction works therein, such as, for example, the building of an Armenian church in Lachyn town, the extension of the flight line of the Khojaly airport by destroying the children’s music school, library, social club and infrastructure facilities. Another widespread practice employed is the change of the architectural details of different monuments, as the Saatly mosque and Khanlyg Mukhtar caravanserai in Shusha town, as well as replacement of the Azerbaijani-Muslim elements of the monuments with alien ones, such as the Armenian cross and writings, which have been engraved on the Arabic character of the nineteenth century Mamayi spring in Shusha town.”<sup>356</sup>

227. In April 2010, Azerbaijan drew the attention of the United Nations Secretary-General to “alleged ‘reconstruction’ and ‘development’ projects for Shusha, one of the most beautiful cultural and historical centres of Azerbaijan, and ‘archaeological excavations’ in Aghdam, both carried out with the sole purpose of removing any signs

<sup>356</sup> “The War against Azerbaijani Cultural Heritage”, Annex to the Letter dated 12 February 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/62/691–S/2008/95 (13 February 2008), pp. 3–4.

of their Azerbaijani cultural and historical roots and substantiating the policy of territorial expansionism”.<sup>357</sup>

228. Azerbaijan has continued tirelessly to bring the atrocities against its cultural heritage in the occupied territories to the attention of the United Nations.<sup>358</sup> In a report from May 2019, described extensive detail on the cultural and historical monuments, mosques, churches, synagogues and other religious centres and pilgrimage sites in Nagorny Karabakh and other occupied territories which have been destroyed or pillaged; examples are given of mausoleums, mosques, churches, monasteries, bridges, temples, libraries, art galleries, cemeteries, cave settlements and so on.<sup>359</sup> In one particularly egregious example, an exhibit from the Lachin Museum was put up for sale and sold for \$80,000 at an auction in Sotheby’s in London.<sup>360</sup>

229. Armenia’s wantonly destructive and internationally unlawful conduct in relation to the occupied territories’ cultural heritage has attracted international opprobrium. In April 2016, the OIC “expressed its grave concern” at, *inter alia*, “unlawful actions aimed at changing the ... cultural ... character of the occupied territories, including by destruction and misappropriation of cultural heritage and sacred sites”<sup>361</sup> and “condemned in the strongest terms the continuous attacks carried out by the Armenian armed forces in the occupied territories of the Republic of Azerbaijan as a result of which ... mosques have been attacked”.<sup>362</sup> In October of the same year, the OIC expressed further concern “about the loss, destruction, removal, theft, pillage, illicit movement or misappropriation of cultural property in the occupied territories of Azerbaijan and acts of vandalism or damage directed against such property”,<sup>363</sup> and strongly condemned “any acts of vandalism, looting and destruction of the archaeological, cultural and religious monuments in the occupied territories of

<sup>357</sup> “The facts documented by Armenian sources, testifying to the ongoing organized settlement practices and other illegal activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/64/760-S/2010/211 (28 April 2010).

<sup>358</sup> See, e.g., “Illegal economic and other activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016-S/2016/711 (16 August 2016), see especially Executive Summary pp. 11, 16; Letter from the Permanent Mission of the Republic of Azerbaijan to the OSCE, No. 0512/10/10, OSCE Doc No. SEC.DEL/585/16 (14 December 2016), p. 3; Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/782-S/2017/110 (7 February 2017), p. 6; “Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan”, Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/880-S/2017/316 (26 April 2017), pp. 42, 44; Letter dated 3 October 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/508-S/2017/836 (5 October 2017), p. 6; Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/72/725-S/2018/77 (1 February 2018), p. 5; Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery” (2019), pp. 72, 80.

<sup>359</sup> Information from the Military Prosecutor’s Office of the Republic of Azerbaijan, “On the criminal case No. 80377 investigated by a joint operational-investigative group established to investigate crimes against peace and humanity, as well as war crimes committed by Armenian armed forces on the territory of Nagorno-Karabakh and other occupied territories of the Republic of Azerbaijan” (31 May 2019).

<sup>360</sup> *Ibid.*

<sup>361</sup> Organization of Islamic Cooperation, Final Communiqué of the 13<sup>th</sup> Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2016), para. 16.

<sup>362</sup> *Ibid.*, para. 17.

<sup>363</sup> Organization of Islamic Cooperation, Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (18–19 October 2016), Preamble.



Azerbaijan”.<sup>364</sup> In the same session, the OIC affirmed “that the utter and barbaric destruction of mosques and other Islamic Shrines in Azerbaijani territories occupied by, for the purpose of ethnic cleansing is a war crime and a crime against humanity” and noted the “tremendous losses inflicted by the Armenian aggressors on the Islamic heritage in the Azerbaijani territories occupied by the Republic of Armenia”.<sup>365</sup> It accordingly resolved as follows:

“1. **Strongly condemns** the barbaric acts committed by the Armenian aggressors in the Republic of Azerbaijan with the aim of total annihilation of the Islamic historic and cultural heritage in the occupied Azerbaijani territories.

...

3. **Stresses** the need to ensure the protection of cultural heritage, cultural property and sacred sites in the occupied territories of Azerbaijan, including, inter alia, the prohibition and prevention of any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation, as well as any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

4. **Demands** that Armenia cease any attempts to introduce Azerbaijani historical and cultural heritage as its own, including at tourism fairs and exhibitions.”<sup>366</sup>

## 7. War crimes relating to damage to the natural environment

### (i) Applicable legal principles

230. Various rules of IHL operate to protect the environment. Indeed, to the extent that the natural environment is not a military object, it is a civilian object and therefore cannot be the subject of attack, and any damage caused to the natural environment must comply with the principles of proportionality. Rule 43 of the ICRC Rules of Customary International Humanitarian Law provides that:

“The general principles on the conduct of hostilities apply to the natural environment:

- A. No part of the natural environment may be attacked, unless it is a military objective.
- B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited.”<sup>367</sup>

231. In addition, Rule 45 declares that: “[T]he use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe

<sup>364</sup> *Ibid*, para. 3.

<sup>365</sup> Organization of Islamic Cooperation, Resolution No. 3/43-C on Protection of Islamic Holy Places (18–19 October 2016), Preamble.

<sup>366</sup> *Ibid*, paras. 1, 3–4.

<sup>367</sup> J. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law, Vol. I: The Rules* (ICRC, Cambridge, 2005), Rule 43, p. 143.

damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon”.<sup>368</sup>

232. In addition, there are rules of IHL which have protection of the environment as their specific objective. For example, Article 35(3) of Additional Protocol I prohibits the use of “methods or means of warfare which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment”. Article 55 further states:

“1. Care 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 of survival of the population.

2. Attacks against the natural environment by way of reprisals are forbidden.”

233. These rules have, since their inception, acquired the status of customary international law.<sup>369</sup> Articles 8(2)(iv)(b) of the Rome Statute defines as a war crime “[i]ntentionally launching an attack in the knowledge that such attack will cause ... 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”.

***(ii) Armenia’s violation of these legal rules in the occupied territories of Azerbaijan***

234. Armenia has carried out numerous attacks which have inflicted long term, irreversible damage on the natural environment, and has frequently sought to weaponise the natural environment against the Azerbaijani civilian population of the occupied territories and in habitations near the “Line of Contact”.

235. In November 2003, Azerbaijan published a “Report on the results of Armenian aggression against Azerbaijan and recent developments in the occupied Azerbaijani territories” which provided extensive detail on the large-scale destruction of the natural environment in the occupied territories.<sup>370</sup> Not all of that detail can be reproduced here. It suffices to note that the evidence set out in that report includes evidence relating to the destruction of natural monuments such as national parks, the elimination of protected tree species, the deliberate spreading of wildfires through protected forests, the endangerment of wild fauna species, the destruction of agricultural land, and the damaging of water resources (such as by having chemically contaminated water spilled directly into major waterways).<sup>371</sup>

236. In September 2005, the Crisis Group published a report documenting Azerbaijan’s accusations that Armenians had destroyed protected forests and reserves, both through logging and through deliberately setting forest fires, before confirming that the OSCE Fact-Finding Mission had “witnessed in and around Kelbajar the transportation of large logs cut in the region’s forests”.<sup>372</sup>

237. In September 2006, the United Nations General Assembly passed a resolution expressing serious concern at “the fires in the [occupied] territories [of Azerbaijan],

<sup>368</sup> *Ibid*, Rule 45, p. 151.

<sup>369</sup> *Ibid*, Rule 45, pp. 143, 151.

<sup>370</sup> “Report on the results of Armenian aggression against Azerbaijan and recent developments in the occupied Azerbaijani territories”, Annex to the Letter dated 12 November 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/58/594-S/2003/1090 (13 November 2003), p. 4.

<sup>371</sup> *Ibid*, pp. 4–6.

<sup>372</sup> Crisis Group Europe Report No. 166, Nagorno-Karabakh: Viewing the Conflict from the Ground (14 September 2005), pp. 14–15.

which have inflicted widespread environmental damage”<sup>373</sup> and stressing “the necessity to urgently conduct an environmental operation to suppress the fires in the affected territories and to overcome their detrimental consequences”.<sup>374</sup> The OSCE-led environmental assessment mission to fire-affected territories, conducted from 2–13 October 2006, reported that “the fires have affected extensive areas along the about 100 km of the line of contact” and that “[t]he fires resulted in environmental and economic damages and threatened human health and security”.<sup>375</sup>

238. After the re-escalation of the conflict in 2015, Armenia’s illegal use of water resources as a means of causing humanitarian suffering became a focal point of the international community. In December 2015, the PACE published a report detailing the humanitarian and environmental harm caused by lack of maintenance on the Sarsang dam.<sup>376</sup> It described Armenia’s conduct as the “deliberate creation of an artificial environmental crisis” and as a form of “environmental aggression”.<sup>377</sup> The report confirmed “that deliberate deprivation of water cannot be used as a means to harm innocent citizens”<sup>378</sup> and implored Armenia to cease using water resources “as tools of political influence or an instrument of pressure benefiting only one of the parties to the conflict”.<sup>379</sup> It passed a resolution condemning these practices in January 2016.<sup>380</sup> In a further report, it described a permanent water shortage in the territories under the control of Azerbaijan and near the “Line of Contact”, stating: “the Armenians keep the reservoir valves closed most of the year, thus depriving Azerbaijani farmers of water exactly when they need it most”.<sup>381</sup>

239. In August 2016, Azerbaijan published a detailed report setting out extensive evidence of the illegal economic and other activities of Armenia in the occupied territories. The report provided extensive coverage of the destruction of the natural environment by Armenia, including by exploitation of agricultural land, the mining of precious minerals and metals without adequate safeguarding of the natural environment, and illegally trafficking natural resources and thereby creating a “conflict diamonds” effect as this activity helps to fuel the illegal occupation.<sup>382</sup> The facts, figures and statistical data contained in the report, gathered mainly from Armenian public sources, provide sufficient and convincing evidence testifying to the continued activities of Armenia in the Nagorno-Karabakh region and other occupied territories of Azerbaijan, in breach of international law.<sup>383</sup> Another discreditable and reprehensible fact revealed in the report is that the exploitation of natural resources and other wealth in the occupied territories of Azerbaijan has turned into a lucrative

<sup>373</sup> United Nations General Assembly Resolution 60/285, UN Doc A/60/285 (15 September 2006), Preamble.

<sup>374</sup> *Ibid.*, para. 1.

<sup>375</sup> “OSCE-led Environmental Assessment Mission to fire-affected territories in and around the Nagorno-Karabakh region: Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities”, Annex to the Letter dated 20 December 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General, UN Doc A/61/696 (12 January 2007), pp. 2, 7.

<sup>376</sup> Parliamentary Assembly of the Council of Europe, “Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water” (12 December 2015).

<sup>377</sup> *Ibid.*, para. 3.

<sup>378</sup> *Ibid.*, para. 2.

<sup>379</sup> *Ibid.*, para. 6.2.

<sup>380</sup> Parliamentary Assembly of the Council of Europe Resolution 2085 (2016) (26 January 2016).

<sup>381</sup> Parliamentary Assembly of the Council of Europe, “Escalation of violence in Nagorno-Karabakh and the other occupied territories of Azerbaijan”, Doc No. 13930 (11 December 2015), para. 123.

<sup>382</sup> “Illegal economic and other activities in the occupied territories of Azerbaijan”, Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016-S/2016/711 (16 August 2016).

<sup>383</sup> Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/70/1016-S/2016/711 (16 August 2016), p. 1.

business and is one of the sources of income for Armenia and the subordinate separatist regime it has set up in those territories.<sup>384</sup>

240. In November 2016, a letter from Azerbaijan to the Secretary-General of the United Nations provided additional evidence of the “devastating impact on the environment” of Armenia’s aggression against Azerbaijan, including “destroyed forests, burned and degraded soil, polluted water resources and killed animals”.<sup>385</sup> The letter stated:

“The environment is being severely damaged also as a result of the continuing barbaric exploitation of natural resources in the occupied territories of Azerbaijan. Such exploitation has generated significant profit for Armenia and the subordinate separatist regime it has set up in those territories to accrue personal fortunes and fund a war.”<sup>386</sup>

241. In 2019, the satellite operator of Azerbaijan published a report which provided stark imagery evidence of Armenia’s wanton destruction and exploitation of the natural environment in the occupied territories. For example, it provided satellite images showing the trafficking of timber from protected forests and hazardous leaks from mining activities.<sup>387</sup> Examples from the report include satellite imagery of a tailing dump caused by exploitation of Gyzybulag underground copper-gold mine near Heyvaly village in the occupied Kalbajar district;<sup>388</sup> of a burned area affecting Jilan and Bunyadli villages of the occupied Khojavand district and Khalafly, Khybyarli, Kurds and Garar villages of the occupied Jabrayil district;<sup>389</sup> and of deforestation caused by mining activities near Chardagly village in the occupied part of the Tartar district.<sup>390</sup> A subsequent joint press release of the satellite operator and Azerbaijan’s Ministry of Foreign Affairs confirms that Armenia continues to destroy the natural environment, including by spreading wildfires in the Fuzuli district, carrying out deforestation in the Shusha district, and carrying out mining and mineral processing activities near Demirli village in the occupied part of the Tartar district.<sup>391</sup>

## Conclusions

242. The following conclusions have been reached:

- a. Armenia bears responsibility for war crimes which it has committed as a matter of the international law of State responsibility;
- b. Such responsibility includes that of its agents and officials and those for whom it must be deemed liable by virtue of direct instruction;
- c. Responsibility has also been incurred by virtue of Armenia’s effective control, including direction, insofar as the so-called “NKR” is concerned in the occupied areas of Azerbaijan;

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<sup>384</sup> *Ibid*, p. 2.

<sup>385</sup> Letter dated 8 November 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc A/71/607–S/2016/944 (10 November 2016), p. 2.

<sup>386</sup> *Ibid*, p. 3.

<sup>387</sup> Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of the Republic of Azerbaijan, “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery” (2019): see, e.g., pp. 88–91, 97.

<sup>388</sup> *Ibid*, p. 89.

<sup>389</sup> *Ibid*, pp. 90–91.

<sup>390</sup> *Ibid*, p. 97.

<sup>391</sup> Joint press release by the Ministry of Foreign Affairs of the Republic of Azerbaijan and the “Azercosmos” OJSC (9 August 2019): <<https://azercosmos.az/media-news/205?lang=en>>.

- d. In addition, Armenia has been found responsible under Article 1 of the European Convention of Human Rights for acts and omissions within the occupied areas;
- e. Individual Armenians will bear criminal responsibility where allegations of war crimes are proven against them;
- f. As a matter of fact, it has been sufficiently demonstrated that Armenia exercises sufficient effective control over the so-called “NKR” and the other occupied areas of Azerbaijan for it to bear responsibility under international law;
- g. Such control has been and continues to be manifested in terms of political, economic and military domination;
- h. Armenia is responsible for a variety of war crimes committed in the occupied territories. Such crimes include war crimes relating to civilian deaths or injuries; civilian property; the mistreatment of detainees and prisoners of war; the taking of hostages; ethnic cleansing, forced displacement and changing the character of occupied territory; the destruction of cultural heritage; and damage to the natural environment.

243. This survey is far from being comprehensive. That would take volumes. It suffices, however, to demonstrate the range, variety and consistency of Armenia’s violations of IHL and its commission of multiple war crimes for which it as the State responsible bears liability and with regard to which individual criminal responsibility may also lie.

Professor Malcolm Shaw QC

Naomi Hart

Essex Court Chambers

30 December 2019

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