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Генеральная Ассамблея
Семьдесят четвертая сессия
Пункты 32, 37, 68, 70, 75 и 83 повестки дня

Затянувшиеся конфликты на пространстве ГУАМ и их последствия для международного мира, безопасности и развития

Положение на оккупированных территориях Азербайджана

Ликвидация расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости

Поощрение и защита прав человека

Ответственность государств за международно-противоправные деяния

Верховенство права на национальном и международном уровнях

Совет Безопасности
Семьдесят пятый год

Письмо Постоянного представителя Азербайджана при Организации Объединенных Наций от 4 июня 2020 года на имя Генерального секретаря

Агрессия Армении против Азербайджана привела к захвату значительной части территории моей страны, включая Нагорно-Карабахский регион и семь прилегающих к нему районов, которые по-прежнему находятся под оккупацией Армении, что является вопиющим нарушением международного права и резолюций 822 (1993), 853 (1993), 874 (1993) и 884 (1993) Совета Безопасности. Эта война унесла жизни десятков тысяч людей и повлекла за собой серьезные разрушения объектов гражданской инфраструктуры, имущества и источников средств к существованию в Азербайджане. Оккупированные территории были этнически зачищены от всех азербайджанцев: более 1 миллиона человек были вынуждены оставить свои дома и имущество на этих территориях. В настоящее время на этих территориях осуществляются преднамеренные действия с целью добиться их колонизации и аннексии. Такие действия включают размещение поселенцев, разрушение и присвоение объектов исторического и культурного наследия, эксплуатацию, разграбление и незаконный оборот имущества, природных ресурсов и других богатств на оккупированных территориях.

Имею честь представить Вам доклад о международно-правовых обязательствах Армении как воинственной державы, оккупирующей азербайджанскую территорию, подготовленный по просьбе правительства Азербайджанской Республики профессором Малкольмом Шоу, королевским адвокатом, при поддержке Наоми Харт, барристера адвокатской палаты “Essex Court Chambers”, Лондон (см. приложение)[*]. Данный доклад представляет собой обновленный вариант доклада, представленного и опубликованного в январе 2009 года (A/63/692-S/2009/51), и содержит следующие основные выводы:

- Регулярные вооруженные силы Армении принимали непосредственное участие в захвате Нагорно-Карабахского региона и семи прилегающих к нему районов Азербайджана.
- Армения незаконно установила на оккупированных азербайджанских территориях марионеточный режим и продолжает поддерживать его существование различными способами, в том числе посредством сохранения военного присутствия на этих территориях. Армения не может снять с себя ответственность за эти нарушения международного права, просто пытаясь скрыть свою роль агрессора за ширмой марионеточного режима.
- Международное право запрещает приобретение территории с применением силы, и, следовательно, никакие действия, предпринимаемые Арменией или ее марионеточным режимом на оккупированных территориях Азербайджана, не могут изменить существовавший ранее правовой статус этих территорий, которые, таким образом, остаются азербайджанскими по международному праву.
- Армения несет государственную ответственность за нарушения ею международного гуманитарного права и международного права прав человека. К таким нарушениям относятся попытки изменить азербайджанские законы и правовую систему, существующую на оккупированных территориях, посягательства на имущественные права и повреждение или уничтожение объектов культурного и исторического значения, создание поселений армян на оккупированных территориях, ненадлежащее обращение с покровительствуемыми лицами и насильственные исчезновения.
- Армения обязана как прекратить совершаемые ею нарушения, так и возместить ущерб в связи с ними. Такие обязательства согласно международному гуманитарному праву и международному праву прав человека могут контролироваться и осуществляться посредством механизмов, действующих в отношении Армении, таких как договорные органы Организации Объединенных Наций по правам человека и соответствующие международные судебные органы.
- Что касается военных преступлений, преступлений против человечности и геноцида, то индивидуальная ответственность может признаваться допустимой и может осуществляться через национальные суды в различных вовлеченных или третьих государствах-участниках, в то время как ответственность государства может обеспечиваться через соответствующие межгосударственные механизмы.

[*] Приложение распространяется только на том языке, на котором оно было представлено.

Буду признателен Вам за распространение настоящего письма и приложения к нему в качестве документа Генеральной Ассамблеи по пунктам 32, 37, 68, 70, 75 и 83 повестки дня и в качестве документа Совета Безопасности.

(*Подпись*) Яшар **Алиев**
Посол
Постоянный представитель

Приложение к письму Постоянного представителя Азербайджана при Организации Объединенных Наций от 4 июня 2020 года на имя Генерального секретаря

Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory

1. The present Report constitutes an updated version of the one presented on 23 January 2009 to the United Nations. [1] It examines the international legal responsibilities of the Republic of Armenia ("Armenia") as the belligerent occupier of the internationally recognised territory of the Republic of Azerbaijan ("Azerbaijan").[2] The Report addresses the following issues:

(a) Is Armenia an occupier in international law of Azerbaijani territory?

(b) If so, what are Armenia's duties as an occupier of Azerbaijani territory with regard to issues such as the maintenance of public order, the preservation of the Azerbaijani legal system and the protection of human rights in the territory in question?

(c) How may Armenia's responsibilities be monitored and enforced in international law?

[1] UN Doc. A/63/692-S/2009/51.

[2] For more information on the matter, see also the following reports: "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); "Report on the Legal Consequences of the Armed Aggression of 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); "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); "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); "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); "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); "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/206/711 (16 August 2016); "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); "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility", Annex to the Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/676-S/2020/90 (7 February 2020).

1. General

2. International law deals with question of occupation of territory of a State as part of what used to be called the law of war or the law of armed conflict and what is now most usually called international humanitarian law.[3] The law is essentially laid down in three instruments, being the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land 1907 ("the Hague Regulations"); Geneva Convention IV on the Protection of Civilians in Time of War 1949 ("Geneva Convention IV") and Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts 1977 ("Additional Protocol I").

3. Armenia became a party to Geneva Convention IV and to Additional Protocol I on 7 June 1993 and Azerbaijan became a party to Geneva Convention IV on 1 June 1993. Accordingly, Armenia is bound by all three of the instruments noted above. The relevant provisions of the Hague Regulations reflect rules of customary international law.

(a) Occupation and Sovereignty

4. The first point to make is that international law specifies that territory cannot be acquired by the use of force. Article 2(4) of the United Nations Charter declares that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State …".

5. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970[4] provided that:

> "The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal".

6. Principle IV of the Declaration of Principles adopted by the Conference on Security and Cooperation in Europe in the Helsinki Final Act 1975 noted that:

> "The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

7. It is, thus, abundantly clear that, as a matter of customary international law, occupation does not confer sovereignty over the occupied territory upon the occupying State. Dinstein, for example, writes that:

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[3] See, e.g., Y. Dinstein, *The International Law of Belligerent Occupation*, Cambridge, 2nd ed., 2019; E. Benvenisti, *The International Law of Occupation*, Princeton, 2nd ed., 2012; A. Clapham, P. Gaeta and M. Sassòli (eds.), *The 1949 Geneva Conventions*, Oxford, 2015, Part II C; A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation*, Cambridge, 2017; L. Green, *The Contemporary Law of Armed Conflict*, Manchester, 3rd ed., 2008, chapters 12 and 15; H.P. Gasser and K. Dörmann, "Protection of the Civilian Population", in D. Fleck (ed.), *Handbook of Humanitarian Law in Armed Conflict*, Oxford, 3rd ed., 2013, p. 264; UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, chapters 9 and 11; and J. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary, Geneva Convention IV*, Geneva, 1958. See also A. Roberts, "What is a Military Occupation?", 55 British Year Book of International Law, p. 249.

[4] Adopted in General Assembly resolution 2625 (XXV).

> "The main pillar of the law of belligerent occupation is embedded in the maxim that the occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure*. For its part, the Occupying Power acquires possession … but not title".[5]

8. Accordingly, sovereignty over the occupied territory does not pass to the occupier. The legal status of the population cannot be infringed by any agreement concluded between the authorities of the occupied territory and the occupying power, nor by an annexation by the latter.[6] Occupation is, thus, a relationship of power and such power is regulated according to the rules of international humanitarian law, which lays down both the rights and the obligations of the occupying power pending termination of that status. Both the legal status of the parties to the conflict and the legal status of the territory in question remain unaffected by the occupation of that territory.[7] Accordingly, no action taken by Armenia or by its subordinate local authority within the occupied territories of Azerbaijan can affect the pre-existing legal status of these territories, which thus remain Azerbaijani in international law.

(b) Commencement of Occupation

9. Article 42 of the Hague Regulations provides that:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".

10. This provision is considered to be a rule of customary international law and thus binding on all States.[8] It was examined by the International Court of Justice in the *Construction of a Wall* advisory opinion, in which the Court declared that:

> "territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised".[9]

11. The International Court of Justice has separately noted that:

> "under customary international law, as reflected in article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised. … In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an 'occupying Power' in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question".[10]

12. Article 2 of Geneva Convention IV provides that the Convention shall apply:

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[5] *Op.cit*., p. 58. See also Benvenisti, *op.cit*., p. 6. Note in addition *Prefecture of Voiotia v. Germany (Distomo Massacre)*, Court of Cassation, Greece, 4 May 2000, 129 International Law Reports, pp. 514, 519 and *Mara'abe v. The Prime Minister of Israel*, Israel Supreme Court, 15 September 2005, 129 International Law Reports, pp. 241, 252.

[6] See article 47 of Geneva Convention IV.

[7] See article 4 of Additional Protocol I.

[8] See *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 172.

[9] *Ibid*., p. 167.

[10] *Congo v. Uganda*, ICJ Reports, 2005, pp. 168, 229–30.

> "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.
>
> The Convention shall also 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 armed resistance".[11]

13. Since both Armenia and Azerbaijan are parties to this Convention, they are bound by its provisions. The obligations in Geneva Convention IV derive from both quoted paragraphs of article 2. Insofar as the first paragraph is concerned, the official Commentary on the Convention notes that "[a]ny difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2".[12] That this happened from the early 1990s is indisputable, as is the continuing outbreak of low-level hostilities and loss of life.[13]

14. The International Court of Justice has discussed the meaning of this paragraph in its advisory opinion in the *Construction of a Wall* proceedings.[14] It noted that the Convention is applicable under this paragraph when two conditions were fulfilled – namely, that there exists an armed conflict and that the conflict is between two contracting parties. The Court continued by stating that "[i]f those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties". Further, the Court noted that the object of the second paragraph, which provides that the Convention applies to "all cases of partial or total occupation of the territory of a High Contracting Party", was "directed simply to making it clear that, even if the occupation effected during the conflict met no armed resistance, the Convention is still applicable". As the Court emphasised, the purpose of the Convention was to seek to guarantee the protection of civilians irrespective of the status of the occupied territory.[15] It further underlined its approach by concluding that:

[11] See also article 3 of Additional Protocol I.

[12] Pictet (ed.), *op.cit*., p. 20.

[13] See, e.g., an AFP report dated 5 September 2007, stating that three Armenian and two Azerbaijani soldiers had been killed in fighting near Nagorny Karabakh. The report concludes by noting that "Armenian and Azerbaijani forces are spread across a ceasefire line in and around Nagorny Karabakh, often facing each other at close range, and shootings are common", <http://www.reliefweb.int/rw/rwb.nsf/db900sid/TBRL-76RMYP?OpenDocument>. See also the Parliamentary Assembly of the Council of Europe report on Migration, Refugees and Population dated 6 February 2006, which deplores "the frequent incidents along the ceasefire line and the border incidents, which are detrimental to refugees and displaced persons", Doc. 10835, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10835.htm>, at para. 5. This terminology was repeated in Resolutions 1497 and 2006. For statements deploring the number of casualties in more recent military incidents, see, e.g., 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>; 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 >.

[14] *Op.cit.*, pp. 174-5.

[15] *Ibid*.

> "the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties".[16]

15. Further, the Eritrea–Ethiopia Claims Commission has pointed out that:

> "These protections [provided by international humanitarian law] should not be cast into doubt because the belligerents dispute the status of territory. … [R]especting international protections in such situations does not prejudice the status of the territory".[17]

16. Insofar as the conflict between Armenia and Azerbaijan is concerned, both the Hague Regulations and Geneva Convention IV apply. Further, as Armenia is a party to Additional Protocol I, this also applies.

2. Armenia as an Occupier under International Law

(a) Armenia as the Occupier of Azerbaijani Territory

17. The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the Soviet Union ("USSR") disintegrated and the new successor States came into being, thus transforming an internal conflict between the two Union Republics into an international conflict. There can be no occupation in an international law sense of the concept as between contending forces in an internal conflict. With the declaration of Armenian independence on 21 September 1991 and that of Azerbaijan on 18 October that year,[18] the conflict over Nagorny Karabakh[19] became an international one. Both Armenia and Azerbaijan came to independence and were recognised as such in accordance with international law within the boundaries that they had had as Republics of the USSR. This meant that Nagorny Karabakh was internationally accepted as falling with the sovereign territory of Azerbaijan.

18. Fighting in the Nagorno-Karabakh region intensified after Armenia and Azerbaijan became independent, followed by the increased involvement of troops from Armenia during this period. The first armed attack by Armenia against Azerbaijan after the independence of the two Republics – an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets – occurred in February 1992, when the town of Khojaly in Azerbaijan was notoriously overrun.[20] Direct artillery bombardment of the Azerbaijani town of Lachin – mounted from within the territory of Armenia – took place in May of that year.[21] Armenian attacks against

[16] *Ibid*., p. 177.

[17] Partial Award, Central Front, Ethiopia's Claim 2, The Hague, 28 April 2004, para 28. See also article 4 of Additional Protocol I.

[18] 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.

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

[20] See T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, 2003, p. 170.

[21] See the Statement by the Ministry of Foreign Affairs of Azerbaijan, annexed to a Letter from the Permanent Representative of Azerbaijan addressed to the President of the Security Council, UN Doc. S/23926 (14 May 1992).

areas within Azerbaijan were resumed in 1993, eliciting a series of four Security Council resolutions. Human Rights Watch in its comprehensive report of December 1994 established on the basis of evidence it had collected "the involvement of the Armenian army as part of its assigned duties in the conflict". Such information was gathered by Human Rights Watch from prisoners from the Armenian army captured by Azerbaijan and from Armenian soldiers in Yerevan, the capital of Armenia. Western journalists also reported seeing busloads of Armenian army soldiers entering Nagorny Karabakh from Armenia. Human Rights Watch concluded that the Armenian army troop involvement in Azerbaijan made Armenia a party to the conflict and made the war an international armed conflict involving these two States.[22]

19. Both the Security Council and General Assembly of the United Nations have recognised that a situation of armed conflict exists in the occupied territories.[23] Other organs of the United Nations have recognised the same. The United Nations Human Rights Committee, for example, has referred with regard to Azerbaijan explicitly to "[t]he situation of armed conflict with a neighbouring country".[24] 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".[25]

20. Further, this Committee proceeded to "express its concern about the continuation of the conflict in and around the Nagorny-Karabakh region of the Republic of Azerbaijan", a conflict which "undermines peace and security in the region and impedes implementation of the Convention".[26] Concern with "the conflict in the Nagorny-Karabakh region" was also expressed in the Committee's Concluding Observations on Azerbaijan on 14 April 2005.[27]

21. A similar position has been adopted by the United Nations 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".[28] The Committee also referred to the "conflict with Armenia" in its Concluding Observations on Azerbaijan on 14 December 2004.[29] That there was and remains a situation of armed conflict has been recognised by other international organisations, including the Organization for Security and Cooperation in Europe (OSCE),[30] the

[22] *Seven Years of Conflict in Nagorno-Karabakh*, New York, 1994, pp. 69-73.
[23] See, e.g., the Statement by the President of the Security Council, UN Doc. S/PRST/1995/21 (26 April 1995), p. 2; General Assembly resolution A/RES/62/243 (14 March 2008), Preamble.
[24] See the Concluding Observations of the Human Rights Committee: Azerbaijan, UN Doc. CCPR/C/79/Add.38 (3 August 1994), at 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), at para. 3.
[25] UN Doc. CERD/C/304/Add.75 (12 April 2001), at para. 3.
[26] *Ibid.*, at para. 7.
[27] UN Doc. CERD/C/AZE/CO/4 (14 April 2005), at para. 10.
[28] UN Doc. E/C.12/1/Add.20 (22 December 1997), at para. 12.
[29] UN Doc. E/C.12/1/Add.104 (14 December 2004), at para. 11.
[30] See, e.g., CSCE, First Additional Meeting of the Council, Helsinki (24 March 1992), Summary of Conclusions, para. 3.

Council of Europe,[31] and the Organisation of Islamic Cooperation ("OIC").[32] Further, the United Nations Security Council, its President and the General Assembly have repeatedly reaffirmed that the parties to the conflict are bound by rules of international humanitarian law.[33]

22. Aside from the existence of the armed conflict, the existence of a situation of occupation and Armenia's role in that occupation have been confirmed beyond dispute.

23. The United States Department of State's Country Reports on Human Rights Practices for Armenia 2006, for example, noted that:

> "Armenia continues to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories. All parties to the Nagorno-Karabakh conflict have laid landmines along the 540-mile border with Azerbaijan and along the line of contact".[34]

24. The United States Department of State's Country Reports on Human Rights Practices for Azerbaijan 2006 stated that:

> "Armenia continued to occupy the Azerbaijani territory of Nagorno-Karabakh and seven surrounding Azerbaijani territories. During the year, incidents along the militarized line of contact separating the sides as a result of the Nagorno-Karabakh conflict again resulted in numerous casualties on both sides. Reporting from unofficial sources indicated approximately 20 killed and 44 wounded, taking into account both military and civilian casualties on both sides of the line of contact. According to the national agency for mine actions, landmines killed two persons and injured 15 others during the year".[35]

25. Further, the Freedom House Report on Azerbaijan for 2006 states that:

> "The Azerbaijani government continued to have no administrative control over the self-proclaimed Nagorno-Karabakh Republic (NKR) and the seven surrounding regions (Kelbajar, Gubatli, Djabrail, Fizuli, Zengilan, Lachin, and Agdam) that are occupied by Armenia. This area constitutes about 17 percent of the territory of Azerbaijan",[36]

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[31] 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.

[32] See, e.g., Organisation 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.

[33] Security Council resolution 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"); Security Council resolution 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"); Security Council resolution 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"); General Assembly resolution 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").

[34] <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78799.htm>.

[35] <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78801.htm>. The Country Reports on Human Rights Practices for Azerbaijan for 2019 notes that: "Separatists, with Armenia's support, continued to control most of Nagorno-Karabakh and seven surrounding Azerbaijani territories", <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/azerbaijan/>.

[36] <http://www.freedomhouse.org/template.cfm?page=47&nit=390&year=2006>.

while the International Crisis Group's Report of 11 October 2005 notes in its Executive Summary that:

> "Armenia is not willing to support withdrawal from the seven occupied districts around Nagorno-Karabakh, or allow the return of Azerbaijani internally displaced persons (IDPs) to Nagorno-Karabakh, until the independence of Nagorno-Karabakh is a reality".[37]

26. The Security Council has consistently reaffirmed both the sovereignty and territorial integrity of Azerbaijan, the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory. It has further consistently recognised that Nagorny Karabakh is part of Azerbaijan and demanded the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan.

27. Security Council resolution 822 (1993) called for "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". Resolution 853 (1993) condemned "the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic" and demanded the "the immediate, complete and unconditional withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of the Azerbaijani Republic", while resolution 874 (1993) repeated the call for the "withdrawal of forces from recently occupied territories". Resolution 884 (1993) reaffirmed the earlier resolutions, condemned the occupation of the Zangelan district and the city of Goradiz in Azerbaijan and demanded the "unilateral withdrawal of occupying forces from the Zangelan district and the city of Goradiz, and the withdrawal of occupying forces from other recently occupied areas of the Azerbaijani Republic".

28. Resolutions 853 (1993) and 884 (1993) further called upon the Government of Armenia to "continue to exert its influence" to achieve compliance with Security Council resolutions, as did the statement made by the President of the Security Council on 18 August 1993.[38]

29. The General Assembly has also included on its agenda from 2004 an item entitled "The situation in the occupied territories of Azerbaijan". On 14 March 2008, the Assembly adopted resolution 62/243, including the following substantive provisions:

> "1. *Reaffirms* continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders;
>
> 2. *Demands* the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan;
>
> 3. *Reaffirms* the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes, and stresses the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict-affected territories;
>
> 5. *Reaffirms* that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation".

[37] "Nagorno-Karabakh: A Plan for Peace", Report No. 167, p. I.
[38] *Op.cit.*

30. The report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, dated 19 November 2004, declared that:

> "Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large budgetary resources to this area".[39]

31. Resolution 1416 (2005), adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe, noted particularly that "[c]onsiderable parts of the territory of Azerbaijan are still occupied by Armenian forces" and reiterated that "the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe."

32. The International Crisis Group noted in its September 2005 report that "[a]ccording to an independent assessment, there are 8,500 Karabakh Armenians in the army and 10,000 from Armenia" and that "many conscripts and contracted soldiers from Armenia continue to serve in NK [Nagorny Karabakh]", while "[f]ormer conscripts from Yerevan and other towns in Armenia have told Crisis Group they were seemingly arbitrarily sent to Nagorno-Karabakh and the occupied districts immediately after presenting themselves to the recruitment bureau. They deny that they ever volunteered to go to Nagorno-Karabakh or the adjacent occupied territory". It was further noted that "[t]here is a high degree of integration between the forces of Armenia and Nagorno-Karabakh".[40]

33. The above indicative materials demonstrate clearly that the regular armed forces of Armenia took direct part in the capture of Nagorny Karabakh and seven surrounding districts. Further, Armenia has sustained the existence of what it calls the "Republic of Nagorny Karabakh" ("NKR") or alternatively the "Republic of Artsakh", an illegally created and entirely unrecognised entity within the internationally recognised territory of Azerbaijan, by a variety of political and economic means, including the maintenance of military forces in the occupied territories and on the line of contact.[41]

34. It has been internationally recognised that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions. Article 6 of Geneva Convention IV declares that the Convention applies "from the outset of any conflict or occupation mentioned in article 2", so that it clearly applies as from the moment that Armenian forces entered Azerbaijani territory and will continue so to do until their final withdrawal.[42]

35. Armenia's role as occupying power means that it is internationally responsible for breaches of the obligations attendant upon that role.

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[39] David Atkinson, "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", Explanatory Memorandum, para. 6.

[40] "Nagorno-Karabakh: Viewing the Conflict from the Ground", Report no. 166, 14 September 2005, pp. 9–10.

[41] See *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 167 and following. See further below, paragraph 82 and following.

[42] See Pictet (ed.), *op.cit*., p. 60 with which the official statement of the International Committee of the Red Cross ("ICRC") delivered by D. Thürer on 21 October 2005 agrees (see following footnote). See also Roberts, "What is a Military Occupation?", *op.cit*., p. 256 and *Construction of a Wall*, *op.cit.*, p. 174, noting that Geneva Convention IV applies when an armed conflict between two contracting parties exists.

(b) Armenia's Duties as an Occupier of Azerbaijani Territory

(1) General

36. In the official statement of the International Committee of the Red Cross ("ICRC") delivered by Thürer in 2005, the following was noted with regard to the duties of an occupier in the light of the applicable law:

> "the occupying power must not exercise its authority in order to further its own interests, or to meet the interests of its own population. In no case can it exploit the inhabitants, the resources or other assets of the territory under its control for the benefit of its own territory or population. Any military occupation is considered temporary in nature; the sovereign title does not pass to the occupant and therefore the occupying powers have to maintain the *status quo*. They should thus respect the existing laws and institutions and make changes only where necessary to meet their obligations under the law of occupation, to maintain public order and safety, to ensure an orderly government and to maintain their own security".[43]

37. Article 43 of the Hague Regulations provides the essential framework of the law of occupation. It notes 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 safety [*l'ordre et la vie publics*], while respecting, unless absolutely prevented, the laws in force in the country".

38. Further, the International Court of Justice has emphasised that an occupying power is under an obligation under article 43:

> "to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force [in the occupied area]. This obligation comprised 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 against acts of violence, and not to tolerate such violence by any third party".[44]

39. Article 43 has been described as the "gist" of the law of occupation and the culmination of prescriptive efforts made in the nineteenth century and thus recognised as expressing customary international law.[45] The key features of this provision read together create a powerful presumption against change with regard to the occupying power's relationship with the occupied territory and population, particularly concerning the maintenance of the existing legal system, while permitting the occupier to "restore and ensure" public order and safety. While the balance between the two is not always clear, especially with regard to extended occupations, it is clear that the occupying power does not have a free hand to alter the legal and social structure in the territory in question and that any form of "creeping annexation" is forbidden.

40. There is abundant evidence, summarised in the following sections, showing that Armenia has failed to comply with this basic international legal obligation. It has

[43] <https://www.icrc.org/en/doc/resources/documents/statement/occupation-statement-211105.htm> (reply to Question 3).

[44] *Congo v. Uganda*, *op.cit.*, p. 231.

[45] See Benvenisti, *op.cit.*, p. 68. See also M. Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 European Journal of International Law, 2005, p. 661 and Roberts, "Transformative Military Occupation: Applying the Laws of War and Human Rights", 100 American Journal of International Law, 2006, p. 580.

entirely discarded the rights and interests of Azerbaijan as sovereign of the territories it occupies, as well as those of the local population. Instead, it has used the occupied territories as a vehicle to advance its own interests and with a view to ultimately incorporating those territories into Armenia itself.

(2) Protection of the Existing Local Legal System

41. International humanitarian law provides for the keeping in place of the local legal system during occupation. This is a fundamental element in the juridical protection of the territory and population as they fall under the occupation of a hostile power. Article 43 of the Hague Regulations expressly provides for this in noting that the occupying power must respect local laws "unless absolutely prevented", a high threshold which may be only rarely achieved. This is because occupation is a temporary factual situation with minimal modification of the underlying legal structure with regard to the territory in question. The term "laws in force" is to be interpreted widely to include not only laws in the strict sense, but also constitutional provisions, decrees, ordinances, court precedents as well as administrative regulations and executive orders.[46]

42. Article 43 of the Hague Regulations has been supplemented by Geneva Convention IV. Article 64 provides, for example, that the penal laws of the occupied territory shall remain in force, unless they constitute a threat to the security of the occupying power. Occupying powers may, however, under the second paragraph to this provision, subject the population of the occupied territory to "provisions which are essential to enable the occupying power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them". However, this is to be restrictively interpreted and the difference between preserving local laws and providing for "provisions" which are "essential" is clear and significant. They mean not only that the legal system as such is unaffected save for the new measures which are not characterised as such as laws, but that the test for the legitimacy of these imposed measures is that they be "essential" for the purposes enumerated. The fact that the French term *indispensable* is used clearly demonstrates the restrictive nature of the reservation.

43. Article 64 also provides that "the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws", while article 54 provides that:

> "the Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience".

44. In other words, while the occupying power may enact penal provisions of its own in order to maintain an orderly administration, such competence is constrained by the need to preserve the existing local legal system and by the need to comply with the rule of law.[47] Further, protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.[48]

[46] See Sassòli, *op.cit*., pp. 668-9.

[47] See articles 67 and 69-75 of Geneva Convention IV and article 75 of Additional Protocol I. See also Dinstein, *op.cit*., chapter 5 and Benvenisti, *op.cit*., chapter 4.

[48] Article 76 of Geneva Convention IV.

Representative of the delegates of the ICRC have the right to go to all places where protected persons are found, particularly places of internment, detention and work.[49]

45. In addition to the preservation of the local legal system, article 56 provides that to the fullest extent of the means available to it, the occupying power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories are to be allowed to carry out their duties.[50]

46. There is evidence that Armenia has failed to comply with its duties as occupier in respect of the legal system in existence prior to the occupation of Nagorny Karabakh and the surrounding districts. Such evidence includes the so-called "constitutional referenda" organized in the occupied territories of Azerbaijan in 2006 and 2017, which were declared illegal and invalid by both Azerbaijan and the international community,[51] and changes made to legislation applicable within the territories, such as the Criminal Code and the Electoral Code.[52]

47. The European Court of Human Rights has addressed various purported changes to the legal system in the occupied territories of Azerbaijan. As explained more fully below in relation to an occupier's duty to preserve existing property rights, the Court found that laws of the so-called "NKR" which purported to extinguish existing property rights were of no effect because "the 'NKR' is not recognised as a State under international law by any countries or international organisations".[53] The Court also referred to evidence presented by Armenia that the "NKR" has "its own legislation and its own independent political and judicial bodies".[54] However, it found that the "NKR" was not independent of Armenia in relation to the laws and legal systems it had purported to introduce in the occupied territories, in that "several laws of the 'NKR' have been adopted from Armenian legislation".[55]

[49] Article 143.

[50] See also article 14 of Additional Protocol I.

[51] See, e.g., Statement by the Ministry of Foreign Affairs of Azerbaijan, Annex to the Letter dated 11 December 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/61/627–S/2006/966 (12 December 2006); Statement by the OSCE Minsk Group Co-Chairs "On the 10 December referendum in Nagorno-Karabakh", 11 December 2006, <https://www.osce.org/mg/48044>; Declaration by the Presidency on behalf of the European Union "On the 'constitutional referendum' in Nagorno-Karabakh on 10 December 2006", 11 December 2006, <https://finlandabroad.fi/web/gha/foreign-ministry-s-press-releases/-/asset_publisher/kyaK4Ry9kbQ0/content/puheenjohtajavaltion-euroopan-unionin-puolesta-antama-julkilausuma-vuoristo-karabahissa-10-joulukuuta-2006-jarjestetysta/35732>; Statement by the Ministry of Foreign Affairs of Azerbaijan, Annex to the Letter dated 15 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/795–S/2017/140 (17 February 2017); Statement by the Co-Chairs of the OSCE Minsk Group, 17 February 2017, <https://www.osce.org/mg/300591>; EU Statement "On the so-called constitutional referendum in Nagorno-Karabakh", 8 March 2017, <https://eeas.europa.eu/sites/eeas/files/pc_1135_eu_en_on_socalled_referendum_nagorno_karabakh_1.pdf>.

[52] See, e.g., Note Verbale dated 14 February 2019 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, Annex, UN Doc. A/HRC/40/G/3 (2 April 2019), pp. 3–4.

[53] *Chiragov and Others v. Armenia*, *op.cit.*, para. 148.

[54] *Ibid.*, para. 182.

[55] *Ibid.*

(3) Property Rights

48. Article 46 of the Hague Regulations provides that, *inter alia*, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Article 46 also specifies that private property cannot be confiscated, except where requisitioned for necessary military purposes, but even then requisitioning must take into account the needs of the civilian population.[56] Dinstein notes that respect for private property under this provision also covers the situation where the owner of such property is actually prevented from exercising his rightful prerogatives[57] and includes in addition intangible assets.[58] Pillage is forbidden specifically under this provision,[59] while reprisals against the property of protected persons are prohibited.[60]

49. Article 55 states that the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State and situated in the occupied country, and that it must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. In addition, article 56 provides that the property of municipalities, institutions dedicated to religion, charity and education, and the arts and sciences, even when State property, shall be treated as private property and that all seizure of, destruction of or wilful damage done to institutions of this character, historic monuments, and works of art and science, is forbidden, and should be made the subject of legal proceedings.

50. Article 53 of Geneva Convention IV prohibits the destruction by the occupying power of any real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations.[61] It is a grave breach of the Convention to engage in extensive destruction not so justified.[62]

51. Armenia has flagrantly violated the rules which prohibit it, as occupier, from interfering with private property rights or from damaging cultural and historical property. Armenia's violations in this respect have been catalogued in depth in the recent report entitled "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility".[63] Without repeating all of the evidence set out in that report, in summary:

(i) An impartial and reputable NGO has presented evidence of Armenia privatising land and turning a blind eye to Armenian settlers profiting from the dismantling of local infrastructure and private property in the occupied territories.[64]

[56] Article 52 of the Hague Regulations and article 55 of Geneva Convention IV.

[57] *Op.cit*., p. 243, citing the *Krupp* trial, US Military Tribunal, Nuremberg, 1948, 10 *Law Reports of Trials of War Criminals*, pp. 137-8 and *Loizidou v. Turkey*, App. No. 15318/89, ECtHR (Grand Chamber), Merits, 18 December 1996, para. 63 (which held that continuous denial of access to land violated the right to the peaceful enjoyment of possessions).

[58] *Ibid.*, p. 244, citing the *IG Farben* trial, US Military Tribunal, Nuremberg, 1948, 10 *Law Reports of Trials of War Criminals*, pp. 44-45.

[59] Article 47 of the Hague Regulations.

[60] Article 33 of Geneva Convention IV.

[61] See also article 23(g) of the Hague Regulations.

[62] Article 147 of Geneva Convention IV.

[63] *Op.cit.*, paras. 138–44 (interference with property), 223–29 (destruction of cultural heritage).

[64] *Ibid.*, para. 138.

(ii) 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.[65]

(iii) 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.[66]

(iv) The OIC has expressed grave concern at the interference with property rights in the occupied territories.[67]

(v) There is extensive evidence of Armenia (or those engaging its international responsibility as occupier) destroying cultural heritage, including mosques, castles, art galleries, libraries and museums.[68]

52. The international community has already recognised the illegality of the "NKR" purporting to nullify the property rights of former inhabitants of the occupied territories. For example, in the case of *Chiragov and Others v Armenia*, the European Court of Human Rights addressed a contention by Armenia that the property rights of certain individuals had been extinguished by the "NKR" enacting a law of privatisation and a "Land Code".[69] The Court recalled its own previous finding that "the 'NKR' is not recognised as a State under international law by any countries or international organisations" with the consequence that "the invoked laws cannot be considered legally valid for the purposes of the Convention and the applicants cannot be deemed to have lost their alleged rights to the land in question by virtue of these laws".[70]

(4) Protecting Protected Persons

53. A number of provisions of Geneva Convention IV detail the treatment of persons within the occupied territory (termed "protected persons" under the convention). The major ones are as follows:

(i) It is prohibited to employ protected persons for work outside the occupied territory (article 51(3)).

(ii) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. All protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion (article 27). The ICRC Commentary regards this provision as "the basis of the [Geneva Convention IV], proclaiming as it does the principles

[65] *Ibid.*, paras. 141–142 and sources cited therein, in particular: UN Doc. A/70/1016–S/2016/711, *op.cit*., p. 1; UN Doc. A/71/880–S/2017/316 (26 April 2017), *op.cit*.

[66] Azercosmos OJSCo (the satellite operator of the Republic of Azerbaijan) and the Ministry of Foreign Affairs of Azerbaijan, "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019).

[67] UN Doc. A/74/676–S/2020/90, *op.cit.*, para. 144, citing the Final Communique of the 13th Islamic Summit Conference (Unity and Solidarity for Justice and Peace) (14–15 April 2016), paras. 16–17; Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan, *op.cit.*, Preamble, paras. 20.

[68] UN Doc. A/74/676–S/2020/90, *op.cit.*, paras. 224–9 and sources cited therein.

[69] *Op.cit.*, para. 148.

[70] *Ibid*.

on which the whole of 'Geneva Law' is founded".[71] It is to be noted that "wilfully causing great suffering or serious injury to body or health" is a grave breach of the Convention (article 147) and, as such, constitutes a war crime under article 8(2)(a)(iii) of the Statute of the International Criminal Court.

(iii) The party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred (article 29).

(iv) No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties (article 31).

(v) There is a prohibition on taking any measure of such a character as to cause the physical suffering or extermination of protected persons in the hands of an occupier. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents (article 32).

(vi) No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited and reprisals against protected persons and their property are prohibited (article 33).

(vii) The taking of hostages is prohibited (article 34). Hostage-taking also constitutes a grave breach of the Convention (article 147) and thus a war crime under article 8(2)(a)(viii) of the Statute of the International Criminal Court.

54. The document entitled "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility" sets out in detail evidence of Armenia's breach of these obligations. Without repeating all of the evidence set out in that report, in summary:

(i) There is extensive evidence of Armenian agents and others engaging its responsibility as occupier perpetrating the murder and torture of civilians in the occupied territories of Azerbaijan.[72]

(ii) There is also evidence of a widespread practice of hostage-taking by Armenia and others for whose conduct it is internationally responsible.[73] As of January 2020, it had been established that, of the 3,889 persons who were missing as a result of the conflict, 267 civilians had been taken hostage, of whom 29 are children, 98 are women and 112 are elderly persons, while a further 1,102 Azerbaijani civilians (including 224 children, 357 women and 225 elderly persons) had previously been taken hostage by Armenian forces but already released.[74]

(5) Missing Persons

55. Special provisions apply with regard to missing persons. Article 26 of Geneva Convention IV provides that each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing

[71] Pictet (ed.), *op.cit.*, pp. 199–200.

[72] *Op.cit.*, paras. 83–117 (unlawful killing of civilians), 154–160 (mistreatment of detainees, including large numbers of civilians), and the sources cited therein.

[73] *Ibid.*, paras. 166–73.

[74] 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/viewpage/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#.XmAak6hKjIU>.

contact with one another and of meeting, if possible. Each party shall encourage, in particular, the work of organizations engaged in this task provided they are acceptable to it and conform to its security regulations.

56. Article 33 of Additional Protocol I, which is specifically entitled “Missing Persons”, provides that:

> “1. As soon as circumstances permit, and at the latest from the end of active hostilities, each party to the conflict shall search for the persons who have been reported missing by an adverse party. Such adverse party shall transmit all relevant information concerning such persons in order to facilitate such searches.
>
> 2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:
>
> (a) Record the information specified in article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
>
> (b) To the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.
>
> 3. Information concerning persons reported missing pursuant to paragraph I and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the ICRC or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the ICRC and its Central Tracing Agency, each party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.
>
> 4. The parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse party while carrying out the missions in areas controlled by the adverse party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.”

57. As a party to Additional Protocol I, Armenia is bound by the above provision.

58. Further, in resolution 59/189, adopted by the General Assembly on 20 December 2004, States parties to an armed conflict were called up to take all appropriate measures to prevent persons from going missing in connection with armed conflict and to account for persons reported missing as a result of such a situation. The resolution also reaffirmed both the right of families to know the fate of their relatives reported missing in connection with armed conflicts; and that each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities, shall search for the persons who have been reported missing by an adverse party. States parties to an armed conflict were called upon to take all necessary measures, in a timely manner, to determine the identity and fate of persons

reported missing in connection with the armed conflict.[75] On 11 June 2019, the Security Council unanimously adopted resolution 2474 (2019), its first ever resolution on this topic,[76] in which it reaffirmed its strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict and called upon all parties to armed conflict to put an end to such practices, in accordance with their obligations under international humanitarian law. Other provisions included calling upon the parties to armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and to facilitate family reunions and ensure impartial and effective investigations and prosecution of offences linked to missing persons as a result of armed conflict with a view to full accountability.

59. In addition, the International Convention on the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006 and in force from 23 December 2010, appears applicable to occupied territories, noting that Article 1 (2) declares that, "[N]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance". Article 2 defines 'enforced disappearance' as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Armenia became a party to the Convention on 24 January 2011.

60. Article 9(1)(a) of the Convention states:

> "1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:
>
> (*a*) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;".

61. It is clear from the jurisprudence of the European Court of Human Rights that the occupied territories of Azerbaijan fall within the 'jurisdiction' of Armenia for such human rights' purposes[77] and imposes upon the latter significant duties to investigate acts of enforced disappearance, having criminalised them,[78] and to either prosecute persons alleged to have committed acts or to extradite them to a State that will prosecute (Articles 6 – 11).

62. Resolution 1553 (2007) of the Parliamentary Assembly of the Council of Europe, entitled "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions", emphasised that the issue of missing persons was a "humanitarian problem with human rights and international humanitarian law implications" and that time was of the essence when seeking to solve the issue of the missing in these conflicts. The resolution noted that the Parliamentary Assembly was concerned by the "continuing allegations of secret detention of missing persons". The resolution also gave the figure

[75] See also General Assembly resolutions A/RES/61/155 (19 December 2006); A/RES/63/183 (18 December 2008); A/RES/65/210 (21 December 2010); A/RES/67/177 (20 December 2012); A/RES/69/184 (18 December 2014); A/RES/71/201 (19 December 2016); A/RES/73/178 (17 December 2018).

[76] UN Press Release SC 13835, 11 June 2019, <https://www.un.org/press/en/2019/sc13835.doc.htm>.

[77] See below, paragraph 83 and following.

[78] Note that under Article 5, "[T]he widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law".

of 4,499 Azerbaijanis listed as missing as a result of the conflict over the Nagorno-Karabakh region and declared that:

> "The right to know the fate of missing relatives is … firmly entrenched in international humanitarian law. Furthermore, state practice establishes as a norm of customary international law, applicable in both international and non-international armed conflicts, the obligations of each party to the armed conflict to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide their family members with any information it has on their fate. The right to know is also anchored in the rights protected under the European Convention on Human Rights, notably Articles 2, 3, 5, 8, 10 and 13.

63. The most recent estimate (as of the beginning of January 2020) is that 3,889 citizens of Azerbaijan are registered as missing as a result of the conflict, including 3,170 servicemen and 719 civilians. Among the civilians, 71 are children, 267 are women and 326 are elderly persons.[79]

(6) Prohibition on Settlements in Occupied Territories

64. Article 49 of Geneva Convention IV provides that "the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies". This constitutes the basis and expression of a rule of law prohibiting the establishment of settlements in the occupied territories consisting of the population of the occupying power or of persons encouraged by the occupying power with the intention, expressed or otherwise, of changing the demographic balance. The International Court of Justice has noted that this provision:

> "prohibits not only deportations or forced transfer of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers or parts of its own population into the occupied territory".[80]

65. Such activity also constitutes a grave breach of Additional Protocol I[81] and, indeed, a breach of Armenia's own domestic legislation.[82] Attempts to change the demographic composition of occupied territories have also been condemned by the Security Council.[83] The Committee on the Elimination of Racial Discrimination in its Decision 2 (47) of 17 August 1995 on the situation in Bosnia and Herzegovina declared that "any attempt to change or to uphold a changed demographic composition of an area, against the will of the original inhabitants, by whichever means is a

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[79] State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, *op.cit*.

[80] *Construction of a Wall*, *op.cit.*, p. 183.

[81] See article 85(4)(a) defining as a grave breach of the Protocol: "The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention". It also amounts to a war crime under the Statute of the International Criminal Court 1998: see article 8(2)(b)(viii) but with a rather different definition ("the transfer *directly or indirectly* by the Occupying Power of parts of its own civilian population into the territory it occupies", emphasis added). Footnote 44 of the Elements of Crimes analysing article 8(2)(b)(viii) notes that the term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law: International Criminal Court, RC/11, 2011, p. 22.

[82] See J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, vol I: Rules*, ICRC, Cambridge, 2005, p. 462, footnote 36.

[83] See, e.g., Security Council resolutions S/RES/446 (1979), S/RES/452 (1979), S/RES/465 (1980), S/RES/476 (1980), S/RES/677 (1990), S/RES/1397 (2002), S/RES/1515 (2002), S/RES/1850 (2008) and S/RES/2334 (2016).

violation of international law",[84] while Special Rapporteur Al-Khasawneh in his Final Report on "Human Rights Dimensions of Population Transfer" for the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities underlined the illegality of population transfers and their prohibition under international human rights and humanitarian law.[85] This view was endorsed by the Sub-Commission in its consideration of the Report.[86]

66. Practice shows clearly that Armenia has violated this prohibition. Significant numbers of Armenian settlers have been encouraged to move into the occupied areas, in particular the Lachin area, an area that had been depopulated of its Azerbaijani inhabitants. There have been numerous independent reports of the introduction of settlers into the occupied areas.

67. The Report of the OSCE Fact-Finding Mission to the Occupied Territories of Azerbaijan Surrounding Nagorny Karabakh, 2005, concluded that the settlement figures were approximately as follows: 1,500 in the Kalbajar district; 800 to 1,000 in the Aghdam district; under 10 in the Fuzuli district; under 100 in the Jabrayil district; 700 to 1,000 in the Zangilan district and from 1,000 to 1,500 in the Gubadly district.[87] The report also noted that some 3,000 settlers lived in Lachin town[88] and emphasised that "[s]ettlement incentives are readily apparent".[89] 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 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.[90] 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".[91] 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".[92]

68. The US Committee for Refugees and Immigrants in its World Refugee Survey 2002 Country Report on Armenia stated that:

> "According to the de facto government of Nagorno-Karabakh, the population of the enclave stood at about 143,000 in 2001, slightly higher than the ethnic Armenian population in the region in 1988, before the conflict. Government officials in Armenia have reported that about 1,000 settler families from Armenia reside in Nagorno-Karabakh and the Lachin Corridor, a strip of land that separates Nagorno-Karabakh from Armenia. According to the government, 875 ethnic Armenian refugees returned to Nagorno-Karabakh in 2001. Most, but not all, of the ethnic Armenian settlers in Nagorno-Karabakh are former

[84] UN Doc. A/50/18 (1995), para. 26.
[85] UN Doc. E/CN.4/Sub.2/1997/23 (27 June 1997). See also the First Report by Al-Khasawneh and Hatano, UN Doc. E/CN.4/Sub.2/1993/17 and Corr.1 (1993).
[86] Sub-Commission resolution 1997/29.
[87] UN Doc. A/59/747-S/2005/187 (21 March 2005), at p. 26.
[88] *Ibid*., at p. 29.
[89] *Ibid*., at p. 30.
[90] Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (2011), pp. 4, 7.
[91] *Ibid.*, p. 6.
[92] *Ibid.*, p. 8.

refugees from Azerbaijan. Settlers choosing to reside in and around Nagorno-Karabakh reportedly receive the equivalent of $365 and a house from the de facto authorities".[93]

69. In a paper prepared by Anna Matveeva on "Minorities in the South Caucasus" for the ninth session (May 2003) of the Working Group on Minorities of the UN Sub-Commission on Promotion and Protection of Human Rights, the following was stated:

> "A policy of resettlement in areas held by the Armenian forces around Karabakh ('occupied territories' or 'security zone') which enjoy relative security has been conducted since 1990s. Applications for settlement are approved by the governor of Lachin who tends to mainly accept families. Settlers normally receive state support in renovation of houses, do not pay taxes and much reduced rates for utilities, while the authorities try to build physical and social infrastructure".[94]

70. The International Crisis Group report of September 2005 reported that:

> "Stepanakert considers Lachin for all intents and purposes part of Nagorno-Karabakh. Its demographic structure has been modified. Before the war, 47,400 Azeris and Kurds lived there: today its population is some 10,000 Armenians, according to Nagorno-Karabakh officials. The incentives offered to settlers include free housing, social infrastructure, inexpensive or free utilities, low taxes, money and livestock. In the town centre, up to 85 percent of the houses have been reconstructed and re-distributed. New power lines, road connections and other infrastructure have made the district more dependent upon Armenia and Nagorno-Karabakh than before the war".[95]

71. The International Crisis Group report of October 2005 stated that:

> "The interest in Lachin seems to be based on more than security. Stepanakert, with Armenia's support, has modified the district's demographic structure, complicating any handover. … Stepanakert considers Lachin for all intents and purposes part of Nagorno-Karabakh and has established infrastructure and institutions in clear violation of international law prohibitions on settlement in occupied territories".[96]

72. Accordingly, Armenia's breach of this important rule of international humanitarian law has been clearly established. Azerbaijan has diligently brought Armenia's conduct of transferring ethnic Armenians into the occupied territories to

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[93] <http://refugees.org/countryreports.aspx?__VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpHb0J1dHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=312&subm=&ssm=&map=&_ctl0%3ASearchInput=+KEYWORD+SEARCH&CountryDD%3ALocationList>.

[94] UN Doc. E/CN.4/Sub.2/AC.5/2003/WP.7 (5 May 2003), at pp. 34–5.

[95] *Op.cit*., p. 7 (internal citations omitted). Note that the town of Khankandi was founded by the Khans of the Azerbaijani Karabakh Khanate in the eighteenth century. Khankandi is translated from Azerbaijani language as the Khan's Village. In September 1923, after the establishment of Soviet rule in Azerbaijan, Khankandi was renamed to Stepanakert after Stepan Shaumian, a Bolshevik Commissar and Vladimir Lenin's proxy in the South Caucasus. In 1991, the town was returned its historical name Khankandi. However, it is still referred to by the Armenians as "Stepanakert".

[96] *Op.cit*., p. 22. See also the full analysis of the settlement programme presented by the Permanent Representative of Azerbaijan to the United Nations in November 2004: UN Doc. A/59/568 (11 November 2004).

the attention of the United Nations and the OSCE.[97] It is not necessary to repeat all of the evidence previously provided. For 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."[98] 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 operating in Yerevan."[99]

73. 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.[100] 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".[101] 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

[97] In addition to the documents cited below, see the documents cited in footnote 2 above, as well as the Press release of the Ministry of Foreign Affairs 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; Letter from the Permanent Mission 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 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.

[98] UN Doc. A/62/491–S/2007/615, *op.cit.*

[99] *Ibid*.

[100] UN Doc. A/64/760–S/2010/211, *op.cit*.

[101] *Ibid*.

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 territorial expansionism, give rise to serious concern and justified indignation."[102]

74. 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.[103] 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 settlers, pillaging natural resources, executing infrastructure changes, exploiting agricultural land, and expropriating public and private property.[104]

75. 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.[105]

76. In April 2016, the OIC expressed its grave concern at, *inter alia*, "unlawful actions aimed at changing the demographic … character of the occupied territories".[106] In October of the same year, the OIC 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",[107] 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

[102] *Ibid*.
[103] UN Doc. A/70/1016–S/2016/711, *op.cit*.
[104] "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery" (2019), *op.cit*.
[105] European Parliament Resolution 0128 (18 April 2012), para. 1(z).
[106] Final Communique of the 13th Islamic Summit Conference (Unity and Solidarity for Justice and Peace), *op.cit.*, para. 16.
[107] Resolution No. 10/43-POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan, *op.cit*, Preamble.

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 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."[108]

77. 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,[109] Professor Alain 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."

78. The importation of ethnically Armenian settlers into the occupied territories of Azerbaijan has been possible only because Armenia has simultaneously engaged in a campaign of forcibly expelling and preventing the return of Azerbaijani inhabitants of those territories, also in clear breach of Article 49 of Geneva Convention IV. 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.[110]

79. Evidence of this practice has been documented in detail in the document entitled "Report on war crimes in the occupied territories of the Republic of Azerbaijan and the Republic of Armenia's responsibility". Without repeating all of the detail set out there, towns and regions which have been the subject of ethnic cleansing by Armenian forces include Shusha,[111] Aghdam,[112] villages near the Iranian border,[113] and the Kalbajar, Fuzuli, Jabrayil, Gubadly and Zangilan districts. The forcible displacement of civilians has been condemned by various international bodies, including the United Nations Security Council,[114] the United Nations General

[108] *Ibid.*, paras. 15–16.
[109] UN Doc. A/71/880–S/2017/316, *op.cit.*, pp. 34–36.
[110] 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; UN Doc. A/72/725–S/2018/77, *op.cit.*, p. 3.
[111] UN Doc. A/73/878–S/2019/406, *op.cit.*, p. 1.
[112] *Ibid*, pp. 32–49.
[113] *Ibid*, pp. 50–62.
[114] Security Council resolution S/RES/822 (30 April 1993), Preamble; Security Council resolution S/RES/853 (29 July 1993), Preamble; Security Council resolution S/RES/874 (14 October 1993), Preamble; Security Council resolution S/RES/884 (12 November 1993), Preamble.

Assembly,[115] the European Union,[116] the OIC,[117] the United States Committee for Refugees and Immigrants,[118] the Grand Chamber of the European Court of Human Rights[119], and the Parliamentary Assembly of the Council of Europe (which "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").[120] One scholar has described the cleansing of Azerbaijani civilians from towns and villages in the occupied territories as a "key component of the Karabakh insurgency's strategy" designed to "make a fait accompli of [the territories'] integration with Armenia".[121] 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
>
> – there seems to be wide evidence of brutalities which were the origin of the situation."[122]

80. 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.[123]

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[115] General Assembly resolution A/RES/48/114 (20 December 1993), Preamble.

[116] "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.

[117] Organisation 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.

[118] World Refugee Survey 2001, country report on Azerbaijan.

[119] *Chiragov and Others v Armenia*, *op.cit.,* para. 18.

[120] Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005), *op.cit.*, para. 2. See also 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. 3, para. 60.

[121] J.A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law*, Cambridge, 2016, pp. 237–39 (internal citations omitted).

[122] UN Doc. A/71/880–S/2017/316 (26 April 2017), *op.cit.*, p. 28 (internal citations omitted).

[123] See, e.g., UN Doc. A/62/491–S/2007/615, *op.cit.*, p. 47; "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; UN Doc. A/64/760–S/2010/211, *op.cit*.; UN Doc. A/66/787–S/2012/289, *op.cit*., pp. 21, 23; 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; UN Doc. A/72/508–S/2017/836 (5 October 2017), *op.cit*., p. 6; 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); 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 74th session of the UN General Assembly, 26 September 2019, <http://un.mfa.gov.az/files/file/statements/Right%20of%20reply%2026.09.19.pdf>.

(7) Application to Subordinate Local Administrations

81. Geneva Convention IV provides that for the continued existence of convention rights and duties irrespective of the will of the occupying power. Article 47 in particular provides that:

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

82. In particular, the rights provided for under international humanitarian law cannot be avoided by recourse to the excuse that another party is exercising elements of power within the framework of the occupation. This is the scenario that Roberts has referred to in noting that occupying powers often seek to disguise or limit their own role by operating indirectly by, for example, setting up "some kind of quasi-independent puppet regime".[124] It is clear, however, that an occupying power cannot evade its responsibility by creating, or otherwise providing for the continuing existence of, a subordinate local administration. The UK Manual of the Law of Armed Conflict has, for example, provided as follows:

> "The occupying power cannot circumvent its responsibilities by installing a puppet government or by issuing orders that are implemented through local government officials still operating in the territory".[125]

83. The degree of Armenia's control over the authorities which control the so-called "NKR" has been extensively scrutinised by the European Court of Human Rights.[126] That Court has found on numerous occasions that the "NKR" is a "subordinate local administration" under the financial, political and military control of Armenia, such that Armenia can be held responsible for breaches of the Convention committed by that administration.

84. 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,[127] 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".[128] 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

[124] "Transformative Military Occupation: Applying the Laws of War and Human Rights", *op.cit.*, pp. 580, 586.

[125] *Op.cit*., p. 282.

[126] This has been in the context of the European Convention on Human Rights, and especially in relation to the jurisdiction and responsibility of Armenia under article 1 of that instrument. Nonetheless, the Court's factual findings on the degree of Armenia's control is relevant to an analysis of attribution under the rules of State responsibility.

[127] *Muradyan v. Armenia*, App. No. 11275/07, ECtHR, 24 November 2016, para. 126.

[128] *Chiragov and Others v. Armenia*, *op.cit.*, para. 170.

> end of 1993, conquered the whole or major parts of seven surrounding Azerbaijani districts."[129]

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."[130]

85. 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 Nagorny Karabakh but occupied by Armenia. The Court referenced a range of factors which led ineluctably to the conclusion of Armenia's responsibility for the acts of the local subordinate administration. 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 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."[131]

86. 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.[132] Thirdly, the Court emphasised that the facts of earlier cases before it (referring to *Zalyan, Sargsyan and Serobyan 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".[133] Finally, the Court referenced the "substantial" financial support given by Armenia to the 'NKR'", concluding that "the

[129] *Ibid.*, para. 174.
[130] *Ibid.*, para. 186.
[131] *Ibid.*, paras. 174–6 and 180.
[132] *Ibid.*, paras. 181–182.
[133] *Ibid.*, para. 182.

'NKR' would not be able to subsist economically without the substantial support stemming from Armenia".[134]

87. The Court's clear and firm finding of Armenia's responsibility for breaches or alleged breaches of the Convention occurring in either Nagorny Karabakh or the surrounding other 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)."[135]

88. 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".[136] 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.[137]

89. 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*".[138] 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.[139]

90. 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

[134] *Ibid*., paras. 183–184 and 185.
[135] *Muradyan v. Armenia*, *op.cit.*, para. 126.
[136] *Ilaşcu v. Moldova and Russia*, App. No. 48787/99, ECtHR (Grand Chamber), 8 July 2004, para. 318.
[137] *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.
[138] *Ilaşcu v. Moldova and Russia*, *op.cit.*, para. 316 (emphasis added).
[139] *Ibid.*, para. 382.

> 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."[140]

91. 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".

92. 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", which "is reflected in the extent to which Armenian casualties in the April 2016 escalation originated in Armenia rather than in NK".[141]

93. 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."[142]

94. The Assembly called for "the immediate withdrawal of Armenian armed forces from the region concerned".[143]

95. In addition, the fact that Armenia consistently presents papers to the United Nations purportedly on behalf of the so-called "NKR" or the so-called "Republic of Artsakh"[144] cannot be taken as anything 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

[140] International Crisis Group, "Nagorno-Karabakh's Gathering War Clouds", Europe Report No. 244 (1 June 2017), p. 15.

[141] L. Broers, *The Nagorny Karabakh Conflict: Defaulting to War*, Chatham House, July 2016, p. 6.

[142] Parliamentary Assembly of the Council of Europe Resolution 2085 (2016) (26 January 2016), paras. 4 and 6, respectively (emphasis added).

[143] *Ibid.*, para. 7.1.1.

[144] See, e.g., 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); 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"). 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).

Council of Armenia and the *soi-disant* "Security Council" of the "NKR"[145] or "joint meetings" on "Armenia-Artsakh military cooperation".[146]

96. 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,[147] provides a significant body of evidence that substantially reinforces and extends the factual 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",[148] the continued incorporation by Armenia of the occupied territories into its socioeconomic space and its customs territory,[149] the high dependence of the "NKR" upon external financial support primarily from Armenia and the Armenian diaspora,[150] and the close political links at all levels between Armenia and the "NKR".[151] In addition, and critically, Armenia has facilitated the transfer of Armenian settlers from Armenia and elsewhere into the occupied territories.[152] 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.[153] 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.[154] In October 2017, the "president" of the "NKR" identified expending the settlement of the adjacent territories as a priority for the period 2017-20.[155]

97. Secondly, Azerbaijan has presented to the United Nations, 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".[156] This report provides considerable evidence testifying to ongoing activities in the occupied territories of Azerbaijan, including the implantation of

[145] Office of the Prime Minister 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/>.

[146] Office of the Prime Minister of Armenia, "Nikol Pashinyan, Bako Sakakyan hold consultation with Armed Forces leadership" (22 February 2020), <https://www.primeminister.am/en/press-release/item/2020/02/22/Nikol-pashinyan-Bako-Sahakyan/>.

[147] UN Doc. A/70/1016–S/2016/711, *op.cit*.

[148] *Ibid.*, pp. 17–20.

[149] *Ibid.*, pp. 20–21

[150] *Ibid.*, pp. 21–27.

[151] *Ibid.*, pp. 30–31.

[152] *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.

[153] *Ibid.*, p. 4, citing an interview with a former *de facto* official in Yerevan, April 2018.

[154] *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.

[155] *Ibid.*, p. 9.

[156] 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, UN Doc. A/73/881–S/2019/420 (22 May 2019). See also "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery", *op.cit*.

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, [157] the economic exploitation of the occupied areas by Armenia and its local subordinate administration [158] and the exploitation of agricultural and water resources. [159]

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

99. In light of all of the above, it is clear that Armenia is responsible as the occupying power not only for the actions of its own armed forces and other organs and agents of its government, but also for the actions of its subordinate local administration in the occupied territories, including the forces and officials of the so-called "NKR".

3. The Application of International Human Rights Law to Occupations

100. In addition to the traditional rules of humanitarian law, international human rights law is now seen as in principle applicable to occupation situations. The International Court of Justice has 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 against acts of violence, and not to tolerate such violence by any third state".[160]

101. More generally, the International Court of Justice has discussed the relationship between international humanitarian law and international human rights law. In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court emphasised that "the protection of the International Covenant of [sic] Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency" and in such cases the matter will fall to be determined by the applicable *lex specialis*, that is international humanitarian law. [161]

102. The Court returned to this matter in its advisory opinion on the *Construction of a Wall*, where it declared more generally that:

> "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind found in Article 4 of the International Covenant on Civil and Political Rights".[162]

103. As to the relationship between international humanitarian law and human rights law, the Court noted that there were three possible situations. First, some rights might

[157] "Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery", *op.cit*, pp. 8–22.
[158] *Ibid.*, pp. 24–35.
[159] *Ibid.*, pp. 50–71.
[160] *Congo v. Uganda*, *op.cit*., p. 231 and 242 and following. See also Dinstein, *op.cit*., chapter 3.
[161] ICJ Reports, 1996, pp. 226, 239.
[162] *Op.cit.*, p. 178.

be exclusively matters of humanitarian law, some rights might be exclusively matters of human rights law and some matters may concern both branches of international law.[163] It was essentially a question of interpretation of the particular instrument in question. In particular, the jurisdiction of States, while primarily territorial, may sometimes be exercised outside the national territory and in such a situation the International Covenant on Civil and Political Rights ("ICCPR") and other relevant human rights treaties had to be applied by States parties. This was an approach that was deemed consistent with both the *travaux préparatoires* of, for example, the ICCPR and with the constant practice of the Human Rights Committee established under it.[164]

104. The Court concluded by affirming that the ICCPR, the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and the Convention on the Rights of the Child were "applicable in respect of acts done by a state in the exercise of its jurisdiction outside of its own territory".[165]

105. It is also worth point out the applicability of the general principle of State responsibility for the acts of its organs which would obviously include members of its armed forces acting abroad.[166] The Court interestingly referred in addition in the *Construction of a Wall* case to the prolonged occupation question and to the applicability of the ICESCR.[167]

106. The Court returned to the question of the relationship between international humanitarian law and international human rights law by reaffirming that:

> "international human rights instruments are applicable 'in respect of acts done by a state in the exercise of its jurisdiction outside its own territory', particularly in occupied territories".[168]

107. Accordingly, it is now accepted that the law applicable in occupation situations includes multilateral human rights instruments to which the occupying power is a party. This means inevitably not only that the organs and agents of the occupying power must act in conformity with the provisions of such instruments, but also that the population is entitled to the benefit of their application. Thus, the application of human rights law in these situations impacts upon the powers and duties of the occupier and affects the traditional attempts to balance military necessity and humanity in any occupation.

108. Armenia is a party to the following universal human rights conventions as from the date in parenthesis:

(i) ICCPR (23 June 1993);

(ii) ICESCR (13 September 1993);

(iii) Convention on the Prevention and Punishment of the Crime of Genocide (23 June 1993);

(iv) Convention on the Elimination of All Forms of Racial Discrimination (23 June 1993);

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[163] *Ibid*.
[164] *Ibid.,* pp. 179–82.
[165] *Ibid*., pp. 180 and 181.
[166] See, e.g., *Difference Relating to Immunity from Legal Process of a Special Rapporteur*, ICJ Reports, 1999, p. 87 and *Congo v. Uganda*, *op.cit.*, p. 242. See also Article 4 of the International Law Commission's Articles on State Responsibility, 2001, UN Doc. A/56/10 and General Assembly resolution A/RES/56/83 (12 December 2001).
[167] *Op.cit*., p. 181 (emphasis added).
[168] *Congo v. Uganda*, *op.cit.*, pp. 178, 242–3.

(v) Convention on the Rights of the Child (23 June 1993);

(vi) Convention on the Elimination of All Forms of Discrimination against Women (13 September 1993);

(vii) Convention against Torture (13 September 1993);

(viii International Convention for the Protection of All Persons from Enforced Disappearance (24 January 2011).

109. Accordingly, Armenia is bound by the provisions of these conventions not only within its own borders, but also in the occupied territories of Azerbaijan. One may note briefly the relevance of the following obligations by way of example:

(i) The obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the particular instrument, without distinction of any kind (article 2, ICCPR and article 2, ICESCR);

(ii) Right to life (article 6, ICCPR);

(iii) Prohibition of torture and cruel, inhuman and degrading treatment or punishment (article 7, ICCPR and Convention against Torture);

(iv) Right to liberty and security of person (article 9, ICCPR);

(v) Right to liberty of movement and the right not to be arbitrarily deprived of the right to enter one's own country (article 12, ICCPR);

(vi) Right to equality before court and tribunals (article 14, ICCPR) and to equality of protection before the law (article 26, ICCPR);

(vii) Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence (article 17, ICCPR);

(viii) Right to freedom of thought, conscience and religion (article 18(1), ICCPR);

(ix) Prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20, ICCPR);

(x) Rights to peaceful assembly and association (articles 21 and 22, ICCPR);

(xi) Right and opportunity, without distinction and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to have access, on general terms of equality, to public service in one's country (article 25, ICCPR).

110. In addition, Armenia is also a party to the European Convention on Human Rights. The question of the application of this Convention extraterritorially by States parties has been the subject of a number of important cases.

111. The European Court of Human Rights has interpreted the concept of 'jurisdiction' as it appears under article 1 ("High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention") to include the situation where acts of the authorities of contracting States, whether performed within or outside national boundaries, produce effects outside their own territory.[169] In the case of *Chiragov and Others v. Armenia*, which concerned alleged breaches of the Convention by Armenia within the occupied

[169] See, e.g., *Drozd and Janousek v. France and Spain*, App. No. 12747/87, ECtHR, 26 June 1992, para. 91. See also *Loizidou v. Turkey*, App. No. 15318/89, ECtHR, Preliminary Objections, 23 February 1995; *Loizidou v. Turkey*, Merits, *op.cit.*; *Cyprus v. Turkey*, App. No. 25781/94, ECtHR (Grand Chamber), 10 May 2001; *Ilaşcu v. Moldova and Russia*, *op.cit*.

territories of Azerbaijan and which has been referred to above, the Court further emphasised that:

> "One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State's own armed forces, or through a subordinate local administration (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV; *Banković and Others*, cited above, § 70; *Ilaşcu and Others*, cited above, §§ 314-16; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; and *Al-Skeini and Others*, cited above, § 138). 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).".[170]

112. Accordingly, the Court has established that a State would be responsible under the European Convention for violations of that Convention committed by its own agents and officials and for violations committed by the relevant subordinate local administration of a territory outside of the national boundaries of the State in question. Accordingly, the responsibility of Armenia for violations of the European Convention of Human Rights in the occupied territory of Azerbaijan is engaged, as conclusively shown in the *Chiragov* case and affirmed in *Muradyan v. Armenia*. The relevant rights under this Convention would include the right to life (article 2), the prohibition of torture and inhuman and degrading treatment and punishment (article 3), due process (article 5), fair trial (article 6), the right to private and family life (article 8) and the right to peaceful enjoyment of property (article 1 of Protocol I).

4. Implementation of Armenia's Responsibilities under Applicable International Law

113. To the extent that Armenia has violated the relevant applicable law with regard to the occupation of Azerbaijani territory, it is responsible under international law. That is the essential fact. As article 1 of the Articles on State Responsibility adopted by the International Law Commission on 9 August 2001 [171] declares, "[e]very 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 is attributable to the State under

[170] *Chiragov and Others v. Armenia*, *op.cit.*, para. 106.

[171] Commended to governments in General Assembly resolution A/RES/56/83 (12 December 2001). See also General Assembly resolutions A/RES/59/35 (2 December 2004), A/RES/62/61 (6 December 2007), A/RES/65/19 (6 December 2010), A/RES/71/133 (13 December 2016) and A/RES/74/108 (18 December 2019).

international law and constitutes a breach of an international obligation of the State. This principle has been affirmed in the case-law.[172]

114. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.[173] Article 12 stipulates that there is a breach of an international obligation when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.[174] A breach that is of a continuing nature extends over the entire period during which the act continues and remains not in conformity with the international obligation in question,[175] while the Permanent Court of International Justice has emphasised that "it is a principle of international law, and even a greater conception of law, that any breach of an engagement involves an obligation to make reparation".[176]

115. Any State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition if circumstances so require.[177] Armenia is under such an international obligation.

116. The question of implementation or enforcement of the relevant responsibility laid down in international humanitarian law and under international human rights law, however, is a separate legal and practical question. There are a number of relevant mechanisms. To the extent that Armenia is in violation of relevant United Nations treaties, organs created under such conventions (such as the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee against Torture etc.) possess the jurisdiction to monitor and hold to account States, including Armenia, that have breached the binding provisions in question. The same is true of relevant regional conventions, in particular the European Convention on Human Rights, with the European Court of Human Rights being a particularly active body and one capable as a court of producing binding decisions.

117. International humanitarian law has its own implementation processes. Parties to the 1949 Geneva Conventions and to Additional Protocol I undertake to respect and to ensure respect for the instrument in question,[178] and to disseminate knowledge of the principles contained therein.[179] A variety of enforcement methods also exist, although the use of reprisals has been prohibited.[180] One of the means of implementation is the concept of the Protecting Power, appointed to look after the interests of nationals of one party to a conflict under the control of the other, whether as prisoners of war or civilians in occupied territory. Such a power must ensure that compliance with the relevant provisions has been effected and that the system acts as a form of guarantee for the protected person as well as a channel of communication for him with the State of which he is a national. However, the drawback of this system

[172] See, e.g., *Chorzów Factory* case, PCIJ, Series A, No. 9, 1927, p. 21 and the *Rainbow Warrior* case, 82 International Law Reports, p. 499.

[173] Articles on State Responsibility, *op.cit.*, article 3.

[174] See the *Gabčíkovo–Nagymaros Project (Hungary v. Slovakia)* case, ICJ Reports, 1997, pp. 7, 38.

[175] See Articles on State Responsibility, *op.cit*., article 14. See also, e.g., the *Rainbow Warrior* case, *op.cit*., p. 499; the *Gabcikovo-Nagymaros*, *op.cit*., pp. 7, 54; *Genocide Convention (Bosnia v. Serbia)* case, ICJ Reports, 2007, para. 431; *Loizidou* v. *Turkey*, Merits, *op.cit.*, paras. 41–7 and 63–4; and *Cyprus* v. *Turkey*, *op.cit*., paras. 136, 150, 158, 175, 189 and 269.

[176] The *Chorzów Factory* case, PCIJ, Series A, No. 17, 1928, p. 29; 4 AD, p. 258. See also the *Corfu Channel* case, ICJ Reports, pp. 4, 23.

[177] Articles on State Responsibility, *op.cit.*, article 30. See also the *Rainbow Warrior* case, *op.cit*., pp. 499, 573.

[178] Common article 1.

[179] See, e.g., article 144 of Geneva Convention IV and article 83 of Additional Protocol I.

[180] See, e.g., articles 20 and 51(6) of Additional Protocol I.

is its dependence upon the consent of the parties involved. Not only must the Protecting Power be prepared to act in that capacity, but both the State of which the protected person is a national and the State holding such persons must give their consent for the system to operate.[181]

118. Additional Protocol I also provides for an International Fact-Finding Commission[182] with competence to inquire into grave breaches[183] of the Geneva Conventions and that Protocol or other serious violations, and to facilitate through its good offices the "restoration of an attitude of respect" for these instruments. This body came into being as the International Humanitarian Fact-Finding Commission in 1991 after 20 States parties to the Protocol agreed to accept its competence.[184] The parties to a conflict may themselves, of course, establish an ad hoc inquiry into alleged violations of humanitarian law.[185]

119. An important monitoring and indeed implementation role is played by the ICRC.[186] This organization has a wide-ranging series of functions to perform, including working for the application of the Geneva Conventions and acting in natural and man-made disasters. It has operated in a large number of States, visiting prisoners of war and otherwise functioning to ensure the implementation of humanitarian law.[187] It operates in both international and internal armed conflict situations. It is involved in the Armenia-Azerbaijan conflict.

120. The International Court of Justice in the *Construction of a Wall* case referred to the "special position" of the ICRC concerning execution of Geneva Convention IV, which "must be 'recognised and respected at all times' by the parties pursuant to article 142 of the Convention".[188] In addition, the Eritrea-Ethiopia Claims Commission has noted that the ICRC had been assigned significant responsibilities in a number of articles of the Geneva Convention III (with which the Commission was concerned) both as a humanitarian organization providing relief and as an organization providing necessary and vital external scrutiny of the treatment of prisoners of war.[189]

121. It is, of course, also the case that breaches of international humanitarian law or international human rights law may constitute war crimes or crimes against humanity or even genocide for which universal jurisdiction is provided with regard to alleged offenders.[190] In such cases, pursuit of such individuals may be undertaken through the domestic courts of involved or third party States. There is no current international

[181] See article 9 of Geneva Convention IV.

[182] See article 90 of Additional Protocol I.

[183] See articles 50, 51, 130 and 147 of the four 1949 Conventions respectively and article 85 of Additional Protocol I. A Commission of Experts was established in 1992 to investigate violations of international humanitarian law in the territory of the Former Yugoslavia, see Security Council resolution 780 (1992). See also the Report of the Commission of 27 May 1994, UN Doc. S/1994/674.

[184] See UK Manual, *op.cit*., p. 415. As of today, 76 of the 174 States parties to the Protocol (but not including either Armenia or Azerbaijan) have accepted the competence of the Commission, <https://www.ihffc.org/index.asp?Language=EN&page=statesparties_list>.

[185] Articles 52, 53, 132 and 149 of the four 1949 Conventions respectively.

[186] See, e.g., G. Willemin and R. Heacock, *The International Committee of the Red Cross*, The Hague, 1984, and D. Forsythe, "The Red Cross as Transnational Movement", 30 *International Organisation*, 1967, p. 607.

[187] See, e.g., article 142 of Geneva Convention IV.

[188] *Op.cit*., pp. 136, 175–6.

[189] Partial Award, Prisoners of War. Ethiopia's Claim 4 case, 1 July 2003, paras. 58 and 61–2.

[190] See, e.g., A. Cassese, *International Criminal Law*, 3rd ed., Oxford, 2013; W. Schabas, *An Introduction to the International Criminal Court*, 5th ed., Cambridge, 2017; R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, 4th ed., Cambridge, 2019; I. Bantekas and S. Nash, *International Criminal Law*, 4th ed., Oxford, 2010; and G. Werle, *Principles of International Criminal Law*, 3rd ed., The Hague, 2014.

criminal court or tribunal with relevant individual jurisdiction with regard to Armenia. State responsibility in such cases may be enforced through relevant inter-State mechanisms.

5. Conclusions

122. The following conclusions may be reached:

(1) The applicable law in the first instance is international humanitarian law, consisting of the Hague Regulations (reflecting customary international law), together with Geneva Convention IV and Addition Protocol I, to both of which Armenia is a party;

(2) Involvement of Armenia in the conflict with Azerbaijan gave to that conflict an international character;

(3) Involvement of Armenia in the capture and retention of the Nagorno-Karabakh region of Azerbaijan and its surrounding districts was such as to bring the provisions of international humanitarian law into operation;

(4) The facts show that Armenia is in occupation of these areas as that term is understood in international humanitarian law;

(5) International law precludes the acquisition of sovereignty to territory by the use of force so that the occupation by Armenia of Azerbaijani territory cannot give any form of title to the former State;

(6) As an occupying power, Armenia is subject to a series of duties under international law;

(7) The core of these duties is laid down in article 43 of the Hague Regulations and focus upon the restoration and ensuring, as far as possible, of public order and safety, while respecting, unless absolutely prevented, the laws in force in the occupied territory;

(8) The presumption in favour of the maintenance of the existing legal order is particularly high and is supplemented by provisions in Geneva Convention IV;

(9) Private and public property is particularly protected. Private property cannot be confiscated, except where requisitioned for necessary military purposes, but even then requisitioning must take into account the needs of the civilian population;

(10) The occupying State is no more than the administrator of public property and must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct;

(11) Destruction of private and public property is forbidden, except where such destruction is rendered absolutely necessary by military operations;

(12) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They are to be at all times humanely treated and protected especially against all acts of violence or threats thereof;

(13) Armenia as the occupying power is under a special obligation with regard to Azerbaijani missing persons, of whom there are accepted to be 3,889 as of January 2020;

(14) Armenia bears a responsibility under international humanitarian law not to establish or facilitate the establishment of settlements of Armenians in the occupied territories;

(15) Armenia cannot evade its responsibilities under international humanitarian law by means of its support for a subordinate local administration;

(16) In addition to the traditional rules of humanitarian law, Armenia is also bound in its administration of the occupied territories by the provisions of those international human rights treaties to which it is a party;

(17) Such treaties include the ICCPR; the ICESCR; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance;

(18) Armenia is also bound by the European Convention of Human Rights in its occupation of Nagorny Karabakh and surrounding districts;

(19) Armenia bears State responsibility for its breaches of international humanitarian law and international human rights law as discussed above and is under an obligation both to cease its violations and make reparation for them;

(20) Such obligations under international humanitarian law and under international human rights law may be monitored and implemented by mechanisms in force for Armenia, such as the Human Rights Committee and the European Court of Human Rights, together with ICRC processes;

(21) Insofar as war crimes, crimes against humanity and genocide are concerned, individual responsibility may lie and may be implemented through domestic courts in various involved or third party States, while State responsibility may be enforced where possible through relevant inter-State mechanisms.

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With the assistance of Naomi Hart
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