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genocide, war crimes, ethnic cleansing and crimes
against humanity****Letter dated 21 October 2020 from the Permanent Representative of
Armenia to the United Nations addressed to the Secretary-General**

I have the honour to transmit herewith the second interim report of the Human Rights Ombudsman of the Republic of Artsakh (Nagorno-Karabakh Republic) (see annex), documenting targeted and indiscriminate attacks on the civilian population, critical infrastructure and public institutions, the use of banned weapons, attacks on journalists, war crimes and atrocities committed by Azerbaijan with the direct involvement of the Turkish armed forces and foreign terrorist fighters and mercenaries in the course of the ongoing military aggression launched since 27 September 2020.

I kindly request that the present letter and its annex be circulated as a document of the seventy-fifth session of the General Assembly, under agenda items 34, 71 and 135, and of the Security Council.

(Signed) Mher **Margaryan**
Ambassador
Permanent Representative



Annex to the letter dated 21 October 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General

**SECOND INTERIM REPORT
ON THE AZERBAIJANI ATROCITIES AGAINST ARTSAKH
POPULATION IN SEPTEMBER-OCTOBER 2020***

STEPANAKERT, OCTOBER 18, 2020

* The full report with images and infographics is available at <https://artsakhombuds.am/en/document/735>.

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INTRODUCTION

Starting from the early morning of 27 September, 2020, Azerbaijan began launching indiscriminate airstrikes (including UAV strikes) and artillery assaults against the Republic of Artsakh (Republic of Nagorno-Karabakh) along the entire line of the border.

Villages, towns and the capital Stepanakert have been intensively attacked, which caused numerous casualties and injuries among civilians. Large-scale damages have been caused to civilian objects, such as residential buildings, schools, etc, as well as, infrastructure vital to the survival of the civilian population. Life and health of children, women and the entire population of Artsakh are still under an imminent and real threat.

The current updated edition of the second interim report follows the second interim report published on 9 October, as well as, the first interim report¹, published by the Human Rights Ombudsman of the Republic of Artsakh on 2 October, 2020. It presents the facts of targeted attacks on civilian settlements and casualties derived thereof also the deployment of mercenaries and the use of multiple rockets launching systems and cluster munitions from 27 September to 9 October. The threatening situation on dissemination of massive hate speech towards ethnic Armenians by Azerbaijan and its results are also analyzed.

For the purpose of preparation of the report, fact-finding missions were commissioned, conducted interviews and applications submitted to the Human Rights Ombudsman of Artsakh, inquiries to public authorities, as well as, media and social media publications have been analyzed.

The Azerbaijani aggression included also indiscriminate attacks in villages of Vardenis Region, Gegharkunik Province of Armenia, which are presented in the *ad hoc* report of the Human Rights Defender of Armenia.²

On 10 October a cease-fire agreement was reached in Moscow, effective from noon. But Azerbaijan has continued offensive military actions and even struck capital Stepanakert and other populated areas with heavy missiles, causing new casualties.

The military aggression against the Republic of Artsakh and the Republic of Armenia by Azerbaijan are even more condemnable, since it was launched during the new Coronavirus (COVID-19) global pandemic. On March 23, the Secretary-General of the United Nations called for an immediate global ceasefire in all corners of the world due to the threat of coronavirus.

1 Artsakh Ombudsman, "INTERIM REPORT ON THE AZERBAIJANI ATROCITIES AGAINST ARTSAKH POPULATION IN SEPTEMBER 2020," October 2, 2020,

https://artsakhombuds.am/en/document/722?fbclid=IwAR2sGPItWWisSe61tVQeHOVZ27Ngd4sSt6sHrigYNrZm4bs_GPXWYctOWcE.

2 Armenia Ombudsman, "Ad-hoc report on fact-finding activities in villages of Gegharkunik province of Armenia damaged by Azerbaijani military attacks (30 September-1 October)," Yerevan, 2020,

https://ombuds.am/images/files/dc1b379419a1a9aaecc5191128277502.pdf?fbclid=IwAR0RTdx9q8m8qdOOO_Ccwfykv0VHZDBY7TsciCFamuDjUIRcjo-Cx2XfWQ0.

SECTION 1. THE DAMAGES TO LIFE, DIGNITY, HEALTH, VITAL NEEDS AND PROPERTY OF THE PEOPLE OF ARTSAKH

1.1. TARGETED OR INDISCRIMINATE ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

The Azerbaijani armed forces attacked more than 120 civilian settlements, including densely populated ones (capital Stepanakert, towns of Shushi, Hadrut, Martuni, Martakert, Askeran, Karvajar, Berd zor, villages of Taghaser, Vardashat, Spitakshen, Maghavus, Nerkin Horatagh, Alashan, Mataghis, etc) with aerial, artillery, rocket and tank fire strikes, most of which were targeted or indiscriminate, killing and injuring civilians. In the cases of indiscriminate attacks, the Azerbaijani armed forces failed to abide by the obligation to distinguish between military targets and civilians, who may not be targeted for attack. Nor do they take feasible precautions to minimize harm to civilians. In many cases, attacking the civilians was targeted and intentional, since military targets were located very far from civilian objects, and the Azerbaijani forces used accurate armament like missiles and striking drones. The absence of military targets in the vicinity of attacks further confirms their deliberate nature, which amounts to a war crime.

As of 12 October, 2020, 31 civilians (8 females and 23 males, 1 child and 30 adults) have been killed.³ 60% of them were killed at the places of their residence.

106 civilians have been wounded, of which 86 received serious injuries. The injuries mostly involve upper and lower limbs and facial fractures, in the form of shrapnel wounds. About half of the serious injuries among civilians occurred in their places of residence, about one-third – in public places, 12 civilians received serious injuries at their workplaces, and 6 civilians - while moving to a safer place.

The civilians were mostly affected by the Azerbaijani armed forces attacks at the capital Stepanakert (10 killed and 36 injured), the town of Martuni (6 killed and 15 injured) and the town of Hadrut (at least 6 killed and 5 injured). The case of Hadrut differs from others, since on 10 October, a large subversive group of the Azerbaijani armed forces took partial control over the town and perpetrated executions of Hadrut civilians, including those of vulnerable groups. Based on our preliminary data, the number of executed civilians in Hadrut since 10 October could be higher than presented.⁴

As part of a widespread and systematic attack directed against civilian population, wanton destruction of homes and other property was carried out with discriminatory intent against ethnic Armenians. Besides, large-scale damages have been caused to civilian objects, such as residential buildings, kindergartens, schools, vital infrastructure⁴. Based on preliminary data, more than 6,700 privately owned immovable property (residential houses, apartments, shops, etc), more than 1,110 infrastructure, public and industrial buildings (electricity, gas, telecommunication, water supplies, bridges, schools, kindergartens, cultural centers, factories etc) and more than 640 cars have been seriously damaged.

As a result of the Azerbaijani hostilities and indiscriminate, targeted and systematic strikes against civilian objects, approximately 60% (over 90,000) of the entire population of the Republic of Artsakh have fled their homes to shelter at safer places. Some of them have moved to other settlements of the country and others moved to the Republic of Armenia. The overwhelming majority of the current population has to live at shelters to avoid Azerbaijani indiscriminate and targeted strikes. For that reason, tens of thousands of children, women, elderly, persons with disabilities and other vulnerable groups live not only with constant security threats and psychological terror, but also with certain deprivations of basic rights and conditions, such as food, healthcare, education etc. Those children who have stayed in the country are deprived of getting education, as the schools are closed because of the Azerbaijani attacks on the civilian areas. While

3 Artsakh Ombudsman, “19 civilians killed, 80 wounded, over 2700 property and infrastructure damaged in Artsakh from Azerbaijani war crimes,” 5 October, 2020, <https://artsakhombuds.am/en/news/463>.

4 Armenian Public TV, “Քաղաքացիական բնակչությունը՝ Ադրբեջանի թիրախում,” 5 October, 2020, https://www.youtube.com/watch?v=bVDKVVYQp8Fo&feature=emb_logo.

those children who have left for the Republic of Armenia face natural difficulties with integration with their new environments and schools.

Customary international humanitarian law requires that the parties to the conflict at all times distinguish, on one hand, between civilians and combatants, and on the other hand between civilian and military objects. Attacks may only be directed against combatants and military objects. Attacks must not be directed against civilians and civilian objects.

According to the general rules of protection of the civilian population, the latter as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Likewise, it is prohibited to deliberately target civilians and civilian objects.

The concept of indiscriminate attacks represents an implementation of the principle of distinction. The latter requires that states must never use weapons that are incapable of distinguishing between civilian and military targets.

1.2. TARGETED ATTACKS ON JOURNALISTS

The work of media representatives is important to report accurate, objective, comprehensive and evidence-based information from conflict zone and safeguard to inflame further tensions, protect human rights. This in mind, the Azerbaijani armed forces conducted targeted attacks on civilian journalists engaged in covering the areas of armed conflict. Those attacks resulted in 7 injuries and a death of the person accompanying the journalists' group.⁵

Particularly, on 1 October 2020, a group of journalists were subjected to a targeted shelling in the downtown of Martuni. As a result, two journalists of the French "Le Monde" newspaper, a journalist of Armenian media "24News.am" and the cameraman of "Armenia" TV were injured, while the local resident accompanying the group was killed.⁶ The injuries of the reporter of "Le Monde" were serious and his life was saved through a hard surgery. A deputy chief editor of the Russian television network "Dozhd" among other foreign and Armenian journalists, was also under the shelling but could hide in a bomb shelter and avoided injuries⁷. On the same day the Azerbaijani armed forces also targeted a car transporting journalists of the Agence France-Presse international news agency⁸.

On 2 October, Azerbaijan again targeted a minibus with Armenian and foreign journalists in the town of Martakert⁹.

On 8 October, three Russian journalists were injured (the injuries of one journalist were critical and the others - heavy) while they were reporting from the area of the struck Holy Savior Ghazanchetsots Cathedral of Shushi. 4 hours after the first hitting the Azerbaijani armed forces struck the Cathedral again, knowing that some journalists must have been there to cover the breaking event. Moreover, there are reports on the use of drones in the area at

5 Armenian Unified Center, "Reporters of 24news.am and Armenia TV wounded from Azerbaijani bombardment," 1 October, 2020, <https://www.facebook.com/ArmenianUnifiedInfoCenter/posts/798135994355663>.

Dozhd TV, "Обстрел города Мартуни в непризнанном Нагорном Карабахе. Репортаж корреспондента Дождя," 1 October, 2020, <https://www.youtube.com/watch?v=SDqflvkSf-8>.

6 Armenian Unified Info Center on the targeting of the French journalists, 1 October, 2020, <https://twitter.com/ArmenianUnified/status/1311717564742021120?s=20>.

Artsakh Information Center on the same incident and medical operation results, 1 October, 2020, <https://twitter.com/ArtsakhCenter/status/1311718300913676289?s=20>.

7 Tass, "Замглавреда телеканала "Дождь" Дмитрий Еловский попал под обстрел в Нагорном Карабахе", 1 October, 2020, https://tass.ru/mezhdunarodnaya-panorama/9601327?fbclid=IwAR1o59E8m9_IdWCuUR7DuYtOkOSn8XOAFEqm7xkYFvHZZL6BI3nwiz4GPA98.

8 Armenian Unified Info Center on the same incident, 1 October, 2020, <https://twitter.com/ArmenianUnified/status/1311631007452405760?s=20>.

9 Factor TV, "ՀՐԱՏԱՊ. Կրակահերթ լրագրողների մեքենայի վրա Մարտակերտում", 2 October, 2020, https://www.youtube.com/watch?v=3sAef__znJM&fbclid=IwAR1UQznp0FAa1OzxJfU6YFckbnTkb_uoRANK3PrYM0JYUaig19dsfKYs5p8.

the time of the second strike, which means that Azerbaijan possessed verified information about the presence of journalist in the scene.¹⁰

It is worth-mentioning that (1) all journalists of the described episodes wore special uniforms with distinctive sign “PRESS” (their car also had the “PRESS” sign), (2) the journalists were attacked while were carrying out their professional activities in civilian settlements, but not in the hot-spots of hostilities and not even close to any kind of military object.

The continuous nature of the attacks against journalists engaged in media activities in civilian settlements and having distinctive signs, demonstrates that these actions are aimed at preventing the coverage of hostilities and dissemination of objective information to the international community. Another demonstration of that unlawful purpose of Azerbaijan is the launch of criminal prosecution against Russian journalist Semyon Pegov on 12 October¹¹, who actively and in detail covers the military activities, as well as, the Azerbaijani war crimes in Artsakh.

Under international humanitarian law, journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and thereby benefit from all the protection conferred by international humanitarian law on civilians.

1.3. TARGETED ATTACKS ON CIVILIAN VITAL INFRASTRUCTURE AND PUBLIC INSTITUTIONS

Since 3 October, the Azerbaijani armed forces have deliberately and regularly targeted the key civilian infrastructures (electricity, communications, gas and water supply systems, bridges, foodstuffs, etc), around the whole country but mostly the capital Stepanakert, aiming at depriving tens of thousands of peaceful population of basic living conditions and means for further survival. In attacking these objects Azerbaijan also resorted to long range accurate missiles and striking drones.

More than 25 crucial energy infrastructure objects and equipment have been totally destroyed and a large number of networks have been damaged throughout the entire country. Particularly, Azerbaijani armed forces hit the central electricity station and local stations in Stepanakert, local electricity stations in other towns and villages, as well as, a big number of electricity networks. As a result, more than 10 stations have been destroyed or seriously damaged. The whole population of Artsakh has been regularly deprived of electricity for a few days.

The Azerbaijani armed forces have intentionally struck also several hydro-power stations in the depth of the country aiming at destructing the electricity production system, too.

Another intentional target was the phone and internet communication network since 27 September. Firstly, the Azerbaijani hackers made extensive problems in the system for a few days, for tens of thousands of civilians hindering the communication possibilities for a long time. Since October 3, Azerbaijani armed forces have systematically and intentionally targeted the communication stations and networks again with accurate missiles and striking drones. As a result of those strikes, tens of key communication infrastructure (stations, towers, hubs etc) have been destroyed or seriously damaged.

¹⁰ 168.am, “The Russian journalist stressed that I should reiterate that he had seen with his own eyes how the targeted blow was inflicted on the Mother Cathedral at a time when there were only children, women and elderly present. Arman Tatoyan,” 10 October, 2020,

https://en.168.am/2020/10/10/40074.html?fbclid=IwAR1nxJDCXJDQrpPPfM0Lnsa_KZCjswV1VqU5HdbGM7Wnkr5FH NmPdjm0.

¹¹ Azertag, “Prosecutor General’s Office launches investigation into social media videos with open calls to violate territorial integrity of Azerbaijan,” 12 October, 2020, <https://azertag.az/en/xeber/1611447>.

For a few times the central and much more times local gas pipelines have been also targeted intentionally, as a result of which all the gas clients have been deprived of gas supplies, heating and hot water.

There are certain proofs demonstrating that Azerbaijan also targeted particular water stations and pipelines, all of these intentional strikes to vital infrastructure and supply networks have posed an existential threat to the lives and health of women, children, elderly and the entire population of Artsakh.

The Azerbaijani armed forces have deliberately struck food storage objects in different parts of the country, including capital Stepanakert, and some of them have been damaged. Apparently, those strikes against the vital infrastructure of humanitarian supplies has aimed at depriving the civilian population of the basic conditions for life.

The Azerbaijani armed forces have systematically and deliberately targeted also the road network throughout the entire country, including those of interstate ones. In addition to striking different parts of the roads and highways, Azerbaijan targeted some key bridges in order to paralyze the transportation internally and with the Republic of Armenia.

The Azerbaijani armed forces have deliberately targeted also industrial objects (factories, hydropower stations, agricultural objects, services etc). They directly destructed hundreds of such business activities, negatively affecting their productions, supplies and services.

Azerbaijan has indiscriminately and intentionally struck a large number of public and religious institutions, too, such as schools, kindergartens, cultural centers, cathedrals etc. The geography of such destructions includes from the North to the South, from the bordering to deep communities.

On 8 October 2020, Azerbaijani armed forces launched two intentional assaults on Holy Savior Cathedral in the town of Shushi, which is the recognizable cultural and religious symbol of Artsakh. The analysis of that war crime demonstrates that it was fully intentional and targeted, because the Azerbaijani forces struck the cathedral for two times within a few hours with use of striking and manageable drones. This act of Azerbaijan is in line with its continuous practice of destroying Armenian cultural heritage of Artsakh. It also demonstrates radical disrespect towards Christian element of Armenian identity.

1.4. THE FACTS AND RISKS OF WAR CRIMES AGAINST COMBATANTS

There is clear information from both open and closed sources that a certain number of military servicemen of the Republic of Artsakh or the bodies thereof are under the control of the Azerbaijani armed forces. Some Azerbaijani media and social media representatives have already spread some videos and photos showing some possible crimes against Artsakh combatants. Taking into account those preliminary proofs and the large number of examples of the 2016 April war, the likelihood is very high that the Artsakh military servicemen and/or their bodies might be extensively abused by the Azerbaijani armed forces again.

During the April war of 2016, about 90% of soldiers and/or their bodies that were under Azerbaijani control underwent war crimes and the perpetrators were decorated and encouraged by the authorities of Azerbaijan.¹² In particular, in 2016 April war, the Azerbaijani armed forces perpetrated tortures, executions and mutilations of dead bodies against the civilians and combatants of Artsakh. All of those actions are considered war crimes under international law. Thus:

¹² Artsakh Ombudsman, "Report on Atrocities Committed by Azerbaijan During the 2016 April War," December 9, 2016, <https://artsakhombuds.am/en/document/568>.

1. Torture. Four Geneva Conventions of 1949¹³ strictly prohibit torture. The relevant clauses are set forth, inter alia, in the First Geneva Convention, Article 12¹⁴; and in the Fourth Geneva Convention, Article 32¹⁵. The prohibition of torture is one of the most fundamental principles of International Humanitarian Law¹⁶. Moreover, International Court of Justice has ruled that “the prohibition of torture is part of customary international law and it has become a peremptory norm (jus cogens)”¹⁷. Geneva Conventions do not specify a definition of torture. Thus, a definition stipulated in the UN Convention against Torture (UNCAT)¹⁸ of 1984, Article 1.1, can be applied. It states: “[t]he term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” In the *Kunarac* case the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) formulated the definition of the offence of torture under the international humanitarian law, which is broader than the definition under the UNCAT. It states: “[I]n the field of international humanitarian law, the elements of the offence of torture, under customary international law are as follows: (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental; (ii) The act or omission must be intentional; (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.”¹⁹
2. Execution (violence to life). Four Geneva Conventions of 1949 strictly prohibit violence to life. The relevant clauses are set forth, inter alia, in the First Convention, Article 12²⁰; and in the Fourth Convention, Article 32²¹. The prohibition of the violence to life is one of the most fundamental principles of International Humanitarian Law²². Well-established customary law particularly prohibits attacking persons, who are recognized as hors de combat. A person hors de combat, inter alia, is: (a) anyone who is in the power of an adverse party; (b) anyone who is defenseless because of unconsciousness, shipwreck, wounds or sickness; provided he or she abstains from any hostile act and does not attempt to escape²³.
3. Mutilation of dead bodies. The customary nature of prohibition of mutilation, as well as its applicability on Azerbaijan, clearly follows from a long list of arguments. Some of them are as follows: (a) Article 19 of the Laws of War on Land adopted by the Institute of International Law back in 1880 (the Oxford Manual) provided: “It is forbidden to ... mutilate the dead lying on the field of battle.”; (b) Mutilation or other maltreatment of dead bodies during armed conflict is prohibited under the military manuals of more than twenty different countries, including

13 Azerbaijan is a state party since 1993.

14 “[Wounded or sick combatants] shall not be ... subjected to torture...”.

15 “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to ... torture ... but also to any other measures of brutality ...”.

16 It’s clearly specified in the Common Article 3 of the four Geneva Conventions, which sets the core and indispensable principles of IHL: “cruel treatment and torture” are prohibited with regard to “[p]ersons taking no active part in the hostilities, including members of armed forces ... placed hors de combat by ... wounds,... or any other cause” (Article 3(I)(a)).

17 See Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v Senegal*), Judgment of 20 July 2012, ICJ Reports 2012, §99.

18 Azerbaijan is a state party since 1996.

19 See ICTY, *Kunarac* case, Judgment, 22 February 2001, §497.

20 “[Wounded or sick combatants] shall not be murdered or exterminated...”.

21 “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to murder... but also to any other measures of brutality ...”.

22 It’s clearly specified in the Common Article 3 of the four GC’s, which sets the core and indispensable principles of IHL: “violence to life and person, in particular murder of all kinds” are prohibited with regard to “[p]ersons taking no active part in the hostilities, including members of armed forces ... placed hors de combat by ... wounds, ... or any other cause” (Article 3(I)(a)).

23 For extensive national practice, see: ICRC, *Customary International Humanitarian Law*, Vol. II: Practice, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2005, pp. 930-938.

Australia, Canada, Greece, Israel, Netherlands, Spain, USA etc.²⁴; (c) Mutilation of dead bodies during armed conflict is considered a criminal offence in at least 25 national legislations of countries representing different legal systems from all the continents, including Australia, Bangladesh, Morocco, Ethiopia, Somalia, USA, Venezuela, Italy, Spain, etc.²⁵; (d) The prohibition of mutilating dead bodies in international armed conflicts is covered by the war crime of “committing outrages upon personal dignity” under the Statute of the International Criminal Court, which according to the Elements of Crimes, also applies to dead persons²⁶; (e) Article 3(a) of the 1990 Cairo Declaration on Human Rights in Islam adopted by The Organization of Islamic Conference²⁷ provides: “In the event of the use of force and in case of armed conflict... it is prohibited to mutilate dead bodies”; (f) Azerbaijan’s state practice also proves its acceptance of the aforementioned customary rule. In particular, in 1993 the Ministry of Interior of Azerbaijan ordered that troops “in zones of combat, during military operations . . . must not desecrate the remains of enemies”.²⁸

The representatives of the Human Rights Ombudsman also visited the morgue of Artsakh and check whether the dead bodies of the Azerbaijani military servicemen keeping there have any signs of mutilation. They recorded no mutilations made on the bodies.

Welcoming the announcement of humanitarian ceasefire on October 10, the Ombudsman emphasizes the need of exchange of information on possible war prisoners and bodies, ensuring favorable conditions for their transfers according to the norms of international humanitarian law. However, it is extremely worrying that after the ceasefire announcement, too, the Azerbaijani side has continued offensive military activities against the Artsakh civilians and combatants, committing new war crimes.

24ICRC, Customary International Humanitarian Law, Vol. I: Rules, by Jean-Marie Henckaerts and Louise Doswald-Beck, 2009, p. 410.

25 Ibid.

26 Elements of Crimes for the ICC, Definition of outrages upon personal dignity, in particular humiliating and degrading treatment, as a war crime (ICC Statute, Article 8(2)(b)(xxi) and (c)(ii)).

27 Azerbaijan joined the Organization in 1991. In 2011 it was renamed to Organization of Islamic Cooperation.

28 Azerbaijan, Ministry of the Interior, Command of the Troops of the Interior, Order No. 42, Baku, 9 January 1993, §5; cited from ICRC, Customary International Humanitarian Law, Vol. II: p. 2668.

SECTION 2. USE OF BANNED MEANS AND METHODS

2.1. USE OF BANNED WEAPONS

Since the launch of the large-scale aggression against Artsakh, Azerbaijan has been repeatedly using multiple rocket launching systems and cluster munitions in areas where civilian population and civilian objects are located.

The use of multiple rocket launching systems effects broad areas and precludes sufficient precision in targeting, meanwhile cluster munitions release dozens or hundreds of bomblets, or submunitions, and spread them over a large area. Cluster munitions cannot be directed at specific fighters or weapons and their use in populated areas guarantees civilian casualties. Cluster munitions also threaten civilians after conflict: by leaving behind unstable “minefields” of unexploded bomblets, they put more civilians, especially children, at risk.

On September 27-28, October 2-8 Azerbaijan deployed LAR-160 and SMERCH cluster-warhead missiles against the capital Stepanakert, towns of Shushi and Hadrut and the village of Shosh near Stepanakert.²⁹ There are many other reports on usage of cluster weaponries in other settlements and days, too. The Emergency State Service of the Republic of Artsakh stated that since September 27 by October 10 the Service found over 180 cluster munitions only in Stepanakert.³⁰

Azerbaijan, while targeting the civilian settlements and peaceful population of Artsakh, also used **military drones** (unmanned aerial vehicles, UAVs) as means of aggressive, indiscriminate and deliberate attacks.³¹ Azerbaijan has used the following types of drones to target peaceful population in Artsakh:

- intelligence drones, Orbiter -2, Orbiter – 3, Aerostat, among others;
- striking drones, including Harop, Zaoba-1K, Sky Striker;
- intelligence-striking drones, Bayraktar TB-2, AN-2, etc.

These attacks have caused casualties and destruction of private and public properties. Almost all civilian settlements in Artsakh, including densely populated cities and towns, have been under targeted attacks of above-mentioned drones.

In the advisory opinion in the Nuclear Weapons case, the International Court of Justice stated that the prohibition of weapons that are incapable of distinguishing between civilian and military targets constitutes an “intransgressible” principle of customary international law. The Court observed that, in conformity with this principle, humanitarian law, prohibits certain types of weapons “because of their indiscriminate effect on combatants and civilians”. In its review of the indictment in the Martić case in 1996, the International Criminal Tribunal for the Former Yugoslavia examined the legality of the use of cluster bombs according to customary

²⁹ Armenpress, “Azerbaijani forces fire internationally prohibited munitions at Artsakh’s civilian population,” 4 October, 2020

<https://armenpress.am/eng/news/1030241.html?fbclid=IwAR2jiDqQP28JLqXwgrRW4Ef1k6Ly9VJ1cZJXJDGO3nARnijw1Mooq66JfOw>.

A1plus, “Արցախի մայրաքաղաք Ստեփանակերտը հրետակոծությունից հետո”, 3 October, 2020, https://www.youtube.com/watch?v=JM28Q96gqh4&feature=emb_logo.

Hetq, “Oct. 4 – Stepanakert: After the Shelling,” 4 October, 2020,

<https://hetq.am/en/article/122543?fbclid=IwAR21Vrav5u9M7yu5AgUBEXjnot6k85Xy0GtWrSp2JvfErvhW5pXvmeyiY2A>.

³⁰ Armenpress, “Ստեփանակերտում սեպտեմբերի 27-ից սկսած գտնվել է մոտ 180 կասետային ռումբ”, 10 October, 2020, <https://armenpress.am/arm/news/1031170.html?fbclid=IwAR27rZ7X-NPf0UwHdSIMQBIG0aN4z3dbRFE9IPc3F-vKf7zyN2XAsVTtx9o>.

³¹News.am, “Ադրբեջանական ԱԹՍ-ի մասնիկները Հադրութում”, 29 September, 2020,

<https://www.youtube.com/watch?v=LKktBBYQqtU>.

News.am, “Իտոցված ադրբեջանական ԱԹՍ-ն Վարդենիսի տարածքում”, 28 September, 2020,

<https://www.youtube.com/watch?v=GmN13XfU3Eo>.

international law, including the prohibition of indiscriminate attacks involving a means or method of warfare which cannot be directed at a specific military objective.

The Geneva Conventions and the UN Convention on Cluster munitions (Azerbaijan is not a party) limits the right to choose the methods and means of warfare, prohibiting the use of such dangerous weapons. International legal instruments and customary international law prohibits the use of cluster munitions, considering them lethal and inhumane. These types of munitions have an indiscriminate effect, and endanger the lives and health of the civilian population, causing additional damage and suffering.

Thus, international law forbids to attack civilians, including journalists, and civilian objects, as well as use cluster munitions in any case, when the distinction between military targets cannot be ensured.

2.2. DEPLOYMENT AND USE OF TERRORIST GROUP MEMBERS AS MERCENARIES

There are multiple strong evidences that confirms the deployment of mercenaries to fight in the side of Azerbaijan against Artsakh and Armenia. Moreover, the same evidence discloses the key role of Turkey in this matter.

Turkey has deployed mercenaries from northern part of Syria, Libya to Azerbaijan to use them against Artsakh (Nagorno-Karabakh) and Armenia. About 3,000-4,000 mercenaries were hired to participate in the ongoing war activities against Artsakh and Armenia for 1,500-2,000 USD, as reported by multiple media sources and investigations. The deployment of mercenaries and their involvement in the Nagorno-Karabakh conflict by Turkey has been regularly confirmed also by international media, some foreign human rights organizations, Governments (e.g. USA, France, Russia, Iran) and more.³²

The Ministry of Foreign Affairs of Armenia also confirmed in its statement of September 28th that the Ministry has information about mercenaries' recruitment by Turkish authorities in the Middle East to be deployed in the conflict zone in Nagorno-Karabakh. According to the statement, "Turkey is recruiting terrorists and mercenaries in some of the Middle Eastern countries and is sending them to Azerbaijan".³³

The Foreign Minister of Armenia and his Russian counterpart considered the steps undertaken by extra-regional countries towards undermining regional peace and security.³⁴

Moreover, the National Security Service of Armenia presented facts on participation of the Turkish side in hostilities, presence of mercenary terrorists and panic among them.³⁵

32 The Guardian, "Syrian rebel fighters prepare to deploy to Azerbaijan in sign of Turkey's ambition," 28 September, 2020, <https://www.theguardian.com/world/2020/sep/28/syrian-rebel-fighters-prepare-to-deploy-to-azerbaijan-in-sign-of-turkeys-ambition>.

Human Rights Organisation - Afrin - Syria, "Turkey is sending more convoys of Syrian mercenaries from northern Syria to Azerbaijan," 28 September, 2020,

https://www.facebook.com/permalink.php?story_fbid=366061181444110&id=114977619885802.

BBC Arabic Service, "30 أرمينيا وأذربيجان: بي بي سي عربي تحاور مقاتلا سوريا على خط النار بين البلدين," 30 September, 2020, https://www.bbc.com/arabic/middleeast-54346711?fbclid=IwAR3c0djgE8veTgg54FArDq2AFYLh_5vP3eousEuIR9dnyd3_7rsbImHuVo4.

Tass, "Armenian Foreign Ministry says Turkey sending mercenaries from Middle East to Karabakh," 28 September, 2020, <https://tass.com/world/1205995>.

33 Ibit.

34 Armenian MFA, "Regarding the phone conversation of the Foreign Ministers of Armenia and Russia," 30 September, 2020, https://www.mfa.am/en/press-releases/2020/09/30/fm_armenia_russia_/10478.

35 Armenian National Security Service, "National Security Service presents facts on participation of the Turkish side in hostilities, presence of mercenary terrorists and panic among them," 03 October, 2020, <https://www.sns.am/en/press-releases/2020/10/03/national-security-service-presents-facts-on-participation-of-the-turkish-side-in-hostilities-presen/471/>.

The French President, for example, declared that they ‘have information that indicates with certainty that the Syrian combatants left the theater of operation of the combatants of the jihadists by going through Gazianteb (Turkey) to join the theater of operation of Nagorno-Karabakh’.³⁶

Days after the outbreak, a high-ranking official in the US Defense Department confirmed the validity of the information that spoke about sending hundreds of Syrian mercenaries from Turkey to support Azerbaijan.³⁷

The spokesman for the Iranian Ministry of Foreign Affairs commented “Islamic Republic of Iran will by no means allow the terrorist organizations to transform the regions adjacent to our northern borders into a threat to our national security. A transfer of clashes to the Caucasus will bring a much larger catastrophe than the Karabakh conflict.”³⁸

The deployment of the mercenaries and their existence in the Azerbaijan is proofed based on the video published by them. The location of the mercenaries was identified by the respective experts.³⁹

Meanwhile, it is also essential to underline that Turkey and Azerbaijan exercise direction and control at every level of the mercenary army's activities, from the minutest details of the behavior and performance of individual mercenaries, to the broadest issues of deciding what goals to achieve and how to achieve them.

The gathered information and evidence allows to identify the foreign fighters recruited and deployed by Turkey on the borders between Artsakh and Azerbaijan as mercenaries within the meaning of international legal documents such as the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

Azerbaijan is a state party to the Convention of 1989; Turkey is a party to none. However, the prohibition of using mercenaries in hostilities is of customary nature and is binding upon any state. The United Nations Human Rights Council, by the Resolution 42/9 resolution of 26 September 2019 has strongly condemned use of mercenaries to impede the exercise of the right of peoples to self-determination, considering it a complex crime in which criminal responsibility falls upon those who have recruited, employed, trained and financed the mercenaries. The Resolution considers the activities of the mercenaries as a threat to peace, security and human rights.⁴⁰

Deployment and use of these militants not only go against the obligations of Turkey and Azerbaijan under public international law but create major threats for the violation of human rights and the very essence of relevant humanitarian principles.

36 Élysée – Présidence de la République française, “EN DIRECT | Déclaration du Président Emmanuel Macron à son arrivée au Conseil européen,” 01 October, 2020,

https://www.facebook.com/watch/live/?v=2683576861957360&ref=watch_permalink.

37 Frontnews International, “Pentagon confirmed information about transferring Syrian mercenaries to Nagorno-Karabakh by Turkey,” 1 October, 2020, http://frontnews.eu/news/en/71955/?fbclid=IwAR0aXoUMjbjq_XPccAl2IDSYK6j7JeCQib-TnSRIGwTLU4Dos5EZ--Yf2okE.

38 Khabar Online, “03 ”, “ایران اجازه استقرار تروریست‌ها در مناطق همجوار مرزهای شمالی خود را نمی‌دهد,” October, 2020, <https://www.khabaronline.ir/news/1438346/%D8%AE%D8%B7%DB%8C%D8%A8-%D8%B2%D8%A7%D8%AF%D9%87-%D8%A7%DB%8C%D8%B1%D8%A7%D9%86-%D8%A7%D8%AC%D8%A7%D8%B2%D9%87-%D8%A7%D8%B3%D8%AA%D9%82%D8%B1%D8%A7%D8%B1-%D8%AA%D8%B1%D9%88%D8%B1%DB%8C%D8%B3%D8%AA-%D9%87%D8%A7-%D8%AF%D8%B1-%D9%85%D9%86%D8%A7%D8%B7%D9%82-%D9%87%D9%85%D8%AC%D9%88%D8%A7%D8%B1-%D9%85%D8%B1%D8%B2%D9%87%D8%A7%DB%8C?fbclid=IwAR3mGS2g6eDJ9mmkikH3MpAihwUHB3jw9BZBQiL6ryOTQmrJ3kF400zFqBM>.

39 Razminfo, “Ադրբեջանում արաբախոս վարձկանների գտնվելու առաջին տեսասպասույցը”, 03 October, 2020, <https://razm.info/146655>.

40 UN Resolution 42/9 “The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination,” 4 October, 2019, <https://undocs.org/en/A/HRC/RES/42/9>.

The situation raises major legal questions with respect to compliance of Turkey with its international legal obligations. Thus, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations lays down the basic principle according to which “[e]very State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State”.

Furthermore, both Azerbaijan and Turkey are parties to the Convention for the Suppression of the Financing of Terrorism. The latter provides for the obligation of the states to prevent, prosecute and punish direct or indirect, unlawful and willful, provision or collection of funds with the intention that those are used or in the knowledge that they are to be used, in full or in part, in order to carry out, *inter alia*, any act “intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” (Article 2(1)(b)).

Despite the fact that the Convention is an instrument aimed at struggling against individuals committing certain crimes and not talking (at least directly) about negative obligations (commitment of prohibited acts on their own) of the States parties, it must be noted that according to the ruling of the International Court of Justice in *Bosnia and Herzegovina v. Serbia and Montenegro* case “it would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of [prohibited acts] by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 2007 I.C.J. Reports 43, p. 113, ¶166).

It is worth-mentioning that on 6 October the European Court of Human Rights received a request for an interim measure lodged by Armenia against Turkey due to the latter’s involvement in Nagorno-Karabakh conflict through direct military presence and deployment of mercenaries. The European Court granted the request and called on Turkey to refrain from actions that contribute to breaches of the Convention rights of civilians, and to respect its obligations under the Convention.

2.3. MASSIVE HATE SPEECH TOWARDS ETHNIC ARMENIANS

Aggressive military air and artillery shelling against peaceful population of Artsakh launched by Azerbaijan on 27 September is accompanied with massive hate speech towards ethnic Armenians (Armenophobia) that enjoys state support.

Monitoring of mass media and especially social networks has revealed hatred and incitement to hatred and calls for violence, including calls for killings, spread from Turkish and Azerbaijani sources. At the same time, extensive number of social network individual and group pages spread videos and texts containing hatred towards Armenians; scenes of violence and calls for killing and destruction. Significant number of fake profiles is with Armenian names and surnames, which also send messages to real Armenian accounts with threats and intimidation.

The mentioned materials are disseminated through Facebook, Twitter, TikTok, and other social media networks. They target Armenian social media users, including minors. At the same time, more aggressive materials are spread through TikTok with purpose to spread fear and alarms in the peaceful population. Consultations of the Human Rights Ombudsman with experts show that this specific social network is more dangerous than others, since in many cases it is impossible to have control over them.

The Armenophobia and massive hate speech against ethnic Armenians coordinated by Azerbaijani authorities had been thoroughly analyzed and documented by independent experts and published by the Ombudsman of Artsakh.⁴¹

The results of Azerbaijani state lead hate speech against ethnic Armenians were revealed also during the outbreak of Nagorno-Karabakh conflict on April 2016. Within his *ad hoc* reports the Ombudsman of Artsakh addressed a wide range of human rights issues stemming from the Azerbaijani aggression, including beheading, torture, and mutilation of combatants' and civilians' dead bodies, as well as indiscriminate shelling of civilian objects, etc.⁴²

This is a continuation of long-lasting Armenophobia which has been confirmed also by the European Court of Human Rights case of "Makuchyan and Minasyan v. Azerbaijan and Hungary" (paras. 213-221). It is related to the release and glorification of Ramil Safarov by Azerbaijani authorities, who brutally killed Armenian officer Gurgen Margaryan. This ECtHR judgment is a ruling against Azerbaijan's policy of Armenophobia. It not only recognizes, but also adjudicates on the inadmissibility of the promotion on the state level of hate crimes committed against the Armenians by Azerbaijan.

The Strasbourg Court condemned for the release and glorification of a person who committed murder as a result of ethnic hatred, which is a dangerous impetus for creating an atmosphere of impunity. The European Court, in this case, found a violation of right to life guaranteed by the European Convention on Human Rights (Article 2), as well as the right to prohibit discrimination (Article 14), in conjunction with the Article 2. The above mentioned is only one example of the result of the Armenophobic propaganda of the Azerbaijan.

The hate speech is being disseminated also by the Turkish government. According to Garo Paylan, member of the Turkish Parliament, the Turkish government engages in war propaganda by openly supporting the military conflict and is publicly resorting to belligerent rhetoric against the Armenia. Moreover, Turkey's Armenian community has also been intimidated in this climate of hate speech. Provocateurs gathered at the Armenian patriarchate with Azerbaijani flags and Turkey's Armenian community and citizens of Armenia who live and work in Turkey no longer feel safe.⁴³

All these factors clearly demonstrate a policy by Azerbaijan and Turkey of ethnic cleansing and terror-inspiring means against the Armenian civilian population.

41 Artsakh Ombudsman, "ARTSAKH OMBUDSMAN INTERIM PUBLIC REPORT ARMENOPHOBIA IN AZERBAIJAN ORGANIZED HATE SPEECH ANIMOSITY TOWARDS ARMENIANS," 25 September, 2018, <https://artsakhombuds.am/hy/document/570>.

42 Artsakh Ombudsman, "ARTSAKH OMBUDSMAN INTERIM PUBLIC REPORT LEGAL ASSESSMENT FACTS ON HUMAN SHIELDING AND USE OF INDISCRIMINATE ATTACKS AGAINST THE CIVILIAN POPULATION OF NAGORNO KARABAKH BY AZERBAIJANI MILITARY FORCES," 21 April, 2016, <https://artsakhombuds.am/hy/document/566>.

Artsakh Ombudsman, "ARTSAKH OMBUDSMANS SECOND INTERIM REPORT ON ATROCITIES COMMITTED BY AZERBAIJAN DURING THE 2016 APRIL WAR," 9 December, 2016, <https://artsakhombuds.am/hy/document/568>.

43 Garo Paylan - Կարո Փայլան, "Press Statement," 3 October, 2020, <https://www.facebook.com/792138110876107/posts/3362613830495176/>.

Annotation

The institution of the Human Rights Ombudsman of the Republic of Artsakh is an independent national human rights institution functioning with Paris principles. It was established in 2008, according to the Constitution and the Law on Human Rights Ombudsman.

The first Human Rights Ombudsman was Yuri Hayrapetyan, who served in 2008-2016.

The second Human Rights Ombudsman was Ruben Melikyan, who served in 2016-2018.

The incumbent Ombudsman is Artak Beglaryan, who has been elected on October 31, 2018.

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